

## **MEETING NOTICE**

The **Ordinary Meeting** of  
**Bayside Council**  
will be held in the Committee Room at Botany Town Hall,  
cnr Edward Street and Botany Road, Botany  
**on Wednesday, 12 October 2016 at 7.00 pm**

## **AGENDA**

- 1 ACKNOWLEDGEMENT OF TRADITIONAL OWNERS**
- 2 OPENING PRAYER**
- 3 APOLOGIES**
- 4 MINUTES OF PREVIOUS MEETING**
  - 4.1 Extraordinary Council Meeting 14 September 2016
- 5 DISCLOSURES OF INTEREST**
- 6 ADMINISTRATOR MINUTE**
  - 6.1 Update on the Transition of Bayside Council and Progress
- 7 PUBLIC FORUM**
- 8 OFFICER REPORTS**
  - 8.1 Delegates to external bodies
  - 8.2 Advisory Committees – Update
  - 8.3 Audit and Risk Committee
  - 8.4 Preliminary Certificate of Cash and Investments - 9 September 2016
  - 8.5 Common Seal
  - 8.6 Annual Lodgement of Pecuniary Interest Returns (1 July 2015-30 June 2016)
  - 8.7 Community Grant for the Bayside Community Garden at Lance Studdert Reserve
- 9 PLANNING MATTERS**
  - 9.1 Bayside Independent Hearing and Assessment Panel  
Mascot Planning Office
  - 9.2 Development Application 16 (52) -15 Aloha Street, Mascot
  - 9.3 Refusal of Planning Proposal – 51-53 Rhodes Street, Hillsdale
  - 9.4 Report on Submissions – BBDCP 2013 (Amendment 7) – Caretaker Dwellings

- 9.5 Report on Submissions – Reclassification – Planning Proposal – Henry Kendall Crescent, Mascot
- 9.6 Update on new road and parks in Wilson and Pemberton Street Precinct  
Rockdale Planning Office
- 9.7 DA-2016/310 – 1 Bowood Avenue, Bexley
- 9.8 DA-2016/275 - 33 Florence Street, Ramsgate
- 9.9 DA-2016/325 – 16, 18 and 20 Princess Street, Brighton Le Sands
- 9.10 DA-2017/15 – 47 Rowley Street, Brighton Le Sands
- 9.11 DA-2016/47 – 7-9 Gertrude Street, Wolli Creek
- 9.12 DA-2016/352 – 588 and 592 Princes Highway, Rockdale
- 9.13 DA-2016/296 - 7-13 Willis Street, Wolli Creek

## **10 MINUTES OF COMMITTEE**

- 10.1 Bayside Traffic Committee Meeting 28 September 2016
- 10.2 Local Representation Committee Meeting 5 October 2016

## **11 CONFIDENTIAL ITEMS**

- 11.1 Closed Council Meeting
- 11.2 CONFIDENTIAL - Report from NSW Fire and Rescue - 2-4 Dillon Street, Ramsgate (Section 121ZD)
- 11.3 CONFIDENTIAL - Tender – Mascot Childcare Centre Upgrade
- 11.4 CONFIDENTIAL - Tender – Footpath Kerb and Gutters and Pram Ramps
- 11.5 CONFIDENTIAL - Tender – SRV13 Scarborough Park Amenities Refurbishment
- 11.6 CONFIDENTIAL - Senior Staff Structure
- 11.7 Resumption of Open Session of Council

Meredith Wallace  
**Interim General Manager**



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## **Council Meeting**

**12/10/2016**

Item No	4.1
Subject	<b>Minutes of Extraordinary Council Meeting 14 September 2016</b>
Report by	Evan Hutchings, Acting Manager Governance Liz Rog, Acting Manager Governance
File	(R) SF16/959

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## **Council Resolution**

Resolved by the Administrator:

That the Minutes of the Extraordinary Meeting of Council held on 14 September 2016 be confirmed as a true record of proceedings and the recommendations contained therein be approved and adopted.

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## **Officer Recommendation**

That the Minutes of the Extraordinary Council Meeting of 14 September 2016 be confirmed.

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## **Present**

Greg Wright (Administrator)

## **Also Present**

Meredith Wallace, Interim General Manager  
Lara Kirchner, Deputy General Manager  
Fausto Sut, Acting Director Corporate & Community  
John Patterson, Acting Director Corporate & Community  
Michael McCabe, Acting Director City Planning & Development  
Heather Warton, Director City Planning & Environment  
Jeremy Morgan, Acting Director City Operations  
Stuart Dutton, Director City Infrastructure  
Liz Rog, Acting Manager Governance  
Evan Hutchings, Acting Manager Governance  
Luis Melim, Manager Development Services  
Pintara Lay, Coordinator Traffic & Road Safety  
Vince Carrabs, Coordinator City Media & Events  
Veronica Giles-Cook, Mayoral Secretary  
Anne Suann, Executive Services Support Officer  
Ian Vong, IT Support Officer  
Heather Davis, Meeting Secretary

The Administrator opened the meeting in the Rockdale Town Hall at 7.00 pm.

## **1 Acknowledgement of Traditional Owners**

The Administrator acknowledged the traditional custodians of the land, the Gadigal and Bidjigal clans.

## **2 Opening Prayer**

Pastor Andrew Harper, Bay City Church, opened the meeting in prayer.

## **3 Disclosures of Interest**

There were no disclosures of interest.

## **4 Administrator Minutes**

### **4.1 Introducing the new Bayside Council and recognising former Councillors.**

Minute 2016/001

Resolved by the Administrator

- 1 That the Minute be received and noted.
- 2 That the dedication and contributions of Councillors and staff of the former City of Botany Bay and Rockdale City Councils be recorded and acknowledged.
- 3 That the service of the Councillors of the former City of Botany Bay and Rockdale City Councils in the 2012 to 2016 Term be suitably recognised.

## **5 Officer Reports**

### **5.1 Code of Meeting Practice**

Minute 2016/002

Resolved by the Administrator

That the variations to the Code of Meeting Practice be noted and the amended version attached to the report, be endorsed.

## **5.2 Schedule of Council Meeting Dates and Venues**

Minute 2016/003

Resolved by the Administrator

That the revised schedule of Council Meetings for Bayside Council 2016, as listed in the report, be adopted.

## **5.3 Code of Conduct**

Minute 2016/004

Resolved by the Administrator

That the Code of Conduct attached to the report, be adopted.

## **5.4 Delegations to the Interim General Manager**

Minute 2016/005

Resolved by the Administrator

That the delegations granted to the Interim General Manager by virtue of the Proclamation be revoked and the Interim General Manager be delegated all of the functions of the Council other than those specified in Section 377(1) of the Local Government Act 1993.

## **5.5 Expenses & Facilities Policy – Administrator**

Minute 2016/006

Resolved by the Administrator

- 1 That the Payment of Expenses and the Provision of Facilities for Mayor and Councillors Policy, annexed to the report, be adopted as Bayside Council's policy.
- 2 That any reference to Council, the Mayor and Councillors in the policy referred to in (1) above be taken to be a reference to the Administrator.

## **5.6 Adoption of Membership of Local Representation Committee**

Minute 2016/007

Resolved by the Administrator

That the Bayside Council Local Representation Committee be established in accordance with the details contained within the report and operate under the Terms of Reference attached to the report.

## **5.7 Minutes of the former City of Botany Bay Local Traffic Committee held 5 September 2016**

Minute 2016/008

Resolved by the Administrator

That the Minutes of the meeting of the former City of Botany Bay Local Traffic Committee of 5 September 2016 be received and the recommendations therein adopted.

## **5.8 Formation of the Bayside Traffic Committee**

Minute 2016/009

Resolved by the Administrator

- 1 That the Bayside Traffic Committee be established under delegation from the Roads & Maritime Services and comprises the following formal members:
  - the convenor and representative of Council, being the General Manager or nominee;
  - one representative of the NSW Police from each Local Area Command;
  - one representative of the Roads and Maritime Service;
  - the Local State Member of Parliament (MP) or their nominee from each Electorate.
- 2 That the convenor confirms the names of members with the above bodies, and invites other appropriate advisors to attend.
- 3 That the Committee meets on a monthly basis, except in January.

## **5.9 Joint Regional Planning Panel Representation**

Minute 2016/010

Resolved by the Administrator

That the delegates and alternate delegates of the former City of Botany Bay and Rockdale City Councils be endorsed as the delegates for Bayside Council on the Joint Regional Planning Panel for future meetings.

## **5.10 Interim Senior Staff Structure**

Minute 2016/011

Resolved by the Administrator

- 1 That the following positions and staff be confirmed as the interim senior staff structure for Bayside Council:

- Director City Operations – Karin Hartog
- Director City Infrastructure – Stuart Dutton
- Director City Planning and Environment – Heather Warton
- A/Director City Planning and Development – Michael McCabe
- A/Director Corporate and Community – John Patterson
- A/Director Corporate and Community – Fausto Sut

That the interim senior staff structure referred to in (1) above continue until finalisation of a new management structure and clarification of reporting lines, to be the subject of a report to the next Council meeting.

The Administrator closed the meeting at 7.20 pm.

Greg Wright  
**Administrator**

Meredith Wallace  
**Interim General Manager**

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## **Council Meeting**

**12/10/2016**

Item No	6.1
Subject	Update on the Transition of Bayside Council and Progress
File	(R) F16/862

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## **Council Resolution**

Resolved by the Administrator:

That the Minute be received and noted.

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## **Administrator Minute**

It is now three and a half weeks since the new Bayside Council was proclaimed by the Governor and a considerable amount of activity has occurred during that time.

Of primary concern to me in the first weeks of the new Council was the imperative that, despite some often frenzied activity happening in the background, our citizens should not suffer any deterioration of service or inconvenience as a result of the change. Indeed, continuity of service must be fundamental to the success or failure of the merger.

By my estimation we have achieved a relatively seamless changeover up to this point and all indications are that we have actually delivered some early benefits to some of our constituents. Our residents and customers can now access services from the broader area across a greater range of locations. In fact, all residents can now access one of our customer service centres on Saturdays. In addition, we have broader access to library services, development application lodgement, permits and requests for service are accessible right across the Bayside area.

Behind the scenes we have established the Office of the Administrator, established and commenced a Local Representation Advisory Committee, reconstituted the Traffic Committee and tonight we will discuss the many local committees and working groups and how we will best proceed to continue their involvement.

Already we have identified some very significant savings opportunities while respecting the focus of local events and activities. In fact, a working estimate to date of savings potential is in the vicinity of \$3million.

The General Manager and the staff are working diligently to integrate staff teams, processes, assets and services. I have been favourably impressed with the commitment and enthusiasm of the staff for the task at hand.

Residents will be starting to notice the new Bayside Council branding on vehicles, stationery and signage, all achieved at minimal expense and fuss.

I am delighted to be working with such a dedicated team and I look forward to regularly reporting to our community on our progress.

Greg Wright  
Administrator

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## **Motion**

That the Minute be received and noted.

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## Council Meeting

12/10/2016

Item No	8.1
Subject	<b>Delegates to External Bodies</b>
Report by	Liz Rog, Acting Manager Governance Evan Hutchings, Acting Manager Governance
File	(R) F14/259

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## Summary

This report considers the external bodies to which the former City of Botany Bay and Rockdale City Councils have appointed delegates and makes recommendations for Bayside Council.

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## Council Resolution

Resolved by the Administrator:

- 1 That the Administrator be appointed as Council's delegate to:
    - Southern Sydney Regional Organisation of Councils (SSROC)
    - Australian Mayoral Aviation Council
  - 2 That the Interim General Manager, or her nominee, be appointed to the other external bodies listed in the table.
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## Officer Recommendation

- 1 That the Administrator be appointed as Council's delegate to:
    - Southern Sydney Regional Organisation of Councils (SSROC)
    - Australian Mayoral Aviation Council
  - 2 That the Interim General Manager, or her nominee, be appointed to the other external bodies listed in the table.
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## Background

The former City of Botany Bay Council and Rockdale City Councils had appointed delegates to external forums. Such forums are often community bodies or groups of councils with a particular interest.

The respective forums for each council are included in the table below, and includes a brief description of the role of the forum and the most recent delegates. In general the delegates



were councillors, often supported by staff with the relevant areas of expertise and/or knowledge.

It is unrealistic that the Administrator be Council's delegate for all of the forums, however it is appropriate that Council be represented at some of the key forums by the Administrator. Such key forums include:

- Southern Sydney Regional Organisation of Councils (SSROC)
- Australian Mayoral Aviation Council

It is appropriate, that until councillors are elected in 2017, the delegate/s to the other forums be the Interim General Manager or her nominee.

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### Former Delegates to External Bodies

Former Rockdale City Council	Former City of Botany Bay
<b>Australia Day Botany Bay Regatta Committee</b> This sub-Committee was formed under the auspices of SSROC. Membership is a Councillor from each of the SSROC member Councils and the sailing clubs operating on Botany Bay. The role of the Australia Day Botany Bay Regatta Committee is to organise, conduct and promote water based activities for Australia Day on Botany Bay. Former Council delegate Councillor Tsounis.	<b>Australia Day Botany Bay Regatta Committee</b> This sub-Committee was formed under the auspices of SSROC. Membership is a Councillor from each of the SSROC member Councils and the sailing clubs operating on Botany Bay. The role of the Australia Day Botany Bay Regatta Committee is to organise, conduct and promote water based activities for Australia Day on Botany Bay. Former Council delegates: Councillor Troy and Councillor Glinatsis.
<b>Australia Mayoral Aviation Council</b> Membership is the Mayor or nominee. The Council represents the aviation interests of councils throughout Australia that have airports within their areas. It holds an Annual Conference and meetings as required. The Mayor is to decide on Councillor representation. Former Council delegate: Councillor Tsounis.	<b>Australia Mayoral Aviation Council</b> Membership is the Mayor or nominee. The Council represents the aviation interests of councils throughout Australia that have airports within their areas. It holds an Annual Conference and meetings as required. The Mayor is to decide on Councillor representation. Former Council delegate: The Mayor, Councillor Keneally
<b>Cooks River Alliance Board</b> The Cooks River Alliance is an association of councils that implements a strategic plan for the Cooks River Catchment, supported by Alliance Working Group consisting of Alliance staff, council and state agency officers. The Cooks River Alliance Board includes one (1) councillor and one (1) alternative nominated to represent each member of Council. Former Council delegates: Councillors O'Brien and Barlow.	N/A

Former Rockdale City Council	Former City of Botany Bay
<p><b>Georges River Combined Council Committee</b> Membership is two (2) Councillors and Council officers from each member Council. The Committee represents the interests of Councils adjoining the Georges River and manages the Riverkeeper program. Former Council delegates: Councillors Awada and Tsounis.</p>	N/A
<p><b>Lydham Hall Management Committee</b> Membership is one (1) Councillor and representatives of the St George Historical Society. The Committee manages historic Lydham Hall. The Committee meets quarterly. Former Council delegate: Councillor Barlow.</p>	N/A
<p><b>Metro Pool Insurance Group</b> Membership is one (1) delegate and one (1) officer from each member Council. The Group provides a Public Liability and Professional Indemnity Insurance Program for eight (8) Councils. The functions of the group has been expanded in recent times to include property and other insurances. It holds an Annual General Meeting and other meetings as required. This appointment is for a four (4) year term ending September 2016 and no re-appointment is required. Former Council delegate: Councillor Hanna.</p>	<p><b>Metro Pool Insurance Group</b> Membership is one (1) delegate and one (1) officer from each member Council. The Group provides a Public Liability and Professional Indemnity Insurance Program for eight (8) Councils. The functions of the group has been expanded in recent times to include property and other insurances. It holds an Annual General Meeting and other meetings as required. This appointment is for a four (4) year term ending September 2016 and no re-appointment is required. Former Council delegate: John Patterson, Acting Director of Corporate Services.</p>
<p><b>NSW Metropolitan Public Libraries Association</b> The Association represents the concerns of local government libraries in the Greater Sydney Region to the State and Federal Governments, in local government forums, and where appropriate, to other bodies and the wider community. The Association has one (1) Councillor representative from each member Council. Former Council delegate: Councillor Awada.</p>	No delegates
<p><b>Rockdale Community Nursery Committee</b> The Rockdale Community Nursery is a joint venture between Rockdale City Council and the Intellectual Disability Foundation of St George. The Committee has one (1) Councillor representative. Former Council delegate: Councillor Barlow.</p>	N/A

Former Rockdale City Council	Former City of Botany Bay
<p><b>Rockdale Local Traffic Committee</b></p> <p>This is a committee of Council established under a delegation from NSW Roads and Maritime Services (RMS) to the Council, to deal with traffic matters on local roads. Two (2) Councillors have been appointed and one acts as an alternate. Former Council delegates: Councillors Tsounis and Hanna.</p>	<p><b>Botany Local Traffic Committee</b></p> <p>This is a committee of Council established under a delegation from NSW Roads and Maritime Services (RMS) to the Council, to deal with traffic matters on local roads. One (1) Councillor has been appointed. Former Council delegate: Councillor Greg Mitchell.</p>
<p><b>Rockdale Floodplain Risk Management Committee</b></p> <p>The FRMC is a technical advisory committee, with the principle objective of assisting the Council in the development and implementation of management plans for the catchments in the City of Rockdale. The committee is tasked with seeking solutions to the existing, future and continuing flood risk issues. Former Council delegates: Councillors O'Brien and Tsounis.</p>	<p>N/A</p>
<p><b>SSROC (Southern Sydney Regional Organisation of Councils)</b></p> <p>Membership is two (2) delegates (usually Mayor and Deputy Mayor) and two (2) alternate delegates from each of the SSROC member Councils. SSROC advocates and lobbies on regional matters in the interests of the 16 Councils in the region. It meets quarterly. Former Council delegates: Councillors O'Brien and Barlow.</p>	<p><b>SSROC (Southern Sydney Regional Organisation of Councils)</b></p> <p>Membership is two (2) delegates (usually Mayor and Deputy Mayor) and two (2) alternate delegates from each of the SSROC member Councils. SSROC advocates and lobbies on regional matters in the interests of the 16 Councils in the region. It meets quarterly. Former Council delegates: Mayor and Deputy Mayor. Alternates: Councillor Keneally and Councillor Kondilios.</p>
<p><b>SSROC Program Delivery Committee</b></p> <p>Membership is one (1) Councillor and an alternate from each member Council. The areas of responsibility are Asset Management, Public Works, Procurement, Waste Management and SSROC Financial Reports. The Committee meets quarterly. Former Council delegate: Councillor Tsounis.</p>	<p><b>SSROC Program Delivery Committee</b></p> <p>Membership is one (1) Councillor and an alternate from each member Council. The areas of responsibility are Asset Management, Public Works, Procurement, Waste Management and SSROC Financial Reports. The Committee meets quarterly. Former Council delegate: Councillor Troy.</p>
<p><b>SSROC Sustainability Program Committee</b></p> <p>Membership is one (1) Councillor and an alternate from each member Council. The areas of responsibility are Regional Planning, Environment Management, Transport Planning and Management, and Community Development. The Committee meets quarterly. Former Council delegates: Councillor Barlow and O'Brien.</p>	<p><b>SSROC Sustainability Program Committee</b></p> <p>Membership is one (1) Councillor and an alternate from each member Council. The areas of responsibility are Regional Planning, Environment Management, Transport Planning and Management, and Community Development. The Committee meets quarterly. Former Council delegate: Councillor Castle.</p>

Former Rockdale City Council	Former City of Botany Bay
<p><b>St George and Sutherland Business Enterprise Centre</b></p> <p>Membership is one (1) Councillor. The Centre is a non-profit organisation which promotes and supports small businesses in the St George and Sutherland Shire areas. Meetings are held at Kirrawee bi-monthly. Former Council delegate: Councillor O'Brien.</p>	N/A
<p><b>Sydney Coastal Councils Group Board</b></p> <p>Membership is two (2) delegates and one (1) alternate delegate from each of the 15 member Councils. The Committee promotes coordination and cooperation among member Councils on environmental issues relating to the sustainable management of the urban coastal environment. Former Council delegates: Councillor O'Brien and Tsounis.</p>	<p><b>Sydney Coastal Councils Group Board</b></p> <p>Membership is two (2) delegates and one (1) alternate delegate from each of the 15 member Councils. The Committee promotes coordination and cooperation among member Councils on environmental issues relating to the sustainable management of the urban coastal environment. Former Council delegates: Councillor Troy and Councillor Castle.</p>

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## Financial Implications

Included in existing approved budget.

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## Community Engagement

Not required.

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## Attachments

Nil

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## Council Meeting

12/10/2016

Item No	8.2
Subject	<b>Advisory Committees - Update</b>
Report by	Liz Rog Acting Manager Governance Evan Hutchings, Acting Manager Governance Karen Purser, Manager Community Planning and Reporting
File	(R) F14/259

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## Summary

A review of the former City of Botany Bay and Rockdale City Councils' Advisory Committees has been undertaken in light of the proclamation of Bayside Council and the establishment of the Local Representation Committee of Bayside Council.

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## Council Resolution

Resolved by the Administrator:

That, with the exception of the Botany Historical Trust Committee due to separate circumstances requiring review, the Local Representation Committee of Bayside Council provide advice on community participation and advocacy in the development and delivery of council's services, policies and programs until the September 2017 Local Government Elections, when consideration of options for Advisory Committees will be open to the newly elected, incoming Council.

*The Administrator advised Council that separate circumstances are to be reviewed in respect of the Botany Historical Trust Committee.*

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## Officer Recommendation

That the Local Representation Committee of Bayside Council provide advice on community participation and advocacy in the development and delivery of council's services, policies and programs until the September 2017 Local Government Elections, when consideration of options for Advisory Committees will be open to the newly elected, incoming Council.

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## Background

Prior to amalgamation, the former Councils had a number of advisory committees in place to facilitate participation of the community in the development and delivery of council's services, policies and programs. The Advisory Committees ceased to exist on amalgamation of the two Councils and are no longer active.

A Local Representation Committee, comprising membership of past Councillors from both the former City of Botany Bay and Rockdale City Councils, was established at the Extraordinary Council Meeting held 14 September 2016.

The purpose of the committee is to provide advice to the administrator on local views and issues. This includes:

- providing advice on priority programs and projects, and emerging issues
- providing input to the operational plans 2017-18
- advising on the communication and engagement plan for the community
- providing input to the statement of vision and priorities
- assisting to engage communities and partners in planning for the new Council

Two committees are a statutory requirement:

- Bayside Traffic Committee – established at the Extraordinary Meeting held 14 September 2016
- Internal Audit Committee – recommended for establishment under separate cover at tonight's ordinary meeting.

It is recommended that options for a new framework of Advisory Committees for Bayside Council be developed for consideration, pending the outcomes of the September 2017 Local Government Elections.

It also provides details of the opportunities available for the next twelve months in terms of Bayside Council whilst in Administration. One such opportunity is the establishment of Strategic Reference Groups.

### **Strategic Reference Groups**

Strategic Reference Groups (SRGs) are aligned to the Local Representation Committee's priorities and are established to help shape the draft Community Strategic Plan. Strategic Reference Groups aim to replace the role of the previous formal special interest committees across the former council areas.

The Strategic Reference Groups provide a collective voice to provide input to the development of the vision and priorities for the draft Community Strategic Plan.

When implemented, the Strategic Reference Groups aim to include a diversity of members and ensure geographical coverage across the region. There is opportunity for each Strategic Reference Group to comprise up to 10 people from the five new wards, as well as five others from across the broader Council region. Their input will help develop the draft Community Strategic Plan.

## Former Advisory Committees

Former Rockdale City	Former City of Botany Bay	Bayside Council Est. 9 September 2016
Community Development and Safety Committee	Aboriginal Advisory Committee	Options to be developed in relation to Strategic Reference Groups in preparation for the newly elected incoming Council in September 2017.
	Access Committee	
	Senior Citizens Advisory Committee	
No equivalent	Botany Historical Trust Advisory Committee	
Climate Change and Environment Advisory Committee	No equivalent	
Sport and Recreation Advisory Committee	Recreation Committee	

A letter has been sent to all former advisory committee members advising of proclamation of Bayside Council and acknowledging and thanking members for their contributions.

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## Financial Implications

Not applicable

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## Community Engagement

Not required

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## Attachments

Nil

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## **Council Meeting**

**12/10/2016**

Item No                8.3  
Subject:                **Audit and Risk Committee**  
Report by:             Internal Auditors, John Hughes and Natasha Balderston  
File                      (R) F12/156

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## **Summary**

Both predecessor Councils of the Bayside Council had operational Audit Committees and operational Internal Audit functions prior to proclamation of the new Council.

Accordingly to allow normal business continuity in the immediate term the creation of an Audit Committee as the oversight mechanism for the Internal Audit function is an immediate administrative and governance issue for Council which needs to be addressed.

The Internal Audit function for Bayside Council will be established in accordance with the following documents annexed to this report:

- 1      the S. 23A Guidelines for Internal Audit (2010)
  - 2      the proposed Local Government Act amendments for Internal Audit requirements (refer p 25 of explanatory paper proposed phase 1 Local Government Act amendments attached)
  - 3      Bayside Council Internal Audit Charter
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## **Council Resolution**

Resolved by the Administrator:

- 1      That Council note the consolidation and continuity of the Internal Audit functions of Bayside east and west.
  - 2      That Council adopts the Bayside Council Audit Committee Charter.
  - 3      That Council endorses the process for the appointment of four independent members of Audit Committee by an advertised Expression of Interest process.
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## **Officer Recommendation**

- 1      That Council note the consolidation and continuity of the Internal Audit functions of Bayside east and west.
  - 2      That Council adopts the Bayside Council Audit Committee Charter.
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- 3 That Council endorses the process for the appointment of four independent members of Audit Committee by an advertised Expression of Interest process.
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## **Background**

The Division of Local Government believes that an Internal Audit function supports good internal governance; ensures consistency with other levels of government; improves the effectiveness of risk management, control and governance processes and helps to instil public confidence in an organisation's ability to operate effectively. Councils need to have an Internal Audit function that "provides independent assurance over the Internal Audit controls and risk management framework of the Council. Councils have formed Audit Committees and developed Internal Audit Programs to be undertaken internally by their own Internal Auditor(s) or outsourced.

The former Botany and Rockdale Councils have Internal Audit functions with each having an Internal Auditor employed 'in house' to undertake audit functions in accordance with an adopted audit program. The Internal Auditors report to an Audit Committee that operate under a formal charter in accordance with the Local Government Act 1993.

The establishment of Bayside Council as a result of the NSW Government proclamation requires the integration of the Internal Audit functions and audit program and, the establishment of one Audit Committee for the new entity. This ensures business continuity and that Council remains compliant with the Office of Local Government (OLG) Guidelines issued under s23A of the Local Government Act.

### **Process to establish new Audit Committee**

The Office of Local Government (OLG) Guidelines suggest a model structure for Audit Committees, which includes independent members external to Council. The idea of having independent members with particular expertise means that the Committee can provide an independent check on Council activities, systems and procedures, governance and risk management and more broadly whether Council is receiving value for money on systems, services and projects.

It is proposed to establish an Audit Committee for the new entity in accordance with the OLG Model as a priority. The draft charter is attached for the Executive Committee's review and endorsement.

The process to establish the new Audit Committee is summarised below;

- Committee Charter Developed and Endorsed - October 2016
- EOI for external representatives completed - October 2016. This includes a letter to members of former Botany and Rockdale Audit Committee thanking them for their contribution and inviting them to apply to be members on the Bayside Audit Committee.
- Selection of new members - November 2016
- First Audit Committee Meeting - Nov/Dec 2016

## **Interim Model for Internal Audit Functions**

It is proposed whilst former Botany and Rockdale Councils are transitioning, that the Internal Auditors are co-located and work together on delivering a joint interim audit program. Whilst administratively reporting to the Interim General Manager or their delegate, the Internal Auditors will report functionally to the Independent Chair of the Audit Committee once established. The Internal Auditors can also assist in undertaking risk and audit related tasks as required by the Interim General Manager to support the transition process.

Once the new organisational structure is known and a new Audit Committee established, the audit programs can be progressively developed and revised to reflect business risks and priorities of Bayside Council.

This interim model enables both Internal Auditors to share information and knowledge about their former organisations and work towards a future Internal Audit model and program.

## **Governance Structure**

The Internal Audit function will maintain independent reporting relationships with the Audit Committee and Management.

This requires:

- Reporting functionally to the Audit Committee and administratively to the Interim General Manager or their nominated delegate
- Reporting to an Audit Committee with external members
- Internal audit charter to be approved by the Audit Committee and the Audit Committee Charter to be approved by the Administrator.
- Audit Committee to approve Internal Audit plans, and provide a forum for discussion of areas worthy of Internal Audit attention
- Audit Committee to ensure coordination and cooperation of internal and external auditors
- Audit Committee to make enquiries of management to determine if the scope or budgetary limitations impede the Internal Audit's ability to function properly, and ensure that the Internal Audit function is properly resourced
- Reporting to the General Manager for budgeting and accounting, human resource administration, internal communications, administration of policies and procedures.

## **Relationship with External Auditors**

It is proposed that:

- The Internal Auditors shall liaise closely and cooperate with the Council External Auditors in the preparation of the Internal Audit work schedule and other audit matters so that the resources of the Internal Auditor shall be used to the best effect.

- The Internal Auditor shall be the Council primary contact with the External Auditors in relation to audit follow-up, and shall ensure that formal and informal External Audit recommendations are implemented or at least addressed as appropriate.
- Internal Audit Plans, working papers, flow charts, and reports shall be readily available to the Council External Auditors.

A meeting will be held biannually between the Internal Auditor, as the representative of the Council, and the Council External Auditors for the purpose of discussing audit matters.

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## **Financial Implications**

There are no financial implications applicable to this report.

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## **Community Engagement**

The issues raised in this report do not require community consultation under Council's Community Engagement Policy.

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## **Attachments**

Internal Audit Guidelines 2010

Toward New Local Government Legislation. Explanatory Paper: Proposed Phase 1 Amendments

Proposed Audit Committee Charter



**Premier & Cabinet**  
Division of Local Government

# **Internal Audit Guidelines**

**September 2010**

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The Division of Local Government, Department of Premier and Cabinet is located at:

Levels 1 & 2

5 O'Keefe Avenue  
NOWRA NSW 2541

Locked Bag 3015  
NOWRA NSW 2541

Phone 02 4428 4100  
Fax 02 4428 4199  
TTY 02 4428 4209

Level 9, 323 Castlereagh Street  
SYDNEY NSW 2000

Locked Bag A5045  
SYDNEY SOUTH NSW 1235

Phone 02 9289 4000  
Fax 02 9289 4099

Email [dlg@dlg.nsw.gov.au](mailto:dlg@dlg.nsw.gov.au)  
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## **Chief Executive's Foreword**

Internal audit is an essential component of a good governance framework for all councils. At both a management and councillor level, councils must strive to ensure there is a risk management culture. Internal audit can assist in this regard.

Internal audit is widely used in corporate Australia as a key mechanism to assist councils to manage risk and improve efficiency and effectiveness. At Federal and State Government levels there are clear requirements for internal audit and risk management.

There is also growing acceptance of the importance of internal audit and risk management in local government. It is pleasing to see that a number of councils in New South Wales are showing leadership in fully embracing this concept. However, a survey of councils conducted in 2009 by the Division of Local Government designed to assess the progress of councils in implementation of the internal audit function highlighted that while progress is being made, there is still opportunity for improvement. Effective internal audit and risk management processes should become part of the 'business as usual' operations of councils.

With the implementation of Integrated Planning and Reporting, internal audit will play a vital role at ensuring that the strategies adopted by council are being followed.

These guidelines propose oversight of council systems and processes through an audit committee. The combination of an effective audit committee and internal audit function provide a formal means by which councillors can obtain assurance that risk management is working effectively. Similarly the internal audit process is an on-going mechanism to ensure that the recommendations of the Promoting Better Practice reviews undertaken by the Division of Local Government have been fully implemented.

This guide has been designed to help councils and county councils develop and implement internal audit and risk management frameworks that will in turn build community confidence in their managerial performance. I encourage all councils to use this guide to assist them in building their own internal audit capability within their organisations.

**Ross Woodward**  
**Chief Executive, Local Government**  
**A Division of the Department of Premier and Cabinet**



# 1. Introduction

The NSW Division of Local Government (DLG) believes that a professional Internal Audit function is one of the key components of the effective governance of any council. In 2001, the Independent Commission Against Corruption (ICAC) found that while 80% of local council General Managers agreed that internal audit is important, only 20% of councils had an internal audit function or audit committee.

These Internal Audit Guidelines, first released in 2008, are aimed at assisting councils put into place effective internal audit practices.

In 2009 the DLG conducted a survey of councils to assess how they were progressing with the implementation of the recommendations of the Guidelines. While the results of the survey revealed that considerable progress has been made toward the implementation of the Guidelines, with more than 50% of councils reporting that they had an internal audit function, it also identified that there were some areas where some councils appeared to be having difficulties and some areas where the Guidelines needed to be clarified.

These revised Guidelines have been developed to address the issues arising from the survey.

The Guidelines are designed to provide councils with assistance to implement internal audit and risk management. There are already a large number of internal audit standards, guidelines and publications in existence, such as the Institute of Internal Auditors' Internal Audit Framework, Better Practice Guidelines – Local Government Entity Audit Committees and Internal Audit (Victoria) and A Guide to Leading Edge Internal Auditing in the Public Sector (Manitoba).

These Guidelines are Director General's Guidelines for the purposes of section 23A of the *Local Government Act 1993*, issued by the Chief Executive, Local Government under delegated authority. They describe internal audit and risk management systems for Local Government in NSW. The Guidelines also include appropriate structures, functions, charter, and membership of audit and risk management committees.

The Division acknowledges the lead role of the Local Government Internal Audit Network (LGIAN) and the Institute of Internal Auditors in the development of these Guidelines.

## Terminology

The following terms are used throughout this guidance paper:

- Council is used in two contexts. Council can refer to the elected body of councillors, the local government administration and staff and/or the entity as a whole. The term also includes county councils.
- The General Manager is the most senior member of management as per section 335 of the Local Government Act. Chief Financial Officer (CFO) refers to the most senior member of staff within the finance and accounts area of the council.
- Internal Audit Activity is used interchangeably with 'internal audit function' in recognition that there are several methods of resourcing an internal audit function, including outsourcing this to a third party provider or sharing resources with other councils.
- Audit Committee is the name used for the committee which provides independent oversight of both the internal audit function and the external audit function. It provides the council with independent oversight and monitoring of the council's audit processes,

including the council's internal controls activities. This oversight includes internal and external reporting, risk management activities, internal and external audit, and compliance. It is not uncommon for the committee charged with these responsibilities to be referred to by other names such as governance and risk management committee; audit and risk management committee; internal audit committee.

- External Audit refers to the review and certification of the financial reports as per section 415 of the *Local Government Act 1993*.
- Enterprise Risk Management is the holistic management of all risks within council, not just insurable risks or Occupational Health and Safety.

## **1.1. What is Internal Audit?**

Internal audit is described as *'an independent, objective assurance and consulting activity designed to add value and improve an organisation's operations.*

*It helps an organisation accomplish its objectives by bringing a systematic disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes.'*<sup>1</sup>

Internal audit's role is primarily one of providing independent assurance over the internal controls and risk management framework of the council.

Management has primary day-to-day responsibility for the design, implementation, and operation of internal controls.

Internal audit has no direct involvement in day-to-day operations, but it has a direct functional relationship with the General Manager and the council. An effective internal audit function should evaluate and monitor the adequacy and effectiveness of the internal control framework as a minimum.

Risk management is also an essential part of a council's management and internal control framework. It looks at what risks the council may face and the best way to address these risks. Assessment and management of risk is central to determining internal audit activities.

Internal audit's core competencies are in the area of internal control, risk and governance. Typically, internal audit's scope will include some or all of the following areas:

- Reliability and integrity of financial and operational information
- Effectiveness and efficiency of operations and resource usage
- Safeguarding of assets
- Compliance with laws, regulations, policies, procedures and contracts
- Adequacy and effectiveness of the risk management framework.

## **1.2. Why my council should have an internal audit function.**

All councils should have an internal audit function for the following reasons:

- it supports good internal governance
- to ensure consistency with other levels of government
- to improve the effectiveness of risk management, control and governance processes
- helps to instil public confidence in an organisation's ability to operate effectively.

When considering an internal audit function, councils should consider the following issues:

- The need to extend council's understanding of risk management beyond traditional areas of public liability and occupational health and safety, into areas such as internal governance, fraud risk and broader regulatory risk.
- Whether council should have a uniform approach to assessing and managing risk, regardless of size or location.
- Whether it is feasible for council to pool resources with like councils or arrange through regional organisations of councils for internal audit services.

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<sup>1</sup> International Professional Practice Framework (IPPF) 2009, The Institute of Internal Auditors, [www.iaa.org.au](http://www.iaa.org.au)

- Whether small management teams can feasibly conduct audits or internal reviews in the absence of an audit function, with an appropriate degree of independence and objectivity.
- How council can properly resource internal audit and internal control programs.

### **1.3. How does internal audit fit in with other governance functions and activities?**

Good governance requires an organisation to have a proper framework in place to ensure excellence in decision making, and that decisions are implemented efficiently and effectively. Key components of good governance include the use of:

- Audit Committees
- Internal and External Audit
- Enterprise Risk Management

#### **1.3.1. The Audit Committee**

An audit committee plays a pivotal role in the governance framework. It provides councils with independent oversight and monitoring of the council's audit processes, including the council's internal controls activities. This oversight includes internal and external reporting, risk management activities, internal and external audit, and compliance<sup>2</sup>. Given the key role of the Audit Committee, for it to be most effective it is important that it is properly constituted of appropriately qualified independent members.

A strong relationship between the audit committee and internal audit enables the committee to meet its responsibilities and carry out its functions. An audit committee establishes the role and direction for internal audit, and maximises the benefits from the internal audit function.

More information on the Division's expectations of audit committees in Local Government is set out in section 4 of this document.

#### **1.3.2. External Audit**

External audit is a statutory function that provides an opinion on the council's annual financial reports, as required under Divisions 2 and 3 of the *Local Government Act 1993*. The primary focus and responsibility is on providing an opinion on the financial report to council and its external stakeholders.

Councils should be aware that the external auditor should not be expected to conduct a deep or thorough review of the adequacy or effectiveness of a council's risk management framework or internal controls. To obtain a deeper understanding of the scope of the external auditor's report it is recommended that you read the disclaimer contained in the external audit report in your council's statutory financial reports. The external auditor may place some reliance on internal audit reviews, monitoring of internal control, including fraud control and risk management as per the Australian Auditing Standards.

An effective internal audit function may contribute to the performance of external audit, as the external auditor may be able to rely on some of the internal audit work performed, and the stronger internal control environment that a strong internal audit function can create. This may have an indirect benefit in reducing audit fees.

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<sup>2</sup> *Auditing and Assurance Standards Board, Australian Institute of Company Directors, Institute of Internal Auditors, Audit Committees A guide to good practice 2008*

### **1.3.3. Management**

Management has primary responsibility for the design and operation of the risk management and internal control frameworks of the council. It is separate from the responsibilities of external audit, internal audit and the audit committee. While these functions provide advice and oversight in relation to the risk management and internal controls, they are not responsible for its design or implementation. This responsibility lies solely with management. Good governance in local government relies on a robust independent review of management, finances, risks and operations.

### **1.3.4. Risk Management**

Risk management is an important component of corporate governance. Risk management is the responsibility of management with oversight by council and the audit committee. Internal audit can assist management to identify and evaluate the effectiveness of council's risk management system and contribute to the improvement of risk management and control systems. The annual Internal Audit plan should be developed after consideration of the council's risk registers and those areas that are high risk to the organisation.

Internal audit will usually provide advice and assurance over the risk management and internal control frameworks, but in order to maintain independence, internal audit will not be responsible for its implementation of risk management or making decisions on how risks should be treated. Risk management is an important area that is touched upon in more detail in section 5 of this document.

## 2. Establishing an Internal Audit Function

**Key strategies** aimed at ensuring that internal audit services conform with good practice:<sup>3</sup>

- Establish an audit committee, with a majority of members who are external (independent) to council
- Set up an independent reporting structure for internal audit (i.e report functionally to the audit committee and administratively to the General Manager) and define its functions and responsibilities with an internal audit charter
- Adopt and comply with professional internal auditing standards
- Recruit and retain capable staff
- Establish and communicate a clear internal audit vision and strategy
- Demonstrate the value of internal audit
- Understand council, management and community stakeholder needs
- Focus on risk
- Review internal controls
- Educate management on risks and controls
- Continuously improve the quality of internal audit services.

**Key Attributes** of a good practice internal audit function in local government:<sup>4</sup>

- Maintain independence and objectivity
- Have clear roles and responsibilities
- Comply with the internal auditors International Standards for professional practice of internal auditing in planning and executing work
- Have sufficient and appropriate resources to carry out audit work, as well as the necessary skills, experience and personal attributes to achieve what is expected of internal audit
- Have regular and timely communication of findings and recommendations
- Systematically conduct regular follow-ups on audit recommendations
- Continuously monitor internal audit effectiveness
- Adding value by proactive auditing and advice
- Develop audit plans that are comprehensive and balanced, and are linked to council's management of risks.

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<sup>3</sup> Jeffrey Ridley and Andrew Chambers. Leading Edge Internal Auditing. ICSA Publishing, 1998, pgs. xxxiii, and 10 to 17.

<sup>4</sup> Ridley and Chambers: as above

## **2.1. Internal Audit Charter**

An internal audit charter provides a comprehensive statement of the purpose, authority, responsibilities and reporting relationships of the internal audit function. The audit committee or council should approve the internal audit charter.

The content of an internal audit charter should:

- Identify the purpose, authority and responsibility of the internal audit function
- Establish internal audit's position within the organisational structure
- Define reporting relationships of the internal auditor with the General Manager and the audit committee
- Define internal audit's relationship with the council's external auditor
- Have provisions that authorise access to records, personnel, physical property, and attendance at relevant meetings
- Define the scope of internal audit activities, including any restrictions.

The internal auditor should periodically assess whether the purpose, authority and responsibility, as defined in the charter, are still adequate. Results of the assessment should be communicated to the audit committee.

A sample internal audit charter is contained at Appendix 3. Councils should tailor their charters as considered appropriate for their circumstances.

The audit committee should also have a charter that sets out its roles and responsibilities and its oversight of the internal and external audit functions, including any statutory duties. The elected council should approve the audit committee charter (Appendix 2). An external quality assessment every 5 years would assist this process.

## **2.2. Professional Standards**

Internal auditors in NSW local government should comply with appropriate professional standards, such as the Institute of Internal Auditors (IIA) Standards and Code of Ethics. A summary of the standards is shown at Appendix 1. The standards should be the basis of policies, procedures, and plans. Internal audit should be performed with integrity, objectivity, confidentiality and competency.

IIA Standards include the expectation that an internal audit function will establish policies and procedures to guide internal staff in carrying out their work. Policies and procedures should be periodically reviewed to ensure they are up to date with changes in professional practice.

The IIA is thanked for their kind permission to reproduce these standards in this document.

## **2.3. Reporting lines**

Generally, the internal audit function is led by a chief audit executive who is the most senior member of staff in the organisation responsible for the internal audit function. The IIA's Standards for the professional practice of internal auditing state that *"The Chief Audit Executive must report to a level within the organisation that allows the internal audit activity to fulfil its responsibilities. The chief audit executive must confirm to the board, at least annually, the organisational independence of the internal audit activity. The internal audit activity must be free from interference in determining the scope of internal auditing, performing work, and communicating results"*.

For local government, the Internal Auditor should report functionally to the audit committee and administratively to the General Manager. If matters involve the conduct of the General Manager, an alternate reporting chain to the Mayor or a protected disclosure to the ICAC, Ombudsman or the Division of Local Government (about serious and substantial waste in local government) should be in place.

It should be remembered that pursuant to section 335 of the Local Government Act the General Manager is responsible for the day-to-day management of council activities including the direction of staff and implicitly the internal audit function. The General Manager may choose to delegate this responsibility provided always that the delegation does not directly or indirectly interfere with the ability of the Internal Auditor to conduct an internal audit function free from interference as required by the IIA's Standards, referred to above (see section 3.4 below).

A clear and properly defined reporting relationship ensures that the Internal Auditor is empowered to perform their role working with management. The direct reporting line to the Audit Committee also acts as an adequate safeguard in the event of a serious breakdown in internal controls or internal control culture at senior levels in the organisation.

Due to the reporting relationships of this key role, it is important that councils appoint an internal auditor who has credibility, and can build relationships and influence decisions at the most senior levels of council, including the audit committee and the General Manager.

## **2.4. Options for Resourcing Internal Audit**

Regardless of size, councils are encouraged to have an appropriately resourced internal audit function. An internal audit function should have sufficient and appropriate resources to carry out its work, including skilled auditors, appropriate technology tools, budgets and professional development opportunities. Budget allocations should align to the approved audit plans.

While size and complexity of a council's operations will drive the size and overall budget of its internal audit function, a small size of operation does not justify forgoing internal audit altogether. The most efficient and effective means of resourcing the internal audit function depends upon the individual circumstances of the council. It is recognised that smaller councils may not be able to justify a full-time internal auditor. Guidance is provided below on alternative resourcing models that may achieve the required outcomes on a cost effective basis.

### **2.4.1. Appointment of Full-Time or Part-Time Internal Auditor**

Ideally the internal auditor should be an independent position reporting directly to the Audit Committee and administratively to the General Manager, with no other operational or management responsibilities. The role and duties and a sample position description are described in more detail in the appendices.

Depending upon the size and complexity of the organisation, councils may consider appointing an internal auditor or internal audit team. The appointment could be full-time or part-time personnel and may be staffed by more than one auditor if the size of the council demands.

Position descriptions should be set for internal audit staff and should identify required qualifications and competencies, including:

- Proficiency in applying internal audit standards, procedures and techniques
- Proficiency in accounting principles and techniques if working extensively with financial records and reports



- An understanding of management principles required recognising and evaluating the significance of deviations from good business practices
- An appreciation of fundamental concepts in areas such as accounting, economics, commercial law, taxation, finance, quantitative methods and IT
- Effective interpersonal skills
- Skills in oral and written communication
- Ability to identify key issues in any area under review
- Ability to influence senior management as and when required
- Knowledge of key information systems technology risks and controls and available technology-based audit techniques.

## **2.4.2 Outsourced or co-sourced function**

Providing that independence requirements are adhered to, councils can contract their internal audit function to private sector accounting firms or internal audit service providers. If this is the preferred option, then councils need to ensure that the service provided is for a professional internal audit service and not an extension of the financial assurance based external audit.

Councils should note that outsourcing or co-sourcing the internal audit function does not abrogate the council's responsibility to oversee and manage the internal audit function.

In monitoring the performance of the internal audit services provided by accounting firms, councils need to ensure that an appropriately qualified auditor is conducting the internal audit. To ensure an effective and comprehensive internal audit program, contracted internal auditors should have authority to independently set an ongoing audit program, which is not constrained by a narrow scope of audit coverage pre-determined by management.

A co-sourced function is one where a staff internal auditor supplements audit services with an outsourced internal audit service provider. An outsourced internal audit function is one where the service provider assumes all the responsibilities of the internal audit function.

Several options are set out below:

- Private sector accounting firms – most large accounting firms have specialist internal audit divisions, which provide a good service. Internal audit is a specialised skill and hence councils are advised to only use firms who have a specialised internal audit division.
- Boutique firms – a number of boutique firms exist that specialise in internal audit services.
- Internal audit contractors – there a range of experienced internal audit contractors available for this sort of work.
- NSW GTE - IAB Services is a State Government agency that provides internal audit services to the public sector.

Each of these options will have their advantages and can be appropriate for different circumstances. The advantages of using external providers include: flexibility; access to a wide range of expertise; ability to access the service as and when required. Disadvantages include loss of corporate knowledge and possible increased costs.

The NSW State Contracts Control Board has compiled a panel of qualified internal audit service providers at competitive rates through a competitive tender process. Councils are able to access this panel to save them time and effort in the procurement process and are encouraged to do so.

## **2.4.3 Regional or Inter-Council Sharing of Internal Audit Resources**

Councils are also encouraged to consider resourcing their internal audit function via collaborative arrangements with other councils or through a regional organisation of councils (ROC).

A ROC or some other body (such as a strategic council alliance) could agree to jointly employ or contract an appropriately qualified internal auditor. This may have benefits in terms of cross-council benchmarking, reduction in travel costs and access to a bigger resource pool than would be available to a single council.

Each council should nevertheless establish its own independent audit committee and the internal auditor would need to report separately to each council, maintaining confidentiality. A funding model could be established that shares the costs on a user-pays basis between participating councils, with internal audit costs based on an agreed cost sharing basis.

Under this model, the appointed internal auditor would prepare an audit plan for each council, based on individual council requirements. There will be some common systems and shared knowledge and tools, such as audit planning, risk assessment, audit programs and procedures.

A small team of internal auditors directed by a suitably qualified and experienced auditor could be appropriate for serving several smaller councils in adjacent local government areas. This model should result in lower audit costs compared to councils employing separate internal auditors or consultants at various management levels.

Risk assessments and annual audit plans need to be designed with input from senior management of each of the participating councils. The internal audit team will need to retain a high degree of independence from management in the planning and conduct of audits. The reporting framework will need to ensure the independence of the audits and confidentiality of findings. The internal auditor should report directly to the General Manager and the Audit Committee of each council.

#### **2.4.4 Other Resources**

The Local Government Internal Audit Network (LGIAN) represents internal auditors in NSW local government and adds value to local government by promoting better practice internal audit and sharing of information and resources. This group provides sharing of technical expertise by internal audit professionals who are experienced in local government operations, legislation and governance. Member councils host quarterly meetings. Contact details are available from the Division of Local Government.

## 3. Internal Audit Operations

### 3.1. *Adding Value*

One of the primary objectives of the internal audit function is to add value to the council operations. Adding value involves taking a proactive approach with a focus on risk, organisational concerns and effective controls at a reasonable cost. By focusing audit work on high risk areas, the organisation will benefit from assessments of their systems and gain independent assurance on whether those systems that are critical to program delivery are operating efficiently and effectively.

This risk approach contributes to preventative auditing, rather than relying on detecting issues and exceptions after they have already eventuated.

### 3.2. *Roles and Responsibilities*

An internal audit function should have clear roles and responsibilities. This includes complete and unrestricted access to employees, property and records. Roles and responsibilities should be communicated in the internal audit charter and position descriptions.

## **Policies and Procedures Checklist**

Councils should establish a manual of policies / procedures that guide internal auditors in their work. The content of these policies / procedures should be consistent with relevant standards, such as the IIA Standards, and cover the following topics:

#### ***Attribute Standards***

- Purpose, Authority and Responsibility
- Independence
- Proficiency and Due Care
- Quality Assurance

#### ***Performance Standards***

- Managing the Internal Audit Activity
- Nature of the Work
- Engagement Planning
- Performing the Engagement
- Communication of Results
- Monitoring Progress
- Resolution of Management's Acceptance of Risk.

### 3.3. *Independence and Objectivity*

An internal audit function should maintain an appropriate level of independence and objectiveness through sound reporting relationships, and by those involved in internal audit activities avoiding bias and conflicts of interest.

#### 3.3.1 **Avoidance of Bias and Conflict of Interest**

Policies and procedures should be in place to help an internal audit ensure against the risk of bias, particularly arising from perceived familiarity by virtue of long association with persons the subject of internal audit activity.

## **The Avoidance of Bias and Conflict of Interest Checklist**

An internal auditor or person responsible for internal audit should have a process in place to ensure that:

- An internal auditor does not undertake audit work regarding operations / services for which he / she has held responsibility within the last two (2) years.
- An internal auditor who provides consulting services regarding a particular operation / service is not the same auditor who provides assurance on that same operation / service.
- Internal auditors are rotated periodically whenever it is practical to do so; alternatively, some other method is put in place to address the risks associated with having the same auditors responsible for auditing the same unit / functional area over a prolonged period.

## **Position Description Checklist**

The internal audit function should have written position descriptions for each level of audit staff. The position descriptions for audit staff should identify required qualifications and competencies, including:

- Proficiency in applying internal audit standards, procedures and techniques
- Proficiency in accounting principles and techniques
- An understanding of management principles required recognising and evaluating the materiality and significance of deviations from good business practices
- An appreciation of fundamental concepts in areas such as accounting, economics, commercial law, taxation, finance, quantitative methods and IT
- Effective interpersonal skills
- Skills in oral and written communication.

### **3.4. Reporting Relationships**

Councils establishing an internal audit function must provide appropriate independence for the internal audit function by establishing some degree of separation of the function from management.

In private companies, the internal auditor is accountable to the Board of Directors through the Chairman of the Audit Committee. This approach cannot be directly reproduced under the provisions of the *Local Government Act 1993*. Internal audit is an operational matter that falls within the responsibility of the General Manager. Under section 335(1) of the *Local Government Act*, the General Manager is responsible for the efficient and effective operation of the council's organisation.

The separation of powers between the General Manager and the elected council is a key element to the Act and accordingly both need to ensure that they do not interfere with or control the exercise of each of these functions. It is therefore not appropriate for an internal auditor to report directly to the mayor and/or councillors.

Internal auditors should be mindful of their obligation under section 11 of the ICAC Act to report suspected areas of corrupt activity. Further, they may wish to report their findings under the provisions of the *Protected Disclosures Act 1994*. This may be necessary if concerns are raised in regard to the General Manager or other senior staff.

Councils have the power to appoint an external audit firm to be the internal auditor. Where possible this firm should not be the same one that provides council's external audit services. This does not change the fact that internal audit remains an operational role. It should be remembered that pursuant to section 335 of the Local Government Act the General Manager is responsible for the day-to-day management of council activities including the direction of staff and implicitly the internal audit function.

While management employs the internal auditor, the internal auditor is also expected to review the conduct of management. Therefore, the internal auditor should be able to report to a person or body with sufficient authority to implement internal audit recommendations.

It is important for the internal auditor to have direct access to the audit committee to monitor the scope of the work of internal audit and to review the reports issued. This is achieved by having the internal auditor attend meetings of the audit committee.

The appointment of an internal auditor does not give council the ability to direct the performance of the internal audit function. However, councils can use the General Manager's employment contract to ensure that relevant internal audit work is being undertaken as a requirement of the General Manager's performance obligations.

The Internal Auditor should maintain independent reporting relationships with the audit committee, General Manager and management. This requires:

- Reporting functionally to the audit committee and administratively to the General Manager
- Reporting to an audit committee with external members
- Internal audit charter to be approved by the audit committee and the audit committee charter to be approved by council
- Audit committee to approve of internal audit plans, and provide a forum for discussion of areas worthy of internal audit attention
- Audit committee to ensure coordination and cooperation of internal and external auditors
- Audit committee to make enquiries of management to determine if the scope or budgetary limitations impede the internal audit's ability to function properly, and ensure that the internal audit function is properly resourced
- Reporting to the General Manager for budgeting and accounting, human resource administration, internal communications, administration of policies and procedures.

Reporting to an audit committee with a majority of members, who are external and independent to the council, ensures that internal audit operates independently from management and can effectively review risk, control, governance processes and management assertions.

## **Reporting Relationships Checklist**

The audit committee should include persons external to the organisation. In the absence of an audit committee, the internal auditor should report to a level within the organisation that ensures that the internal audit is able to have broad audit coverage and to fulfil its responsibilities independently and objectively.

Reporting functionality to an audit committee means the committee:

- Approves the internal audit charter

- Approves short and long term audit plans
- Comments on the performance of the internal auditor
- Makes enquiries of management to determine if there are scope or budgetary limitations that impede internal audit's ability to function properly
- Ensures that the internal audit function is adequately resourced
- Approves the scope of external assessments of the internal audit
- Provides a forum for discussion to identify areas worthy of examination by internal audit
- Recommends to Council who should be the internal audit provider and/or has input into the selection of the Chief Audit Executive.

Reporting administratively to the General Manager relates to day to day operations of internal audit including:

- Budgeting and accounting
- Human resource administration
- Internal communication / information flow
- Administration of internal policies and procedures.

### **3.5. *Internal Audit Plans***

Internal audit should prepare an audit plan that identifies internal audit's objectives and strategies, and the audit work they will undertake.

Good practice internal audit plans will be based on a risk assessment of the council's key strategic and operational areas to determine an appropriate timing and frequency of coverage of each of these areas. Best practice will also include audit judgment of areas that should also be reviewed despite not appearing as a high priority in the council's risk profile.

The annual plan will generally be developed with input from the General Manager and senior management and approved by the audit committee. Generally, such a plan will identify:

- The audit projects that will be carried out during the year and rationale for selecting each
- When each audit project is expected to commence and the time allocated for each
- The performance measures that will be used to evaluate the performance in relation to established goals / objectives and strategies
- Any areas that cannot be covered within existing budgets and additional areas, which in the opinion of the internal auditor, should be reviewed
- Whether the audit projects identified require the use of external expertise.

A rolling three year plan of coverage can be proposed so that it can be readily determined what areas will be covered in any given year, and if their area is not covered in a given year, when it is scheduled for review. The ability of the internal auditor to execute this plan over a three year cycle is a useful method to assess whether internal audit is adequately resourced. However the plan should be reviewed at least annually to ensure that it still aligns with the council's risk profile.

## **Audit Plans Checklist**

The internal auditor should have a long term strategic plan and annual work program to guide their work.

Long term strategic plans that are prepared with input from and approval by the internal audit committee should be risk based. They would generally include:

- A description of the goals / objectives of internal audit
- Key organisational issues and risks of the organisation prepared in consultation with senior management, the audit committee, the external auditor and other relevant parties
- The strategies / priorities in order to address issues and risks.

Mid term operational plans may also be prepared to assist an organisation in the implementation of the key strategies / priorities identified in the strategic plan. Typically these plans would include aspects such as:

- Staffing, competency needs
- Professional development
- Information technology requirements
- Budgeting requirements
- How performance monitoring, measurement, and internal / external assessments will be operationalised.

The annual audit plan is prepared with input from and approval by the audit committee. It should be developed based on the long term strategic plan and the mid term plan. Generally, such a program will identify:

- The audits and other types of projects that will be carried out during the year and the rationale for selecting each
- Staffing for each project, when it is expected to commence and the time allocated for each
- Financial budgets
- The performance measures that will be used to evaluate performance in relation to established goals / objectives and strategies
- As applicable, the plans for internal / external assessments of an internal audit group.

### **3.6. *Performing Internal Audits***

Internal Auditors should perform internal audit reviews in accordance with the accepted Institute of Internal Auditors (IIA) Standards and the IIA Code of Ethics for performance standards, practices and guidelines. An outline is shown in the appendices. This includes:

- planning the audit
- defining the audit scope
- identifying sufficient, reliable, relevant, and useful information to achieve the audit's objectives
- identifying and evaluating the risks
- analysis and evaluation of controls
- maintaining proper records of the audit and evidence collected and analysed
- performing tests



- making recommendations
- discussing audit results with relevant staff and management.

Internal Audit may also perform consulting engagements and investigations of allegations, depending on the roles conferred in the Internal Audit Charter. Professional standards should also be applied when conducting these types of reviews.

### **3.7. Communication of Audit Results**

Internal audit should regularly communicate its findings and recommendations to the audit committee, General Manager and management of the areas audited. An internal audit report should communicate accurate, objective, clear, concise, constructive, complete and timely information.

Audit reports should normally include background information, the audit objectives, scope, approach, observations/findings, conclusions, recommendations and agreed management actions. Reports should promote better practice options and explain why the recommended changes are necessary and how they add value.

Reports and memos should share internal audit's observations on significant risk exposures, control issues, corporate governance issues, and other related audit matters. By sharing audit criteria, explaining causes and consequences of audit observations, councils can gain an understanding of the implications and impacts of the audit findings.

Depending on the size of the internal audit reports, summaries may be appropriate for the General Manager and the audit committee with full reports available on request.

## **Internal Audit Reports Checklist**

The following table is based on the IIA Professional Practices Framework.

Background	<ul style="list-style-type: none"> <li>✓ Identifies the organisational units and activities reviewed and provides explanatory information.</li> <li>✓ Indicates why the audit project was conducted, including whether the report covers a scheduled engagement or is responding to a request.</li> <li>✓ Includes the status of observations, conclusions and recommendations from prior audits.</li> </ul>
Objectives	<ul style="list-style-type: none"> <li>✓ Statements that define intended engagement accomplishments.</li> </ul>
Scope	<ul style="list-style-type: none"> <li>✓ Identifies the audited activities.</li> <li>✓ Identifies the time period reviewed.</li> <li>✓ Identifies related activities that are not reviewed.</li> </ul>
Approach	<ul style="list-style-type: none"> <li>✓ Establishes the procedures for identifying, analysing, and evaluating sufficient information to achieve the engagement's objectives.</li> </ul>
Observations / Findings	<ul style="list-style-type: none"> <li>✓ Identifies the standards, measures, or expectations used in making an evaluation and / or verification (criteria).</li> <li>✓ Identifies the factual evidence that the internal auditor found during the examination that supports the conclusions and recommendations (conditions).</li> <li>✓ Identifies the reason for the difference between the expected and actual conditions (causes).</li> </ul>

	<ul style="list-style-type: none"> <li>✓ Identifies the risk or exposure the organisation and / or others encounter because the condition is not consistent with the criteria (effect).</li> </ul>
Conclusions	<ul style="list-style-type: none"> <li>✓ Should be clearly identified.</li> <li>✓ Should be based on appropriate analyses and evaluations.</li> <li>✓ Should encompass the entire scope of an engagement.</li> <li>✓ Should relate directly to objectives.</li> </ul>
Recommendations	<ul style="list-style-type: none"> <li>✓ Should be based on engagement observations and conclusion.</li> <li>✓ Should either be general or specific and call for action to correct existing conditions or improve operations.</li> <li>✓ Should suggest approaches to correct or enhance performance.</li> </ul>
Agreed actions	<ul style="list-style-type: none"> <li>✓ An agreed set of actions proposed by management to address any recommendations. (In some cases the internal audit teams may move straight to agreeing actions and skip recommendations. This is considered good practice.)</li> </ul>

### **3.8. Follow-Up on Audit Reports**

The General Manager and audit committee should systematically review progress against audit recommendations and agreed action plans. This ensures that a clear message is sent to management and staff that these matters are important and are being reviewed at the most senior levels in the organisation.

If management accepts a risk that internal audit believes is unacceptable, then this should normally be discussed at an appropriate level in the organisation, including with the General Manager and the audit committee, as considered appropriate.

### **3.9. Access to Audit Reports**

Internal audit reports are intended for internal use only. Where audit reports have findings that are useful to other areas of council, internal audit may share this information on a limited basis. Internal audit reports should be shared with the council's external auditor to assist them in the course of their work. This permission should be documented in the audit committee charter.

Councillors should also have access to the minutes of the Audit Committee. As the minutes may contain confidential information, broader public access should be controlled. However the council should be mindful of its obligations under the *Government Information (Public Access) Act 2009* to provide greater transparency and accountability.

### **3.10. Annual report from the Audit Committee to Council**

The audit committee should report regularly to the council on the management of risk and internal controls. This may be done following each meeting of the audit committee, but as a minimum, the audit committee should report at least annually to the full council on its oversight role of the internal audit function. The General Manager should also provide an annual report to the audit committee on the performance of the internal audit function.

Council may request the Chairperson of the Audit Committee to address the Council to answer any enquiries about the operation of the Audit Committee.

### **3.11. Performance Measurement**

Internal audit should have performance measures that are based on its specific goals / objectives and performance targets that are derived from the internal audit group's plans / strategies. Quality assurance and review of audit work papers in accordance with Australian Auditing Standards is also an essential requirement to ensure the audit findings are adequately evidenced and documented. The work of internal audit can be used by the external auditors where they are satisfied of its quality as per the Australian Auditing Standards AA610.

#### **Performance Measurement System Checklist**

Performance measures should provide information that enables the internal audit function to determine whether its activities are achieving its charter and planned results (ie, the aims expressed in its various types of plans).

The performance measurement system should be documented and should be clear on:

- Performance data that is to be collected
- The frequency of data collection
- Who is responsible for data collection
- Data quality control
- Who generates performance data reports
- Who receives such reports.

Performance measures may cover aspects such as:

- Stakeholder satisfaction
- Internal audit processes (eg, risk assessment / audit planning, performing the audits, reporting, and value added)
- Innovation and capabilities (training, technology, knowledge of business)
- Control deficiencies identified and resolved by management
- Cost/benefit analysis of internal audit recommendations.

An internal audit function should regularly report to the General Manager and the audit committee on its progress against the annual internal audit plan.

### **3.12. Independent Quality Review of Internal Audit**

Internal audit should be subject to an external quality assessment of its performance using accepted standards for performance measurement and evaluation at least every five years.

This is to provide assurance to the General Manager and council that internal audit is effective and operating in accordance with the International Standards for the Professional Practice of Internal Auditing.

The Institute of Internal Auditors provides a quality assessment framework for this purpose.

### **3.13. Internal Audit and Protected Disclosures**

Where there is otherwise no designated protected disclosures coordinator for the council, the internal auditor can be appointed to fulfil the requirements of the *Protected Disclosures Act 1994* and the provisions of council's internal reporting policy. Alternatively, the General Manager can appoint the internal auditor to conduct an independent investigation of matters arising from a protected disclosure.

Protected disclosures are an important means by which councils can signal commitment to ethical practice. They also can act as an early warning system for management and to assist staff in making any disclosures of alleged corrupt conduct, maladministration or serious and substantial waste of public money under the *Protected Disclosures Act 1994*.

Every public official has a statutory right to make a disclosure under the Protected Disclosure Act to the following external agencies:

- NSW Ombudsman
- Independent Commission Against Corruption (ICAC)
- Audit Office
- Police Integrity Commission or
- Division of Local Government, Department of Premier and Cabinet (about serious and substantial waste in local government).

Councils should inform their councillors, staff and council delegates of the requirements and protections of the *Protected Disclosures Act 1994* through staff and councillor induction and training programs.

## 4. Establishing an Audit Committee

### 4.1. *What is an Audit Committee?*

An audit committee plays a pivotal role in the governance framework to provide council with independent oversight and monitoring of the council's audit processes, including the council's internal control activities. This oversight includes internal and external reporting, risk management activities, internal and external audit and compliance.<sup>5</sup>. A strong relationship between the audit committee and the internal audit function enables the committee to meet its responsibilities and carry out its functions. An audit committee establishes the importance and executive direction for an internal audit function, and ensures that the council achieves maximum value from the internal audit function. The audit committee sets the appropriate tone at the top. Guidelines for establishment and operations of audit committees in local government are set out below.

No two audit committees will function in exactly the same way, nor should they. A dynamic audit committee process is required for each council to cater for the particular internal and external influences impacting upon them. The size and conduct of council audit committees will also vary depending on a council's size and other circumstances.

**Key characteristics** of good practice audit committees are:

- A thorough understanding of the audit committee's position in the legal and governance framework
- Clearly defined roles and responsibilities
- Members with relevant personal qualities, skills and experience, including at least one member with a strong financial and/or audit background
- The ability to maintain effective relationships with key stakeholders
- The ability and capacity to conduct its affairs efficiently and effectively
- A robust and considered process of assessment and continuous improvement.

### 4.2. *Independence and Objectivity*

The audit committee will achieve its independence by having a majority of independent members external to council and its operations. In addition, it is highly desirable that all members chosen exhibit an independence of mind in their deliberations and do not act as a representative of a particular area of council, or with conflicts of interests. Regular rotation of some or all members is also desirable to keep a fresh approach.

Ideally the audit committee should consist of at least three and preferably no more than five members comprised of independent external members, who should be in the majority, and councillors other than the Mayor (or an Administrator). Staff should not be members of the audit committee.

When selecting committee members it is important to ensure that they have appropriate qualifications and experience to fulfil their role. The following qualities are desirable when appointing members:

Individuals should have:

- Knowledge of local government
- Strong communication skills

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<sup>5</sup> Auditing and Assurance Standards Board, Australian Institute of Company Directors, Institute of Internal Auditors, Audit committees, A Guide to Good Practice 2008

- High levels of personal integrity and ethics
- Sufficient time available to devote to their responsibilities as a committee member
- High levels of financial literacy and, if possible accounting; financial; legal compliance and/or risk management experience or qualifications.

The audit committee as a whole should have:

- At least one member with financial qualifications and experience
- Skills and experience relevant to discharging its responsibilities, including experience in business, financial and legal compliance, risk management

### **Selection and Appointment of Committee Members**

Committee members and the audit committee chair should be appointed by the council. This could be done on the recommendation of a committee which has been convened by council with the power to interview and recommend suitable candidates. It is important that the process used is transparent and accountable.

If the council wishes to use this process then the committee should prepare a written report for the council that provides details of the qualifications and experience of all eligible applicants for the position(s) of independent audit committee member(s) or audit committee chair from which the council can select the most suitable appointees.

Sufficient funds need to be allocated to the audit committee for it to operate effectively. Council should resolve to provide a budget and funds for the audit committee, this should include fees payable to the audit committee members.

### **Independent and councillor members**

Independent and councillor members must be free from any management, business or other relationships that could be perceived to interfere with their ability to act in the best interests of the council.

When considering whether an individual has the necessary independence from council it is common to examine the individual's past and current relationships with the council. Some of the following are relationships that might affect the independent status of an independent and/or councillor:

- Is a substantial shareholder; an owner, officer or employee of a company; or a consultant, that is a material provider of professional advice, or goods, or services to the council;
- Is employed by or has previously been employed by a council and there has not been a period of at least two years between ceasing such employment;

To maximise both the real and perceived independence of the committee individuals currently employed by a council cannot be considered as an independent member of a council audit committee.

This list is not exhaustive and if one or more of the above examples is exhibited by an independent or councillor it is possible that their status as an "independent" member of the committee might be compromised.

Members and potential members of an audit committee need to ensure that they disclose to the council any relationships that could be viewed by other parties as creating conflicts of interests that impair either the individual's or the audit committee's actual or perceived independence.

In order to maximise the effectiveness of the audit committee it is important for members to be both independent and to be seen to be independent.

### **Audit committee chair**

The chair of the audit committee is critical to the overall effectiveness of the committee. The chair of the committee should be independent and should not be the mayor or a member of council. The council should select an audit committee chair who:

- Is knowledgeable of the duties and responsibilities of the position as outlined in the audit committee charter; especially about local government, financial reporting and auditing requirements;
- Has the requisite local government, financial and leadership skills;
- Has the ability to build good relationships; and
- Has strong communication skills

The term of appointment of the chair should be specified by the council.

### **4.3. Structure and Membership**

The structure and membership of an audit committee in the NSW local government environment will depend on the size of the council. Membership should have a majority of independent members and councillors (excluding the Mayor), with between 3 and 5 members. Good practice in governance is that council staff should not be members of the committee. However, this may not be practical for some councils. The chair should be an independent member. A suggested membership is:

- 1 or 2 councillors (excluding the mayor)
- 2 or 3 independent members, at least one with financial expertise and one of whom should be the chair.

The internal auditor and Chief Financial Officer should be invited to attend all meetings. The external auditor should also be invited to attend as an independent advisor.

To preserve the independence of the Audit Committee the General Manager should not be a voting member of the Audit Committee. In accordance with section 376(2) of the Local Government Act the General Manager is entitled to attend meetings of the Audit Committee. Furthermore pursuant to Section 376(3) of the Local Government Act the General Manager may only be excluded from the meeting while the committee deals with a matter relating to the standard of performance of the General Manager or the terms of the employment of the General Manager. However, the General Manager is not automatically entitled to be, nor should the General Manager be, a member of the audit committee.

General Managers are strongly encouraged to enable the audit committee to conduct its activities without undue influence from the General Manager.

It is recommended that, even though, pursuant to the Local Government Act, the General Manager is entitled to attend all meetings, in line with better practice, the General Manager should allow the audit committee to meet separately with each of the internal auditor and the external auditor without the presence of management on at least one occasion per year.

A suggested structure for smaller councils is as follows:

- 1 councillor (excluding the Mayor)
- 2 independents – at least one with financial expertise

A structure for bigger councils could be:

- 1 or 2 councillors (excluding the Mayor)
- 2 or 3 independents – at least one with financial expertise and/or one with financial, legal or business expertise

The audit committee should also have its own charter that sets out the roles and responsibilities of the audit committee and its oversight of the internal and external audit functions, including any statutory duties. The elected council should approve the audit committee charter.

An example charter for audit committees is included in Appendix 2. Councils should not use this example verbatim but should tailor it according to their specific circumstances.

## **4.4. Audit Committee Operations**

### **4.4.1. Meetings**

The audit committee should meet with sufficient frequency to meet its responsibilities.

The number of meetings and their duration will vary depending on the range and complexity of the council and the committee's responsibilities. The audit committee should decide the number of meetings needed for the year after taking into consideration:

- The roles and responsibilities of the committee
- Maturity of the committee and audit arrangements
- The level and/or volume of internal and external audit activity
- Key reporting deadlines
- Significant developments or emerging risks for the entity, for example, restructuring, policy initiatives or new programs
- The potential resource implications versus the benefit to the committee and the entity of more frequent meetings.

Generally, the audit committee should meet at least four times a year. It is also appropriate to have meetings dedicated to considering the annual external audit plan, external management letters and council's audited annual financial reports. Where significant issues arise during the year, committees should consider the need to schedule additional meetings.

Where possible, the dates for audit committee meetings should be established 12 months in advance, particularly where the committee has independent members with other commitments. Each year the committee should agree a forward meeting plan, including meeting dates, location and agenda items. When developing the forward meeting plan, the committee should ensure it covers all the responsibilities outlined in its charter.

The audit committee charter should require the chair of the committee to hold a meeting if asked to do so by another committee member or by the council or the General Manager. There should also be provision for both the internal and external auditors to meet privately with the chair of the audit committee if required, and this should be documented in the audit committee charter.

### **4.4.2. Functions**

Clear roles and responsibilities should be given to an audit committee, and documented in the audit committee charter (see Appendix 2 for a model charter). The broad responsibilities for best practice include the following:

- Risk management
- The control framework
- External accountability (including the council's annual audited financial reports)
- Legislative compliance
- Internal audit



- External audit
- Approving the internal audit charter that will guide the activities of an internal audit group
- Having input into and approving an internal audit's long-term strategic plan and annual audit plan
- Having input into the appointment and remuneration of the internal auditor
- Making enquiries of management and the internal audit to determine if there are scope or budgetary limitations that impede an internal auditor's ability to function properly
- Approving the scope of an external assessment or equivalent internal assessment of internal audit to be undertaken every 5 years; and internal assessments which can be undertaken in intervening years if desired.

An audit committee, as a crucial component of corporate governance, is fundamental to assisting the General Manager and council with their oversight function to:

- Ensure all key controls are operating effectively
- Ensure all key controls are appropriate for achieving corporate goals and objectives
- Meet their statutory and fiduciary duties
- Provide a forum for discussing problems and issues that may affect the operations of the internal audit group and acting as a forum for discussion
- Provide a forum for discussion to identify areas worthy of examination by an internal audit group
- Review the implementation of the annual audit plan and implementation of audit recommendations.

#### **4.4.3. Conflict of Interests**

Councillors, council staff and members of council committees must comply with the applicable provisions of council's code of conduct in carrying out their functions as council officials. It is the personal responsibility of council officials to comply with the standards in the council's code of conduct and regularly review their personal circumstances with this in mind.

There will in all likelihood be times where matters to be considered by the Committee raise a conflict of interests for a member of the committee. To preserve the integrity and independence of the Audit Committee it is of utmost important that any conflict of interests is appropriately managed.

This can be done by Committee members declaring any conflict of interests at the start of each meeting or before discussion of a relevant agenda item or topic. Details of any conflict of interests should be appropriately minuted.

Where members or invitees at Committee meetings are deemed to have a real or perceived conflict of interests, it may be appropriate they be excused from Committee deliberations on the issue where the conflict of interests may exist. The final arbiter of such a decision is the Chair of the Committee.

## 5. Enterprise Risk Management

### 5.1. *What is Risk Management*

Internal audit is not responsible for designing or implementing risk management in councils, but is required to consider the risk management framework in planning and conducting audits.

Risk management is an essential part of effective corporate governance. It is defined as “the culture, processes and structures that are directed towards realising potential opportunities whilst managing adverse effects.”<sup>6</sup> Enterprise Risk Management is the holistic management of all risks within council, not just insurable risks or occupational health and safety.

The concept of risk has two elements, the likelihood of something happening and the consequences if it happens. It is recommended that councils refer to the International Standard “*Risk Management – Principles and Guidelines*” ISO 31000:2009(E) for detailed guidance on risk management.

Risk can arise from internal or external sources, and might include exposure to such things as economic or financial loss or gain, physical damage, failure of a project to reach its objectives, ratepayer dissatisfaction, unfavourable publicity, a threat to physical safety or breach of security, mismanagement, failure of equipment, corruption and fraud. Risks should not necessarily be avoided. If managed effectively, they allow us to seize opportunities for improving services and business practices.

Risks can be categorised according to the goals, objectives or outcomes in the council's strategic, management or business plans. At the highest level, these represent risks to the council's ability to implement policy and deliver outcomes to the community. Risks also can be categorised into:

- Strategic risks (risks to the council's direction, external environment and to the achievement of its plans)
- Commercial risks (risks of commercial relationships, such as failed contractual relationships)
- Operational risks (risks to core business activities, such as inadequate human resources, disasters or threats to physical safety)
- Technical risks (risks of managing assets, such as equipment failure or structure collapse)
- Financial and systems risks (risks with financial controls and systems, such as fraud)
- Compliance risks (risks to meeting regulatory obligations).

Risk management is a logical and systematic process that can be used when making decisions and in managing performance. It is a means to an end and should be integrated into everyday work. Good risk management is forward-looking and helps to improve business decisions. It is not just about avoiding or minimising losses, but also about dealing positively with opportunities. It is a powerful tool for local government managers.

Good risk management is based on a well-planned, logical, comprehensive and documented strategy. This strategy provides general policy guidance, and plans and procedures that can be used as part of the organisation's everyday work to manage risk.

Good risk management must be based on a strategy, but a strategy itself doesn't manage risks. Leadership, effort by all levels of management and staff, and careful monitoring by councillors and risk committees, are needed to make the strategy a success.

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<sup>6</sup> “*Risk Management – Principles and Guidelines*” ISO 31000:2009(E)

Focus should be on embedding a risk management philosophy into organisational decision making and providing tools to enable this process. Where major risks are identified then managerial effort should be directed to managing those risks. Overly complex approaches to risk management will divert resources from the main objective of better management performance, and hence a common sense approach is encouraged.

## **5.2. Why Implement Risk Management?**

Increasingly, risk management is a mainstream activity embedded into good management in both the private and public sectors. Through better understanding of risks, and their likelihood and consequences, councils and their staff will be better prepared to anticipate these risks and take appropriate action.

By utilising risk management principles, councils are able to maximise the likelihood of successfully achieving their goals through proactive treatment of risks resulting in the following outcomes:

- Higher level of service delivery
- Efficient and effective allocation of resources
- Improved responsiveness and flexibility
- Increased accountability and transparency
- Reduced stress to council staff and management.

It is also hoped that effective risk management will result in fewer surprises and unanticipated negative events.

## **5.3. Risk Management in New South Wales Local Government**

The *Local Government Act 1993* was enacted in an era before enterprise risk management was a widely accepted element of good governance. The Act nevertheless requires councils, among other things, to:

*“provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community **and to ensure that those services and facilities are managed efficiently and effectively**”.*<sup>7</sup>

The Act also requires Councillors:

**“to review the performance of the council and its delivery of services, and the management plans and revenue policies of the council”**<sup>8</sup>

and that the General Manager:

*“is generally responsible for the **efficient and effective operation** of the council’s organisation and for ensuring the implementation, without undue delay, of decisions of the council”.*<sup>9</sup>

While there is currently no specific reference to risk management in the Act, it is implicit in each of the above broader requirements for efficiency, effectiveness and oversight.

The Division of Local Government's Promoting Better Practice Program reviews have frequently made recommendations to actively encourage councils to undertake a comprehensive risk management plan across all functions of council to proactively identify and manage risk exposures.

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<sup>7</sup> Local Government Act 1993 – Section 8

<sup>8</sup> Local government Act 1993 Section 232(1)

<sup>9</sup> Local government Act 1993 Section 335(1)

One of the key roles of the internal auditor is to provide advice and assurance over the risk management and internal control frameworks. To maintain independence, internal audit will not normally be responsible for the implementation of risk management or making decisions on how risks should be treated.

#### **5.4. *Risks Inherent Within Local Government***

While each council will have different sizes and complexities in its structure and operations, and these in turn will generate different risks, there are a number of risks that will be common to the sector and be applicable in some form to most councils.

As a first step, councils may wish to identify material risks to the achievement of the council's goals, objectives and desired outcomes of the council's strategic, management and/or business plans. At the highest level, these represent risks to the council's ability to implement policy and deliver outcomes to the community.

A number of common risks for local government are set out in Appendix 5, which may assist in this process.

#### **5.5. *Whole-Of-Government Risk Management***

Councils often face risks that significantly influence other risks (such as inadequate staff skills or low morale that influence productivity). These links between risks are important - a risk may not look significant in isolation, but is significant when its flow-on effect is considered.

As whole-of-government approaches become more common, state-sector risks – risks that affect the state as a whole – are becoming better understood and therefore can be better managed.

Councils will increasingly need to understand state-sector risks, and to pay greater attention to identifying and working with other layers of government to manage them. There are 3 types of state-sector risk, each of which calls for a different response:

- Council-level risks (such as the risks above). These can become risks to the State because of their size and significance, because of the wider impact of measures to manage them, or because of poor management by councils.
- Inter-agency risks, which if unmitigated by one agency, become risks for other agencies (such as the link between meeting the educational and social needs of teenagers and anti-social behaviour).
- State-wide risks, which are beyond the boundaries of any one council and call for a response across councils coordinated by a central council (such as bushfires, floods and other emergencies).

There is no such thing as a risk-free environment, but many risks can be avoided, modified or shared through good risk management. Similarly it is not desirable to attempt to create a risk-free environment and not all risks should be reduced. It may be appropriate in some circumstances to retain the risk, or even look at increasing the level of risk taken.

Risk management is an effective tool to identify, evaluate and manage both risks and opportunities at all levels of the organisation. Good risk management also takes advantage of opportunities while analysing and dealing with risks.

Risks should not necessarily be avoided. If managed effectively, they allow councils to seize opportunities for improving services and business practices and avoiding unexpected negative impacts.

## 5.6. Other Guidance

Risk management is a common sense, yet highly evolved discipline. This guide aims to provide grounding on some of the key principles and practices councils should embrace. For those seeking a deeper understanding of risk management principles and practice, the Division recommends:

- International Standard ISO 31000:2009(E) risk management – Principles and guidelines
- ISO Guide 73:2009 Risk Management – Vocabulary
- IS/IEC 31010 Risk Management – Risk Assessment Techniques

These important publications provide detailed and authoritative guidance about risk management practices. They constitute a step-by-step guide for councils wanting to develop and implement risk management frameworks.

Although not all organisations use this approach, public sector risk management continues to expand beyond a financial focus to encompass all parts of an organisation's business and services. The Commonwealth Government based its *Guidelines for Managing Risk in the Australian Public Service* on this standard. See [www.apsc.gov.au/mac/index.htm](http://www.apsc.gov.au/mac/index.htm).

The Australian National Audit Office describes the key components of effective risk management, as well as the importance of developing a risk management culture, in its better practice guide, *Public Sector Governance Volume 16*. See [www.anao.gov.au](http://www.anao.gov.au).

CPA Australia has a number of publications relating to public sector risk management. They include *Case Studies in Public Sector Risk Management: Better Practice Guide*; *Enterprise-wide Risk Management: Better Practice Guide*; *Public Sector Risk Management: A State of Play*; and *Research Report on Public Sector Risk Management*. See [www.cpaaustralia.com.au/20\\_cpastore](http://www.cpaaustralia.com.au/20_cpastore).

# Appendix 1 - Summary of Internal Audit Standards and Professional Practices Framework

## The Institute of Internal Auditors

### International Standards for the Professional Practice of Internal Auditing

*Reprinted with permission of the Institute of Internal Auditors, Australia. Note that these standards are under continuous development and hence while correct at the time of publication, readers should obtain the latest version of the standards from IIA Australia.*

The purpose of the *Standards* is to:

1. Delineate basic principles that represent the practice of internal auditing, as it should be.
2. Provide a framework for performing and promoting a broad range of value-added internal audit activities.
3. Establish the basis for the evaluation of internal audit performance.
4. Foster improved organisational processes and operations.

The structure of the Standards is divided between Attribute and Performance Standards. Attribute Standards address the attributes of organisations and individuals performing internal auditing. The Performance Standards describe the nature of internal auditing and provide quality criteria against which the performance of these services can be measured. The Attribute and Performance Standards are also provided to apply to all internal audit services.

Implementation Standards are also provided to expand upon the Attribute and Performance standards, by providing the requirements applicable to assurance (A) or consulting (C) activities.

The Standards are part of the International Professional Practices Framework (IPPF). The IPPF includes the Definition of Internal Auditing, the Code of Ethics, the Standards, and other guidance. Guidance regarding how the Standards might be applied is included in Practice Advisories that are issued by the Professional Issues Committee.

## Attribute Standards

### **Attribute Standards**

#### **1000 – Purpose, Authority, and Responsibility**

The purpose, authority, and responsibility of the internal audit activity must be formally defined in an internal audit charter, consistent with the Definition of Internal Auditing, the Code of Ethics, and the *Standards*. The chief audit executive must periodically review the internal audit charter and present it to senior management and the board for approval.

##### **Interpretation:**

*The internal audit charter is a formal document that defines the internal audit activity's purpose, authority, and responsibility. The internal audit charter establishes the internal audit activity's position within the organisation; authorizes access to records, personnel, and physical properties relevant to the performance of engagements; and defines the scope of internal audit activities. Final approval of the internal audit charter resides with the board.*

**1000.A1** – The nature of assurance services provided to the organisation must be defined in the internal audit charter. If assurances are to be provided to parties outside the organisation, the nature of these assurances must also be defined in the internal audit charter.

**1000.C1** – The nature of consulting services must be defined in the internal audit charter.

#### **1010 – Recognition of the Definition of Internal Auditing, the Code of Ethics, and the Standards in the Internal Audit Charter**

The mandatory nature of the Definition of Internal Auditing, the Code of Ethics, and the *Standards* must be recognized in the internal audit charter. The chief audit executive should discuss the Definition of Internal Auditing, the Code of Ethics, and the *Standards* with senior management and the board.

#### **1100 – Independence and Objectivity**

The internal audit activity must be independent, and internal auditors must be objective in performing their work.

##### **Interpretation:**

*Independence is the freedom from conditions that threaten the ability of the internal audit activity or the chief audit executive to carry out internal audit responsibilities in an unbiased manner. To achieve the degree of independence necessary to effectively carry out the responsibilities of the internal audit activity, the chief audit executive has direct and unrestricted access to senior management and the board. This can be achieved through a dual-reporting relationship. Threats to independence must be managed at the individual auditor, engagement, functional, and organisational levels.*

*Objectivity is an unbiased mental attitude that allows internal auditors to perform engagements in such a manner that they believe in their work product and that no quality compromises are made. Objectivity requires that internal auditors do not subordinate their judgment on audit matters to others. Threats to objectivity must be managed at the individual auditor, engagement, functional, and organisational levels.*

### **1110 – Organisational Independence**

The chief audit executive must report to a level within the organisation that allows the internal audit activity to fulfil its responsibilities. The chief audit executive must confirm to the board, at least annually, the organisational independence of the internal audit activity.

**1110.A1** – The internal audit activity must be free from interference in determining the scope of internal auditing, performing work, and communicating results.

### **1111 – Direct Interaction with the Board**

The chief audit executive must communicate and interact directly with the board.

### **1120 – Individual Objectivity**

Internal auditors must have an impartial, unbiased attitude and avoid any conflict of interest.

#### **Interpretation:**

*Conflict of interest is a situation in which an internal auditor, who is in a position of trust, has a competing professional or personal interest. Such competing interests can make it difficult to fulfil his or her duties impartially. A conflict of interest exists even if no unethical or improper act results. A conflict of interest can create an appearance of impropriety that can undermine confidence in the internal auditor, the internal audit activity, and the profession. A conflict of interest could impair an individual's ability to perform his or her duties and responsibilities objectively.*

### **1130 – Impairment to Independence or Objectivity**

If independence or objectivity is impaired in fact or appearance, the details of the impairment must be disclosed to appropriate parties. The nature of the disclosure will depend upon the impairment.

#### **Interpretation:**

*Impairment to organisational independence and individual objectivity may include, but is not limited to, personal conflict of interest, scope limitations, restrictions on access to records, personnel, and properties, and resource limitations, such as funding.*

*The determination of appropriate parties to which the details of an impairment to independence or objectivity must be disclosed is dependent upon the expectations of the internal audit activity's and the chief audit executive's responsibilities to senior management and the board as described in the internal audit charter, as well as the nature of the impairment.*

**1130.A1** – Internal auditors must refrain from assessing specific operations for which they were previously responsible. Objectivity is presumed to be impaired if an internal auditor provides assurance services for an activity for which the internal auditor had responsibility within the previous year.

**1130.A2** – Assurance engagements for functions over which the chief audit executive has responsibility must be overseen by a party outside the internal audit activity.

**1130.C1** – Internal auditors may provide consulting services relating to operations for which they had previous responsibilities.

**1130.C2** – If internal auditors have potential impairments to independence or objectivity relating to proposed consulting services, disclosure must be made to the engagement client prior to accepting the engagement.



## **1200 – Proficiency and Due Professional Care**

Engagements must be performed with proficiency and due professional care.

### **1210 – Proficiency**

Internal auditors must possess the knowledge, skills, and other competencies needed to perform their individual responsibilities. The internal audit activity collectively must possess or obtain the knowledge, skills, and other competencies needed to perform its responsibilities.

#### **Interpretation:**

*Knowledge, skills, and other competencies is a collective term that refers to the professional proficiency required of internal auditors to effectively carry out their professional responsibilities. Internal auditors are encouraged to demonstrate their proficiency by obtaining appropriate professional certifications and qualifications, such as the Certified Internal Auditor designation and other designations offered by The Institute of Internal Auditors and other appropriate professional organisations.*

**1210.A1** – The chief audit executive must obtain competent advice and assistance if the internal auditors lack the knowledge, skills, or other competencies needed to perform all or part of the engagement.

**1210.A2** – Internal auditors must have sufficient knowledge to evaluate the risk of fraud and the manner in which it is managed by the organisation, but are not expected to have the expertise of a person whose primary responsibility is detecting and investigating fraud.

**1210.A3** – Internal auditors must have sufficient knowledge of key information technology risks and controls and available technology-based audit techniques to perform their assigned work. However, not all internal auditors are expected to have the expertise of an internal auditor whose primary responsibility is information technology auditing.

**1210.C1** – The chief audit executive must decline the consulting engagement or obtain competent advice and assistance if the internal auditors lack the knowledge, skills, or other competencies needed to perform all or part of the engagement.

### **1220 – Due Professional Care**

Internal auditors must apply the care and skill expected of a reasonably prudent and competent internal auditor. Due professional care does not imply infallibility.

**1220.A1** – Internal auditors must exercise due professional care by considering the:

- Extent of work needed to achieve the engagement's objectives;
- Relative complexity, materiality, or significance of matters to which assurance procedures are applied;
- Adequacy and effectiveness of governance, risk management, and control processes;
- Probability of significant errors, fraud, or noncompliance; and
- Cost of assurance in relation to potential benefits.

**1220.A2** – In exercising due professional care internal auditors must consider the use of technology-based audit and other data analysis techniques.

**1220.A3** – Internal auditors must be alert to the significant risks that might affect objectives, operations, or resources. However, assurance procedures alone, even when performed with due professional care, do not guarantee that all significant risks will be identified.

**1220.C1** – Internal auditors must exercise due professional care during a consulting engagement by considering the:

- Needs and expectations of clients, including the nature, timing, and communication of engagement results;
- Relative complexity and extent of work needed to achieve the engagement's objectives; and
- Cost of the consulting engagement in relation to potential benefits.

### **1230 – Continuing Professional Development**

Internal auditors must enhance their knowledge, skills, and other competencies through continuing professional development.

### **1300 – Quality Assurance and Improvement Program**

The chief audit executive must develop and maintain a quality assurance and improvement program that covers all aspects of the internal audit activity.

#### **Interpretation:**

*A quality assurance and improvement program is designed to enable an evaluation of the internal audit activity's conformance with the Definition of Internal Auditing and the Standards and an evaluation of whether internal auditors apply the Code of Ethics. The program also assesses the efficiency and effectiveness of the internal audit activity and identifies opportunities for improvement.*

### **1310 – Requirements of the Quality Assurance and Improvement Program**

The quality assurance and improvement program must include both internal and external assessments.

#### **1311 – Internal Assessments**

Internal assessments must include:

- Ongoing monitoring of the performance of the internal audit activity; and
- Periodic reviews performed through self-assessment or by other persons within the organisation with sufficient knowledge of internal audit practices.

#### **Interpretation:**

*Ongoing monitoring is an integral part of the day-to-day supervision, review, and measurement of the internal audit activity. Ongoing monitoring is incorporated into the routine policies and practices used to manage the internal audit activity and uses processes, tools, and information considered necessary to evaluate conformance with the Definition of Internal Auditing, the Code of Ethics, and the Standards.*

*Periodic reviews are assessments conducted to evaluate conformance with the Definition of Internal Auditing, the Code of Ethics, and the Standards.*

*Sufficient knowledge of internal audit practices requires at least an understanding of all elements of the International Professional Practices Framework.*

### **1312 – External Assessments**

External assessments must be conducted at least once every five years by a qualified, independent reviewer or review team from outside the organisation. The chief audit executive must discuss with the board:

- The need for more frequent external assessments; and
- The qualifications and independence of the external reviewer or review team, including any potential conflict of interest.

#### **Interpretation:**

*A qualified reviewer or review team consists of individuals who are competent in the professional practice of internal auditing and the external assessment process. The evaluation of the competency of the reviewer and review team is a judgment that considers the professional internal audit experience and professional credentials of the individuals selected to perform the review. The evaluation of qualifications also considers the size and complexity of the organisations that the reviewers have been associated with in relation to the organisation for which the internal audit activity is being assessed, as well as the need for particular sector, industry, or technical knowledge.*

*An independent reviewer or review team means not having either a real or an apparent conflict of interest and not being a part of, or under the control of, the organisation to which the internal audit activity belongs.*

### **1320 – Reporting on the Quality Assurance and Improvement Program**

The chief audit executive must communicate the results of the quality assurance and improvement program to senior management and the board.

#### **Interpretation:**

*The form, content, and frequency of communicating the results of the quality assurance and improvement program is established through discussions with senior management and the board and considers the responsibilities of the internal audit activity and chief audit executive as contained in the internal audit charter. To demonstrate conformance with the Definition of Internal Auditing, the Code of Ethics, and the Standards, the results of external and periodic internal assessments are communicated upon completion of such assessments and the results of ongoing monitoring are communicated at least annually. The results include the reviewer's or review team's assessment with respect to the degree of conformance.*

### **1321 – Use of “Conforms with the International Standards for the Professional Practice of Internal Auditing”**

The chief audit executive may state that the internal audit activity conforms with the *International Standards for the Professional Practice of Internal Auditing* only if the results of the quality assurance and improvement program support this statement.

### **1322 – Disclosure of Nonconformance**

When nonconformance with the Definition of Internal Auditing, the Code of Ethics, or the *Standards* impacts the overall scope or operation of the internal audit activity, the chief audit executive must disclose the nonconformance and the impact to senior management and the board.

## **Performance Standards**

### **2000 – Managing the Internal Audit Activity**

The chief audit executive must effectively manage the internal audit activity to ensure it adds value to the organisation.

#### **Interpretation:**

*The internal audit activity is effectively managed when:*

- *The results of the internal audit activity's work achieve the purpose and responsibility included in the internal audit charter;*
- *The internal audit activity conforms with the Definition of Internal Auditing and the Standards; and*
- *The individuals who are part of the internal audit activity demonstrate conformance with the Code of Ethics and the Standards.*

### **2010 – Planning**

The chief audit executive must establish risk-based plans to determine the priorities of the internal audit activity, consistent with the organisation's goals.

#### **Interpretation:**

*The chief audit executive is responsible for developing a risk-based plan. The chief audit executive takes into account the organisation's risk management framework, including using risk appetite levels set by management for the different activities or parts of the organisation. If a framework does not exist, the chief audit executive uses his/her own judgment of risks after consultation with senior management and the board.*

**2010.A1** – The internal audit activity's plan of engagements must be based on a documented risk assessment, undertaken at least annually. The input of senior management and the board must be considered in this process.

**2010.C1** – The chief audit executive should consider accepting proposed consulting engagements based on the engagement's potential to improve management of risks, add value, and improve the organisation's operations. Accepted engagements must be included in the plan.

### **2020 – Communication and Approval**

The chief audit executive must communicate the internal audit activity's plans and resource requirements, including significant interim changes, to senior management and the board for review and approval. The chief audit executive must also communicate the impact of resource limitations.

### **2030 – Resource Management**

The chief audit executive must ensure that internal audit resources are appropriate, sufficient, and effectively deployed to achieve the approved plan.

#### **Interpretation:**

*Appropriate refers to the mix of knowledge, skills, and other competencies needed to perform the plan. Sufficient refers to the quantity of resources needed to accomplish the plan. Resources are effectively deployed when they are used in a way that optimizes the achievement of the approved plan.*

## **2040 – Policies and Procedures**

The chief audit executive must establish policies and procedures to guide the internal audit activity.

### **Interpretation:**

*The form and content of policies and procedures are dependent upon the size and structure of the internal audit activity and the complexity of its work.*

## **2050 – Coordination**

The chief audit executive should share information and coordinate activities with other internal and external providers of assurance and consulting services to ensure proper coverage and minimize duplication of efforts.

## **2060 – Reporting to Senior Management and the Board**

The chief audit executive must report periodically to senior management and the board on the internal audit activity's purpose, authority, responsibility, and performance relative to its plan. Reporting must also include significant risk exposures and control issues, including fraud risks, governance issues, and other matters needed or requested by senior management and the board.

### **Interpretation:**

*The frequency and content of reporting are determined in discussion with senior management and the board and depend on the importance of the information to be communicated and the urgency of the related actions to be taken by senior management or the board.*

## **2100 – Nature of Work**

The internal audit activity must evaluate and contribute to the improvement of governance, risk management, and control processes using a systematic and disciplined approach.

## **2110 – Governance**

The internal audit activity must assess and make appropriate recommendations for improving the governance process in its accomplishment of the following objectives:

- Promoting appropriate ethics and values within the organisation;
- Ensuring effective organisational performance management and accountability;
- Communicating risk and control information to appropriate areas of the organisation; and
- Coordinating the activities of and communicating information among the board, external and internal auditors, and management.

**2110.A1** – The internal audit activity must evaluate the design, implementation, and effectiveness of the organisation's ethics-related objectives, programs, and activities.

**2110.A2** – The internal audit activity must assess whether the information technology governance of the organisation sustains and supports the organisation's strategies and objectives.

**2110.C1** – Consulting engagement objectives must be consistent with the overall values and goals of the organisation.

## **2120 – Risk Management**

The internal audit activity must evaluate the effectiveness and contribute to the improvement of risk management processes.

**Interpretation:**

*Determining whether risk management processes are effective is a judgment resulting from the internal auditor's assessment that:*

- *Organisational objectives support and align with the organisation's mission;*
- *Significant risks are identified and assessed;*
- *Appropriate risk responses are selected that align risks with the organisation's risk appetite; and*
- *Relevant risk information is captured and communicated in a timely manner across the organisation, enabling staff, management, and the board to carry out their responsibilities.*

*Risk management processes are monitored through ongoing management activities, separate evaluations, or both.*

**2120.A1** – The internal audit activity must evaluate risk exposures relating to the organisation's governance, operations, and information systems regarding the:

- Reliability and integrity of financial and operational information.
- Effectiveness and efficiency of operations.
- Safeguarding of assets; and
- Compliance with laws, regulations, and contracts.

**2120.A2** – The internal audit activity must evaluate the potential for the occurrence of fraud and how the organisation manages fraud risk.

**2120.C1** – During consulting engagements, internal auditors must address risk consistent with the engagement's objectives and be alert to the existence of other significant risks.

**2120.C2** – Internal auditors must incorporate knowledge of risks gained from consulting engagements into their evaluation of the organisation's risk management processes.

**2120.C3** – When assisting management in establishing or improving risk management processes, internal auditors must refrain from assuming any management responsibility by actually managing risks.

**2130 – Control**

The internal audit activity must assist the organisation in maintaining effective controls by evaluating their effectiveness and efficiency and by promoting continuous improvement.

**2130.A1** – The internal audit activity must evaluate the adequacy and effectiveness of controls in responding to risks within the organisation's governance, operations, and information systems regarding the:

- Reliability and integrity of financial and operational information;
- Effectiveness and efficiency of operations;
- Safeguarding of assets; and
- Compliance with laws, regulations, and contracts.

**2130.A2** – Internal auditors should ascertain the extent to which operating and program goals and objectives have been established and conform to those of the organisation.

**2130.A3** – Internal auditors should review operations and programs to ascertain the extent to which results are consistent with established goals and objectives to determine whether operations and programs are being implemented or performed as intended.

**2130.C1** – During consulting engagements, internal auditors must address controls consistent with the engagement's objectives and be alert to significant control issues.

**2130.C2** – Internal auditors must incorporate knowledge of controls gained from consulting engagements into evaluation of the organisation's control processes.

## **2200 – Engagement Planning**

Internal auditors must develop and document a plan for each engagement, including the engagement's objectives, scope, timing, and resource allocations.

### **2201 – Planning Considerations**

In planning the engagement, internal auditors must consider:

- The objectives of the activity being reviewed and the means by which the activity controls its performance;
- The significant risks to the activity, its objectives, resources, and operations and the means by which the potential impact of risk is kept to an acceptable level;
- The adequacy and effectiveness of the activity's risk management and control processes compared to a relevant control framework or model; and
- The opportunities for making significant improvements to the activity's risk management and control processes.

**2201.A1** – When planning an engagement for parties outside the organisation, internal auditors must establish a written understanding with them about objectives, scope, respective responsibilities, and other expectations, including restrictions on distribution of the results of the engagement and access to engagement records.

**2201.C1** – Internal auditors must establish an understanding with consulting engagement clients about objectives, scope, respective responsibilities, and other client expectations. For significant engagements, this understanding must be documented.

## **2210 – Engagement Objectives**

Objectives must be established for each engagement.

**2210.A1** – Internal auditors must conduct a preliminary assessment of the risks relevant to the activity under review. Engagement objectives must reflect the results of this assessment.

**2210.A2** – Internal auditors must consider the probability of significant errors, fraud, noncompliance, and other exposures when developing the engagement objectives.

**2210.A3** – Adequate criteria are needed to evaluate controls. Internal auditors must ascertain the extent to which management has established adequate criteria to determine whether objectives and goals have been accomplished. If adequate, internal auditors must use such criteria in their evaluation. If inadequate, internal auditors must work with management to develop appropriate evaluation criteria.

**2210.C1** – Consulting engagement objectives must address governance, risk management, and control processes to the extent agreed upon with the client.

## **2220 – Engagement Scope**

The established scope must be sufficient to satisfy the objectives of the engagement.

**2220.A1** – The scope of the engagement must include consideration of relevant systems, records, personnel, and physical properties, including those under the control of third parties.

**2220.A2** – If significant consulting opportunities arise during an assurance engagement, a specific written understanding as to the objectives, scope, respective responsibilities, and other expectations should be reached and the results of the consulting engagement communicated in accordance with consulting standards.

**2220.C1** – In performing consulting engagements, internal auditors must ensure that the scope of the engagement is sufficient to address the agreed-upon objectives. If internal auditors develop reservations about the scope during the engagement, these reservations must be discussed with the client to determine whether to continue with the engagement.

## **2230 – Engagement Resource Allocation**

Internal auditors must determine appropriate and sufficient resources to achieve engagement objectives based on an evaluation of the nature and complexity of each engagement, time constraints, and available resources.

## **2240 – Engagement Work Program**

Internal auditors must develop and document work programs that achieve the engagement objectives.

**2240.A1** – Work programs must include the procedures for identifying, analysing, evaluating, and documenting information during the engagement. The work program must be approved prior to its implementation, and any adjustments approved promptly.

**2240.C1** – Work programs for consulting engagements may vary in form and content depending upon the nature of the engagement.

## **2300 – Performing the Engagement**

Internal auditors must identify, analyse, evaluate, and document sufficient information to achieve the engagement's objectives.

## **2310 – Identifying Information**

Internal auditors must identify sufficient, reliable, relevant, and useful information to achieve the engagement's objectives.

### **Interpretation:**

*Sufficient information is factual, adequate, and convincing so that a prudent, informed person would reach the same conclusions as the auditor. Reliable information is the best attainable information through the use of appropriate engagement techniques. Relevant information supports engagement observations and recommendations and is consistent with the objectives for the engagement. Useful information helps the organisation meet its goals.*

## **2320 – Analysis and Evaluation**

Internal auditors must base conclusions and engagement results on appropriate analyses and evaluations.



### **2330 – Documenting Information**

Internal auditors must document relevant information to support the conclusions and engagement results.

**2330.A1** – The chief audit executive must control access to engagement records. The chief audit executive must obtain the approval of senior management and/or legal counsel prior to releasing such records to external parties, as appropriate.

**2330.A2** – The chief audit executive must develop retention requirements for engagement records, regardless of the medium in which each record is stored. These retention requirements must be consistent with the organisation's guidelines and any pertinent regulatory or other requirements.

**2330.C1** – The chief audit executive must develop policies governing the custody and retention of consulting engagement records, as well as their release to internal and external parties. These policies must be consistent with the organisation's guidelines and any pertinent regulatory or other requirements.

### **2340 – Engagement Supervision**

Engagements must be properly supervised to ensure objectives are achieved, quality is assured, and staff is developed.

#### **Interpretation:**

*The extent of supervision required will depend on the proficiency and experience of internal auditors and the complexity of the engagement. The chief audit executive has overall responsibility for supervising the engagement, whether performed by or for the internal audit activity, but may designate appropriately experienced members of the internal audit activity to perform the review. Appropriate evidence of supervision is documented and retained.*

### **2400 – Communicating Results**

Internal auditors must communicate the engagement results.

#### **2410 – Criteria for Communicating**

Communications must include the engagement's objectives and scope as well as applicable conclusions, recommendations, and action plans.

**2410.A1** – Final communication of engagement results must, where appropriate, contain internal auditors' overall opinion and/or conclusions.

**2410.A2** – Internal auditors are encouraged to acknowledge satisfactory performance in engagement communications.

**2410.A3** – When releasing engagement results to parties outside the organisation, the communication must include limitations on distribution and use of the results.

**2410.C1** – Communication of the progress and results of consulting engagements will vary in form and content depending upon the nature of the engagement and the needs of the client.

#### **2420 – Quality of Communications**

Communications must be accurate, objective, clear, concise, constructive, complete, and timely.

**Interpretation:**

*Accurate communications are free from errors and distortions and are faithful to the underlying facts. Objective communications are fair, impartial, and unbiased and are the result of a fair-minded and balanced assessment of all relevant facts and circumstances. Clear communications are easily understood and logical, avoiding unnecessary technical language and providing all significant and relevant information. Concise communications are to the point and avoid unnecessary elaboration, superfluous detail, redundancy, and wordiness. Constructive communications are helpful to the engagement client and the organisation and lead to improvements where needed. Complete communications lack nothing that is essential to the target audience and include all significant and relevant information and observations to support recommendations and conclusions. Timely communications are opportune and expedient, depending on the significance of the issue, allowing management to take appropriate corrective action.*

**2421 – Errors and Omissions**

If a final communication contains a significant error or omission, the chief audit executive must communicate corrected information to all parties who received the original communication.

**2430 – Use of “Conducted in Conformance with the *International Standards for the Professional Practice of Internal Auditing*”**

Internal auditors may report that their engagements are “conducted in conformance with the *International Standards for the Professional Practice of Internal Auditing*”, only if the results of the quality assurance and improvement program support the statement.

**2431 – Engagement Disclosure of Nonconformance**

When nonconformance with the Definition of Internal Auditing, the Code of Ethics or the *Standards* impacts a specific engagement, communication of the results must disclose the:

- Principle or rule of conduct of the Code of Ethics or *Standard(s)* with which full conformance was not achieved;
- Reason(s) for nonconformance; and
- Impact of nonconformance on the engagement and the communicated engagement results.

**2440 – Disseminating Results**

The chief audit executive must communicate results to the appropriate parties.

**Interpretation:**

*The chief audit executive or designee reviews and approves the final engagement communication before issuance and decides to whom and how it will be disseminated.*

**2440.A1** – The chief audit executive is responsible for communicating the final results to parties who can ensure that the results are given due consideration.

**2440.A2** – If not otherwise mandated by legal, statutory, or regulatory requirements, prior to releasing results to parties outside the organisation the chief audit executive must:

- Assess the potential risk to the organisation;
- Consult with senior management and/or legal counsel as appropriate; and
- Control dissemination by restricting the use of the results.

**2440.C1** – The chief audit executive is responsible for communicating the final results of consulting engagements to clients.

**2440.C2** – During consulting engagements, governance, risk management, and control issues may be identified. Whenever these issues are significant to the organisation, they must be communicated to senior management and the board.

#### **2500 – Monitoring Progress**

The chief audit executive must establish and maintain a system to monitor the disposition of results communicated to management.

**2500.A1** – The chief audit executive must establish a follow-up process to monitor and ensure that management actions have been effectively implemented or that senior management has accepted the risk of not taking action.

**2500.C1** – The internal audit activity must monitor the disposition of results of consulting engagements to the extent agreed upon with the client.

#### **2600 – Resolution of Senior Management's Acceptance of Risks**

When the chief audit executive believes that senior management has accepted a level of residual risk that may be unacceptable to the organisation, the chief audit executive must discuss the matter with senior management. If the decision regarding residual risk is not resolved, the chief audit executive must report the matter to the board for resolution.

## **Glossary**

### **Add Value**

Value is provided by improving opportunities to achieve organisational objectives, identifying operational improvement, and/or reducing risk exposure through both assurance and consulting services.

### **Adequate Control**

Present if management has planned and organised (designed) in a manner that provides reasonable assurance that the organisation's risks have been managed effectively and that the organisation's goals and objectives will be achieved efficiently and economically.

### **Assurance Services**

An objective examination of evidence for the purpose of providing an independent assessment on governance, risk management, and control processes for the organisation. Examples may include financial, performance, compliance, system security, and due diligence engagements.

### **Board**

A board is an organisation's governing body, such as a board of directors, supervisory board, head of an agency or legislative body, board of governors or trustees of a non-profit organisation, or any other designated body of the organisation, including the audit committee to whom the chief audit executive may functionally report.

### **Charter**

The internal audit charter is a formal document that defines the internal audit activity's purpose, authority, and responsibility. The internal audit charter establishes the internal audit activity's position within the organisation; authorizes access to records, personnel, and physical properties relevant to the performance of engagements; and defines the scope of internal audit activities.

### **Chief Audit Executive**

Chief audit executive is a senior position within the organisation responsible for internal audit activities. Normally, this would be the internal audit director. In the case where internal audit activities are obtained from external service providers, the chief audit executive is the person responsible for overseeing the service contract and the overall quality assurance of these activities, reporting to senior management and the board regarding internal audit activities, and follow-up of engagement results. The term also includes titles such as general auditor, head of internal audit, chief internal auditor, and inspector general.

### **Code of Ethics**

The Code of Ethics of The Institute of Internal Auditors (IIA) are Principles relevant to the profession and practice of internal auditing, and Rules of Conduct that describe behaviour expected of internal auditors. The Code of Ethics applies to both parties and entities that provide internal audit services. The purpose of the Code of Ethics is to promote an ethical culture in the global profession of internal auditing.

### **Compliance**

Adherence to policies, plans, procedures, laws, regulations, contracts, or other requirements.

### **Conflict of Interest**

Any relationship that is, or appears to be, not in the best interest of the organisation. A conflict of interest would prejudice an individual's ability to perform his or her duties and responsibilities objectively.

**Consulting Services**

Advisory and related client service activities, the nature and scope of which are agreed with the client, are intended to add value and improve an organisation's governance, risk management, and control processes without the internal auditor assuming management responsibility. Examples include counsel, advice, facilitation, and training.

**Control**

Any action taken by management, the board, and other parties to manage risk and increase the likelihood that established objectives and goals will be achieved. Management plans, organises, and directs the performance of sufficient actions to provide reasonable assurance that objectives and goals will be achieved.

**Control Environment**

The attitude and actions of the board and management regarding the significance of control within the organisation. The control environment provides the discipline and structure for the achievement of the primary objectives of the system of internal control. The control environment includes the following elements:

- Integrity and ethical values
- Management's philosophy and operating style
- Organisational structure
- Assignment of authority and responsibility
- Human resource policies and practices
- Competence of personnel.

**Control Processes**

The policies, procedures, and activities that are part of a control framework, designed to ensure that risks are contained within the risk tolerances established by the risk management process.

**Engagement**

A specific internal audit assignment, task, or review activity, such as an internal audit, control self-assessment review, fraud examination, or consultancy. An engagement may include multiple tasks or activities designed to accomplish a specific set of related objectives.

**Engagement Objectives**

Broad statements developed by internal auditors that define intended engagement accomplishments.

**Engagement Work Program**

A document that lists the procedures to be followed during an engagement, designed to achieve the engagement plan.

**External Service Provider**

A person or firm outside of the organisation that has special knowledge, skill, and experience in a particular discipline.

**Fraud**

Any illegal act characterized by deceit, concealment, or violation of trust. These acts are not dependent upon the threat of violence or physical force. Frauds are perpetrated by parties and organisations to obtain money, property, or services; to avoid payment or loss of services; or to secure personal or business advantage.

**Governance**

The combination of processes and structures implemented by the board to inform, direct, manage, and monitor the activities of the organisation toward the achievement of its objectives.

**Impairment**

Impairment to organisational independence and individual objectivity may include personal conflict of interest, scope limitations, restrictions on access to records, personnel, and properties, and resource limitations (funding).

**Independence**

The freedom from conditions that threaten objectivity or the appearance of objectivity. Such threats to objectivity must be managed at the individual auditor, engagement, functional, and organisational levels.

**Information Technology Controls**

Controls that support business management and governance as well as provide general and technical controls over information technology infrastructures such as applications, information, infrastructure, and people.

**Information Technology Governance**

Consists of the leadership, organisational structures, and processes that ensure that the enterprise's information technology sustains and supports the organisation's strategies and objectives.

**Internal Audit Activity**

A department, division, team of consultants, or other practitioner(s) that provides independent, objective assurance and consulting services designed to add value and improve an organisation's operations. The internal audit activity helps an organisation accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of governance, risk management and control processes.

**International Professional Practices Framework**

The conceptual framework that organises the authoritative guidance promulgated by The IIA. Authoritative Guidance is comprised of two categories – (1) mandatory and (2) strongly recommended.

**Must**

The *Standards* use the word "must" to specify an unconditional requirement.

**Objectivity**

An unbiased mental attitude that allows internal auditors to perform engagements in such a manner that they have an honest belief in their work product and that no significant quality compromises are made. Objectivity requires internal auditors not to subordinate their judgment on audit matters to others.

**Residual Risk**

The risk remaining after management takes action to reduce the impact and likelihood of an adverse event, including control activities in responding to a risk.

**Risk**

The possibility of an event occurring that will have an impact on the achievement of objectives. Risk is measured in terms of impact and likelihood.

**Risk Appetite**

The level of risk that an organisation is willing to accept.

**Risk Management**

A process to identify, assess, manage, and control potential events or situations to provide reasonable assurance regarding the achievement of the organisation's objectives.

**Should**

The *Standards* use the word "should" where conformance is expected unless, when applying professional judgment, circumstances justify deviation.

**Significance**

The relative importance of a matter within the context in which it is being considered, including quantitative and qualitative factors, such as magnitude, nature, effect, relevance, and impact. Professional judgment assists internal auditors when evaluating the significance of matters within the context of the relevant objectives.

**Standard**

A professional pronouncement promulgated by the Internal Audit Standards Board that delineates the requirements for performing a broad range of internal audit activities, and for evaluating internal audit performance.

**Technology-based Audit Techniques**

Any automated audit tool, such as generalized audit software, test data generators, computerized audit programs, specialized audit utilities, and computer-assisted audit techniques (CAATs).

## Appendix 2 - Sample Audit Committee Charter

### AUDIT COMMITTEE CHARTER

#### 1. Objective

The objective of the Audit Committee (Committee) is to provide independent assurance and assistance to the NAME OF COUNCIL on risk management, control, governance, and external accountability responsibilities.

#### 2. Authority

The Council authorises the Committee, within the scope of its role and responsibilities, to:

- Obtain any information it needs from any employee or external party (subject to their legal obligations to protect information).
- Discuss any matters with the external auditor or other external parties (subject to confidentiality considerations).
- Request the attendance of any employee or councillor at Committee meetings.
- Obtain external legal or other professional advice considered necessary to meet its responsibilities.

#### 3. Composition and Tenure

The Committee will consist of:

##### 3.1 Members (voting)

- Councillor
- Independent external member (not a member of the Council).
- Independent external member (not a member of the Council to be the chairperson).

##### 3.2 Attendee (non-voting)

- General Manager
- Head of Internal Audit
- Chief Financial Officer

##### 3.3 Invitees (non-voting) for specific Agenda items

- Representatives of the external auditor.
- Other officers may attend by invitation as requested by the Committee.

The independent external member will be appointed for the term of council, after which they will be eligible for extension or re-appointment following a formal review of their performance.

The members of the Committee, taken collectively, will have a broad range of skills and experience relevant to the operations of NAME OF COUNCIL. At least one member of the Committee shall have accounting or related financial management experience, with understanding of accounting and auditing standards in a public sector environment.



#### **4. Role and Responsibilities**

The Committee has no executive powers, except those expressly provided by the Council.

In carrying out its responsibilities, the Committee must at all times recognise that primary responsibility for management of Council rests with the Council and the General Manager as defined by the Local Government Act.

The responsibilities of the Committee may be revised or expanded by the Council from time to time. The Committee's responsibilities are:

##### **4.1 Risk Management**

- Review whether management has in place a current and comprehensive risk management framework, and associated procedures for effective identification and management of business and financial risks, including fraud.
- Review whether a sound and effective approach has been followed in developing strategic risk management plans for major projects or undertakings;
- Review the impact of the risk management framework on its control environment and insurance arrangements; and
- Review whether a sound and effective approach has been followed in establishing business continuity planning arrangements, including whether plans have been tested periodically.

##### **4.2 Control Framework**

- Review whether management has adequate internal controls in place, including over external parties such as contractors and advisors;
- Review whether management has in place relevant policies and procedures, and these are periodically reviewed and updated;
- Progressively review whether appropriate processes are in place to assess whether policies and procedures are complied with;
- Review whether appropriate policies and procedures are in place for the management and exercise of delegations; and
- Review whether management has taken steps to embed a culture which is committed to ethical and lawful behaviour.

##### **4.3 External Accountability**

- Satisfy itself the annual financial reports comply with applicable Australian Accounting Standards and supported by appropriate management sign-off on the statements and the adequacy of internal controls.
- Review the external audit opinion, including whether appropriate action has been taken in response to audit recommendations and adjustments.
- To consider contentious financial reporting matters in conjunction with council's management and external auditors.
- Review the processes in place designed to ensure financial information included in the annual report is consistent with the signed financial statements.
- Satisfy itself there are appropriate mechanisms in place to review and implement, where appropriate, relevant State Government reports and recommendations.
- Satisfy itself there is a performance management framework linked to organisational objectives and outcomes.

#### 4.4 Legislative Compliance

- Determine whether management has appropriately considered legal and compliance risks as part of risk assessment and management arrangements.
- Review the effectiveness of the system for monitoring compliance with relevant laws, regulations and associated government policies.

#### 4.5 Internal Audit

- Act as a forum for communication between the Council, General Manager, senior management, internal audit and external audit.
- Review the internal audit coverage and Internal Audit Plan, ensure the plan has considered the Risk Management Plan, and approve the plan.
- Consider the adequacy of internal audit resources to carry out its responsibilities, including completion of the approved Internal Audit Plan.
- Review all audit reports and consider significant issues identified in audit reports and action taken on issues raised, including identification and dissemination of better practices.
- Monitor the implementation of internal audit recommendations by management.
- Periodically review the Internal Audit Charter to ensure appropriate organisational structures, authority, access and reporting arrangements are in place.
- Periodically review the performance of Internal Audit.

#### 4.6 External Audit

- Act as a forum for communication between the Council, General Manager, senior management, internal audit and external audit.
- Provide input and feedback on the financial statement and performance audit coverage proposed by external audit, and provide feedback on the external audit services provided.
- Review all external plans and reports in respect of planned or completed external audits, and monitor the implementation of audit recommendations by management.
- Consider significant issues raised in relevant external audit reports and better practice guides, and ensure appropriate action is taken.

#### 4.7 Responsibilities of Members

Members of the Committee are expected to:

- Understand the relevant legislative and regulatory requirements appropriate to NAME OF COUNCIL.
- Contribute the time needed to study and understand the papers provided.
- Apply good analytical skills, objectivity and good judgment.
- Express opinions frankly, ask questions that go to the fundamental core of issues, and pursue independent lines of enquiry.

## **5. Reporting**

At the first Committee meeting after 30 June each year, Internal Audit will provide a performance report of:

- The performance of Internal Audit for the financial year as measured against agreed key performance indicators.
- The approved Internal Audit Plan of work for the previous financial year showing the current status of each audit.

The Committee may, at any time, consider any other matter it deems of sufficient importance to do so. In addition, at any time an individual Committee member may request a meeting with the Chair of the Committee.

The Committee will report regularly, and at least annually, to the governing body of council on the management of risk and internal controls.

## **6. Administrative arrangements**

### **6.1 Meetings**

The Committee will meet at least four times per year, with one of these meetings to include review and endorsement of the annual audited financial reports and external audit opinion.

The need for any additional meetings will be decided by the Chair of the Committee, though other Committee members may make requests to the Chair for additional meetings.

A forward meeting plan, including meeting dates and agenda items, will be agreed by the Committee each year. The forward meeting plan will cover all Committee responsibilities as detailed in this Audit Committee Charter.

### **6.2 Attendance at Meetings and Quorums**

A quorum will consist of a majority of Committee members, including at least one independent member. Meetings can be held in person, by telephone or by video conference.

The Head of Internal Audit will be invited to attend each meeting unless requested not to do so by the Chair of the Committee. The Committee may also request the Chief Finance Officer or any other employees to participate for certain agenda items, as well as the external auditor.

The General Manager may attend each meeting but will permit the Committee to meet separately with each of the Head of Internal Audit and the External Auditor in the absence of management on at least one occasion per year.

### **6.3 Secretariat**

The Committee has appointed the Head of Internal Audit to be responsible for ensuring that the Committee has adequate secretariat support. The Secretariat will ensure the agenda for each meeting and supporting papers are circulated, at least one week before the meeting, and ensure minutes of the meetings are prepared and maintained. Minutes shall be approved by the Chair and circulated to each member within three weeks of the meeting being held.

### **6.4 Conflict of Interests**

Councillors, council staff and members of council committees must comply with the applicable provisions of Council's code of conduct in carrying out the functions as council officials. It is the personal responsibility of council officials to comply with the standards in the code of conduct and regularly review their personal circumstances with this in mind.

Committee members must declare any conflict of interests at the start of each meeting or before discussion of a relevant agenda item or topic. Details of any conflicts of interest should be appropriately minuted.

Where members or invitees at Committee meetings are deemed to have a real or perceived conflict of interest, it may be appropriate they be excused from Committee deliberations on the issue where the conflict of interest may exist. The final arbiter of such a decision is the Chair of the Committee.

#### 6.5 Induction

New members will receive relevant information and briefings on their appointment to assist them to meet their Committee responsibilities.

#### 6.6 Assessment Arrangements

The Chair of the Committee will initiate a review of the performance of the Committee at least once every two years. The review will be conducted on a self-assessment basis (unless otherwise determined by the Chair), with appropriate input from management and any other relevant stakeholders, as determined by the Chair.

#### 6.7 Review of Audit Committee Charter

At least once every two years the Audit Committee will review this Audit Committee Charter.

The Audit Committee will approve any changes to this Audit Committee Charter.

**Approved:**

Audit Committee Meeting

Date:

## Appendix 3 - Sample Internal Audit Charter

The mission of internal auditing is to provide an independent, objective assurance and consulting activity designed to add value and improve an organisation's operations. It helps an organisation accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes.

Internal Audit at NAME OF ORGANISATION is managed by the TITLE OF INTERNAL AUDIT MANAGER who is the designated Head of Internal Audit within the organisation. The Head of Internal Audit is the top position within an organisation for internal audit activities, as defined in The International Standards for the Professional Practice of Internal Auditing (Standards) issued by the Institute of Internal Auditors.

### 1. Introduction

This Internal Audit Charter is a formal statement of purpose, authority and responsibility for an internal auditing function within NAME OF ORGANISATION.

- It establishes Internal Audit within NAME OF ORGANISATION and recognises the importance of such an independent and objective service to the organisation.
- It outlines the legal and operational framework under which Internal Audit will operate.
- It authorises the Head of Internal Audit to promote and direct a broad range of internal audits across NAME OF ORGANISATION and, where permitted, external bodies.

Mandate for Internal Audit THIS WILL VARY FROM ORGANISATION TO ORGANISATION AND MAY INCLUDE LEGISLATIVE OR REGULATORY REQUIREMENTS).

### 2. Role and Authority

The Head of Internal Audit is authorised to direct a comprehensive program of internal audit work in the form of reviews, previews, consultancy advice, evaluations, appraisals, assessments and investigations of functions, processes, controls and governance frameworks in the context of the achievement of business objectives.

For this purpose, all members of Internal Audit are authorised to have full, free and unrestricted access to all functions, property, personnel, records, information, accounts, files, monies and other documentation, as necessary for the conduct of their work.

### 3. Objectivity, Independence and Organisational Status

Objectivity requires an unbiased mental attitude. As such, all Internal Audit staff shall perform internal audit engagements in such a manner that they have an honest belief in their work product and that no significant quality compromises are made. Further, it requires Internal Audit staff not to subordinate their judgment on internal audit matters to that of others.

To facilitate this approach, Internal Audit shall have independent status within NAME OF ORGANISATION, and for this purpose shall be responsible directly through the Head of Internal Audit to the Audit Committee and administratively to the General Manager. Internal Audit shall be independent of the activities reviewed, and therefore shall not undertake any operating responsibilities outside internal audit work. Neither shall Internal Audit staff have any executive or managerial powers, authorities, functions or duties except those relating to the management of Internal Audit. Internal Audit staff and contractors shall report to the Head of Internal Audit any situations where they feel their objectivity may be impaired. Similarly, the Head of Internal Audit should report any such situations to the Audit Committee.

The work of Internal Audit does not relieve the staff of NAME OF ORGANISATION from their accountability to discharge their responsibilities. All NAME OF ORGANISATION staff are responsible for risk management and the operation and enhancement of internal control. This includes responsibility for implementing remedial action endorsed by management following an internal audit.

Internal Audit shall not be responsible for operational activities on a daily basis, or in the detailed development or implementation of new or changed systems, or for internal checking processes.

#### **4. Scope of Work**

The scope of services provided by Internal Audit shall encompass:

- The examination and evaluation of the adequacy and effectiveness of systems of internal control, risk management, governance, and the status of ethical behaviour.
- Ascertaining conformity with the goals and objectives of NAME OF ORGANISATION.
- Assessment of the economic and efficient use of resources.
- The examination of compliance with policies, procedures, plans and legislation.
- Assessment of the reliability and integrity of information.
- Assessment of the safeguarding of assets.
- Any special investigations as directed by the Audit Committee.
- All activities of NAME OF ORGANISATION, whether financial or non-financial, manual or computerised.

#### **5. The scope of work may include**

- **Assurance services** – objective examination of evidence for the purpose of providing an independent assessment on risk management, control, or governance processes for the organisation. Examples may include financial, performance, operational, compliance, system security, and due diligence engagements.
- **Consulting services** – advisory and related client service activities, the nature and scope of which are agreed with the client and which are intended to add value and improve an organisation's governance, risk management, and control processes without the internal auditor assuming management responsibility. Examples include counsel, advice, facilitation and training.

#### **6. Internal Audit Methodology**

Internal Audit shall use the most appropriate methodology for each internal audit engagement, depending on the nature of the activity and the pre-determined parameters for the engagement. Generally, internal audits will include:

- Planning.
- Reviewing and assessing risks in the context of the audit objectives.
- Examination and evaluation of information.
- Communicating results.
- Following up on implementation of audit recommendations.

#### **7. Operating Principles**

Internal Audit shall conform with:

- The Standards and Code of Ethics issued by the Institute of Internal Auditors.
- Where relevant, the Statement on Information Systems Auditing Standards issued by the Information Systems and Control Association.
- Relevant auditing standards issued by the Auditing and Assurance Standards Board.

#### **8. Internal Audit shall:**

- Possess the knowledge, skills, and technical proficiency essential to the performance of internal audits.

- Be skilled in dealing with people and in communicating audit issues effectively.
- Maintain their technical competence through a program of continuing education.
- Exercise due professional care in performing internal audit engagements.

#### **9. Internal Audit staff shall:**

- Conduct themselves in a professional manner.
- Conduct their activities in a manner consistent with the concepts expressed in the Standards and the Code of Ethics.

#### **10. Reporting Arrangements**

The Head of Internal Audit shall at all times report to the Audit Committee. At each Audit Committee meeting the Head of Internal Audit shall submit a report summarising all audit activities undertaken during the period, indicating:

- ✓ Internal audit engagements completed or in progress.
- ✓ Outcomes of each internal audit engagement undertaken.
- ✓ Remedial action taken or in progress.

On completion of each internal audit engagement, Internal Audit shall issue a report to its audit customers detailing the objective and scope of the audit, and resulting issues based on the outcome of the audit. Internal Audit shall seek from the responsible senior executive an agreed and endorsed action plan outlining remedial action to be taken, along with an implementation timetable and person responsible. Responsible officers shall have a maximum of ten working days to provide written management responses and action plans in response to issues and recommendations contained in internal audit reports.

The Head of Internal Audit shall make available all internal audit reports to the Audit Committee. However, the work of Internal Audit is solely for the benefit of NAME OF ORGANISATION and is not to be relied on or provided to any other person or organisation, except where this is formally authorised by the Audit Committee or the Head of Internal Audit.

In addition to the normal process of reporting on work undertaken by Internal Audit, the Head of Internal Audit shall draw to the attention of the Audit Committee all matters that, in the Head of Internal Audit's opinion, warrant reporting in this manner.

#### **11. Planning Requirements**

Internal Audit uses a risk-based rolling program of internal audits to establish an annual Internal Audit Plan to reflect a program of audits over a 12 month period. This approach is designed to be flexible, dynamic and more timely in order to meet the changing needs and priorities of NAME OF ORGANISATION.

The Head of Internal Audit shall prepare an annual Internal Audit Plan for review and approval by the Audit Committee, showing the proposed areas for audit. The annual Internal Audit Plan shall be based on an assessment of the goals, objectives and business risks of NAME OF ORGANISATION, and shall also take into consideration any special requirements of the Audit Committee and senior executives.

The Head of Internal Audit has discretionary authority to adjust the Internal Audit Plan as a result of receiving special requests from management to conduct reviews that are not on the plan, with these to be approved at the next meeting of the Audit Committee.

#### **12. Quality Assurance & Improvement Program**

The Head of Internal Audit shall oversee the development and implementation of a quality assurance and improvement program for Internal Audit, to provide assurance that internal audit work conforms to the Standards and is focused on continuous improvement.

### **13. Co-ordination with External Audit**

The Head of Internal Audit shall periodically consult with the external auditor, to discuss matters of mutual interest, to co-ordinate audit activity, and to reduce duplication of audit effort.

### **14. Review of the Internal Audit Charter**

The Head of Internal Audit shall periodically review the Internal Audit Charter to ensure it remains up-to-date and reflects the current scope of internal audit work.

### **15. Evaluation of Internal Audit**

The Head of Internal Audit shall develop performance measures (key performance indicators) for consideration and endorsement by the Audit Committee, as a means for the performance of Internal Audit to be periodically evaluated.

Internal Audit shall also be subject to an independent quality review at least every five years. Such review shall be in line with the Standards of Professional Practice in Internal Audit and be commissioned by and report to the Audit Committee.

### **16. Conflict of Interests**

Internal auditors are not to provide audit services for work for which they may previously have been responsible. Whilst the Standards provide guidance on this point and allow this to occur after 12 months, each instance should be carefully assessed.

When engaging internal audit contractors, the Head of Internal Audit shall take steps to identify, evaluate the significance, and manage any perceived or actual conflicts of interest that may impinge upon internal audit work.

Instances of perceived or actual conflicts of interest by the Head of Internal Audit or Internal Audit staff and contractors are to be immediately reported to the Audit Committee by the Head of Internal Audit.

Any changes to this Internal Audit Charter will be approved by the Audit Committee.

**Approved:**

Audit Committee Meeting

Date:



## Appendix 4 - Risk Management Assessment Tool

*This tool is designed to assist the Audit Committee's consideration of risk management, through the review of material, and discussion or presentations from senior management.*

*The Committee's charter will determine the extent to which the Audit Committee needs to consider risk management or whether this is to be overseen by a separate Risk Committee.*

*The tool consists of a series of questions, or high level prompts, which should be tailored to meet the Council's particular circumstances. The extent and nature of the Committee's consideration of risk will largely be dependent on whether or not the Council has in place a formal and structured risk management framework.*

*Some elements, for example, questions on risk strategy and structure, could be addressed on an annual basis while others could be considered on a more regular basis, depending on Council's individual risk management activities, and the Committee charter.*

*A 'no' answer does not necessarily indicate a failure or breakdown in Council's risk management framework but may indicate where more detailed discussion or consideration by the Committee is warranted.*

<b>Risk Strategy</b>	<b>Yes</b>	<b>No</b>
Is Council's risk management framework clearly articulated and communicated to all staff?	<input type="checkbox"/>	<input type="checkbox"/>
Is Council's risk posture clear? (i.e. the amount of risk Council is willing to take)	<input type="checkbox"/>	<input type="checkbox"/>
Has the 'tone at the top' from the General Manager's perspective permeated the risk culture of the Council?	<input type="checkbox"/>	<input type="checkbox"/>
Is there a clear link between risk management, the control environment and business planning?	<input type="checkbox"/>	<input type="checkbox"/>
<b>Risk Structure</b>	<b>Yes</b>	<b>No</b>
Is responsibility and accountability for risk management clearly assigned to individual managers?	<input type="checkbox"/>	<input type="checkbox"/>
Are risk management activities/responsibilities included in job descriptions, where appropriate?	<input type="checkbox"/>	<input type="checkbox"/>
Are the primary risk management activities (for example, business continuity planning, fraud control plan, annual risk assessment, and so on) across Council, clearly defined?	<input type="checkbox"/>	<input type="checkbox"/>
Is responsibility for co-ordinating and reporting risk management activity to the Audit Committee, or other relevant committee clearly defined?	<input type="checkbox"/>	<input type="checkbox"/>
Does Council have a risk management support capability to assist the development of emerging risk management practices?	<input type="checkbox"/>	<input type="checkbox"/>
Is there a common risk management language/terminology across Council?	<input type="checkbox"/>	<input type="checkbox"/>

Does management have a formal business continuity plan incorporating a disaster recovery plan?	<input type="checkbox"/>	<input type="checkbox"/>
<b><i>Risk Identification and Assessment</i></b>	<b>Yes</b>	<b>No</b>
Are risk assessments undertaken at both strategic and operational levels?	<input type="checkbox"/>	<input type="checkbox"/>
Have the risks associated with cross-agency governance arrangements been identified?	<input type="checkbox"/>	<input type="checkbox"/>
Does a comprehensive risk profile exist?	<input type="checkbox"/>	<input type="checkbox"/>
Is a risk assessment undertaken for all significant organisational changes/projects?	<input type="checkbox"/>	<input type="checkbox"/>
Does management have effective processes for ensuring risk assessments have been performed in each major business area?	<input type="checkbox"/>	<input type="checkbox"/>
Is there a process in place to identify emerging risks and to incorporate these into the Council's risk management plan?	<input type="checkbox"/>	<input type="checkbox"/>
Do the Council's policies appropriately address relevant operational and financial risks?	<input type="checkbox"/>	<input type="checkbox"/>
Have any frauds, material irregularities or possible illegal acts been identified?	<input type="checkbox"/>	<input type="checkbox"/>
Does Council have a current fraud control policy and plan in place which identifies all fraud related risks?	<input type="checkbox"/>	<input type="checkbox"/>
<b><i>Risk Mitigation and Improvement</i></b>	<b>Yes</b>	<b>No</b>
Has management assessed the effectiveness of controls over the highest priority risks?	<input type="checkbox"/>	<input type="checkbox"/>
Does management consider the controls to mitigate risks to within Council's risk tolerance to be adequate?	<input type="checkbox"/>	<input type="checkbox"/>
Have all significant recommendations that impact on risk or the effective operation of controls, made by Council's internal and external auditors, been addressed in a timely manner?	<input type="checkbox"/>	<input type="checkbox"/>
Is there a response plan for prompt and effective action when fraud or an illegal act is discovered?	<input type="checkbox"/>	<input type="checkbox"/>
<b><i>Monitoring and Assurance</i></b>	<b>Yes</b>	<b>No</b>
Are systems in place for measuring and monitoring risk, including consideration of common risk themes across Council?	<input type="checkbox"/>	<input type="checkbox"/>
Are risks, including suspected improprieties, escalated to the appropriate levels of management within Council?	<input type="checkbox"/>	<input type="checkbox"/>
Does Council have a formal process by which senior management periodically assure the General Manager/Council that key control strategies are operating effectively?	<input type="checkbox"/>	<input type="checkbox"/>

<b><i>Continuous Improvement</i></b>	<b>Yes</b>	<b>No</b>
Do Council's management practices reflect the concept of risk management?	<input type="checkbox"/>	<input type="checkbox"/>
Does Council have a culture of continuous improvement? (for example does Council 'learn' from past risk exposures)	<input type="checkbox"/>	<input type="checkbox"/>
Does management periodically review its risk profile?	<input type="checkbox"/>	<input type="checkbox"/>
Is risk a priority consideration whenever business processes are improved?	<input type="checkbox"/>	<input type="checkbox"/>

Name		
Position	<i>(To be completed by the most senior executive responsible for risk management within council)</i>	
Signed		Date

## Appendix 5 - Common risks in the council environment

This appendix lists some of the more significant risk exposures which are likely to be faced in the council environment.

*Warning - This list is provide as an aid to check completeness. It should only be used after a thorough risk identification process is conducted and should not be used as a substitute for an effective risk identification process. Not adhering to this advice is likely to result in significant risks which are specific to your council not being identified, which may have significant consequences if that risk were to eventuate.*

### Governance

- Advocacy processes ineffective at State and Federal Government level leading to unwanted results/lack of funding etc.
- Governance training processes (Code of Conduct, Protected Disclosures, Conflict of Interests, councillor interaction with staff, identifying fraud) not undertaken/ineffective leading to higher risk of fraud and corruption.
- Corruption (development applications/rezonings/election funding) leading to loss of reputation of Council.
- Lack of cohesion of Councillors leading to lack of strategic direction/poor decision making.
- Complaints handling processes ineffective leading to legal disputes/lack of transparency.
- Misuse of personal information leading to penalties under Privacy legislation or loss of confidence in Council.
- Poor processes for the disclosure and management of staff conflicts of interest leading to partial decision making.
- Inappropriate delegations or delegations not properly exercised.
- Failure to implement council resolutions leading to breakdown of council/staff relationships.

### Planning and Regulation

- Unanticipated population growth leading to unsustainable natural environment/infrastructure demand.
- Planning strategies not developed in timely manner leading to delayed delayed/inappropriate development/community angst.
- Population decrease leading to community breakdown.
- Planning controls outdated, leading to poor urban design.
- Legislation not complied with leading to legal disputes/penalties
- Poor planning controls leading to poor planning decisions

### Assets and Finance

- Adequate asset management processes not being in place, leading to substantial additional long term financial burdens to council.
- Adequate long term financial management processes not being in place leading to poor decision making by council.
- Limited opportunities to increase rates and user charges, leading to increasing reliance on grants/one off funding.
- Cost of infrastructure to be funded under section 94 contributions underestimated/unaffordable, leading to funding shortfalls/reduced level of infrastructure.
- Limited regional collaboration between councils, leading to on-going inefficiencies and additional costs to regional residents.

- Operational unit business plans not effectively in place, leading to poor decision making/performance monitoring.
- Inadequate disaster/crisis management processes, leading poor response in real situation.
- Community assets under-utilised leading to closure in longer term.
- Quasi commercial operations of Council (child care/tourist parks/airports/cultural centres etc) not operated effectively leading to higher than appropriate council subsidisation.
- Project management practices not effectively in place, leading to cost over run/quality issues.
- Appropriate procurement processes not undertaken, leading to value for money issues/questions of probity.
- Council assets under insured leading to financial exposure to Council
- Plant fleet under utilised leading to additional costs to Council.
- Minor road condition unable to be maintained at satisfactory level leading to community dissatisfaction.
- Mismanagement of Council supported community entities leading additional financial burden to Council/cessation of service.
- Knowledge management processes not effectively in place leading to poor decision making.
- Inadequate information security leading to issues of confidentiality or legal/financial penalties to Council.

### **Community and Consultation**

- Inability to maintain/increase employment base leading to adverse socio/economic consequences.
- Poor issues management, leading to sustained loss of public support for council in media and/or public.
- Unnecessary bureaucratic processes/red tape leading to additional costs to those dealing with Council.

### **Workforce Relations**

- Productivity levels of council below industry/commercial benchmarks or not measured, leading to additional costs/perpetuation of inefficiencies.
- Skill shortages in professional areas, leading to inability to maintain standards/deliver services.
- Loss of trained staff with specific knowledge, leading to loss of knowledge, ability and experience.
- Inadequate/insufficient staff training leading to reduced skills, currency of knowledge, errors and omissions, turnover of staff.
- Information technology systems outdated leading to on-going inefficiencies..
- OHS not appropriately embedded in operational processes leading to major injury/death or penalty against Council or Council staff.



## Towards New Local Government Legislation Explanatory Paper: proposed Phase 1 amendments

## ACCESS TO SERVICES

The Office of Local Government is located at:

Levels 1 & 2  
5 O’Keefe Avenue  
NOWRA NSW 2541

Locked Bag 3015  
NOWRA NSW 2541

Phone 02 4428 4100  
Fax 02 4428 4199  
TTY 02 4428 4209

Level 9, 6 – 10 O’Connell Street  
SYDNEY NSW 2000

PO Box R1772  
ROYAL EXCHANGE NSW 1225

Phone 02 9289 4000  
Fax 02 9289 4099

Email [olg@olg.nsw.gov.au](mailto:olg@olg.nsw.gov.au)  
Website [www.olg.nsw.gov.au](http://www.olg.nsw.gov.au)

## OFFICE HOURS

Monday to Friday  
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## Foreword



The journey towards stronger, more sustainable local government began in late 2011. Councils from throughout NSW came together for Destination 2036 to discuss their long-term future. The gathering considered how communities, economies and technologies might change over the next 25

years and how the local government sector might change to meet these challenges. This led to the appointment of the *Independent Local Government Review Panel* (the Panel) and *Local Government Acts Taskforce* (the Taskforce).

While the fundamentals of the *Local Government Act 1993* remain sound, both the Panel and the Taskforce recommended change. The Government's response to the Taskforce and Panel reports was released in 2014 and supported many important recommendations that had been made for legislative reform – including the development of modern, principles-based local government legislation.

The proposed phase 1 reforms are the first step in the process of modernising the Local Government Act, to ensure that it meets the future needs of councils and communities. Phase 1 of the reform program focuses mainly on changes to the governance and strategic business planning processes of councils. Later phases will focus on how councils raise revenue and how they exercise their regulatory functions, as well as a program of restructuring and updating the local government legislation.

I would like to invite councils and communities to provide your input and co-operation on this critical phase of the Fit for the Future reforms and I look forward to working with you as we continue the process of reform.

A handwritten signature of Paul Toole in black ink.

**The Hon. Paul Toole**  
**Minister for Local Government**

## Overview

### We are seeking your feedback

The Office of Local Government is seeking input on important proposals by the NSW Government for legislative reform. The views of councils and their communities, and other stakeholders, are now being sought on phase 1 of the development of new Local Government legislation.

Phase 1 is designed to:

- embed strategic business planning principles across the range of council functions and practices;
- promote independent and sustainable councils engaged with and accountable to their local communities that have the capacity to deliver on local and regional needs; and
- support a culture of continuous improvement in councils to ensure the effective and efficient delivery of the strategic goals agreed to with their local communities.

### How to give your feedback

Each of the amendments that is being proposed for phase 1 is described briefly in this explanatory paper and a cross-reference to any relevant recommendation of the Panel and/or the Taskforce is given. Most of these proposals have been the subject of stakeholder consultation in developing the Government's response to the Panel and Taskforce reports, so the paper is as streamlined as possible. The aim of this consultation is to use feedback received about the phase 1 amendments to inform the legislative drafting process.

The first stage of consultation is therefore an invitation to provide your feedback on each of these proposals through an online survey on the Fit for the Future website at [www.fitforthefuture.nsw.gov.au](http://www.fitforthefuture.nsw.gov.au). There will also be a link through the NSW Government's Have Your Say website at [www.haveyoursay.nsw.gov.au](http://www.haveyoursay.nsw.gov.au).

Following consultation, it is anticipated that amending legislation could be introduced into and passed by the NSW Parliament in 2016.

# 1. Guiding principles for the Act and local government

## 1.1 Purposes of the Local Government Act

### Proposed Amendment

The purposes of the *Local Government Act 1993* should be:

- to establish a legal framework for the NSW system of local government, in accordance with section 51 of the *Constitution Act 1902* (NSW);
- to describe the nature and extent of the responsibilities and powers of local government; and
- to create a system of local government that is democratically elected, engages with and is accountable to the community, is sustainable, flexible, effective and maximises value for money.

### Current provision:

Section 7

### Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T) recommendation:

T: 3.1.1 Purposes of the Local Government Act

### Background

The current purposes of the Act will be updated and streamlined by the proposal.

## 1.2 Role of local government

### Proposed Amendment

The council charter in section 8 should be replaced by provisions that:

- describe the role of local government; and
- establish guiding principles for local government.

The role of local government should be to enable local communities to be healthy and prosperous by:

- providing strong and effective elected representation, leadership, planning and decision making;
- working cooperatively with other bodies, including other levels of government, to pursue better community outcomes;
- effective stewardship of lands and other assets to affordably meet current and future needs;
- endeavouring to provide the best possible value for money for residents and ratepayers;
- strategically planning for and securing effective and efficient services, including regulatory services, to meet the diverse needs of members of local communities; and
- following the guiding principles of local government.

### Current provision:

Section 8

### Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T) recommendation:

T: 3.1.2 Role and Guiding Principles of Local Government

### Background:

The Taskforce's proposed role of local government was similar but has been modified in this proposal to:

- more closely reflect the vision for Local Government in NSW agreed to at Destination 2036, including a focus on achieving outcomes and working together within and outside local government;
- adopt clear and simple language and remove duplication;
- reflect the role of councils in enabling outcomes and shaping its local government area through external relationships; and
- focus on the context in which councils operate, rather than prescribe outcomes.

### 1.3 The guiding principles of local government

**Proposed amendment:**

The council charter in section 8 should be replaced by provisions that:

- describe the role of local government; and
- establish guiding principles for local government.

The new guiding principles to be observed in local government should enable councils to:

- actively engage local communities, including through integrated planning & reporting;
- be transparent and accountable;
- recognise diverse needs and interests;
- have regard to social justice principles;
- have regard to the long term and cumulative effects of its actions on future generations;
- foster ecologically sustainable development;
- effectively manage risk;
- have regard to long term sustainability;
- work with others to secure services that are appropriate to meet local needs;
- foster continuous improvement and innovation;
- act fairly, ethically and without bias in the public interest; and
- endeavour to involve and support its staff.

**Current provisions:**

Section 8

**Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T)**

**recommendation:**

T: 3.1.2 Role and Guiding Principles of Local Government

**Background:**

The Taskforce's proposed role of local government was similar but has been modified in this proposal to:

- more closely reflect the vision for Local Government in NSW agreed to at Destination 2036, including a focus on achieving outcomes and working together within and outside local government;
- adopt clear and simple language and remove duplication;
- reflect the role of councils in enabling outcomes and shaping its local government area through external relationships; and
- focus on the context in which councils operate, rather than prescribe outcomes.

## 2. Structural framework of local government

### 2.1 The role of the governing body

#### **Proposed Amendment**

It is proposed to replace the current prescribed role of the governing body under section 223 which is focussed only on the board-like function of the body. The governing body is the elected representatives of the council (the councillors).

It is proposed to use the Panel's more expansive list as a basis for describing the functions of the governing body:

- to provide effective civic leadership to the community;
- to consult regularly with community organisations and other key stakeholders and keep them informed of council's activities and decisions;
- to direct and control the affairs of the council in consultation with the general manager and in accordance with the Act;
- to ensure as far as possible the financial sustainability of the council;
- to determine and adopt the community strategic plan, delivery program and other strategic plans and policies;
- to determine and adopt a rating and revenue policy and operational plans that ensure the optimum allocation of the council's resources to implement the community strategic plan and for the benefit of the area;
- to make decisions in accordance with those plans and policies;
- to make decisions necessary for the proper exercise of the council's regulatory functions;
- to keep under review the performance of the council and its delivery of services;
- to determine the process for appointment of the general manager and monitor his/her performance; and
- to ensure that the council acts honestly, efficiently and appropriately in carrying out its statutory responsibilities.

#### **Current provision:**

Section 223

#### **Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T) recommendation:**

##### **P: 26 Political Leadership and Good Governance (Box 19)**

T: 3.1.4 Roles and Responsibilities of Council Officials

T: 3.3.18(7)d Other Matters

#### **Background:**

The proposed amendments are intended to:

- provide greater clarity to the roles of councillors by describing their collective role as members of the governing body, as distinct from their individual role as elected representatives; and
- embed strategic principles and practices within the prescribed role of the governing body.

## 2.2 The number of councillors

### **Proposed Amendment:**

Section 224 prescribes the numbers of councillors a council may have (between 5 and 15) and the manner in which that number is to be determined.

It is proposed to amend section 224 to require that councils must have an odd number of councillors and mayor.

### **Current provisions:**

Section 224 and 224A

### **Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T)**

#### **recommendation:**

P: 26 Political Leadership and Good Governance (Box 22)

#### **Background:**

The proposed amendment would give effect to the Government's response to the Panel's recommendation that councils comprise an odd number of councillors. This change will reduce the risk of the mayoralty being determined by lot and decisions being made on the casting vote of the mayor.

## 2.3 Rural councils

### **Proposed Amendment**

It is proposed to allow for small rural councils to apply to the Minister for Local Government for one-off approval to:

- reduce councillor numbers and abolish wards without the need for a constitutional referendum;
- omit the current restriction that prevents councils from making an application for a decrease in the number of councillors that would result in the number of councillors for each ward being fewer than 3; and
- reduce the number of council meetings to be held in a year to below the minimum of 10 currently required under section 365.

### **Current provisions:**

Sections 224A and 365

### **Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T)**

#### **recommendation:**

P: 12 Rural Councils (Box 33)

#### **Background:**

The Panel recommended that consideration be given to supporting the streamlining of some small rural councils' governance arrangements to allow efficiencies and savings. These councils are in rural-remote areas with small populations. It is proposed to provide a one-off voluntary process to allow the Minister to approve small rural council proposals to abolish wards, change councillor numbers and allow numbers of meetings that are less than the thresholds set out in the Act where proposed by some small rural councils in their Fit for the Future submissions.

This proposal is intended to facilitate a flexible response to the needs and circumstances of different regions.

## 3. The governing body of councils

### 3.1 The role of the mayor

#### **Proposed Amendment**

It is proposed to describe the role of the mayor differently.

The mayor should have all the prescribed responsibilities of a councillor in addition to the following additional responsibilities:

- to be the leader of the council and the community of the local government area, and advance community cohesion;
- to promote civic awareness and, in conjunction with the general manager, ensure adequate opportunities and mechanisms for engagement between the council and the local community;
- to be the principal member and spokesperson of the governing body and to preside at its meetings;
- to ensure that the business of meetings of the governing body is conducted efficiently, effectively and properly in accordance with provisions of the Act;
- to lead the councillors in the exercise of their responsibilities and in ensuring good governance;
- to ensure the timely development of the governing body's strategic plans and policies, and to promote their effective and consistent implementation, including by promoting partnerships between the council and key stakeholders;
- to exercise, in cases of necessity, the policy-making functions of the governing body between meetings of the council;
- to represent the governing body on regional organisations and in inter-government forums at regional, State and federal levels;
- to advise, manage and provide strategic direction to the general manager in accordance with the council's strategic plans and policies;
- to lead performance appraisals of the general manager;
- to carry out the civic and ceremonial functions of the mayoral office; and
- to exercise such other functions as the governing body determines.

#### **Current provision:**

Section 226

#### **Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T) recommendation:**

P: 26 Political Leadership and Good Governance (Box 21)

T: 3.1.4 Roles and Responsibilities of Council Officials

T: 3.3.18(7)d Other Matters

#### **Background**

Some aspects of the prescribed role of the mayor recommended by the Panel have not been included in this proposal as a result of previous stakeholder consultation.



### 3.2 The mayor's term of office

#### Proposed Amendment

The current length of term for a mayor is either:

- one year for mayors elected by councillors; or
- four years for mayors popularly elected by the electors.

This would be changed so that mayors elected by councillors are to hold office for a minimum of two years, as recommended by the Panel, with the option of electing a person to the office for the whole four year term.

Also in accordance with the Panel's recommendation, and the Government's response, it proposed that it be compulsory for councillors to vote in a mayoral election.

Section 230 will also be amended to clarify that the office of mayor becomes vacant upon the person holding the office ceasing to hold civic office or on the occurrence of a casual vacancy.

#### Current provision:

Section 230

#### Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T) recommendation:

P: 26 Political Leadership and Good Governance (Box 22)

T: 3.3.1(8) Elections

#### Background

The proposed amendments will

- enhance political leadership and stable governance of council to give effect to the Government's commitment to extend the term of mayors elected by councillors to a minimum of two years, as well as make voting in mayoral elections compulsory; and
- address an existing ambiguity in the Act that has allowed some Mayors to purport to exercise the role of mayor after they cease to hold office as a councillor after an election.

Although the Panel and Taskforce did not describe a four year mayoral term option – just proposing a *minimum* of two years – this extension is being explored as a way to further support stable local government.

Compulsory voting by councillors for a mayoral election (as recommended by the Panel) may also address community concern that too many mayors are chosen by pulling lots out of a hat. However, it is important that a positive statutory obligation to vote does not undermine the democratic process (such as by excluding a person who has a genuine reason for being absent) or be too easy to avoid for reasons that are not bona fide. To meet those policy ends, the Act could provide:

- councillors may cast a vote in a mayoral election by proxy;
- councillors may cast a vote by telephone, video-conference, or electronic means;
- if a councillor is absent from the meeting at the time of the vote so that the number of remaining councillors voting is even-numbered, and has not cast a vote by proxy or electronic means, then another councillor must be excluded from voting by way of a 'draw from a hat'; and
- a regulation-making power in relation to process of electing mayors by councillors.

### 3.3 The role of councillors

#### Proposed Amendment

It is proposed to recast section 232 so that it focuses on individual responsibilities of councillors, rather than their responsibilities as members of the governing body of a council. The role and responsibilities of an individual councillor, (including the mayor), should be:

- to be an active and contributing member of the governing body;
- to make considered and well informed decisions;
- to represent the collective interests of residents, ratepayers and the wider community of the local government area;
- to facilitate communication between the community and the governing body;
- to be accountable to the community for the local government's performance; and
- to uphold and represent accurately the policies and decisions of the governing body.

#### Current provision:

Section 232

#### Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T) recommendation:

P: 26 Political Leadership and Good Governance (Box 19)

T: 3.1.4 Roles and Responsibilities of Council Officials

T: 3.3.18(7)d Other Matters

#### Background

Section 232 currently sets out a “dual role” for councillors as members of the governing body and as elected representatives and has been a source of confusion.

The proposed amendments are intended to provide greater clarity for councillors and communities by prescribing councillors individual roles as elected representatives separately from their collective roles as members of the governing body, as recommended by the Panel.

### 3.4 Councillors' term of office

#### Proposed Amendment

Section 234 prescribes the circumstances in which a civic office becomes vacant. Section 234 will be amended to clarify that a vacancy will occur in the civic office of a councillor where they are elected to another civic office in the council, (ie the office of a popularly elected Mayor) something that is currently not clear.

#### Current provisions:

Sections 233 and 234

#### Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T) recommendation:

None

### 3.5 Oath or affirmation of office

#### Proposed Amendment

It is proposed to require all councillors, including the Mayor to take an oath or affirmation of office in the prescribed form before commencing duties.

The oath or affirmation of office is to be taken within 1 month of election to office and councillors are not to undertake their duties until they do so. Where a councillor fails to take an oath or affirmation, his or her office will be declared vacant.

#### Current provision:

None

#### Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T) recommendation:

T: 3.3.18(2) Other Matters

#### Background

An oath or affirmation of office operates as a mechanism for inducting councillors into their role and reinforcing the serious nature of the role and the chief responsibilities and duties the role entails. Both Victoria and Queensland require their councillors to take an oath of office. It is proposed that the NSW law should operate in a similar way to Victoria and Queensland.

### 3.6 Councillors' expenses and facilities

#### Proposed Amendment

Sections 252 to 254 relate to the payment of expenses and provision of facilities to councillors and the adoption of policies governing this. It is proposed to amend sections 252 and 253 to:

- replace the requirement under section 252 for councils to annually adopt an expenses and facilities policy with one simply requiring councils to adopt a policy within the first 12 months of their terms; and
- remove the requirement under section 253 for councils to provide the Office of Local Government annually with a copy of their adopted policies and an assessment of public submissions made in relation to their adoption.

#### Current provisions:

Sections 235 – 254A and Schedule 1

#### Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T)

##### recommendation:

T: 3.3.18(3) Other Matters

#### Background

The proposed amendments are designed to reduce the compliance burden on councils of being required to annually exhibit, consult and adopt their councillor expenses and facilities policies even where no change is made to them and to provide copies to the Office of Local Government. It is also noted that open access obligations apply now to councils under the *Government Information (Public Access) Act 2009*.

### 3.7 Mayor/councillor professional development

#### Proposed Amendment

New provisions are proposed to require the following:

- Councils are to develop an induction program for newly elected and returning councillors and a specialist supplementary program for the mayor to assist them in the performance of their functions. The induction program is to be available for delivery within 4 months of the election.
- Each year, councils are to develop an ongoing professional development program for the mayor and each councillor to assist them in the performance of their functions to be delivered over the coming year.
- In determining the content of the induction and ongoing professional development programs, the council is to have regard to the specific needs of each individual councillor (including the mayor) and of the governing body as a whole and the requirements of any guidelines issued by the Office of Local Government.
- The content of the induction and ongoing professional development program is to be determined in consultation with the mayor, the council as a whole and individually with each of the councillors.
- Councils are to include details of the content of the induction and ongoing professional development offered to the mayor and each councillor and whether or not they participated in the training or development offered in the council's annual report.

#### Current provisions:

None

#### Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T)

##### recommendation:

P: 26 Political Leadership and Good Governance (requirement for mandatory professional development)

P: 27 Political Leadership and Good Governance (linking remuneration with completion of professional development program).

#### Background

Some aspects of the Panel recommendation have not been included in this proposal as a result of previous stakeholder consultation. The proposed approach has the following benefits:

- it places a responsibility on all councils to offer an induction and ongoing professional development programs to their councillors;
- it allows councils the freedom to determine the content of those programs based on local and individual needs at the same time as allowing the Office of Local Government to have input into content through guidelines; and
- it places responsibility for participation on councillors and makes them accountable to the community that elected them for any failure to do so.

### 3.8 Role and functions of administrators

#### Proposed Amendment

Several provisions of the Act provide that the administrator is to exercise the functions of the council without articulating what the nature of their role is within a council.

It is proposed to address this ambiguity and align the role of the administrator with the proposed prescribed role of the mayor and councillors by amending these sections to provide that:

- Where a sole administrator is appointed to a council, they are to exercise the role and responsibilities of the mayor and a councillor as prescribed under the Act.
- Where more than one administrator is appointed, all administrators are to exercise the role and responsibilities of councillors as prescribed under the Act and one, as specified by the relevant instrument of appointment, is to exercise the role and responsibilities of the mayor as prescribed under the Act in addition to those of a councillor.

#### Current provisions:

Sections 255-259, 438I, 438M and 438Y

#### Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T) recommendation:

None

#### Background

The proposed amendments are designed to address an existing ambiguity in the legislation that has been unhelpful in councils under administration. Providing greater clarity in relation to the roles of administrators aligns with the new descriptions that are being proposed for mayors and councillors.

### 3.9 Financial controllers

#### Proposed Amendment

A financial controller is responsible for implementing financial controls and related duties. Where a financial controller is appointed, a council may only make payments that are authorised or countersigned by the financial controller.

It is proposed to allow the Minister for Local Government to appoint a financial controller to a council that is performing poorly with respect to its financial responsibilities and/or is at high financial sustainability risk, in conjunction with issuing a performance improvement order.

A financial controller would only be appointed through the existing performance improvement order process after information is gathered or an investigation undertaken that shows the council is not performing, a notice of the proposed remedial action has been issued to a council and the Minister has considered the council's submissions with respect to the notice.

#### Current provision:

None

#### Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T) recommendation:

None

#### Background:

The Minister has an existing power to issue a performance improvement order against poorly performing councils to compel them to take steps to improve their performance. Before issuing a performance improvement order, the Minister must first give the council notice of his intention to do so and consider submissions by the council.

As part of the exercise of these powers, the Minister may appoint a temporary adviser to the council. If a temporary adviser is appointed, the council, councillors and members of the staff of the council are required to co-operate with the temporary adviser and to provide any information or assistance the temporary adviser reasonably requires to exercise his or her functions.

It is proposed to complement these powers with a new power for the Minister to appoint a financial controller to a council. These powers will be modelled on those that exist in Queensland.

### 3.10 Meetings

#### **Proposed Amendment**

In relation to conduct of meetings, amendments consistent with the following are proposed :

- provide that the Regulation may prescribe a Model Code of Meeting Practice (a Model Meeting Code);
- provide that the Model Meeting Code may include mandated and non-mandatory “best practice” provisions;
- require councils to adopt a Code of Meeting Practice (an adopted meeting code) that at a minimum incorporates the mandated provisions of the Model Meeting Code;
- allow a council’s adopted meeting code to supplement the provisions contained in the Model Meeting Code;
- provide that a provision of a council’s adopted meeting code will be invalid to the extent of any inconsistency with the mandated provisions of Model Meeting Code;
- require council and committee meetings to be conducted in accordance with the council’s adopted meeting code;
- require councils to review and adopt a meeting code within 12 months of each ordinary election; and
- retain the existing requirements under sections 361 - 363 in relation to the adoption and amendment of a meeting code and public consultation in relation to this.

Aspects of the current meetings provisions in the Act and the Regulation will be updated and incorporated into a new Model Meeting Code.

#### **Current provisions:**

Sections 9-11, and 360-376  
Clauses 231-273

#### **Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T)**

##### **recommendation:**

T: 3.3.2 Meetings

#### **Background**

The Model Meeting Code will comprise mandatory provisions and non-mandatory best practice provisions. Councils will be required to adopt meetings codes that incorporate the mandatory provisions but will not be obliged to adopt the non-mandatory best practice provisions in order to respond to local requirements. The mandatory provisions will largely incorporate the existing meetings provisions, which will be updated to:

- address existing procedural ambiguities; and
- modernise procedural requirements.

It is expected that the new Code will initially include the provisions relating to meeting processes now found in the Act and Regulation, but be reordered to reflect the order in which events usually occur in meetings.

### 3.11 Delegation of functions

#### **Proposed Amendment**

It is proposed to include amendments to section 377, which were introduced into Parliament previously but lapsed prior to the 2015 election, to remove the restriction on the delegation of the acceptance of tenders.

It is also proposed to allow councils to delegate the provision of community financial assistance for the purpose of exercising its functions where:

- the financial assistance is part of a specific program;
- the program's details have been included in the council's draft operational plan for the year in which the financial assistance is proposed to be given;
- the program's proposed budget for that year does not exceed 5 per cent of the council's proposed income from the ordinary rates levied for that year; and
- the program applies uniformly to all persons within the council's area or to a significant proportion of all persons within the area.

Amendments may be required facilitate the proposal to allow councils to delegate a regulatory function to another council or a joint organisation of councils, to support future collaboration and resource sharing.

#### **Current provisions:**

Sections 377-381

#### **Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T) recommendation:**

T: 3.3.8 Delegations

T: 3.3.10 Procurement

#### **Background**

The amendments are designed to:

- Reduce red tape
- Remove impediments to collaboration, and
- Support the use of Integrated Planning and Reporting to guide council decisions on financial assistance.

## 4. Elections

### 4.1 Extension of the option of universal postal voting to all councils

#### **Proposed Amendment**

It is proposed to amend section 310B to provide that the option of universal postal voting is available to *all* councils after the next ordinary election.

#### **Current provisions:**

Sections 310B  
Clauses 313 and 321

#### **Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T) recommendation:**

T: 3.3.1(1) Elections

#### **Background**

The Taskforce's election-related recommendations have largely been implemented through the *Local Government Amendment (Elections) Act 2014* which was legislated to give effect to the recommendations of the Joint Standing Committee on Electoral Matters' inquiry into the 2012 Local Government elections.

The one outstanding action arising from the Government response to the Committee's recommendations is the extension of the option of universal postal voting to all councils. Currently this is only available to the City of Sydney. In its response to the Committee's recommendation to give councils the option of universal postal voting, the Government indicated that this option would be made available to all councils following the 2016 elections. For councils that do not choose universal postal voting, the existing postal and pre-poll voting qualifications will remain.



## 5. Council's workforce

### 5.1 Determination of the organisation structure

#### Proposed Amendment

It is proposed to amend the Act to provide that:

- the organisation structure is to be determined on the advice of the general manager;
- the adopted structure must accord with the priorities set out in the council's community strategic plan and delivery program;
- the adopted structure may only specify the roles and relationships of the general manager, designated senior staff and other staff reporting directly to the general manager; and
- the general manager is to be responsible for determining the balance of the organisation structure but must do so in consultation with the governing body.

#### Current provisions:

Sections 332-333

#### Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T) recommendation:

P: 29

T: 3.3.3 (1)

#### Background

The current provisions are unclear about the respective roles of general managers and councils in determining the organisation structure. This has been the source of conflict within councils.

The proposed approach has the benefit of:

- addressing this ambiguity making it clear what the respective responsibilities of the council and the general manager are;
- making it clear that the organisation structure has to be determined on the advice of the general manager (ie councils cannot unilaterally restructure without the input of the general manager); and
- clearly aligning the determination of the organisation structure with the delivery of a council's Integrated Planning and Reporting objectives.



## 5.2 The role of general managers

### Proposed Amendment

It is proposed to describe the role and responsibilities of the general manager in the Act consistent with the following:

- to conduct the day-to-day management of the council in accordance with the governing body's strategic plans and policies;
- to advise the mayor and the governing body on the development and implementation of policies and programs, including the appropriate form and scope of community consultation;
- to prepare, in consultation with the mayor and governing body, the community strategic plan and the council's resourcing strategy, delivery program and operational plan, annual report and community engagement strategy;
- to certify that Integrated Planning and Reporting requirements have been met in full, and that council's annual financial statements have been prepared correctly;
- to ensure that the mayor and councillors receive timely information, advice and administrative and professional support necessary for the effective discharge of their responsibilities;
- to implement lawful decisions of the governing body in a timely manner;
- to exercise such of the functions of the governing body as are delegated by the governing body to the general manager;
- to appoint staff in accordance with an organisation structure and resources approved by the governing body
- to direct and dismiss staff;
- to implement the council's workforce management strategy; and
- to undertake such other functions as may be conferred or imposed on the general manager by or under the Act or any other Act.

### Current provision:

Section 335

### Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T)

#### recommendation:

P: 28: Political Leadership and Good Governance (Boxes 23 and 24)

T: 3.1.4 Roles and Responsibilities of Council Officials

T: 3.3.3 Appointment and Management of Staff

T: 3.3.18(7)d Other Matters

### Background

The current provisions are unclear about the respective roles of general managers and councils in determining the organisation structure. This has been the source of conflict within councils.

The proposed approach has the benefit of:

- addressing this ambiguity making it clear what the respective responsibilities of the council and the general manager are;
- making it clear that the organisation structure has to be determined on the advice of the general manager (ie councils cannot unilaterally restructure without the input of the general manager); and
- clearly aligning the determination of the organisation structure with the delivery of a council's Integrated Planning and Reporting objectives.

### 5.3 The requirement to report annually to the council on senior staff contractual conditions

**Proposed Amendment**

It is proposed to omit the requirement under section 339 for general managers to report annually to the council on the contractual conditions of senior staff.

**Current provision:**

Section 339

**Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T) recommendation:**

None

**Background**

Senior staff are now all employed under the approved standard contract for senior staff rendering this requirement redundant.

## 6. Ethical standards

### 6.1 Consolidation of the prescription of ethical standards

#### **Proposed Amendment**

Provisions in the Act and the Regulation relating to the disclosure of pecuniary interests and the management of pecuniary conflicts of interests will be replicated in the Model Code of Conduct.

#### **Current provisions:**

Sections 441 – 459  
Clauses 180 - 192

#### **Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T) recommendation:**

T: 3.3.6 Code of Conduct  
T: 3.3.7 Pecuniary Interest

#### **Background**

The proposed amendments are designed to consolidate the imposition, administration and regulation of the ethical obligations of council officials into a single instrument, the *Model Code of Conduct for Local Councils in NSW* (the Model Code).

Currently council officials need to be familiar with their obligations under both the Model Code and the pecuniary interest provisions of the Act. The separate regulation of the obligation of council officials to disclose and appropriately manage pecuniary conflicts of interests is a historical anomaly that arose from the fact that these provisions predated the prescription of a Model Code of Conduct and the provision for a disciplinary regime with respect to councillor misconduct. Replication will allow the consolidation of ethical standards into a single instrument.

The current misconduct investigative provisions in the Act will apply to pecuniary interest matters and replace the pecuniary interest investigative procedures (see [6.2] below). The prescribed *Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW* (the Model Code Procedures) will continue to require the referral of pecuniary interest breaches to the Office of Local Government and these will be dealt with under the misconduct provisions of the Act.

## 6.2 Investigation of pecuniary interest breaches

### **Proposed Amendment**

It is proposed to omit the provisions relating specifically to the investigation of complaints alleging breaches of the pecuniary interest provisions. These will instead be dealt with under the existing misconduct provisions.

General managers (and mayors in the case of allegations concerning general managers) will continue to be obliged to refer pecuniary interest breaches to the Office of Local Government under the prescribed Model Code Procedures. These will continue to be investigated by the Office and referred to the NSW Civil and Administrative Tribunal (NCAT) under the misconduct provisions where appropriate. As is currently the case with respect to misconduct matters, it will also be open to the Chief Executive to take disciplinary action with respect to less serious pecuniary interest breaches instead of referring them to the Tribunal.

The Tribunal's powers to take disciplinary action against council staff, committee members and advisors with respect to pecuniary interest breaches are to be retained. The provisions that apply to proceedings before the NCAT generally and the NCAT's consideration of misconduct matters will also be retained.

### **Current provisions:**

Sections 440F – 440P  
Sections 460 – 486A

### **Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T)**

#### **recommendation:**

T: 3.0.0 Approach and Principles for the Development of the New Act  
T: 3.2.1 Integrated Planning and Reporting

### **Background**

The proposed amendments are required to give effect to the amendments that will see the prescription of all ethical standards under the Model Code of Conduct for Local Councils. All breaches (including in relation to the obligation to disclose and appropriately manage pecuniary conflicts of interests) will be dealt with under the existing misconduct provisions of the Act.

## 7. Councils' strategic framework

### 7.1 Integrated planning and reporting principles

#### **Proposed Amendment**

New provisions will be included to establish overarching Integrated Planning and Reporting principles and require councils to undertake strategic business planning in accordance with those principles.

The proposed Integrated Planning and Reporting principles will provide that councils (together with their communities, other councils and stakeholders) are proposed to include:

- lead and inspire residents, businesses and others to engage with their council;
- identify and prioritise key community needs and aspirations;
- develop strategic goals to meet these needs and aspirations;
- identify activities and prioritise actions to work towards these strategic goals;
- plan holistically to deliver on strategic goals within their resources;
- foster community participation to better inform local and state decision making;
- manage council's current and future financial sustainability;
- appropriately adapt to changing circumstances, evidence and priorities;
- proactively manage risks to the community and its council;
- be transparent and accountable for decisions and omissions;
- maintain an integrated approach to planning, delivery, monitoring and reporting;
- collaborate to maximise achievement of key community outcomes; and
- honestly review and evaluate progress on a regular basis.

#### **Current provisions:**

Sections 402 – 406 (Note there are mandatory guidelines)

#### **Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T) recommendation:**

T: 3.0.0 Approach and Principles for the Development of the New Act

T: 3.2.1 Integrated Planning and Reporting

#### **Background**

The proposed amendments will ensure that the purpose and principles of Integrated Planning and Reporting as a strategic business planning tool are clearly reflected in the Act. These provisions will:

- set out the overarching principles of Integrated Planning and Reporting;
- require strategic business planning to be undertaken by councils in accordance with the prescribed Integrated Planning and Reporting principles and provisions;
- guide how Integrated Planning and Reporting documents are to be adopted/endorsed and reviewed; and
- require integrated planning to be directed to achieving better outcomes through continuous improvement.

## 7.2 Streamlining the existing integrated planning and reporting provisions

### Proposed Amendment

The current Integrated Planning and Reporting provisions are contained in sections 402 to 406. These provisions will be amended so that they are confined to setting out the purpose of each document and when they must be delivered. Detailed process requirements for how this must be done will be moved to the Regulation.

### Current provisions:

Sections 402 – 406

### Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T) recommendation:

T: 3.0.0 Approach and Principles for the Development of the New Act  
T: 3.2.1 Integrated Planning and Reporting

### Background

These amendments are designed to give effect to the Taskforce's recommendations that the existing Integrated and Planning and Reporting provisions be simplified with prescriptive detail contained in the Regulation.

## 7.3 Council's integrated planning and reporting to reflect regional priorities

### Proposed Amendment

Amendments are proposed to ensure that regional priorities are reflected in individual councils' strategic business planning. In particular, amendments are proposed to:

- require council's community strategic plans to identify key regional priorities and strategies for the council, developed with adjoining councils and agencies; and
- require delivery programs to address key regional strategies including council actions and any proposed joint programs agreed regionally.

### Current provisions:

Sections 402 and 404

### Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T) recommendation:

T: 3.0.0 Approach and Principles for the Development of the New Act  
T: 3.2.1 Integrated Planning and Reporting

## 7.4 Expanded scope of delivery programs

### Proposed Amendment

Section 404 will be amended to clarify that delivery programs are to capture all council activities.

### Current provisions:

Section 404 and 406

### Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T) recommendation:

T: 3.0.0 Approach and Principles for the Development of the New Act  
T: 3.2.1 Integrated Planning and Reporting

### Background

This amendment is designed to embed in the Act a requirement that is currently reflected in the mandatory Integrated Planning and Reporting Guidelines.

## 7.5 Fiscal sustainability

### Proposed Amendment

The *Local Government (General) Regulation 2005*, which provides for an annual statement of revenue policy in each operational plan, will be amended to require councils to:

- establish revenue policies with a view to ensuring fiscal sustainability; and
- provide a clear rationale for how rating systems are structured and what they are designed to achieve.

The Regulation will also set out in more detail what is required of councils' resourcing strategy to clarify the purpose and objectives of workforce, asset and long term financial planning. This will draw on the essential elements in the current Integrated Planning and Reporting guidelines to help councils produce more robust and useful strategies in these key areas.

### Current provision:

Clause 201

### Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T)

#### recommendation:

P: 2 Fiscal Responsibility (Box 9)

P: 5 Strengthening Revenues

### Background

The amendments will give effect to the Panel's recommendations to embed the principle of fiscal sustainability through Integrated Planning and Reporting.

## 7.6 Expanded scope of councils' community engagement strategies

### Proposed Amendment

It is proposed to broaden the existing requirement that a council must adopt a community engagement strategy to inform the development of its community strategic plan. If amended, the Act would require the adoption of a community engagement strategy to inform *all* council activities (other than routine business-as-usual operations), not only those directly associated with development of the council's Integrated Planning and Reporting framework.

This would be done by making the adoption of a community engagement strategy a general legislative obligation.

A council's community engagement strategy would need to meet minimum prescribed requirements. It is anticipated, for example, that guidelines would prescribe minimum public consultation requirements for specific activities including the development of the components of a council's Integrated Planning and Reporting framework, and include a requirement to periodically evaluate the efficacy of consultation methodologies.

It is proposed to accommodate the existing provisions relating to community polls within the proposed standalone community engagement provisions.

### Current provisions:

Sections 14, 18 – 20, 402

### Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T)

#### recommendation:

T: 3.0.0 Approach and Principles for the Development of the New Act

T: 3.2.2 Community Engagement

T: 3.3.18(7)b Other Matters

### Background

The requirement for a single overarching community engagement strategy provides a framework for councils to engage with their communities in a strategic, ongoing, flexible and locally appropriate way. It also provides a single, consistent point of reference in the Act for other provisions requiring councils to undertake consultation for specified activities.

## 8. Council performance

### 8.1 Annual reports

#### **Proposed Amendment**

It is proposed to require the information reported in councils' annual reports to be endorsed as factually accurate by an internal audit committee. As noted below (at [8.4]), councils will be required to establish internal audit committees with a majority of independent members and an independent Chair.

#### **Current provisions:**

Sections 428-428A

#### **Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T)**

##### **recommendation:**

P: 22 Improvement, Productivity and Accountability (Box 17)

T: 3.2.3 Performance of Local Government

#### **Background**

The proposed amendment is designed to provide an assurance mechanism and to give communities confidence in the integrity of the information their councils report about their council's performance through its annual report.

### 8.2 State of the environment reports

#### **Proposed Amendment**

It is proposed to remove the requirement under section 428A for a council to include a State of the environment report in its annual report every 4 years. Councils would instead be required to report on environmental issues relevant to the objectives established by the community strategic plan in the same way they are currently required to report on the achievement of other objectives set in their community strategic plans (that is, through their annual reports and the 4-yearly end of term report).

#### **Current provision:**

Section 428A

#### **Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T)**

##### **recommendation:**

T: 3.2.1 Integrated Planning and Reporting

#### **Background**

This amendment is designed to:

- reduce the compliance burden on councils arising from the preparation of a separate state of the environment report every 4 years; and
- help councils achieve their environmental objectives by consolidating the reporting of those objectives into their Integrated Planning and Reporting frameworks.



### 8.3 Performance measurement

#### **Proposed Amendment**

It is proposed to allow for the introduction of a performance management and reporting framework that should:

- provide a statutory basis to establish new indicators and benchmarks for reporting purposes;
- expressly require councils to collect and report against these indicators in accordance with guidelines;
- establish annual performance statements as part of council annual reports, which will be subject to oversight and attestation requirements;
- align performance reporting to the Integrated Planning and Reporting cycle; and
- provide the capacity to establish a state-wide community satisfaction survey.

#### **Current provision:**

Section 429

#### **Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T)**

##### **recommendation:**

P: 2 Fiscal Responsibility

P: 18 Improvement, Productivity and Accountability

T: 3.2.3 Performance of Local Government

#### **Background**

The proposed framework is a modified version of the one recently adopted by Victoria. Further work will be undertaken with the local government sector to develop the performance management framework in the coming months.

## 8.4 Internal audit

### Proposed Amendment

It is proposed to introduce a mandatory requirement for councils to have an internal audit function. To this end, it is proposed that new provisions will require all councils to have an internal audit function:

- with broad terms of reference covering compliance, risk, fraud control, financial management, good governance, performance in implementing their community strategic plan and delivery program, service reviews, collection of required indicator data, continuous improvement and long term sustainability; and
- that focuses on councils adding value to, and continuous improvement in, the performance of their functions.

All councils will be required to comply with guidelines issued by the Chief Executive of the Office of Local Government with respect to the implementation of their internal audit functions. All councils will appoint an audit, risk and improvement committee that meets the following requirements:

- audit committees must have a majority of independent members and an independent chair;
- general managers may not be members of audit committees (but may attend meetings unless excluded by the committee); and
- the Chair of the audit committee must report at least biannually to a council meeting on the organisation's performance in financial management, good governance and continuous improvement.

Councils will be permitted to have joint arrangements for internal audit and share audit committees.

### Current provisions:

Discretionary guidelines issued under section 23A

### Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T)

#### recommendation:

P: 22 Improvement, Productivity and Accountability (Box 17)

### Background

Mandating internal audit will:

- entrench within each council an internal assurance mechanism that offers an alternative to prescription and external oversight as a means of addressing risk, ensuring compliance and promoting best practice;
- drive and inform a culture of continuous improvement;
- facilitate reporting; and
- promote increased accountability.

## 8.5 Sector-wide performance audits by the Auditor-General

### **Proposed Amendment**

To identify trends and opportunities for improvement across the sector as a whole, it is proposed to compliment the mandated requirement for internal audit by empowering the Auditor-General to conduct issue-based performance audits in key areas of local government activity.

### **Current provision:**

None

### **Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T)**

#### **recommendation:**

P: 22 Improvement, Productivity and Accountability (Box 17)

### **Background**

As noted by the Panel, such audits have been conducted by the Victorian Auditor-General for many years. Topics are selected in consultation with the sector, and recent audits have covered important issues such as rating practices, sustainability of small councils, business planning, fees and charges, and use of development contributions. They usually involve a small sample of representative councils. The audits do not question the merits of councils' policy objectives. Rather, the purpose of the audit is to assess whether councils are achieving their objectives and operating economically, efficiently and effectively.

## 8.6 Financial management

### Proposed Amendment

It is proposed to adopt a more ‘principles-based’ approach to the management of council funds by moving detailed requirements to the Regulation and the *Local Government Code of Accounting Practice and Financial Reporting*, which is prescribed under the Act.

New provisions in the Act will set out objectives and principles that are to inform councils’ financial management practices and that align them with the objectives set through councils’ Integrated Planning and Reporting frameworks. These provisions will ensure that the financial targets for councils are to be those reflected in their long term financial plans, delivery programs and operational plans.

They will also establish the following principles of sound financial management:

- responsible and sustainable spending, aligning general revenue and expenses as per the councils’ planning documents.
- responsible and sustainable infrastructure investment for the benefit of its community.
- effective financial and asset management, including sound policies and processes for:
  - performance management and reporting, and
  - asset maintenance and enhancement, and
  - funding decisions, and
  - risk management practices.
- achieving intergenerational equity, including ensuring that:
  - policy decisions are made having regard to their financial effects on future generations, and
  - the current generation funds the cost of its services.

### Current provisions:

Sections 408 – 411

### Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T)

#### recommendation:

T: 3.3.9 Financial Governance

### Background

The proposed amendments are designed to start to give effect to the Taskforce’s recommendations for a more “principles-based” approach to the regulation of councils’ financial governance in the Act, with prescriptive detail moved to the Regulation and other subordinate instruments wherever practical.

The proposed principles of sound financial management are modelled on those contained in the *Fiscal Responsibility Act 2012*.

## 8.7 Financial reporting

### **Proposed Amendment**

Consistent with the proposal that councils' financial obligations be recast to establish a "principles-based" approach in the Act detailed reporting requirements should be specified instead in the Regulation and the *Local Government Code of Accounting Practice and Financial Reporting*.

### **Current provisions:**

Sections 412-421

### **Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T) recommendation:**

T: 3.3.9 Financial Governance

### **Background**

The proposed amendments are designed to give effect to the Taskforce's recommendations for a more "principles-based" approach to the regulation of councils' financial governance in the Act, with prescriptive detail moved to the Regulation and other subordinate instruments.

## 8.8 External audit

### **Proposed Amendment**

It is proposed to place Local Government audits under the aegis of the NSW Auditor-General.

There will also need to be transitional arrangements in the Bill to ensure that existing auditor appointments can be brought to an orderly conclusion, with minimal disruption to councils, current auditors and the Audit Office of New South Wales.

### **Current provisions:**

Sections 422-427

### **Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T) recommendation:**

P: 3 Fiscal Responsibility

### **Background**

As noted in the Government response to the Panel and Taskforce, giving the Auditor-General oversight of council financial audit will improve quality, consistency and timeliness and financial management.

The Office of Local Government is currently working with the Audit Office on the development and implementation of the proposed amendments, including transitional arrangements.

## Risk and Audit Committee Charter

**DRAFT** 12 October 2016



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Enquiries: Manager Audit and Risk (t) 1300 581 299

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# 1 Objective

The objective of the Risk and Audit Committee (Committee) is to provide independent assurance and assistance to Bayside Council on the following responsibilities:

- Risk Management;
- Internal Control;
- Governance;
- External Accountability;
- Performance Management (efficiency, effectiveness and value for money);
- Quality Assurance and Management.

## 2 Authority

The Council authorises the Committee, within the scope of its role and responsibilities, to:

- Obtain any information it needs from any employee or external party (subject to their legal obligations to protect information).
- Discuss any matters with the external auditor or other external parties (subject to confidentiality considerations).
- Request the attendance of any employee or councillor at Committee meetings.
- Obtain external legal or other professional advice considered necessary to meet its responsibilities.

## 3 Composition and Tenure

The Committee will consist of:

### 3.1 Members (voting)

The Administrator (if appointed) or alternately two Councillors appointed annually by Council;

- One Independent external member (not a member of the Council) to be the Chairperson of the Committee; and
- Three Independent external members (not members of the Council).

Where there is an elected Council, there will be a further two Councillor Members as alternates. These alternates shall be nominated by resolution of Council and may attend meetings in place of the member where that member is unable to attend the meeting and has registered an apology.

The appointment of Independent external members of the Committee shall be honorary, non-stipendiary appointments.

However in accordance with prescribed Council Policies and Procedures, Independent external members may be eligible to seek reimbursement for approved expenses incurred with the prior approval of the General Manager directly connected with the performance of their official functions.

### **3.2 Attendees (non-voting)**

- General Manager
- Internal Auditor
- Director of Corporate and Community
- Manager Risk and Audit

### **3.3 Invitees (non-voting) for specific Agenda items**

- Representatives of the external auditor
- Other officers may attend by invitation as requested by the Committee.

The independent external member(s) will be appointed for the term of council, after which they will be eligible for extension or re-appointment following a formal review of their performance.

The members of the Committee, taken collectively, will have a broad range of skills and experience relevant to the operations of Bayside Council. At least one member of the Committee shall have accounting or related financial management experience, with understanding of Australian Accounting and Auditing standards applied in a public sector environment.

## **4 Roles and Responsibilities**

The Committee has no executive powers, except those expressly provided by the Council.

In carrying out its responsibilities, the Committee must at all times recognise that primary responsibility for management of Council rests with the Council and the General Manager as defined by the Local Government Act.

The responsibilities of the Committee may be revised or expanded by the Council from time to time. The Committee's responsibilities are:

### **4.1 Risk Management**

- Review whether management has in place a current and comprehensive risk management framework, and associated procedures for effective identification and management of business and financial risks, including fraud and theft.
- Review whether a sound and effective approach has been followed in developing strategic risk management plans for major projects or undertakings;

- Review the impact of the risk management framework on its control environment and insurance arrangements; and
- Review whether a sound and effective approach has been followed in establishing business continuity planning arrangements, including whether plans have been tested periodically.

## **4.2 Internal Control Framework**

- Review whether management has adequate internal controls in place, including over external parties such as contractors and advisors;
- Review whether management has in place relevant policies and procedures, and these are periodically reviewed and updated;
- Progressively review whether appropriate processes are in place to assess whether policies and procedures are complied with;
- Review whether appropriate policies and procedures are in place for the management and exercise of delegations; and
- Review whether management has taken steps to embed a culture which is committed to ethical and lawful behaviour.

## **4.3 External Accountability**

- Satisfy itself the annual financial reports comply with applicable Australian Accounting Standards and supported by appropriate management sign-off on the statements and the adequacy of internal controls.
- Review the external audit opinion, including whether appropriate action has been taken in response to audit recommendations and adjustments.
- Consider contentious financial reporting matters in conjunction with council's management and external auditors.
- Review the processes in place designed to ensure financial information included in the annual report is consistent with the signed financial statements.
- Satisfy itself there are appropriate mechanisms in place to review and implement, where appropriate, relevant State Government reports and recommendations.
- Satisfy itself there is a performance management framework linked to organisational objectives and outcomes.

#### **4.4 Legislative Compliance**

- Determine whether management has appropriately considered legal and compliance risks as part of risk assessment and management arrangements.
- Review the effectiveness of the system for monitoring compliance with relevant laws, regulations and associated government policies.

#### **4.5 Performance Management**

- Ensure, principally through the internal audit function, that the systems of performance measurement and reporting are adequate and robust and addressed routinely in internal audit plans.
- Obtain assurances from management and internal audit that the Council's performance management system is adequately and effectively reporting appropriate and relevant performance information.

#### **4.6 Quality Management**

- review at least annually the status and extent of quality management improvement targets and achievements reported by management;
- review special-focus quality audits carried out by internal audit and by external parties via quality accreditation processes;
- review at least annually Council's quality management action plans;
- monitor progress of the development, implementation and review of policies & procedures.

#### **4.7 Internal Audit**

- Act as a forum for communication between the Council, General Manager, senior management, internal audit and external audit.
- Review the internal audit coverage and Internal Audit Plan, ensure the plan has considered the Risk Management Plan, and approve the plan.
- Consider the adequacy of internal audit resources to carry out its responsibilities, including completion of the approved Internal Audit Plan.
- Review all audit reports and consider significant issues identified in audit reports and action taken on issues raised, including identification and dissemination of better practices.
- Monitor the implementation of internal audit recommendations by management.

- Periodically review the Internal Audit Charter to ensure appropriate organisational structures, authority, access and reporting arrangements are in place.
- Periodically review the performance of Internal Audit.

## **4.8 External Audit**

- Act as a forum for communication between the Council, General Manager, senior management, internal audit and external audit.
- Provide input and feedback on the financial statement and performance audit coverage proposed by external audit, and provide feedback on the external audit services provided.
- Review all external plans and reports in respect of planned or completed external audits, and monitor the implementation of audit recommendations by management.
- Consider significant issues raised in relevant external audit reports and better practice guides, and ensure appropriate action is taken.

## **4.9 Responsibilities of Members**

Members of the Committee are expected to:

- Understand the relevant legislative and regulatory requirements appropriate to Bayside Council.
- Contribute the time needed to study and understand the papers provided.
- Apply good analytical skills, objectivity and good judgment.
- Express opinions frankly, ask questions that go to the fundamental core of issues, and pursue independent lines of enquiry.

# **5 Reporting**

At the first Committee meeting after 30 June each year, Internal Audit will provide a performance report of:

- The performance of Internal Audit for the financial year as measured against agreed key performance indicators.
- The approved Internal Audit Plan of work for the previous financial year showing the current status of each audit.

The Committee may, at any time, consider any other matter it deems of sufficient importance to do so. In addition, at any time an individual Committee member may request a meeting with the Chair of the Committee.

The Committee will report regularly, and at least annually, to the governing body of council on the management of risk and internal controls.

## **6 Administrative Arrangements**

### **6.1 Meetings**

The Committee will meet at least six times per year, with one of these meetings to include review and endorsement of the annual audited financial reports and external audit opinion.

The need for any additional meetings will be decided by the Chair of the Committee, though other Committee members may make requests to the Chair for additional meetings.

A forward meeting plan, including meeting dates and agenda items, will be agreed by the Committee each year. The forward meeting plan will cover all Committee responsibilities as detailed in this Risk and Audit Committee Charter.

### **6.2 Attendance at Meetings and Quorums**

A quorum will consist of a majority of Committee members, including at least one independent member. Meetings can be held in person, by telephone or by video conference.

The Internal Auditor will be invited to attend each meeting unless requested not to do so by the Chair of the Committee. The Committee may also request the Chief Finance Officer or any other employees to participate for certain agenda items, as well as the external auditor.

The General Manager may attend each meeting but will permit the Committee to meet separately with each of the Internal Auditor and the External Auditor in the absence of management on at least one occasion per year.

### **6.3 Secretariat**

The Committee has appointed the Internal Auditor to be responsible for ensuring that the Committee has adequate secretariat support. The Secretariat will ensure the agenda for each meeting and supporting papers are circulated, at least one week before the meeting, and ensure minutes of the meetings are prepared and maintained. Minutes shall be approved by the Chair and circulated to each member within three weeks of the meeting being held.

### **6.4 Conflict of Interests**

Councillors, council staff and members of council committees must comply with the applicable provisions of Council's code of conduct in carrying out the functions as council officials. It is the personal responsibility of council officials to comply with the standards in the code of conduct and regularly review their personal circumstances with this in mind.

Committee members must declare any conflict of interests at the start of each meeting or before discussion of a relevant agenda item or topic. Details of any conflicts of interest should be appropriately minuted.

Where members or invitees at Committee meetings are deemed to have a real or perceived conflict of interest, it may be appropriate they be excused from Committee deliberations on the issue where the conflict of interest may exist. The final arbiter of such a decision is the Chair of the Committee.

## **6.5 Induction**

New members will receive relevant information and briefings on their appointment to assist them to meet their Committee responsibilities.

## **6.6 Assessment Arrangements**

The Chair of the Committee will initiate a review of the performance of the Committee at least once every two years. The review will be conducted on a self-assessment basis (unless otherwise determined by the Chair), with appropriate input from management and any other relevant stakeholders, as determined by the Chair.

## **6.7 Review of Risk and Audit Committee Charter**

At least once every two years the Risk and Audit Committee will review this Risk and Audit Committee Charter. The Council will approve any changes to this Risk and Audit Committee Charter.

## **6.8 Related documents**

## **6.9 Version history**

<b>Version</b>	<b>Release Date</b>	<b>Author</b>	<b>Reason for Change</b>
1.0	12 Oct 2016	Manager Audit and Risk	Draft document for consideration

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## **Council Meeting**

**12/10/2016**

Item No	8.4
Subject	<b>Preliminary Certificate of Cash and Investments - 9 September 2016</b>
Report by	Ward Kirshaw, Acting Manager Finance & Administration Daniel Fabri, Acting Chief Financial Officer
File	(R) F09/605

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## **Summary**

The preliminary Certificate of Cash and Investments as at 9 September 2016 is provided for Council's information.

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## **Council Resolution**

Resolved by the Administrator:

That the preliminary Certificate of Cash and Investments be received and noted.

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## **Officer Recommendation**

That the preliminary Certificate of Cash and Investments be received and noted.

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## **Background**

A preliminary Certificate of Cash and Investments has been prepared for Bayside Council as at 9 September 2016, being the date of proclamation of the new entity. The Certificate shows a total of \$280.16M in cash and investments, being the consolidation of funds held by Rockdale City Council and City of Botany Bay Council on the last day of their existence.

Amicus Advisory Pty Ltd, an independent investment advisor for the former City of Botany Bay Council has prepared investment reports for the then City of Botany Bay Council, for the 2015/16 financial year and to the month ending 31 August 2016.

When Council's financial statements are audited, those figures will be used as the opening balances for Bayside Council and the Certificate of cash and Investments as at 9 September 2016 will be finalised.

The previous investment policies and strategies will be reviewed in the near future and a consolidated Investment Policy will be reported to Council for consideration.

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### **Financial Implications**

Investment income will need to be accrued up to the period ending 9 September 2016 in the financial statements.

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### **Community Engagement**

Not required

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### **Attachments**

Preliminary Certificate of Cash & Investments as at 9 September 2016.

**Preliminary Investment Register**  
**As at 9 September 2016**

Investment Institution	Type of Investment	Purchase Value	Maturity	Annual Interest Rate	Current Market Value
<b>Cash Funds</b>					
CBA General Fund		4,350,921.55			4,350,921.55
CBA General Fund		150,814.43			150,814.43
AMP 31 day Notice Account		10,000,000.00			10,000,000.00
CBA -Cash Management		18,259,726.05			18,259,726.05
CBA -Cash Management		24,866,745.22			24,866,745.22
Petty Cash/Floats		16,958.00			16,958.00
<b>Total Cash On Call &amp; at Bank</b>		<b>57,645,165.25</b>			<b>57,645,165.25</b>
Bendigo Bank Shares (5000@\$1)	Shares	5,000.00	n/a	n/a	5,000.00
<b>Total Bank Shares</b>		<b>5,000.00</b>			<b>5,000.00</b>
CBA Credit Union Aust Ltd 3 yr FRN BBB+ (2726)	FRN	1,000,000.00	20/03/2017	3.30%	1,008,130.00
CBA Credit Union Aust Ltd 3 yr FRN BBB+ (2667)	FRN	1,000,000.00	20/03/2017	3.30%	1,008,130.00
CBA Members Equity Bank 3 yr FRN BBB+ (2603)	FRN	1,000,000.00	28/11/2016	2.98%	1,002,090.00
CBA Members Equity Bank 3 yr FRN BBB+ (3167)	FRN	3,000,000.00	18/07/2019	3.40%	3,026,220.00
CBA Bendigo & Adelaide 3Yr FRN A- (3166)	FRN	2,000,000.00	17/09/2019	2.93%	2,008,640.00
CBA Greater Bank Ltd FRN BBB (3136)	FRN	3,000,000.00	7/06/2019	3.59%	3,006,180.00
CBA Police Bank FRN BBB+ (2757)	FRN	1,000,000.00	21/08/2017	2.83%	1,000,690.00
CBA Bank of QLD 3Yr FRN (26/02/16-06/11/19) A- (3067)	FRN	2,000,000.00	6/11/2019	2.86%	2,004,120.00
CBA Bendigo & Adelaide 4Yr FRN (26/02/16-18/08/20) A- (3068)	FRN	2,000,000.00	18/08/2020	2.85%	2,004,640.00
CBA Rabobank FRN (4/3/16- 4/3/2021)A+ (3078)	FRN	2,000,000.00	4/03/2021	3.49%	2,027,360.00
CBA CUA FRN (1/4/16- 1/4/2019)BBB+ (3097)	FRN	2,000,000.00	1/04/2019	3.56%	2,017,760.00
CBA Greater Building Society FRN BBB+ (3187)	FRN	2,000,000.00	30/08/2019	3.28%	2,000,000.00
Bank of China(90days BBSW +125BPS)	FRN	1,000,000.00	9/04/2018	3.22%	1,000,000.00
Bank of Queensland (3mth BBSW+115BPS)	FRN	1,000,000.00	29/04/2019	3.01%	1,000,000.00
AMP(3mth BBSW+110BPS)	FRN	750,000.00	11/06/2019	3.12%	750,000.00
Bank of Queensland (3mth BBSW+100BPS)	FRN	2,000,000.00	5/02/2018	2.79%	2,000,000.00
NAB (3mBBSW+98BPS)	FRN	2,000,000.00	25/02/2019	2.71%	2,000,000.00
Westpac Banking Corporation(3mth BBSW+100BPS)	FRN	1,000,000.00	10/05/2019	2.77%	1,000,000.00
Newcastle Permanent (3mth BBSW+160BPS)	FRN	2,000,000.00	22/03/2019	3.60%	2,000,000.00
Suncorp (3mthBBSW+138BPS)	FRN	2,000,000.00	12/04/2021	3.35%	2,000,000.00
Bank of Queensland (3mth BBSW+148BPS)	FRN	1,000,000.00	18/05/2021	3.23%	1,000,000.00
CBA (3mthBBSW+121BPS)	FRN	2,000,000.00	12/07/2021	3.18%	2,000,000.00
<b>Total Floating Rate Notes</b>		<b>36,750,000.00</b>			<b>36,863,960.00</b>
CBA Greater Building Society TCD BBB (2647)	TCD	1,000,000.00	24/02/2017	3.03%	1,000,730.00
<b>Total Transferable Certificate of Deposits</b>		<b>1,000,000.00</b>			<b>1,000,730.00</b>
CBA Term Deposit	TD	2,000,000.00	5/10/2016	2.64%	2,000,000.00
CBA Term Deposit	TD	2,000,000.00	18/10/2016	2.57%	2,000,000.00
CBA Term Deposit	TD	2,000,000.00	1/11/2016	2.55%	2,000,000.00
IMB Term Deposit	TD	1,225,780.56	8/12/2016	2.60%	1,225,780.56
IMB Term Deposit	TD	1,145,269.12	13/10/2016	2.75%	1,145,269.12
IMB Term Deposit	TD	1,510,087.60	15/12/2016	2.60%	1,510,087.60
IMB Term Deposit	TD	1,349,533.32	21/09/2016	2.65%	1,349,533.32
IMB Term Deposit	TD	1,350,145.93	5/10/2016	2.65%	1,350,145.93
IMB Term Deposit	TD	1,081,183.80	29/09/2016	2.65%	1,081,183.80
IMB Term Deposit	TD	1,154,086.62	15/11/2016	2.60%	1,154,086.62
IMB Term Deposit	TD	1,316,251.44	2/12/2016	2.60%	1,316,251.44
IMB Term Deposit	TD	1,699,571.39	13/12/2016	2.60%	1,699,571.39
IMB Term Deposit	TD	1,251,926.80	14/10/2016	2.75%	1,251,926.80
IMB Term Deposit	TD	1,213,524.41	30/11/2016	2.60%	1,213,524.41
ANZ Bank	TD	1,149,000.56	1/11/2016	2.90%	1,149,000.56
ANZ Bank	TD	1,142,087.03	21/09/2016	2.60%	1,142,087.03
Bendigo & Adelaide Bank	TD	2,000,000.00	19/09/2016	3.05%	2,000,000.00
AMP Bank	TD	3,000,000.00	14/03/2017	2.95%	3,000,000.00
AMP Bank	TD	2,000,000.00	15/02/2017	2.95%	2,000,000.00
ING Direct TD 182 days	TD	1,000,000.00	1/12/2016	2.84%	1,000,000.00
ING Direct TD 182 days	TD	1,000,000.00	13/09/2016	3.00%	1,000,000.00
ING FTD(9/3/16-14/3/17)	TD	1,000,000.00	14/09/2016	2.88%	1,000,000.00
ING Direct TD 183 days	TD	3,000,000.00	7/03/2017	2.63%	3,000,000.00
ING Direct TD 182 days	TD	1,000,000.00	6/12/2016	2.83%	1,000,000.00
ING FTD (10/9/15-12/9/16)	TD	2,000,000.00	12/09/2016	2.32%	2,000,000.00
Bankwest Term Deposit	TD	1,160,519.47	26/10/2016	2.60%	1,160,519.47
Bankwest Term Deposit	TD	2,024,657.53	27/09/2016	2.95%	2,024,657.53
Bankwest Term Deposit	TD	1,143,475.47	21/09/2016	2.75%	1,143,475.47
Bankwest Term Deposit	TD	1,179,680.67	4/10/2016	2.70%	1,179,680.67
Bankwest Term Deposit	TD	1,089,211.76	10/10/2016	2.60%	1,089,211.76
Bankwest Term Deposit	TD	1,064,338.86	13/10/2016	2.60%	1,064,338.86
Bankwest Term Deposit	TD	1,227,888.96	17/11/2016	2.70%	1,227,888.96
Bankwest Term Deposit	TD	1,042,239.91	5/10/2016	2.65%	1,042,239.91
Bankwest Term Deposit	TD	1,043,043.59	3/11/2016	2.60%	1,043,043.59
Bankwest Term Deposit	TD	1,292,203.84	12/10/2016	2.60%	1,292,203.84
Bankwest Term Deposit	TD	1,095,971.34	19/09/2016	2.75%	1,095,971.34

Bankwest Term Deposit	TD	1,077,384.26	14/09/2016	2.75%	1,077,384.26
Bankwest Term Deposit	TD	1,122,071.24	2/11/2016	2.55%	1,122,071.24
Bankwest Term Deposit	TD	1,288,991.94	22/09/2016	2.85%	1,288,991.94
Bankwest Term Deposit	TD	1,298,092.45	18/10/2016	2.60%	1,298,092.45
Bankwest Term Deposit	TD	1,153,926.39	11/01/2017	2.60%	1,153,926.39
Bankwest Term Deposit	TD	1,142,741.41	20/09/2016	3.00%	1,142,741.41
Bankwest Term Deposit	TD	1,151,929.53	31/10/2016	2.55%	1,151,929.53
Bankwest Term Deposit	TD	1,149,770.51	12/09/2016	2.80%	1,149,770.51
Bankwest Term Deposit	TD	1,246,454.37	19/10/2016	2.85%	1,246,454.37
Bankwest Term Deposit	TD	1,256,393.03	9/11/2016	2.55%	1,256,393.03
Bankwest Term Deposit	TD	2,000,000.00	14/12/2016	2.55%	2,000,000.00
Newcastle Permanent Building Society	TD	1,220,586.80	15/09/2016	2.80%	1,220,586.80
Newcastle Permanent Building Society	TD	1,239,864.20	13/09/2016	2.80%	1,239,864.20
Newcastle Permanent Building Society	TD	1,148,227.29	22/11/2016	2.70%	1,148,227.29
Newcastle Permanent Building Society	TD	1,306,842.49	2/12/2016	2.70%	1,306,842.49
Newcastle Permanent Building Society	TD	1,184,935.98	8/11/2016	2.80%	1,184,935.98
Newcastle Permanent Building Society	TD	1,089,134.04	15/11/2016	2.65%	1,089,134.04
Newcastle Permanent Building Society	TD	1,197,754.32	3/11/2016	2.60%	1,197,754.32
Newcastle Permanent Building Society	TD	1,267,589.11	7/12/2016	2.65%	1,267,589.11
Newcastle Permanent Building Society	TD	1,150,596.76	2/11/2016	2.70%	1,150,596.76
ME Bank	TD	1,000,000.00	10/03/2017	2.65%	1,000,000.00
ME Bank	TD	1,000,000.00	9/02/2017	2.65%	1,000,000.00
ME Bank	TD	1,000,000.00	7/02/2017	2.65%	1,000,000.00
ME Bank	TD	1,000,000.00	6/10/2016	2.95%	1,000,000.00
ME Bank	TD	1,000,000.00	22/02/2017	2.65%	1,000,000.00
National Australia Bank Term Dep	TD	1,000,000.00	29/11/2016	2.90%	1,000,000.00
National Australia Bank Term Dep	TD	1,000,000.00	10/03/2017	2.55%	1,000,000.00
National Australia Bank Term Dep	TD	1,000,000.00	28/02/2017	2.55%	1,000,000.00
National Australia Bank Term Dep	TD	1,000,000.00	21/02/2017	2.55%	1,000,000.00
National Australia Bank Term Dep	TD	1,000,000.00	16/11/2016	2.90%	1,000,000.00
National Australia Bank Term Dep	TD	2,000,000.00	8/03/2017	2.55%	2,000,000.00
National Australia Bank Term Dep	TD	2,000,000.00	2/03/2017	2.55%	2,000,000.00
National Australia Bank Term Dep	TD	2,000,000.00	23/11/2016	2.90%	2,000,000.00
National Australia Bank Term Dep	TD	1,000,000.00	14/12/2016	2.69%	1,000,000.00
National Australia Bank Term Dep	TD	2,000,000.00	9/03/2017	2.55%	2,000,000.00
National Australia Bank Term Dep	TD	2,000,000.00	15/12/2016	2.90%	2,000,000.00
National Australia Bank Term Dep	TD	1,000,000.00	14/09/2016	3.05%	1,000,000.00
National Australia Bank Term Dep	TD	2,000,000.00	1/12/2016	2.90%	2,000,000.00
National Australia Bank Term Dep	TD	2,000,000.00	25/10/2016	3.05%	2,000,000.00
National Australia Bank Term Dep	TD	2,000,000.00	12/10/2016	3.05%	2,000,000.00
Westpac Term Deposit	TD	1,000,000.00	4/01/2017	2.70%	1,000,000.00
ME Bank	TD	2,000,000.00	13-Sep-16	3.06%	2,000,000.00
Westpac Bank	TD	2,000,000.00	19-Sep-16	4.12%	2,000,000.00
National Australia Bank	TD	1,000,000.00	27-Sep-16	2.95%	1,000,000.00
IMB	TD	1,000,000.00	27-Sep-16	2.70%	1,000,000.00
National Australia Bank	TD	4,000,000.00	27-Sep-16	2.85%	4,000,000.00
Bank of Queensland	TD	4,000,000.00	4-Oct-16	2.70%	4,000,000.00
MyState Banking Ltd	TD	2,000,000.00	4-Oct-16	3.00%	2,000,000.00
Bank of Queensland	TD	2,000,000.00	11-Oct-16	3.03%	2,000,000.00
National Australia Bank	TD	2,000,000.00	11-Oct-16	3.05%	2,000,000.00
MyState Banking Ltd	TD	2,000,000.00	18-Oct-16	3.00%	2,000,000.00
National Australia Bank	TD	2,000,000.00	25-Oct-16	3.05%	2,000,000.00
Bank of Queensland	TD	2,000,000.00	25-Oct-16	2.80%	2,000,000.00
ME Bank	TD	2,000,000.00	1-Nov-16	2.95%	2,000,000.00
Rural Bank	TD	2,000,000.00	1-Nov-16	3.15%	2,000,000.00
MyState Banking Ltd	TD	1,000,000.00	8-Nov-16	3.00%	1,000,000.00
Rural Bank	TD	2,000,000.00	8-Nov-16	3.15%	2,000,000.00
National Australia Bank	TD	2,000,000.00	15-Nov-16	2.87%	2,000,000.00
AMP Bank	TD	2,000,000.00	29-Nov-16	2.90%	2,000,000.00
Rural Bank	TD	2,000,000.00	6-Dec-16	3.15%	2,000,000.00
Bank of Queensland	TD	2,000,000.00	13-Dec-16	2.95%	2,000,000.00
National Australia Bank	TD	1,000,000.00	20-Dec-16	2.88%	1,000,000.00
National Australia Bank	TD	2,000,000.00	10-Jan-17	2.85%	2,000,000.00
Bank of Queensland	TD	2,000,000.00	17-Jan-17	2.85%	2,000,000.00
AMP Bank	TD	2,000,000.00	14-Feb-17	2.85%	2,000,000.00
MyState Banking Ltd	TD	2,000,000.00	14-Feb-17	2.55%	2,000,000.00
ING Bank	TD	2,000,000.00	7-Mar-17	3.10%	2,000,000.00
ME Bank	TD	2,000,000.00	14-Mar-17	3.07%	2,000,000.00
National Australia Bank	TD	1,000,000.00	21-Mar-17	2.85%	1,000,000.00
Bank of Queensland	TD	1,000,000.00	28-Mar-17	2.85%	1,000,000.00
National Australia Bank	TD	2,000,000.00	23-May-17	2.95%	2,000,000.00
AMP Bank	TD	1,000,000.00	8-Aug-17	2.80%	1,000,000.00
National Australia Bank	TD	2,000,000.00	23-Jan-18	2.75%	2,000,000.00
National Australia Bank	TD	2,000,000.00	30-Jan-18	2.73%	2,000,000.00
National Australia Bank	TD	2,000,000.00	6-Feb-18	2.75%	2,000,000.00
National Australia Bank	TD	2,000,000.00	13-Feb-18	2.60%	2,000,000.00
Bendigo Bank	TD	3,000,000.00	20-Feb-18	2.70%	3,000,000.00
Bendigo Bank	TD	3,000,000.00	27-Feb-18	2.70%	3,000,000.00
ME Bank	TD	2,000,000.00	6-Mar-18	2.65%	2,000,000.00
ME Bank	TD	4,000,000.00	13-Mar-18	2.65%	4,000,000.00
<b>Total Fixed Interest Term Deposits</b>		<b>184,644,966.10</b>			<b>184,644,966.10</b>
<b>Total Cash &amp; Investments</b>		<b>280,045,131.35</b>			<b>280,159,821.35</b>

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## Council Meeting

12/10/2016

Item No	8.5
Subject	<b>Common Seal</b>
Report by	Liz Rog, Acting Manager Governance Even Hutchings, Acting Manager Governance
File	(R) F14/363

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## Summary

This report proposes the adoption of a common seal for Bayside Council.

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## Council Resolution

Resolved by the Administrator:

- 1 That, in accordance with clause 400 of the Local Government (General) Regulation 2005, the Bayside Council seal design as included in this report be adopted.
  - 2 That the draft Common Seal Policy tabled at the Council meeting be adopted.
- 

## Officer Recommendation

- 1 That, in accordance with clause 400 of the Local Government (General) Regulation 2005, the Bayside Council seal design as included in this report be adopted.
  - 2 That the draft Common Seal Policy attached to this report be adopted.
- 

## Background

Bayside Council was proclaimed on 9 September 2016, bringing together the former City of Botany Bay Council and Rockdale City Council. The attached draft policy outlines the requirements for a Council seal and its appropriate application, based on a similar policy of the former City of Botany Bay Council. Legislative obligations require Council to have a common seal as follows:

From the Local Government Act 1993:

- Section 220 states that Council is a body corporate.
- Section 377 allows Council to delegate any of its functions (except those enumerated in the section) to the General Manager or any other person or body.

From the Interpretation Act 1987:

- Because Council is a body corporate, Section 50 of Part 8 of the Interpretation Act requires Council to have a seal. In addition, it requires that the seal be kept by the president, chairperson or other principal officer of the corporation and affixed to a document only in the presence of at least two members of the corporation, and with an attestation by the signatures of those members of the fact of the affixing of the seal.

From the Local Government (General) Regulation 2005:

Requirements in relation to Council's seal are further detailed in clause 400 of the Regulation, which states:

- 1 The seal of a council must be kept by the mayor or the general manager, as the council determines.
- 2 The seal of a council may be affixed to a document only in the presence of:
  - (a) the mayor and the general manager, or
  - (b) at least one councillor (other than the mayor) and the general manager, or
  - (c) the mayor and at least one other councillor, or
  - (d) at least 2 councillors other than the mayor.
- 3 The affixing of a council seal to a document has no effect unless the persons who were present when the seal was affixed (being persons referred to in subclause (2)) attest by their signatures that the seal was affixed in their presence.
- 4 The seal of a council must not be affixed to a document unless the document relates to the business of the council and the council has resolved (by resolution specifically referring to the document) that the seal be so affixed.
- 5 For the purposes of subclause (4), a document in the nature of a reference or certificate of service for an employee of the council does not relate to the business of the council.

It is to be noted, that during any period of Administration, the Administrator undertakes the responsibilities of the mayor outlined above.

More detailed business rules about affixing the seal are outlined in the attached draft Council Seal Policy.

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## **Financial Implications**

Included in existing approved budget

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## **Community Engagement**

Not required

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## **Attachments**

Council Seal Policy (attached)

Proposed Bayside Council seal design (under separate cover)

## Council Seal Policy

**Draft 27 September 2016**



© Bayside Council

Council Seal Policy

File: F14/363 Document: 16/117450

Class of document: Council Policy

Enquiries: Manager Governance



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<b>Appendix I</b>	<b>..... Error! Bookmark not defined.</b>	

# 1 Introduction

## 1.1 Background

This policy outlines the requirements for the use of the Council seal.

From the Local Government Act 1993:

- Section 220 states that Council is a body corporate.
- Section 377 allows Council to delegate any of its functions (except those enumerated in the section) to the General Manager or any other person or body.

From the Interpretation Act 1987:

- Because Council is a body corporate, Section 50 of Part 8 of the Interpretation Act requires Council to have a seal. In addition, it requires that the seal be kept by the president, chairperson or other principal officer of the corporation and affixed to a document only in the presence of at least two members of the corporation, and with an attestation by the signatures of those members of the fact of the affixing of the seal.

## 1.2 Definitions

The definitions of certain terms are:

### ***Council seal***

A stamped or embossed insignia affixed to a document as a guarantee of authenticity as a council document. In this policy the word 'seal' is used to describe both the instrument used to stamp the insignia and the insignia once affixed.

## 1.3 Policy statement

The Council seal is kept in the custody of the General Manager or their nominee. It is affixed to documents in accordance with the Local Government Act 1993, the Local Government (General) Regulation 2005 and this policy.

## 1.4 Scope of policy

This policy is applicable to all Council officials.

# 2 Authenticating documents

## 2.1 The Council seal

In accordance with clause 400 Local Government (General) Regulation 2005:

- (1) The seal of a council must be kept by the mayor or the general manager, as the council determines.
- (2) The seal of a council may be affixed to a document only in the presence of:
  - (a) the Mayor and the General Manager, or
  - (b) at least one Councillor (other than the Mayor) and the General Manager, or
  - (c) the Mayor and at least one other Councillor, or
  - (d) at least 2 Councillors other than the Mayor.
- (3) The affixing of a council seal to a document has no effect unless the persons who were present when the seal was affixed (being persons referred to in subclause

- (2)) attest by their signatures that the seal was affixed in their presence.
- (4) The seal of a council must not be affixed to a document unless the document relates to the business of the council and the council has resolved (by resolution specifically referring to the document) that the seal be so affixed.
- (5) For the purposes of subclause (4), a document in the nature of a reference or certificate of service for an employee of the council does not relate to the business of the council.

## **2.2 Other authentication**

Not all documents created to implement decisions of Council require the affixing of a seal. In accordance with s683 Local Government Act 1993:

A document requiring authentication by the council may be sufficiently authenticated without the seal of the council if signed by the general manager or public officer.

## **3 Affixing the seal**

In line with its legislative requirements:

- A decision to affix Council's seal to a document can only be made by a resolution of Council. It is not a matter that can be delegated.
- Following a decision by Council that a document will be issued under seal, the General Manager, or their nominee, will ensure that the requirements of clause 400 (2) and (3) of the Regulation are met whenever the Council seal is to be affixed to a document.
- Council's seal will be used only for documents that relate to the business of Council, and without limiting the use of the seal, will normally only include specifically:
  - the exercise by Council of its functions in relation to the purchase, exchange, leasing, disposal of, and otherwise dealing with, real property, or executing a contract of employment for the General Manager
  - completing agreements or contracts from state or federal government departments where they have requested the agreements or contracts be under seal
  - entering into planning agreements
  - other documents as required by law.
- Council's seal will not be used for documents such as references or certificates of service for Council employees.
- The General Manager will not witness the affixing of Council's seal to the contract of employment for the General Manager.
- Except in the case of emergency (as determined by the Mayor or General Manager) or the contract of employment for the General Manager, the seal shall be affixed only in the presence of the Mayor and the General Manager.

Appropriate wording for a Council resolution to use the Council seal is as follows:

That Council authorises the Mayor (or Administrator as the case may be) and the General Manager to have the Council seal affixed to [insert specific description of document(s)] in their presence.

Appropriate wording for the signature page of documents is as follows, or as recommended by Council's legal services providers:

Council hereby authorises its seal to be affixed to [identify the document/s and the value including GST if a contract] in the presence of two signatories authorised to affix the seal pursuant to clause 400 of the Local Government (General) Regulation 2005 and the Council Seal Policy.

## 4 Policy implementation

### 4.1 Policy responsibilities

The General Manager is responsible for this policy.

The Manager Governance is responsible for the implementation of this policy, including the day-to-day coordination of execution of documents that require affixing the seal.

### 4.2 Procedures

Further procedures that support this policy, may be approved by the General Manager from time to time.

### 4.3 Breaches

Sanctions for a breach of this policy will be determined in accordance with the provisions applied under the Council's Code of Conduct.

Staff members in breach of this policy will be subject to disciplinary procedures as provided under the Local Government (State) Award.

## 5 Document control

### 5.1 Review

This policy should be reviewed each term of Council. Minor edits that do not affect the substance of the policy may be approved by the Manager Governance.

### 5.2 Related documents

Relevant legislation, Council policies and procedures relevant to the policy:

- Local Government Act 1993
- Local Government (General) Regulation 2005
- Code of Meeting Practice

### 5.3 Version history

Include the details of the original adoption / approval and subsequent changes. Version 1.0 is the initial adopted/approved version.

Version	Release Date	Author	Reason for Change
0.0			New document

---

## Council Meeting

12/10/2016

Item No	8.6
Subject	<b>Annual Lodgement of Pecuniary Interest Returns</b>
Report by	Acting Manager Governance – Evan Hutchings Acting Manager Governance – Liz Rog
File	(R) SF16/241

---

## Summary

The Local Government Act, 1993 details the statutory requirements in respect of the lodgement of Disclosure of Pecuniary Interest and Other Matters Returns by Councillors and Designated Persons.

This report provides information regarding Returns recently lodged with the General Manager by Councillors and Designated Persons holding office as at 30 June 2016.

It is recommended that Council note that the Disclosure of Pecuniary Interest and Other Matters Returns lodged with the General Manager have been tabled in accordance with the Local Government Act.

---

## Council Resolution

Resolved by the Administrator:

That the information be received and noted.

*The Administrator advised Council that, at the time of publication of the report, Council was waiting upon receipt of one outstanding form which has today been lodged with Council and all Annual Lodgement of Pecuniary Interest Returns are now finalised.*

---

## Officer Recommendation

That the information be received and noted.

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## Background

Section 450A of the Local Government Act, 1993 relates to the register of Disclosure of Interest Returns and the tabling of these Returns, which have been lodged by Councillors and Designated Persons.

Section 450A of the Act states:

***“450A Register and Tabling of Returns***

- 1 The general manager must keep a register of returns required to be lodged with the general manager under section 449.***
- 2 Returns required to be lodged with the general manager under section 449 must be tabled at a meeting of the council, being:***
  - (a) In the case of a return lodged in accordance with section 449(1) – the first meeting held after the last day for lodgement under that subsection, or***
  - (b) In the case of a return lodged in accordance with section 449(3) – the first meeting held after the last day for lodgement under that subsection, or***
  - (c) In the case of a return otherwise lodged with the general manager – the first meeting after lodgement.”***

As required by Section 450A (1), a register of all Returns lodged by Councillors and Designated Persons in accordance with Section 449 of the Act is currently kept by Council.

The purpose of this report is to table, in accordance with Section 450A (2), all Returns lodged by Councillors and Designated persons by the dates outlined in subsections (a) and (b).

**Annual Returns**

In accordance with Section 450(2) (b), the following Returns have been lodged by Councillors and Designated Persons holding that position as at 30 June 2016.

**Former Councillors - Rockdale**

<b>Former Councillors' Name</b>	<b>Return Period</b>	<b>Date Lodged</b>
AWADA Joseph	01.07.2015-30.06.2016	11.08.2016
BARLOW Elizabeth	01.07.2015-30.06.2016	03.08.2016
BEZIC Ronald	01.07.2015-30.06.2016	Unavailable at time of lodgement
HANNA Mark	01.07.2015-30.06.2016	27.07.2016
IBRAHIM Tarek	01.07.2015-30.06.2016	03.08.2016
KALLIGAS Petros	01.07.2015-30.06.2016	07.09.2016
MACDONALD James	01.07.2015-30.06.2016	03.08.2016
MICKOVSKI Nicholas	01.07.2015-30.06.2016	05.10.2016
NAGI Michael	01.07.2015-30.06.2016	19.08.2016

<b>Former Councillors' Name</b>	<b>Return Period</b>	<b>Date Lodged</b>
O'BRIEN Shane	01.07.2015-30.06.2016	03.08.2016
POULOS Peter	01.07.2015-30.06.2016	22.09.2016
SARAVINOVSKI Bill	01.07.2015-30.06.2016	03.08.2016
SEDRAK Lydia	01.07.2015-30.06.2016	03.08.2016
SEDRAK Paul	01.07.2015-30.06.2016	03.08.2016
TSOUNIS	01.07.2015-30.06.2016	29.09.2016

#### **Existing Designated Officers - Rockdale**

<b>Position</b>	<b>Return Period</b>	<b>Date Lodged</b>
Building Projects Officer	01.07.2015-30.06.2016	26.07.2016
Coordinator – Asset Strategy	01.07.2015-30.06.2016	29.07.2016
Coordinator – City Assets	01.07.2015-30.06.2016	27.07.2016
Coordinator – City Media & Events	01.07.2015-30.06.2016	21.07.2016
Coordinator – City Projects	01.07.2015-30.06.2016	16.08.2016
Coordinator – Civil Works	01.07.2015-30.06.2016	18.08.2016-
Coordinator – Community Capacity Building	01.07.2015-30.06.2016	02.08.2016
Coordinator – Community Planning & Reporting	01.07.2015-30.06.2016	29.07.2016
Coordinator – Customer Service	01.07.2015-30.06.2016	25.08.2016
Coordinator – Development & Certification	01.07.2015-30.06.2016	30.08.2016
Coordinator – Document Management	01.07.2015-30.06.2016	27.07.2016
Coordinator – Environmental Strategy	01.07.2015-30.06.2016	30.08.2016
Coordinator – Health & Environmental Compliance	01.07.2015-30.06.2016	30.08.2016
Coordinator – Major Assessments	01.07.2015-30.06.2016	26.07.2016
Coordinator – Operations Business	01.07.2015-30.06.2016	15.08.2016
Coordinator – Parks	01.07.2015-30.06.2016	17.08.2016
Coordinator – Property Services	01.07.2015-30.06.2016	17.08.2016

<b>Position</b>	<b>Return Period</b>	<b>Date Lodged</b>
Coordinator – Procurement & Fleet Management	01.07.2015-30.06.2016	11.08.2016
Coordinator – Regulations	01.07.2015-30.06.2016	25.07.2016
Coordinator – Revenue Management	01.07.2015-30.06.2016	26.07.2016
Coordinator – Spatial & Asset Information	01.07.2015-30.06.2016	16.08.2016
Coordinator – Traffic & Road Safety	01.07.2015-30.06.2016	16.08.2016
Coordinator – Waste & Cleansing	<b>Vacant Position</b>	
Development Assessment Planner	01.07.2015-30.06.2016	22.07.2016
Development Assessment Planner	01.07.2015-30.06.2016	26.07.2016
Development Assessment Planner	01.07.2015-30.06.2016	05.09.2016
Director – City Operations	01.07.2015-30.06.2016	27.07.2016
Director – Corporate & Community	<b>Vacant Position</b>	
Director – Planning & Development	<b>Vacant Position</b>	
Engineering Project Officer	01.07.2015-30.06.2016	21.07.2016
Environmental Compliance Officer	01.07.2015-30.06.2016	25.07.2016
Environmental Compliance Officer	01.07.2015-30.06.2016	09.09.2016
Executive Engineer	01.07.2015-30.06.2016	26.07.2016
Facility Manager	01.07.2015-30.06.2016	21.07.2016
General Manager	01.07.2015-30.06.2016	09.08.2016
Infrastructure Engineer	01.07.2015-30.06.2016	11.08.2016
Landscape Infrastructure Planner	01.07.2015-30.06.2016	26.07.2016
Legal Support Officer	01.07.2015-30.06.2016	30.08.2016
Major Projects – Project Manager/Administrator	01.07.2015-30.06.2016	29.07.2016
Major Projects - Superintendent's Representative	01.07.2015-30.06.2016	28.07.2016
Manager – City Infrastructure	01.07.2015-30.06.2016	17.08.2016
Manager – Community Planning & Reporting	01.07.2015-30.06.2016	18.08.2016



<b>Position</b>	<b>Return Period</b>	<b>Date Lodged</b>
Manager – Development Services	01.07.2015-30.06.2016	25.08.2016
Manager – Finance and Administration	01.07.2015-30.06.2016	27.07.2016
Manager – Human Resources	01.07.2015-30.06.2016	26.07.2016
Manager – Information Management & Technology	01.07.2015-30.06.2016	31.08.2016
Manager – Library & Customer Services	01.07.2015-30.06.2016	25.07.2016
Manager – Operations	01.07.2015-30.06.2016	03.08.2016
Manager – Regulatory Services	01.07.2015-30.06.2016	27.07.2016
Manager - Strategic Asset Management	01.07.2015-30.06.2016	28.07.2016
Manager – Urban & Environmental Strategy	01.07.2015-30.06.2016	16.08.2016
Project Engineer	01.07.2015-30.06.2016	11.08.2016
Senior Assessment Planner	01.07.2015-30.06.2016	16.08.2016
Senior Assessment Planner	01.07.2015-30.06.2016	30.08.2016
Senior Building Certifier	01.07.2015-30.06.2016	03.08.2016
Senior Project Architect	01.07.2015-30.06.2016	26.07.2016
Senior Project Landscape Architect	01.07.2015-30.06.2016	21.07.2016
Senior Public Domain Engineer	01.07.2015-30.06.2016	03.08.2016
Special Projects Engineer	01.07.2015-30.06.2016	01.08.2016
Stormwater Project Engineer	01.07.2015-30.06.2016	18.08.2016
Strategic Asset Planner	01.07.2015-30.06.2016	22.07.2016

#### **Former Councillors – Botany Bay**

<b>Former Councillors' Name</b>	<b>Return Period</b>	<b>Date Lodged</b>
CASTLE Mark	01.07.2015-30.06.2016	17.08.2016
CURRY Christina	01.07.2015-30.06.2016	01.09.2016
GLINATIS George	01.07.2015-30.06.2016	12.08.2016
KENEALLY Ben	01.07.2015-30.06.2016	01.09.2016
MITCHELL Greg	01.07.2015-30.06.2016	17.08.2016

<b>Former Councillors' Name</b>	<b>Return Period</b>	<b>Date Lodged</b>
KONDILIOS Stan	01.07.2015-30.06.2016	17.08.2016
TROY Brian	01.07.2015-30.06.2016	17.08.2016

#### **Existing Designated Officers – Botany Bay**

<b>Position</b>	<b>Return Period</b>	<b>Date Lodged</b>
Acting Director Corporate and Community Services	01.07.2015-30.06.2016	14.09.2016
Acting Supervisor Parks and Gardens	01.07.2015-30.06.2016	07.09.2016
Chief Financial Officer	01.07.2015-30.06.2016	19.09.2016
Co-ordinator Operations	01.07.2015-30.06.2016	28.09.2016
Director – City Planning and Environment	01.07.2015-30.06.2016	16.09.2016
Director – City Services	01.07.2015-30.06.2016	23.08.2016
General Manager	01.07.2015-30.06.2016	08.09.2016
Manager – Business Unit	01.07.2015-30.06.2016	16.09.2016
Manager – City Infrastructure	01.07.2015-30.06.2016	30.08.2016
Manager – Compliance	01.07.2015-30.06.2016	16.08.2016
Manager – Governance	01.07.2015-30.06.2016	15.08.2016
Manager – Human Resources	01.07.2016-30.06.2016	26.08.2016
Manager - IT	01.07.2015-30.06.2016	25.08.2016
Manager - Public Relations	01.07.2015-30.06.2016	15.09.2016
Manager – Special Projects	01.07.2015-30.06.2016	27.09.2016
Manager - Statutory Planning	01.07.2015-30.06.2016	23.08.2016
Manager - Strategic Planning	01.07.2015-30.06.2016	15.08.2016
Mayor's Office Executive Officer	01.07.2015-30.06.2016	15.08.2016
Project Manager	01.07.2015-30.06.2016	12.08.2016
Project Manager	01.07.2015-30.06.2016	12.08.2016
Senior Building Surveyor	01.07.2015-30.06.2016	17.08.2016

<b>Position</b>	<b>Return Period</b>	<b>Date Lodged</b>
Senior Building Surveyor	01.07.2015-30.06.2016	28.09.2016
Senior Procurement Officer	01.07.2015-30.06.2016	19.09.2016
Supervisor City Works	01.07.2015-30.06.2016	01.09.2016
Supervisor Cleansing	01.07.2015-30.06.2016	28.09.2016
Supervisor Plant	01.07.2015-30.06.2016	12.08.2016
Supervisor Parks and Gardens	<b>Extended Leave</b>	
Team Leader Development Assessment	<b>Vacant Position</b>	
Team Leader Regulations	01.07.2015-30.06.2016	01.09.2016

With the exception of former Councillor Ron Bezic (who is currently overseas) all former Councillors and Designated Persons have lodged their Returns as required by the Act.

The above returns are now tabled in accordance with Section 450A (2) (a) and (b) of the Act and are available for inspection if required.

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## **Financial Implications**

Not applicable.

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## **Community Engagement**

The issues raised in this report do not require community consultation under Council's Community Engagement Policy.

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## **Attachments**

Nil

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## Council Meeting

12/10/2016

Item No	8.7
Subject	<b>Community Grant for the Bayside Community Garden at Lance Studdert Reserve</b>
Report by	David Dekel, Coordinator City Places and Systems
File	(R) F13/160

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## Summary

In May 2016 The Bay Community Group lodged an application to begin a community garden in Lance Studdert Reserve in accordance with the Rockdale Community Gardens Policy. The application was placed on public exhibition, reviewed by Council staff and given in principle approval by the Council's Executive Committee on 30 August 2016.

To support the initiative the Executive Committee gave in principal support of a \$10,000 grant, subject to Council approval.

The funding will be used to buy materials and tools needed to set up the garden as well as to cover costs for public liability insurance and incorporation for The Bay Community Group.

This community garden will be open for all residents to visit and will become a point of interest and an educational tool for the whole community.

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## Council Resolution

Resolved by the Administrator:

That Council supports the granting of \$10,000 to The Bay Community Group, through Council's Financial Assistance Policy, for a one off grant to initiate Bayside Council's first community garden in Lance Studdert Reserve, Kyeemagh.

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## Officer Recommendation

That Council supports the granting of \$10,000 to The Bay Community Group, through Council's Financial Assistance Policy, for a one off grant to initiate Bayside Council's first community garden in Lance Studdert Reserve, Kyeemagh.

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## Background

In October 2015 the former Rockdale City Council adopted a Community Gardens Policy outlining where and how community gardens could be initiated. The Bay community garden group lodged an application in May 2016 to start a community garden in Lance Studdert Reserve, Kyeemagh.

Following the public exhibition of the Community Garden proposal, the application was reviewed by Council's internal community gardens advisory group and found to meet all the requirements of the Community Gardens Policy. In principle approval for the community garden was given by the Executive Committee on 30 August 2016. The Executive also recommended that The Bay Community Group seek a one off grant for the amount of \$10,000 from council's donations budget. Granting of the funding would be contingent on The Bay Community Group becoming an incorporated body and obtaining public liability insurance. These steps are expected to be completed by the end of October 2016.

Besides covering the costs of insurance and incorporation, the funding will be used for an initial garden planning day, materials such as soil, raised garden beds, tools, signage and some plants. The garden currently has eight members and will begin with eight garden beds, and a communal bed.

Once the group has become incorporated and obtained insurance, a one year provisional license will be issued by Council. If The Bay Community Group meets all the requirements of the license during the first year of the garden, such as maintenance and governance agreements, a three year license for continuation of the community garden may be issued by Council.

Council officers will monitor the progress of The Bay Community Group and will attend monthly meetings to ensure all conditions and requirements are being met.

The Bayside Community Garden (Lance Studdert Reserve) plan consists of a communal planting area where the public can participate in gardening activities and private plots for members of the community garden (see Attachment).

Membership of the garden will be open to all members of the community subject to a commitment of time and a small membership fee payable to The Bay Community Group. The community garden will not be fenced and will remain open to the broader community at all times.

The Bay Community Group hopes that the garden will add to the amenity of the existing Reserve and become a place of interaction and learning for the local and wider community.

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## **Financial Implications**

Additional funds required.

\$10,000 is being sought in accordance with Council's Council's Financial Assistance Policy as a one-off payment to assist The Bay Community Group establish itself and the community garden. The grant will be sourced from the donations budget and the account number to be used is 361.6955.

Sufficient funds exist within the donations budget to support this allocation (\$105K).

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## **Community Engagement**

To review the community garden application the following internal staff from the Rockdale branch were consulted:

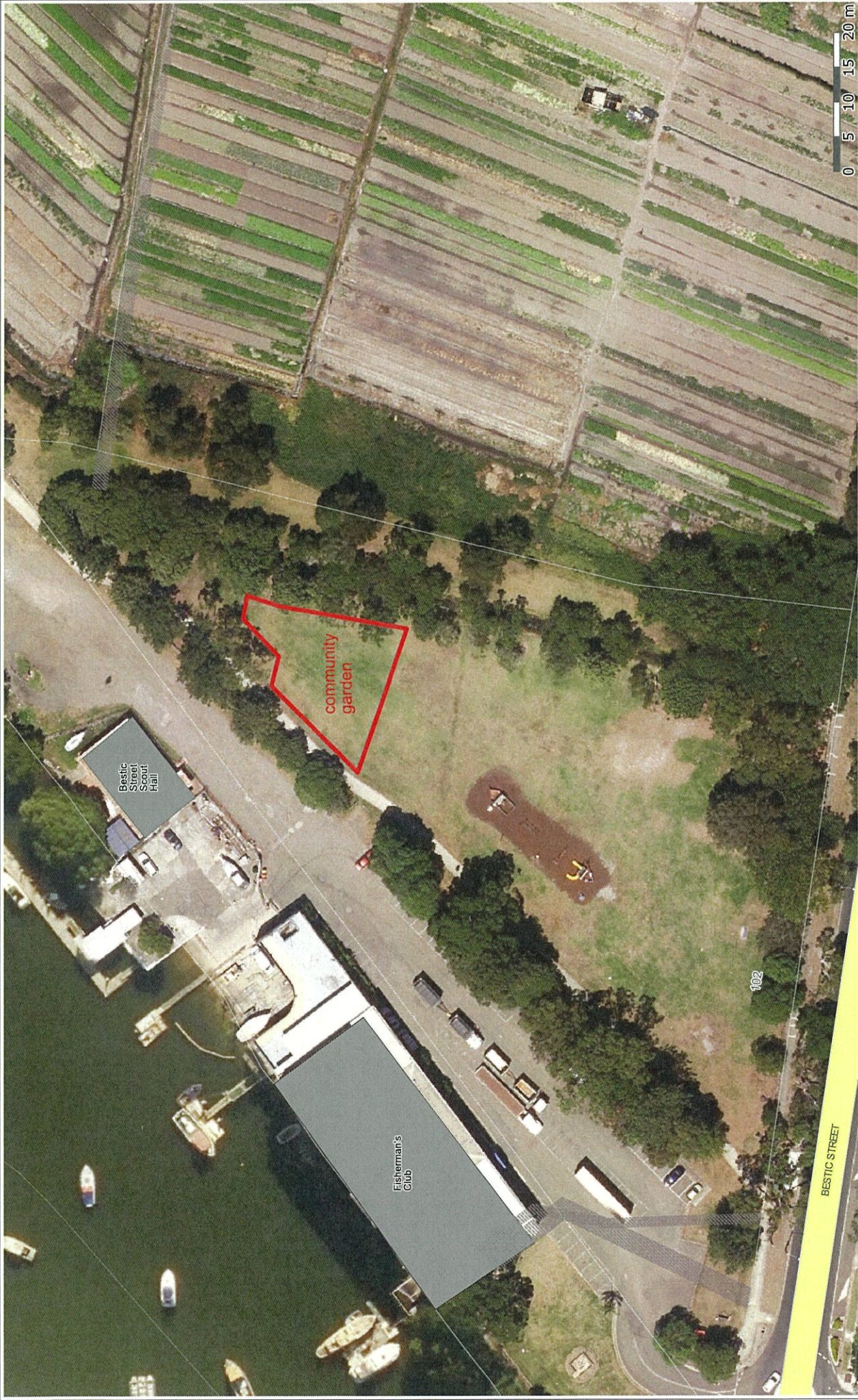
- Coordinator - Operations Business (Tracy Moroney)

- Acting Manager Risk & Audit (Bobbi Mayne)
  - Acting Director - City Planning & Development (Michael McCabe)
  - Acting Manager Property & Venues (Benjamin Heraud)
  - Manager Community Planning & Reporting (Karen Purser)
  - Coordinator Community Capacity Building (Cheryl Brady)
  - Landscape Infrastructure Planner (Fiona MacColl)
  - Acting Director Corporate and Community (Fausto Sut)
  - Interim General Manager (Meredith Wallace)
  - Manager - City Infrastructure (Jeremy Morgan)
  - Coordinator - Parks (Terry Parker)
- 

## **Attachments**

Lance Studdert Reserve Community Garden map





<div data-bbox="1361 78 1505 176"> </div> <div data-bbox="1361 253 1393 365">8/09/2016</div> <div data-bbox="1449 275 1481 342">1:691</div>	<div data-bbox="1377 533 1409 1025">Lance Studdert Reserve Community Garden</div> <div data-bbox="1457 600 1489 958">Prepared By: Madeline Hourihan</div>	<div data-bbox="1409 1149 1457 1977"> <p><b>Disclaimer Note</b> This map remains the property of Rockdale City Council. Reproduction of any part without approval is prohibited. This map has been compiled from various sources and the publisher and/or contributor accept no responsibility for any inaccuracy, loss or damage arising from its use or omission thereon.</p> </div> <div data-bbox="1345 2000 1520 2121"> <p>ROCKDALE CITY COUNCIL On History, Beauty, Blue</p> </div>



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## Council Meeting

12/10/2016

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Item No	9.1
Subject	<b>Independent Hearing and Assessment Panel for Bayside Council</b>
Report by	Anthony Newland, Manager Statutory Planning (Mascot) Luis Melim, Manager Development Services (Rockdale)
File	(R) F14/64 & (B) S16/168

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## Summary

An Independent Hearing and Assessment Panel (IHAP) is an expert panel of development professionals who determine development applications, particularly those applications which are larger and more complex and/or attract considerable community attention. An Independent Hearing and Assessment Panel consists of qualified industry professionals including persons from the fields of urban planning, urban design, the legal profession, architecture, environmental science and the like. Independent Hearing and Assessment Panels may also have community representatives.

The independence and expertise of the Panel members is acknowledged as creating greater integrity in decision making (through transparency and public confidence) and can also have benefits in efficiency in decision making.

The purpose of this report is to:

- 1 Outline the role and function of an Independent Hearing and Assessment Panel and the proposal to establish an Independent Hearing and Assessment Panel for the Bayside Council;
- 2 Outline the proposed Charter of the Bayside Independent Hearing and Assessment Panel, including rules of operation and Code of Conduct;
- 3 Outline which applications are to be referred to the Independent Hearing and Assessment Panel for determination;
- 4 Outline the delegations of the Bayside Independent Hearing and Assessment Panel to determine applications, and
- 5 Outline how the applicant and the community interact with the Independent Hearing and Assessment Panel and have the ability to represent their interests within the Independent Hearing and Assessment Panel process.

*Note: Independent Hearing and Assessment Panel's have been well documented by NSW local government and it is acknowledged that this report draws closely on the currently established Independent Hearing and Assessment Panel Charters of Georges River and Wollongong Council's as effective models.*



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## Council Resolution

Resolved by the Administrator:

- 1 That this item be deferred for one month so that further information can be provided in the report.
  - 2 That a presentation, by an expert, on the relative merits of an Independent Hearing and Assessment Panel be provided to the November meeting of the Local Representation Committee.
  - 3 That feedback on the presentation to the Local Representation Committee be provided to the subsequent Council meeting.
- 

## Officer Recommendation

- 1 That an Independent Hearing and Assessment Panel be established for the Bayside Council.
  - 2 That the Charter for the Bayside Council Independent Hearing and Assessment Panel appended to the report be adopted.
  - 3 That the General Manager, in consultation with the Administrator appoint three (3) Independent Hearing and Assessment Panel professional members and seek expressions of interest for a 'pool' of five (5) community representatives (one from each Ward of the Council) to represent the community on the Independent Hearing and Assessment Panel.
  - 4 That the current delegations and sub-delegations for development assessment determinations, planning proposals and voluntary planning agreements for Bayside Council be modified by the General Manager to reflect this report and the Charter of the Independent Hearing and Assessment Panel.
- 

## Background

An Independent Hearing and Assessment Panel is an expert panel of development professionals who determine development applications, particularly those applications which are larger and more complex and/or attract considerable community attention. The Independent Hearing and Assessment Panel consists of qualified industry professionals including persons from the fields of urban planning, urban design, the legal profession, architecture, environmental science and the like. Independent Hearing and Assessment Panels may also have community representatives.

Independent Hearing and Assessment Panels have been established at a number of NSW Council's for several years, including Liverpool, Lane Cove, Wollongong, Sutherland, Mosman, Warringah and Waverley. An Independent Hearing and Assessment Panel is considered industry best practice as it assists in providing transparency, confidence, integrity, professional (expert) advice and community input into the development assessment process, particularly for larger, more complex and potentially contentious development applications.

The Department of Planning and Environment have noted in their publication “Guidance for merged councils on planning functions, May 2016” that merged councils consider establishing an Independent Hearing and Assessment Panel.

The Independent Commission Against Corruption has recommended on a number of occasions to various Council’s and in various reports that Council’s consider measures to increase transparency in decision making and reduce opportunities for corruption, including the voluntary use of Independent Hearing and Assessment Panels.

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## **Benefits of Independent Hearing and Assessment Panels**

Acknowledged and potential benefits include:

- Removing much of the perception of decision making on political grounds, with emphasis on professional opinion and application merit;
  - Increasing transparency and probity in decision making, thus bettering community and industry perception;
  - Providing an avenue for applicants and the community to engage with the panel decision makers in a facilitated, but less formal manner than a Council meeting;
  - Encouraging development of the City through an applicant’s knowledge that they will get a fair hearing at Bayside;
  - Strengthening the Council’s case where a matter proceeds to the NSW Land and Environment Court, and
  - Further peer review of the assessment work put forward by the Council’s professional staff (this is of benefit to staff accountability, staff professional development and the community perception of the decision making process).
- 

## **Decision making role of an Independent Hearing and Assessment Panel – review only or determinative?**

The role of an Independent Hearing and Assessment Panel does vary between Councils. For example an Independent Hearing and Assessment Panel can review development matters and provide recommendations to the Council or Council committee, or the Independent Hearing and Assessment Panel can exercise the full delegation of the Council under section 377 of the Local Government Act 1993.

It is proposed that the Bayside Independent Hearing and Assessment Panel exercise the full delegation of the Council under section 377 of the Local Government Act 1993 for the matters which are referred to it. These matters are outlined below under “Matters to be referred to the Independent Hearing and Assessment Panel”.

If the Independent Hearing and Assessment Panel is a recommendation body only, the strong potential exists for the Independent Hearing and Assessment Panel to become another ‘process step’ in assessing development, which will add more time to the overall assessment, and will not meet the primary goal of the Independent Hearing and Assessment

Panel, which is to provide increased transparency and probity in decision making and take some of the politics out of development assessment and land use planning.

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### **Matters to be referred to the Independent Hearing and Assessment Panel**

It is recommended that applications which must be referred to the Bayside Independent Hearing and Assessment Panel include:

- any Planning Proposals received by Council; or
- any application where an offer of a voluntary planning agreement has been made to the Council; or
- any matter where the applicant or owner is a member of staff, Councillor, State or Federal Member of Parliament; or
- any application where the applicant or owner is the Council, or where the Council holds a commercial interest or recent commercial interest in the land, and the application has an estimated cost of development of more than \$1 million; or
- any application where a clause 4.6 variation is submitted to vary an LEP development standard by 10% or more; or
- an application where five (5) or more objections have been received that are considered valid and that cannot be resolved through the imposition of appropriate conditions, or any application where there is a significant level of community objection; or
- an application which involves the demolition of a heritage item, a contributory building within a Heritage Conservation Area or any application which invokes the heritage incentives provisions within the LEP; or
- any application which the General Manager or Director of Planning (or equivalent) considers should be considered and determined by the Independent Hearing and Assessment Panel.

Note: In relation to objections, pro-forma letters, petitions or multiple letters from a single address are counted as one objection.

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### **Proposed Members of an Independent Hearing and Assessment Panel**

The proposed Charter of the Bayside Independent Hearing and Assessment Panel attached to this report outlines matters such as the functions of the Independent Hearing and Assessment Panel, membership, appointment of members, requirements for a quorum, term of membership, voting rights and other administrative matters such as obligations of members. For ease of reference the Charter also include the Independent Hearing and Assessment Panel Code of Conduct.

The Bayside Independent Hearing and Assessment Panel is proposed to have the following membership (not dissimilar to other Independent Hearing and Assessment Panels in Sydney):

- A total of four (4) members – three (3) of whom could comprise any of the following professionals with relevant qualifications and experience, such as a lawyer, urban

designer, town planner; and one (1) community member, drawn from a 'pool' of five (5) community representatives – one from each Ward of the LGA.

- A two (2) year service period (with option to extend for a further 2 years);
- The lawyer as the Chairperson;
- A minimum of three (3) Independent Hearing and Assessment Panel members to form a quorum;
- The chairperson has the 'casting vote' if votes are tied; and
- Meetings are open to the public (although the Independent Hearing and Assessment Panel will have discretion to close part of the meeting in order to protect commercial information or to deliberate after public representations have been made by the applicant and interested residents).
- Site inspections by the Independent Hearing and Assessment Panel are undertaken as a group, not individually.

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### **Applicant and community involvement in the Independent Hearing and Assessment Panel**

Applicant and community involvement in the Bayside Independent Hearing and Assessment Panel is discussed in more detail in the draft Charter (see attachment).

It is intended that Panel would engage with the applicant or representative and the community not unlike the Council meeting process, albeit with less formality. In short the engagement would work as follows.

- Panel meeting Agenda's will be made available on the Council website at least five calendar (5) days prior to the meeting.
- Generally any person wishing to address the panel is to register at least 24 hours prior to the meeting.
- The applicant or their representative or a person who has made a written submission to an application is eligible to speak to the Panel, and should keep to the timeframe allotted by the Chairperson.
- Minutes of the Panel will be made available on the Council website as soon as practicable.

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### **Independent Hearing and Assessment Panel Charter & Code of Conduct**

The Independent Hearing and Assessment Panel Charter in draft form includes the various matters/provisions within this report and also includes a Code of Conduct (Code). The Code is based on the Model Code of Conduct and the Code of Conduct for members of Joint Regional Planning Panels.

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## **Financial Implications**

Additional funds will be required above the current budget as the Independent Hearing and Assessment Panel has not been specifically budgeted for.

The General Manager will be responsible for determining the remuneration of the members of the Panel.

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## **Community Engagement**

It is recommended that the General Manager implement an Expression of Interest process for one community member from each Ward of the City to be a member of the Independent Hearing and Assessment Panel.

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## **Attachments**

Draft Charter of the Bayside Council Independent Hearing and Assessment Panel

# Bayside Council

Serving Our Community

## Charter Independent Hearing and Assessment Panel

**DRAFT** 12 October 2016



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Charter Bayside Independent Hearing and Assessment Panel

File: F14/64 Document: 16/120591

Adopted:

Class of document: Council Policy

Enquiries: Governance/Development Services

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# **1 Aim of the Bayside Independent Hearing and Assessment Panel**

The Bayside Independent Hearing and Assessment Panel (the Panel) was formed by resolution of the Council on October 12, 2016. The aim of the Bayside Independent Hearing and Assessment Panel is to provide greater transparency, probity and public confidence in the decision making process for development applications, by using an independent panel of industry related professionals and community representatives.

## **2 Functions of the Bayside Independent Hearing and Assessment Panel**

The functions of the Bayside Independent Hearing and Assessment Panel are to:

- i. Determine development applications, modifications of applications and reviews of development applications, except as limited by Section 377 of the Local Government Act 1993, on behalf of and in accordance with the delegations given by the Council;
- ii. Provide an independent and open forum for the community, applicants and interested persons to make submissions to and express their views on applications before the Panel;
- iii. Support the development, urban design and community outcomes consistent with the relevant planning legislation, local development, strategic planning and place making controls.

## **3 Matters to be referred to the Bayside Independent Hearing and Assessment Panel**

Applications which must be referred to the Bayside Independent Hearing and Assessment Panel include:

- i. Any Planning Proposals received by the Council; or
- ii. Any application where an offer of a voluntary planning agreement has been made to the Council, or
- iii. Any matter where the applicant or owner is a member of staff, Councillor, Administrator, State or Federal Member of Parliament; or
- iv. Any application where the applicant or owner is the Council, or where the Council holds a commercial interest or recent commercial interest in the land, and the application has an estimated cost of development of more than \$1 million; or
- v. Any application where a clause 4.6 variation is submitted to vary an LEP development standard by 10% or more, or
- vi. An application where five (5) or more objections have been received that are considered valid and that cannot be resolved through the imposition of appropriate conditions, or any application where there is a significant level of community objection, or

- vii. An application which involves the demolition of a heritage item, a contributory building within a Heritage Conservation Area or any application which invokes the heritage incentives provisions within the LEP; or
- viii. Any application which the General Manager or Director Planning (or equivalent) considers should be considered and determined by the Bayside Independent Hearing and Assessment Panel.

Note: In relation to objections, multiple letters from a single address will be counted as one objection.

## **4 Constitution of the Bayside Independent Hearing and Assessment Panel**

### **4.1 Members**

The Bayside Independent Hearing and Assessment Panel is a body constituted for the purpose of the delegation of functions by the Council under Section 377 of the Local Government Act and consists of the following members.

- i. A total of four (4) members – three (3) of whom would comprise any of the following professionals with relevant qualifications and experience, such as a lawyer, urban designer, town planner; and one (1) community member, drawn from a ‘pool’ of five (5) community representatives – one from each Ward of the LGA.
- ii. A lawyer who is currently admitted to practice law in NSW as a Barrister or Solicitor; or non-lawyers with significant levels of experience such as retired Land and Environment Court Commissioners; and
- iii. A professional expert with a University degree in urban design or architecture; and
- iv. A professional expert with a University degree in town/urban planning.

The Chairperson may request that one (1) additional community representative from the pool of community members, be available, to attend meetings for controversial or significant items.

### **4.2 Appointment**

Members of the Bayside Independent Hearing and Assessment Panel will be appointed by the General Manager by a Memorandum of Understanding signed by each member and the General Manager.

### **4.3 Term**

The term of the members of Bayside Independent Hearing and Assessment Panel as appointed by the General Manager will be for a period of two (2) years with an option to extend the term for a further two (2) years, at the discretion of the General Manager.

### **4.4 Remuneration**

A member or an alternate member will be paid such remuneration as the General Manager will from time to time determine in respect of the member.

#### **4.5 Chairperson**

The Chairperson of the Bayside Independent Hearing and Assessment Panel will be the lawyer member. Should the lawyer not be present / available for a meeting the members attending will elect a Chairperson.

#### **4.6 Alternate members**

The General Manager may, from time to time, appoint a person or a pool of persons to be alternate members, and may revoke any such appointment. While acting in place of a member, the alternate member has all the functions and obligations of the member and is taken to be a member.

#### **4.7 Vacancies**

A members position will become vacant if the members dies, completes a term of office, resigns in writing to the General Manager, or is removed from the position (notice or reason of the removal of the member is not required to be given by the General Manager).

#### **4.8 Quorum**

A minimum of three Independent Hearing and Assessment Panel members will form a quorum for a meeting.

### **5 Bayside Independent Hearing and Assessment Panel members obligations**

All Bayside Independent Hearing and Assessment Panel members are required to meet the following obligations.

- i. All provisions of this Charter and the Council's Code of Conduct.
- ii. (Except as required to properly perform their duties) member/s must not disclose any confidential information (as advised by the Council) obtained in connection with the functions.
- iii. Members will not make verbal or written statements of any description to any media or social media network, group or platform or to any person associated with such organisations, in connection with any work undertaken relating to the members functions.
- iv. Members may communicate with the General Manager, Director Planning (or equivalent) and the Manager Development Services or Manager Strategic Planning (or equivalent) or other officers as nominated by the General Manager.
- v. Members must not approach or communicate with an applicant or a person representing an applicant, or a Councillor/Administrator, except during the course of a Panel meeting where the particular application concerned forms part of the agenda and the applicant/representative/Councillor/Administrator has a right to be heard by the Panel.
- vi. To act in the best interests of the Bayside Council and its community.

- vii. To take into account any relevant planning legislation, local development, strategic planning and place making controls, and to comply with statutory provisions, particularly the Local Government Act 1993 and Environmental Planning and Assessment Act 1979.
- viii. To attend all meetings reasonably required by the General Manager.
- ix. To have read and be familiar with the documents provided by Council prior to attending an Bayside Independent Hearing and Assessment Panel meeting.
- x. The relationship between the Council and the Bayside Independent Hearing and Assessment Panel members is that of a client and independent contractor, and nothing will be taken as constituting the Bayside Independent Hearing and Assessment Panel member/s or any of their employees as an employee or servant of the Council.
- xi. Nothing causes the Bayside Independent Hearing and Assessment Panel members or any of their employees or agents to be the legal representative, agent, joint venturer or partner of the Council; or to have authority to assume or create any obligations of any kind or to make any representations or warranties on behalf of the Council or to bind the Council in any respect (unless exercising its delegations in the determination of development applications).

## **6 Meeting processes**

### **6.1 Meeting notification and registering to address the Panel**

- i. Bayside Independent Hearing and Assessment Panel meeting agendas will be made available to the Panel members in soft copy at least five calendar (5) days prior to the meeting, and will be available on the Council website at least five calendar (5) days prior to the meeting.
- ii. The applicant or their representative or a person who has made a written submission to an application is eligible to speak to the Panel. Any person wishing to address the Panel is to register through the “Community Access – Request to Speak” registration process, with Council by midday the day before the meeting.

### **6.2 Site inspections by the Panel**

- i. Site inspections will be held where possible on the day of the meeting, in respect of each matter to go before the Panel. Site inspections will be held collectively as a Panel and may be accompanied by relevant senior staff of the Council.
- ii. The site inspection will be under the control of the Chairperson and will not be used as a platform for lobbying by the applicant and /or objector.
- iii. Adjoining and/or affected properties will be visited by the Panel if the objector has first registered their interest for an inspection or if the Panel otherwise agrees to do so at its discretion. It is not a requirement for the Panel to visit an objector’s property to complete its assessment.
- iv. The Chairperson will call for declarations of pecuniary or non-pecuniary interests from members of the Panel that may prevent them from participating

in or considering any particular item on the agenda. If the member so declares an interest they will take no part in the site inspection or the Panel meeting in relation to that item.

### **6.3 Bayside Independent Hearing and Assessment Panel public meeting**

- i. The Bayside Independent Hearing and Assessment Panel meeting is a public meeting. The meeting will be held on a monthly basis or more often at the discretion of the General Manager.
- ii. However, the Bayside Independent Hearing and Assessment Panel may close part of a public meeting to the public where the Panel is of the opinion that such action is strictly necessary in order to protect commercial information of a confidential nature.
- iii. The Chairperson will open the meeting and call for declarations of pecuniary or non-pecuniary interests from members of the Panel that may prevent them from participating in or considering any particular item on the agenda. If the member so declares an interest they will take no part in the site inspection or Panel meeting in relation to that item.
- iv. Unless the Panel otherwise permits, no resident, objector, applicant or supporter who addresses the Panel at any meeting of the Panel may speak for more than five (5) minutes in respect of any one matter before any particular meeting. The Chairperson is to exercise discretion and allow for an extension of time, subject to the general agreement of the Panel, as required to ensure all issues are properly considered. As it is acknowledged that this discretion may be exercised more frequently at Site Inspections, it is not required to obtain general agreement of the Panel in this instance.
- v. Where, at any public meeting, there are a large number of objectors with a common interest, the Bayside Independent Hearing and Assessment Panel may, in its absolute discretion, hear a representative of those persons with a view to discharging its responsibilities in a timely manner.
- vi. The meetings and other process of the Bayside Independent Hearing and Assessment Panel will be undertaken in accordance with any guideline issued by the General Manager from time to time.

### **6.4 Bayside Independent Hearing and Assessment Panel assessment**

- i. The Panel will consider the Council officers report. The Panel will not receive substantive additional documentation to be included in the assessment during the meeting.
- ii. Each member of the Bayside Independent Hearing and Assessment Panel, unless otherwise disentitled to vote, is entitled to one vote. However, the person presiding at a meeting of the Bayside Independent Hearing and Assessment Panel has, in the event of an equal number of votes, a second or casting vote.
- iii. Deliberations and decisions of the Bayside Independent Hearing and Assessment Panel will be conducted and made in open session, with the exception of matters that relate to Section 10A (2) (g) of the Local Government

Act 1993 where the Panel on behalf of Council: *“resolves itself into closed session with the press and public excluded by reasons of advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.”*

- iv. The Bayside Independent Hearing and Assessment Panel will hear submissions on behalf of the applicant and any other interested parties in open session.
- v. Following any deliberations in closed session (refer 6.4 iii. above) the Bayside Independent Hearing and Assessment Panel must reconvene the public meeting to vote and deliver its decision(s).
- vi. In the event that the Bayside Independent Hearing and Assessment Panel determines an application contrary to the officer's recommendation the Bayside Independent Hearing and Assessment Panel will publish its reasons for that decision.

## **6.5 Minutes**

- i. The Minutes of the Bayside Independent Hearing and Assessment Panel meeting will be completed as soon as practicable and will be published on the Council website generally within seven (7) days of the meeting.
- ii. The Decision Notice will be provided to the applicant. Those parties which have made written submissions will be made aware of the decision in writing.

## **6.6 Bayside Independent Hearing and Assessment Panel support**

The General Manager may appoint an officer of the Council as a secretary to the Panel and that person may be present to assist the Panel in taking Minutes or providing other assistance as required.

## **6.7 Bayside Independent Hearing and Assessment Panel operations review**

At the first meeting of the Bayside Independent Hearing and Assessment Panel the Chairperson may consider the provisions of this Charter and may make a recommendation to the General Manager as to those provisions. The Bayside Independent Hearing and Assessment Panel should review its operations annually and report back to the General Manager.

# **7 Document control**

## **7.1 Review**

This Charter will be reviewed every two (2) years or at the request of the General Manager. The Director Planning (or equivalent) or the Manager Governance may approve non-significant and/or minor editorial amendments that do not change the substance of this Charter.

## 7.2 Version history

Version	Release Date	Author	Reason for Change
1.0	12 October 2016	Luis Melim Anthony Newland	Draft for consideration

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## Council Meeting

**12/10/2016**

Item No	9.2
Property	<b>15 Aloha Street, Mascot</b>
Proposal	Demolition of the existing dwelling and structures, subdivision of the site into two Torrens Title allotments and construction of two x two storey semi-detached dwelling houses.
Report by	Anthony Newland, Manager Statutory Planning Angela Lazaridis, Development Assessment Planner
Application No	(B) DA 2016/052

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## Council Resolution

Resolved by the Administrator:

- 1 That Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) of Botany Bay Local Environmental Plan 2013 and that the proposed development is in the public interest because it is consistent with the objectives of the FSR standard and the objectives for the R2 Low Density Residential zone; and
  - 2 That Council approve Development Application No. 16/52 for the demolition of the existing dwelling and structures, subdivision of the site into two Torrens Title allotments and construction of two x two storey semi-detached dwelling houses at 15 Aloha Street, Mascot, subject to conditions in the attached Schedule.
- 

## Officer Recommendation

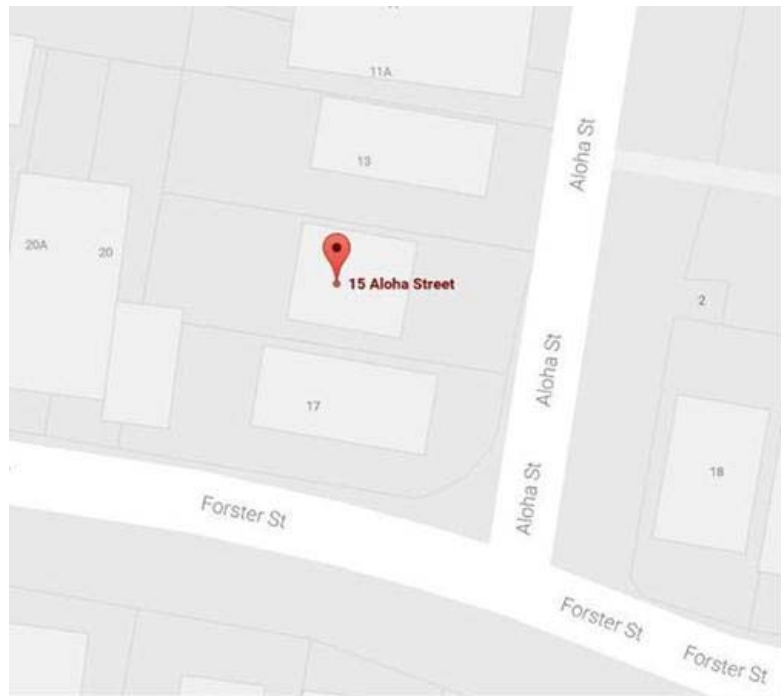
- 1 Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) of Botany Bay Local Environmental Plan 2013 and that the proposed development is in the public interest because it is consistent with the objectives of the FSR standard and the objectives for the R2 Low Density Residential zone; and
  - 2 Council approve Development Application No. 16/52 for the demolition of the existing dwelling and structures, subdivision of the site into two Torrens Title allotments and construction of two x two storey semi-detached dwelling houses at 15 Aloha Street, Mascot, subject to conditions in the attached Schedule.
-



## Attachment

Development Application  
No. 16(15) - 15 Aloha  
Street, Mascot - Planning  
Assessment Report.

## Location Plan



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## Council Meeting

**12/10/2016**

Item No	9.2
Property	15 Aloha Street, Mascot
Proposal	Demolition of the existing dwelling and structures, subdivision of the site into two Torrens Title allotments and construction of two x two storey semi-detached dwelling houses.
Application No	DA -16/52

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## Application Details

<b>Application Number:</b>	2016/52
<b>Date of Receipt:</b>	11 April 2016
<b>Property:</b>	15 Aloha Street, Mascot; Lot 34 in DP 14642
<b>Owner:</b>	Hong Cai and Haiping Sun
<b>Applicant:</b>	Nathan Lester Architecture
<b>Proposal:</b>	Demolition of the existing dwelling and structures, subdivision of the site into two Torrens Title allotments and construction of two x two storey semi-detached dwelling houses
<b>Recommendation:</b>	Support a variation under clause 4.6 to the FSR development standard and approve the development, subject to conditions.
<b>Value of Development</b>	\$572,138.00
<b>No. of Submissions:</b>	Round One- Three objections Round Two- Three objections
<b>Author:</b>	Angela Lazaridis, Senior Development Assessment Planner
<b>Date of Report:</b>	26 September 2016

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## Recommendation

1. That Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) of Botany Bay Local Environmental Plan 2013 and that the proposed development is in the public interest because it is consistent with the objectives of the FSR standard and the objectives for the R2 Low Density Residential zone; and
  2. That Council approve Development Application No. 16/52 for the demolition of the existing dwelling and structures, subdivision of the site into two Torrens Title allotments and construction of two x two storey semi-detached dwelling houses at 15 Aloha Street, Mascot, subject to conditions in the attached Schedule.
-

## Summary

The former City of Botany Bay received Development Application No. 16/52 on 11 April 2016 seeking consent for the demolition of the existing dwelling and structures, subdivision of the site into two Torrens Title allotments and construction of two x two storey semi-detached dwelling houses at 15 Aloha Street, Mascot.

The application was placed on public exhibition for a fourteen (14) day period from 4 May to 18 May 2016. Three objections were received as part of the proposal. Amended plans were notified for a fourteen day period between 15 June to 29 June 2016. Three objections were received from the original objectors.

Key issues raised in the assessment of the application relate to floor space ratio, solar amenity and subdivision pattern. One of the dwellings does not comply with the FSR requirement, having a total FSR of 0.52:1 (117.37sqm). This is a variation of 6sqm or 5%. The departure in FSR is acceptable. The second dwelling complies with the FSR.

The development proposes smaller allotments (224.10sqm and 221.35sqm). The size of the lots are not inconsistent with smaller sized lots along Aloha Street, Forster Street and Oliver Street. There are examples of semi-detached dwelling houses in the street therefore the proposal is not out of character with the area. The report (see Note 2) below goes into greater detail on the subdivision pattern size and street frontages. In regards to solar amenity, the development is located on an east to west orientated site therefore shadow impact will occur onto the southern neighbouring property. A detailed assessment is provided in the report (Note 3) below. The site currently has a two storey dwelling house which contributes to some overshadowing to the northern elevation windows at 17 Aloha Street. As part of the original proposal, the windows were completely overshadowed between 9am to 3pm June 21 and March/September. The applicant has amended their plans removing one of the bedrooms from the rear of 15A Aloha Street to allow for a greater degree of sunlight. The living room window will receive sunlight from 2pm onwards June 21. This is considered acceptable.

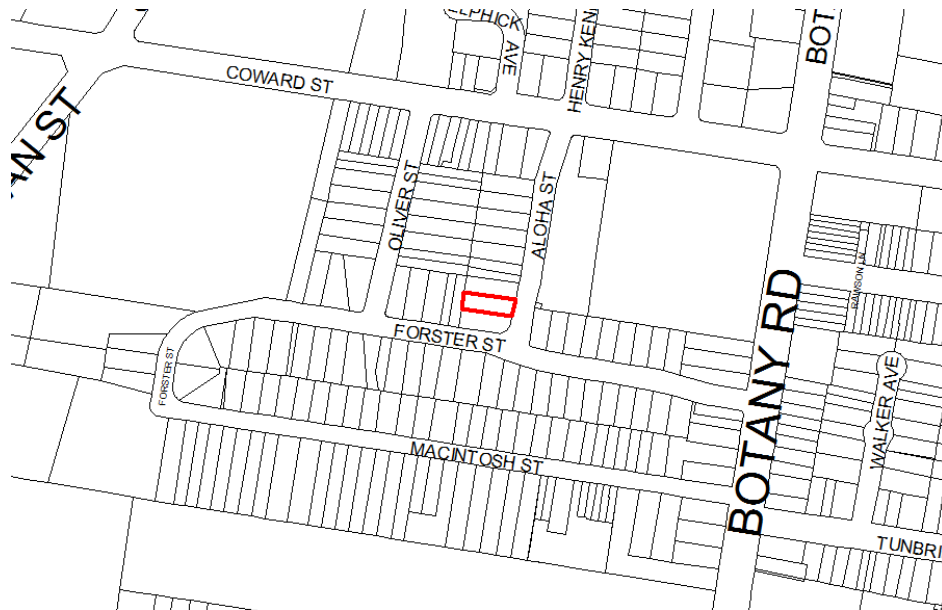
The development application has been assessed in accordance with the relevant requirements of the *Environmental Planning and Assessment Act 1979* and is recommended for approval, subject to conditions of consent.

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## Background

### Site Description

The site is legally known as Lot 34 in DP 14642. The subject site is located on the western side of Aloha Street between Coward Street to the north and Forster Street to the south. The site has an east to west orientation with east being the front of the site (Aloha Street) and west being the rear of the site. The site is located in the R2 Low Density Residential zone.



**Figure 1. Locality Plan**



**Figure 2. Aerial map of subject site**

The subject site is rectangular in shape with a total area of 445.3sqm. The site has a street frontage width of 12.2 metres, a rear boundary width of 12.19 metres, a northern side boundary depth of 36.735 metres and a southern side boundary depth of 36.53 metres. The site is generally flat with a maximum 200mm cross fall.

The site currently contains a two storey detached masonry and timber framed weatherboard dwelling house with aluminium windows and a hipped terracotta tiled roof. The rear of the site contains a large grassed area and the front yard contains small masonry retaining walls with a paved front yard and driveway along the northern side of the site. The rear of the site comprises of a covered patio area and the north-western corner comprises of a single garage and small sheds.





**Figure 3. Front elevation of subject site**



**Figure 4. Rear elevation of existing dwelling**



**Figure 5. Existing rear yard**

The adjoining property to the north and south are single storey dwelling houses constructed out of brick and terracotta roof tiles. 17 Aloha Street comprises of a detached carport and

garage with access off Forster Street and 13 Aloha Street comprises of a carport along the southern side of their dwelling.

Development surrounding the site consists of a mixture of single and two storey detached and semi-detached dwellings. The subdivision pattern is mixed in shape and size. The site is directly opposite Heritage Item I68 'Memorial Park' as identified within Schedule 5 of BBLEP 2013.

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## History

The application was placed on public exhibition for a fourteen (14) day period from 4 May to 18 May 2016. Three (3) objections were received as part of the proposal.

On 19 May 2016, Council requested additional information relating to scaling of the plans, new survey plan, amended Clause 4.6 relating to FSR, greater justification on the subdivision pattern, reduction in the bulk and scale of the development and amended shadow diagrams, reconfiguration of the first floor by removing the rumpus room off a balcony, and greater consideration of the character style. This information was provided to Council on 24 May 2016.

The amended plans were notified for a fourteen day period between 15 June to 29 June 2016. Three objections were received from the original objectors.

A site inspection was carried out on 16 June 2016 on the site.

On 29 July 2016, after an internal meeting with Council officers, Council requested that the applicant reduce the bulk of the development from the rear so that the rear living room window on the neighbouring site at 17 Aloha Street would receive the minimum 2 hours of sunlight during June 21. This information was provided on 8 August 2016. An amended variance to the FSR was provided in September 2016.

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## Proposal

The development application seeks consent for the demolition of the existing dwelling and structures, subdivision of the site into two Torrens Title allotments and construction of two x two storey semi-detached dwelling houses.

The specifics of the proposal are as follows:

### Demolition and Site Clearing

- Demolition of all existing structures on the site including the existing dwelling house, detached garage, covered patio and shed;
- Removal of three trees (one street tree, one within the front yard and one small tree within the rear yard).

### Subdivision

- Subdivision of the site into two separate allotments (15 and 15A) with No. 15 having a site area of 224.10sqm and No. 15A having a site area of 221.35sqm;

- 15 Aloha Street will have a street frontage width of 6.182 metres, a rear boundary width of 6.101 metres and a northern side boundary depth of 36.735 metres.
- 15A Aloha Street will have a street frontage of 6.032 metres, a rear boundary width of 6.096 metres and southern side boundary depth of 36.53 metres.
- The sites have a common boundary depth of 36.478 metres.

### Ground Floor

- Construction of the ground floor will include a front entry, an open plan kitchen, living and dining room, laundry/bathroom and single garage;
- Installation of two (2) windows, one sliding door to the rear elevation and one door along the southern side of the dwelling;
- Installation of a 2,000L rainwater tank on each site and located on the side of the dwellings;
- Rear timber deck at the rear of each dwelling; and
- Landscaping works at the front and rear yard including planting to the rear and front yard and planting of two street trees.

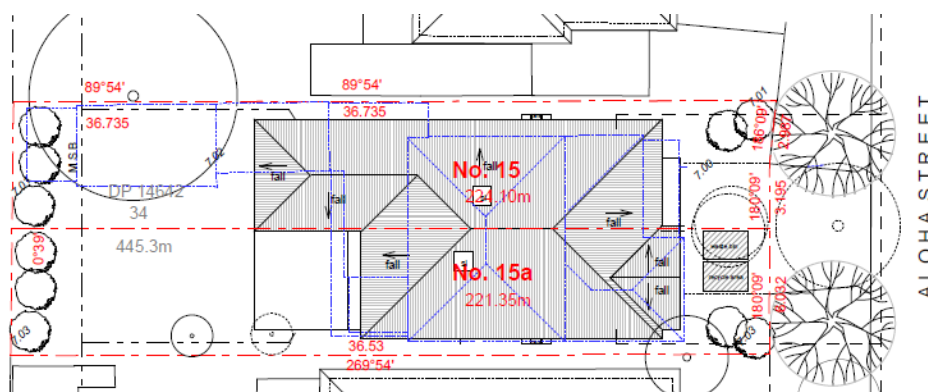
### First Floor

- 15 Aloha Street comprises of three bedrooms, one study, bathroom and staircase. The front elevation comprises of a 4.3sqm balcony at the front of the site and a 7sqm rear balcony;
- 15A Aloha Street comprises of two bedrooms, one study, bathroom and staircase. The front elevation comprises of a 6.44sqm rear balcony;
- Installation of seven (7) windows and two (2) sliding doors at 15 Aloha Street and four (4) windows and one sliding door at 15A Aloha Street.

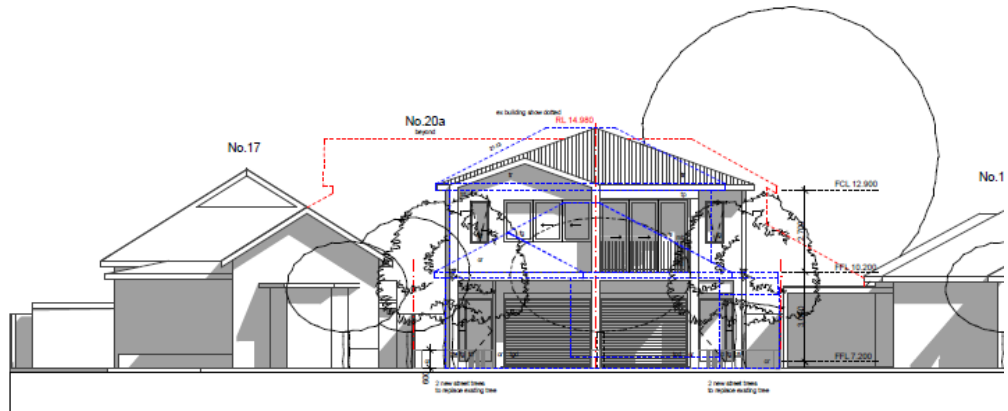
### Materials of Construction

The proposed development will be constructed using the following materials and colours:

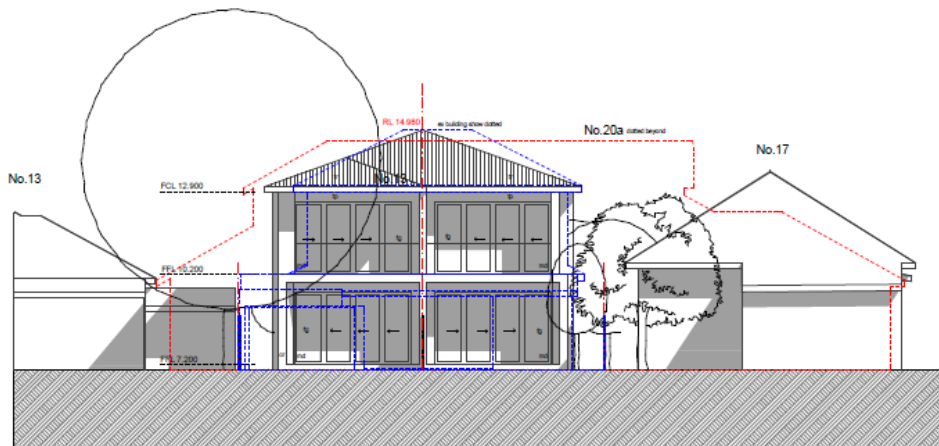
- Rendered brick walls on first floor and exposed brick on ground floor;
- Aluminium windows and sliding doors;
- External operable horizontal louvres;
- Timber decking;
- Panel garage doors.



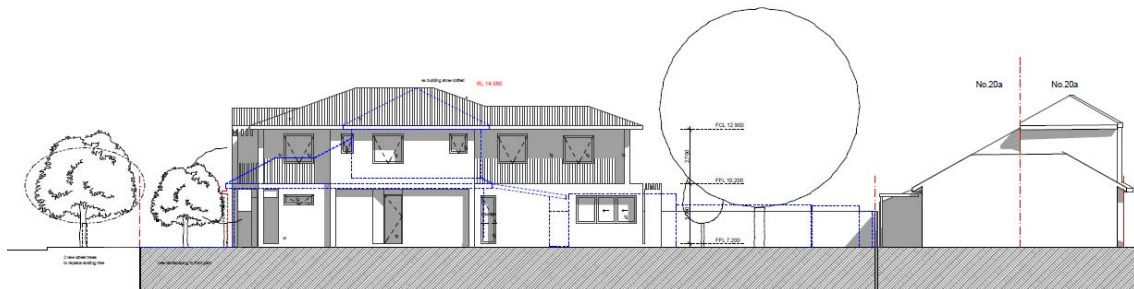
**Figure 6. Proposed Site Plan**



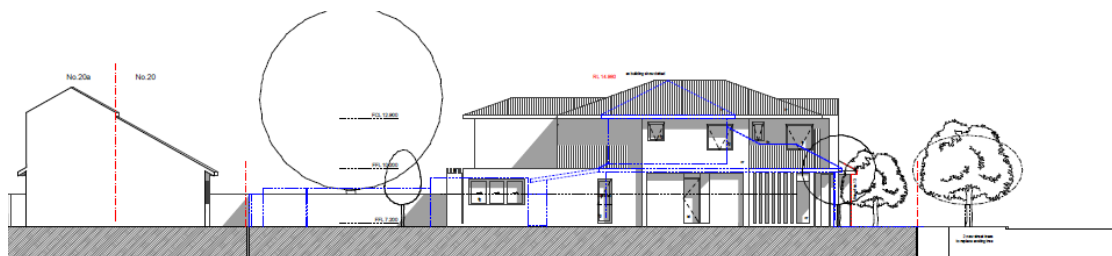
**Figure 7. Proposed Eastern Elevation**



**Figure 8. Proposed Western Elevation**



**Figure 9. Proposed Northern Elevation**



**Figure 10. Proposed Southern Elevation**



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## Referrals

The development application was referred to the former City of Botany Bay's Council's Development Engineer, Landscape Architect and Environmental Health Officer for comments. Appropriate conditions have been imposed on the development consent to address the relevant issues raised. The development engineer has placed a condition in the consent requesting that the development have a higher finished floor level as the site and area is impacted by flooding. This will raise the dwelling by 600mm. It is not considered that the additional height will significantly impact the amenity of the neighbouring properties as the height will continue to be compliant and solar amenity will not change significantly.

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## Statutory Considerations

An assessment of the application has been undertaken pursuant to the provisions of the *Environmental Planning and Assessment Act, 1979*.

### **S.79C(1) - Matters for Consideration – General**

#### **S.79C(1)(a)(i) - Provisions of Environmental Planning Instruments**

The following Environmental Planning Instruments are relevant to this application:

#### **State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

*State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004* (BASIX) applies to the proposed development. The development application was accompanied by BASIX Certificate No. 714002M\_02 dated 6 April 2016 and prepared by The House Energy Rating Company of Aust. Pty Ltd committing to environmental sustainable measures.

#### **State Environmental Planning Policy No. 55 – Remediation of Land**

The provisions of SEPP 55 have been considered in the assessment of the development application, along with the requirements of Part 3K- Contamination of the Botany Bay Development Control Plan (BBDCP) 2013. The likelihood of encountering contaminated soils on the subject site is considered to be extremely low given the following:

- 1 The site appears to have been continuously used for residential purposes;
- 2 The adjoining and adjacent properties are currently used for residential purposes;
- 3 The site and surrounding land were not previously zoned for purposes identified under Table 1 of the contaminated land-planning guide in SEPP 55, in particular industrial, agricultural or defence uses.

On this basis, the site is considered suitable in its present state for the proposed residential development. No further investigations of contamination are considered necessary.

## Botany Bay Local Environmental Plan 2013

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

Relevant Clauses Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
Land use Zone	Yes	The site is zoned R2 Low Density Residential zone under the BBLEP 2013.
Is the proposed use/works permitted with development consent?	Yes	The proposed use is permissible with Council's consent under the BBLEP 2013.
Does the proposed use/works meet the objectives of the zone?	Yes	<p>The proposed development is consistent with the objectives of the R2 zone which are:</p> <ul style="list-style-type: none"> <li><i>To provide for the housing needs of the community within a low density residential environment;</i></li> <li><i>To enable other land uses that provide facilities or services to meet the day to day needs of residents;</i></li> <li><i>To encourage development that promotes walking and cycling.</i></li> </ul>
Does Schedule 1 – Additional Permitted Uses apply to the site?  If so what additional uses are permitted on the site?	N/A	Schedule 1 does not apply to the site.
What is the height of the building?  Does the height of the building comply with the maximum building height?	Yes	<p>A maximum height of 9 metres applies to the subject site.</p> <p>15 Aloha Street = 7.98m from the NGL 15A Aloha Street = 7.98m from the NGL.</p> <p>The maximum height of the dwellings complies with Council's requirements under the BBLEP 2013.</p>
What is the proposed FSR?  Does the FSR of the building comply with the maximum FSR?	<b>No – Refer to Note 1 below</b>	<p>The maximum FSR requirement is 0.5:1</p> <p>15 Aloha Street has a site area of 224.10sqm while 15A Aloha Street has a site area of 221.35sqm.</p>

Relevant Clauses Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
		<p><u>15 Aloha Street</u></p> <p>Proposed GFA: 117.37sqm Proposed FSR: 0.52:1</p> <p><u>15A Aloha Street</u></p> <p>Proposed GFA: 102.44sqm Proposed FSR: 0.46:1</p> <p>The FSR for 15A Aloha Street complies with Council's requirements under the BBLEP 2013.</p> <p>The FSR for 15 Aloha Street does not comply with the FSR requirement. A Clause 4.6 has been provided for consideration and is discussed in Note 1 below.</p>
Is the proposed development in a R3/R4 zone? If so does it comply with site of 2000m <sup>2</sup> min and maximum height of 22 metres and maximum FSR of 1.5:1?	N/A	The site is not located within the R3 Medium Density Residential or R4 High Density Residential zone.
Is the site within land marked "Area 3" on the FSR Map?	<b>No – Refer to Note 1 below</b>	The site is located in the 'Area 3' zone. Refer to Note 1 below relating to FSR.
If so, does it comply with the sliding scale for FSR in Clause 4.4A?		
Is the land affected by road widening?	N/A	The subject site is not affected by road widening.
Is the site listed in Schedule 5 as a heritage item or within a Heritage Conservation Area?	N/A	The site is not listed as a heritage item, nor is it located within a Heritage Conservation Area. However, the site is directly opposite Heritage Item I68- Memorial Park.
<p>The following provisions in Part 6 of BBLEP apply–</p> <ul style="list-style-type: none"> <li>6.1 – Acid Sulfate Soils</li> </ul>	Yes	Class 4 ASS- The likely disruption or effect on the soil conditions, in addition to possible site contamination has been

Relevant Clauses Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
<ul style="list-style-type: none"> <li>6.2 – Earthworks</li> <li>6.3 – Stormwater Management</li> <li>6.9 – Development in areas subject to aircraft noise</li> </ul>	<p>Yes</p> <p>Yes</p> <p>Yes</p>	<p>appropriately considered and is found to be acceptable in this instance. As there is no significant excavation, an Acid Sulfate Soil Management Plan is not warranted.</p> <p>The proposal involves minor excavation for footings. The amount of excavation is acceptable.</p> <p>The proposed development has provided two 2,000L rainwater tanks to be installed on each site. All rainwater collected from the roof will be directed towards these rainwater tanks as well as the absorption pits on the site. Appropriate conditions have been recommended in the consent.</p> <p>The provisions of AS2021-2000 have been considered in the assessment of the development application, as the subject site is located within the 20-25 ANEF contour. The proposal is permissible subject to a condition requiring compliance with the requirements of AS2021-2000. As such, the development is considered to be acceptable with regard to the provisions contained in Clause 6.9.</p>

**Note 1- Clause 4.6 Variation to FSR**

The site is located within 'Area 3' on the FSR map and therefore Clause 4.4A of the BBLEP 2013 applies to the proposal. The objectives of this clause are as follows:

- a) *To ensure that the bulk and scale of development is compatible with the character of the locality; and*
- b) *To promote good residential amenity.*

Pursuant to Clause 4.4A(3)(d), the proposal is defined as a 'semi-detached dwelling' and not defined as a 'dwelling house' or 'multi-dwelling' housing, and as such would fall under the category of 'all other development for the purpose of residential accommodation'. Therefore the maximum permitted FSR is 0.5:1. The FSR for a dwelling house on the subdivided lots is 0.8:1. An FSR of 0.6:1 would apply for the site should subdivision not be involved.

The proposal is for the demolition of the existing dwelling and structures, subdivision of the site into two Torrens Title allotments and construction of two x two storey semi-detached dwelling houses. The following table demonstrates the relevant lot sizes, the proposed gross floor area and floor space ratio of the two allotments:

Proposed	15 Aloha Street	15A Aloha Street
Site Area	224.10sqm	221.35sqm
GFA	117.32sqm	102.44sqm
FSR	0.52:1	0.46:1
Variation to Standard	6sqm (5%)	-

The applicant has submitted a submission to Clause 4.4A, namely that the proposed development does not strictly comply with the 0.5:1 FSR standard as it is unreasonable or unnecessary in this circumstance and that there are exceptional circumstances for its non-compliance. Excerpts of the applicant's response are provided below:

*"Notwithstanding, the maximum permitted FSR for a dwelling house on this site is 0.60:1 by virtue of Clause 4.4(3)(a) of the LEP, and one of the proposed semi-detached buildings has a FSR of 0.53:1 which represents a minor departure by only 5% from the 0.5:1 FSR development standard. For each of the proposed lots of 222.65sqm, a maximum FSR of 0.8:1 would apply under this clause, and 0.9:1 as complying development under the General Housing Code of the Codes SEPP.*

*As demonstrated in the calculations schedule provided on Drawing No.A 104 of the architectural drawings, the proposed building is compliant in all design aspects with the applicable numerical LEP standards and DCP controls which apply to the development of a single dwelling house on the site.*

*The proposed building has been designed to present the character of a single dwelling house to the street. The front setbacks of the dwellings have been staggered and proposed materials and finishes, roof forms and other building design elements employed to achieve asymmetry between the two dwellings so that the overall appearance and character is that of a single dwelling house rather than a symmetrical pair of semi-detached dwellings. The hipped and gable tiled roof forms of the proposed building are both consistent and compatible with those found in the existing streetscape.*

*The proposed building is of similar bulk and scale to that permitted for a single dwelling house on the site, but provides greater side and rear boundary setbacks than the minimums required for a dwelling house.*

*The proposed building is readily compliant in building height, site coverage, front, side and rear boundary setbacks and provision for on-site car parking, private open space and landscaped area for each dwelling. The proposed building also readily meets the DCP's requirements for solar access to the north facing living room window and rear west facing yard area and windows of the neighbouring southern single storey dwelling house at No.17 Aloha Street, and will not result in any view loss from neighbouring or surrounding residential properties or the public domain.*

*The future evolving character of the immediate locality is expected to be one of both single and two storey, low density housing forms, comprising predominantly detached dwelling houses with some semi-detached dwellings interspersed, as evidenced by the new two storey dwelling houses and first floor additions to existing dwellings of more recent construction in the local area, and noting the proximity of local housing to the commercial centre and bus services on Botany Road, local parkland and recreational sporting facilities, Mascot Public School and Mascot Station. The permitted two storey scale of low density residential development in the locality both envisages and promotes this existing and desired future character for the locality. The proposed development is consistent with the relevant desired future character*

*objectives and controls for low density residential development within the Mascot Character Precinct under Part 8 of the Botany Bay Development Control Plan 2013.”*

Consent may be granted for the proposal subject to Clause 4.6, notwithstanding that the proposal would contravene this development standard, as the FSR development standard is not expressly excluded from this Clause (Cl 4.6(2)). The applicant has provided a written request justifying the contravention of the development standard pursuant to Clause 4.6(3) of BBLEP 2013, which is considered below. The matters for consideration pursuant to Clause 4.6(4) and (5) are also considered below. Clause 4.6 (6), (7) and (8) are not relevant to the current proposal.

In *Wehbe v Pittwater Council* [2007] NSW LEC 827 (*Wehbe*), the Land and Environment Court set out the following 5 different ways in which an objection to a development standard may be well founded:

- 1 *the objectives of the standard are achieved notwithstanding non-compliance with the standard;*
- 2 *the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
- 3 *the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
- 4 *the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
- 5 *the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 & NSW LEC 90 (*Four2Five*), the Court established that the construction of Clause 4.6 is such that it is not sufficient for the applicant to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standards, as required by Clause 4.6(3)(b), or for the consent authority to be satisfied that the proposed development is consistent with the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, as required by Clause 4.6(4)(a)(ii). The Court outlines, that Clause 4.6 requires that in addition to the requirements listed above, the applicant must also establish that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, as is required by Clause 4.6(3)(a). This may involve reference to reasons 2-5 outlined within *Wehbe*.

The requirements of 4.6(3)(a), 4.6(3)(b), and 4.6(4)(a)(ii) are each addressed separately below:

Cl. 4.6(3)(a): Is the development standard unreasonable or unnecessary in the circumstances of the case?

Officer's Comments:

The proposed development is non-compliant on one site (15 Aloha Street). There is a minor variance in the amount of gross floor area that is provided which is approximately 6sqm over the FSR requirement for the site which equals a 5% variance. The additional GFA will not result in excess bulk and scale and due to its orientation to the north of the site, will not impact on any of the neighbouring properties solar and visual amenity. The proposal is consistent with the objectives of the FSR development standard and strict compliance with the development standard is unreasonable or unnecessary in this case as the proposed development is within the bulk and scale of its context. The height of the development does not exceed the maximum height of 9 metres and the dwelling will comprise of a high internal amenity with moderate sized rooms, natural ventilation and visual privacy. This development standard remains generally relevant in the area and will not be virtually abandoned or destroyed by approving the non-compliance.

Cl. 4.6(3)(b): Are there sufficient environmental planning grounds to justify contravening the development standard?

Officer's Comments:

- The proposal will create an appropriate built form which is consistent with surrounding low density residential developments whilst the proposal meets Council's height control;
- The proposal will introduce an architectural feature to Aloha Street which incorporates quality facade treatments and an articulated form through the use of large windows, front and side setbacks, and a range of different materials incorporated within the facades. This creates a visually pleasing alternative to what currently exists on the subject site;
- The dwellings will comprise of high internal amenity with moderate sized rooms, sufficient solar access, natural ventilation and visual privacy;
- The proposed development is conveniently located to various uses and public transport services;
- The departure from the maximum FSR control will not result in any significant adverse amenity impacts such as privacy impacts or any significant view loss to the surrounding neighbours;
- The proposal will provide two off-street car parking spaces for each dwelling. This number will not generate significant traffic impact;
- The proposed semi-detached dwellings comply with all other standards and planning controls including height, setbacks, site coverage, landscaped area, private open space and stormwater management.

Cl 4.6(4)(a)(ii) and (5): Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out?

The following matters pursuant to Clause 4.6 also considered:-

- Objectives of Clause 4.6;
- Public interest and public benefit of maintaining the development standard;

- Concurrence is assumed per circular PS 08-003.

Officer's Comments:

#### *Objectives of Clause 4.6*

The objectives of Clause 4.6 (pursuant to Cl 4.6(1) of BBLEP 2013) are:

- a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Council considers that the objectives of the FSR standard are met notwithstanding non-compliance with the standard. The proposed semi-detached dwellings are considered to be satisfactory with the objectives of the R2 Low Density Residential Zone in that it is consistent with new dwellings within a low density residential development.

The proposal generally complies with the Desired Future Character of the Mascot Precinct as provided within the BBDCP 2013 as well as the general dwelling controls under Part 4A of the BBDCP 2013. The development will not significantly impact on the visual amenity of the streetscape, will not create adverse privacy impacts to adjoining properties and has been designed to a similar height and scale with the existing dwelling house on the site that is to be demolished. These have been addressed in further detail within the BBDCP 2013 section of the report below. Therefore, for the reasons outlined in this assessment, flexibility can be applied to this development, as it achieves a better outcome for the site, providing a development of the same use as adjoining properties within the locality, that does not create any adverse impacts to the streetscape or adjoining properties and has been designed in a consistent form to existing development in the area.

#### *Objectives of the development standard*

The objectives of Clause 4.4 Floor Space Ratio of the Botany Bay LEP 2013 are:

- *to establish standards for the maximum development density and intensity of land use,*
- *to ensure that buildings are compatible with the bulk and scale of the existing and desired future character of the locality,*
- *to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing, and are not likely to undergo, a substantial transformation,*
- *to ensure that buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks, and community facilities,*
- *to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,*
- *to provide an appropriate correlation between the size of a site and the extent of any development on that site,*
- *to facilitate development that contributes to the economic growth of Botany Bay.*

The proposal is considered to be consistent with the objectives of the FSR development standard for the following reasons:-



- The non-compliant floor space does not contribute to the dwelling being of unreasonable bulk or scale;
- Aloha Street and surrounding streets are characterised by single storey and two-storey detached dwellings, thereby establishing the maximum density, intensity and form of land use in the area. The area contains a number of semi-detached dwellings houses. As such, the proposed development is not considered to be out of character for the area;
- The first floor is recessed from the side and front and has a maximum height well under the 9 metre height limit, thereby minimising visible bulk and maintaining an appropriate visual relationship along the streetscape. The development is not considerably taller than the current two storey dwelling house on the site;
- The proposed development has been designed to minimised adverse impact upon the amenity of the adjoining properties in terms of overshadowing and loss of privacy as well as complying with the desired future character of the Mascot precinct.

#### *Objectives of the zone*

The Objectives of the R2 Low Density Residential zone is as follows:

- *To provide for the housing needs of the community within a low density residential environment;*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents;*
- *To encourage development that promotes walking and cycling.*

The proposed semi-detached dwellings are a permissible use within the R2 Low Density Residential zone and accords with the zone objectives. The proposal provides for the housing needs of the community and is located within an area which promotes walking and cycling. The proposed development is consistent with the objectives within the zone.

#### *Public Interest and Public Benefit*

In this instance, there is no public benefit in maintaining strict compliance with the development standard given that there are no adverse impacts that will result from exceeding the minor FSR variation. The benefits of the proposed variation to the FSR outweigh any disadvantages.

The proposed development is compatible with the existing development and the approved development surrounding the site as the dwellings have been designed in accordance with Council's Development Control Plan 2013 in particular the desired future character of the Mascot Precinct.

The proposed development will not impact on the existing road network and rely on street car parking as both dwellings can accommodate two off-street parking spaces. There were no objections received during the public notification period.

#### Summary

The Clause 4.6 Exception to the FSR control has been assessed in accordance with relevant case law, being the principles of *Wehbe v Pittwater Council [2007] NSWLEC 827* and *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009* & NSW

LEC 90 (*Four2Five*). The proposal is consistent with the underlying objectives of the standard identified. The proposed development has been assessed against Councils' LEP and DCP 2013 controls which are compliant with the majority.

It has been established that the proposed development is appropriate and strict adherence to the development standard in this instance is unreasonable and unnecessary. Maintaining and enforcing the development standard in this case is unreasonable and does not prevent the orderly and residential development of this site.

The applicant's Clause 4.6 is well-founded and the minor departure in FSR for 15 Aloha Street is in the public interest. On this basis, it is recommended that the development standard relating to the maximum FSR for the site pursuant to Clause 4.4 of the BBLEP 2013 should be varied in the circumstances as discussed above.

### **S.79C(1)(a)(ii) - Provisions of any Draft EPI's**

There are no current Draft EPIs applicable to this development

### **S79C(1)(a)(iii) - Provisions of any Development Control Plan**

The following Development Control Plan is relevant to this application

#### **Botany Bay Development Control Plan 2013**

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

#### **Part 3A – Parking & Access**

<b>Part</b>	<b>Control</b>	<b>Proposed</b>	<b>Complies</b>
<b>3A.2.</b> Parking Provisions of Specific Uses	<b>C2</b> Semi-detached dwelling house = 1 space	Each dwelling provides a single car garage within the front building footprint. There is direct access to Aloha Street. The driveway on both sites can accommodate an additional hard stand parking space.	Yes
<b>3A.3.1</b> Car Park Design	<b>C26</b> The minimum width of the access driveway at the property boundary shall be:-  (i) For dwelling houses: ▪ 3 metres	Each driveway/vehicular crossing is 3 metres wide.	Yes

#### **Part 3E- Subdivision & Amalgamation -3E.2.2. Residential Torrens Title**

<b>Control</b>	<b>Proposed</b>	<b>Complies</b>
<b>C1</b> Development applications shall demonstrate that the proposed subdivision is consistent with the	Two allotments are proposed which are both rectangular in pattern and will maintain the	<b>Yes – Refer to Note 2</b>

Control	Proposed	Complies
<p>Desired Future Character of the area.</p> <p>Desired Future Character – Subdivision</p> <p>Retain and preserve the rectilinear grid pattern within the Precinct</p>	<p>rectilinear grid pattern within the precinct. No existing local character and desired future character has been prepared for the precinct (bounded by Aloha Street, Coward Street, Forster Street and Oliver Street).</p>	
<p><b>C2</b> – Proposed Subdivision must have characteristics similar to the prevailing subdivision pattern of lots fronting the same street, in terms of area, dimensions, shape and orientation</p>	<p>The proposed lots will have a site area of 224.10sqm while and 221.35sqm, will have a east-west orientation, rectilinear shape and frontage to Aloha Street. The area and dimensions of the proposed allotments are similar to a number of smaller lots along the streetscape and along the Oliver Street which is directly behind the site. The street comprises a range of lot sizes.</p>	<p><b>Yes – Refer to Note 2</b></p>
<p><b>C3</b>– Development application which proposes the creation of new allotments must be accompanied by a conceptual building plan that demonstrates compliance with relevant building controls.</p>	<p>Building Plans for the development have been provided.</p>	<p>Yes</p>
<p><b>C5</b> –Proposed lots must be of a size and have dimensions to enable the siting and construction of a dwelling and ancillary structures that:</p> <ul style="list-style-type: none"> <li>i) Acknowledge site constraints</li> <li>ii) Address the street</li> <li>iii) Minimize impacts on adjoining properties including access to sunlight, daylight, privacy and views</li> <li>iv) Provide usable private open space</li> <li>v) Protect existing vegetation</li> <li>vi) Mitigate potential flood affectation and stormwater management requirements</li> <li>vii) Acknowledge contamination of the land</li> <li>viii) Protect heritage items</li> </ul>	<p>The proposed allotments can accommodate dwelling houses that acknowledge site constraints, street frontage, solar access, private open space, vegetation, flood affectation and contamination.</p>	<p>Yes</p>
<p><b>C7</b> All lots created shall have at least one (1) frontage to the street.</p>	<p>Both lots have a frontage to Aloha Street.</p>	<p>Yes</p>

## Note 2– Prevailing Subdivision Pattern

Council generally considers the prevailing subdivision pattern to be the typical characteristic of up to ten allotments on either side of the subject site and corresponding number of allotments directly opposite the subject site. It is noted that the DCP does not provide any exclusions to how this subdivision pattern should be calculated in terms of zoning, strata subdivided properties or subdivided developments approved prior to the gazettal of the BBLEP 2013.

The objectives of *Part 3E.2.1- General Torrens Title Subdivision and Amalgamation* of the BBDCP 2013 is to provide a building envelope that can accommodate an appropriately sized dwelling without resulting in adverse impacts on the surrounding properties. As demonstrated in the assessment of the development application, the proposed dwellings on 15 and 15A Aloha Street generally comply with the DCP controls for dwellings.

### Site Area

As part of this development application, the site will be subdivided into two individual allotments namely 15 Aloha Street (224.10sqm) and 15A Aloha Street (221.35sqm). An assessment of the lot sizes of ten properties on either side of the subject site as well as the ten properties to the rear of the site are as follows:

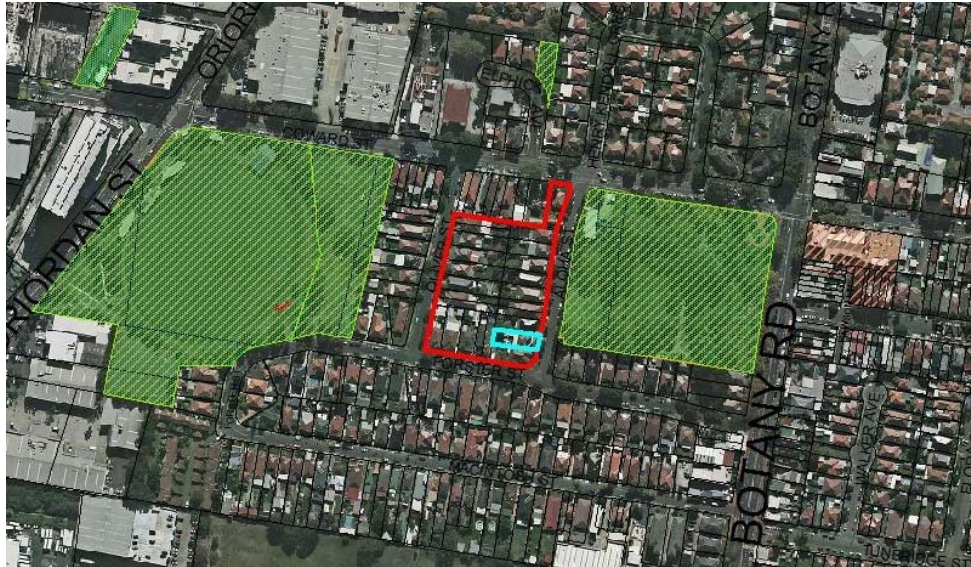
Address	Lot Size (in sqm approx.)	Variation (in sqm) from smallest lot proposed
151 Coward Street	491.39sqm	270.04sqm
1 Aloha Street	470.99sqm	249.64sqm
3 Aloha Street	454.64sqm	233.29sqm
5 Aloha Street	469.83sqm	248.48sqm
7 Aloha Street	452.19sqm	230.84sqm
9 Aloha Street	472.4sqm	251.05sqm
11 Aloha Street	281.22sqm	59.87sqm
13 Aloha Street	455.44sqm	234.09sqm
<b>15 Aloha Street (subject site)</b>	<b>Existing: 445.3sqm Proposed: 224.10sqm; 221.35sqm</b>	-
17 Aloha Street	469.14sqm	247.79sqm
20 Forster Street	236.16sqm	14.81sqm
20A Forster Street	236.15sqm	14.80sqm
22 Forster Street	507.49sqm	286.14sqm
24 Forster Street	500.62sqm	279.27sqm

Address	Lot Size (in sqm approx.)	Variation (in sqm) from smallest lot proposed
26 Forster Street	490.52sqm	269.17sqm
2 Oliver Street	289.93sqm	68.58sqm
4 Oliver Street	281.11sqm	59.76sqm
6 Oliver Street	570.87sqm	349.52sqm
8 Oliver Street	592.64sqm	371.29sqm
10 Oliver Street	580.81sqm	359.46sqm
12 Oliver Street	604.58sqm	383.23sqm
14 Oliver Street	316.47sqm	95.12sqm
16 Oliver Street	369.5sqm	148.15sqm

As demonstrated in the table above, the subdivision pattern exhibits a varied pattern in allotment sizes ranging from 236.15sqm to 507.49sqm. Within the R2 Low Density residential zone, the variable subdivision pattern is especially evident on Oliver Street and one property on Aloha Street. The varied lots sizes, lot dimensions and development types contribute to the Aloha Street streetscape which takes in the subject site, thereby affirming that the proposed two-lot subdivision of the subject site will not be inconsistent with the existing pattern within the R2 zone.



**Figure 11. Cadastre of Existing Subdivision Pattern for Precinct**



**Figure 12. Aerial of existing subdivision pattern for precinct and subject site**

The applicant provided the following comments relating to the subdivision pattern:

*"In relation to Issue 4 of the letter relating to the proposed subdivision, details of the surrounding subdivision pattern have been provided in the Statement of Environmental Effects submitted with the application. We note in this regard that the subject site is located within a mixed pocket of both single and semi detached dwellings located within the same street block, at the southern end of Aloha Street, and that of the 10 closest adjoining allotments surrounding the subject site, 6 contain semi detached dwellings on lots of comparable dimensions and size to the proposed lots, those being Nos. 11 and 11A Aloha Street, 20 and 20A Forster Street, and 14 and 16 Oliver Street. While further afield can be found other pairs of existing semis at No.35 and 37 Forster Street to the south-west, Nos.2 and 4 Oliver Street and along Coward Street to the north (also within the same street block) and at Nos.1 and 3 Oliver Street to the north west, of the subject site. On the opposite (eastern) side of Aloha Street is the Mascot Memorial Park.*

*The proposed subdivision is therefore considered to be appropriate having regard to both the immediate and wider surrounding context of the site, and as we believe is demonstrated by the proposed building design, will not result in a built form which is incompatible with the existing and desired future character of the locality. Further, it is noted that the proposed two storey scale of the building is consistent with the desired future character for low density residential housing within the Mascot Precinct as described in Part 8 of the Botany Bay Comprehensive Development Control Plan 2013, notwithstanding that the majority of existing residential housing in the locality is currently single storey. The proposed development respects the scale, character and setbacks of existing residential housing along Avoca Street and will contribute positively to the visual amenity and character of the local streetscape and the wider locality."*

This is considered acceptable by Council as there is an inconsistent subdivision pattern for the street and the site areas are not considered to small in size to accommodate the two dwelling houses.

### Street Frontage and Depth

As part of the prevailing subdivision pattern, the frontage and depth of surrounding development must be considered. The street frontages widths for adjoining properties along Aloha Street, Forster Street and Oliver Street are as follows:

<b>Address</b>	<b>Frontage length (approx. metres)</b>	<b>Frontage variation from proposed site</b>
151 Coward Street	14.839m	8.8m
1 Aloha Street	12.19m	6.158m
3 Aloha Street	12.19m	6.158m
5 Aloha Street	12.19m	6.158m
7 Aloha Street	12.19m	6.158m
9 Aloha Street	12.19m	6.158m
11 Aloha Street	7.44m	1.408m
13 Aloha Street	12.27m	6.238m
<b>15 Aloha Street (subject site)</b>	<b>Existing: 12.19m; Proposed: 6.032m; 6.182m</b>	-
17 Aloha Street	12.19m	6.158m
20 Forster Street	6.71m	0.678m
20A Forster Street	6.71m	0.678m
22 Forster Street	13.41m	7.378m
24 Forster Street	13.41m	7.378m
26 Forster Street	13.56m	7.528m
2 Oliver Street	6.156m	0.124m
4 Oliver Street	6.075m	0.043m
6 Oliver Street	12.24m	6.208m
8 Oliver Street	12.24m	6.208m
10 Oliver Street	12.24m	6.208m
12 Oliver Street	12.24m	6.208m
14 Oliver Street	6.07m	0.038m
16 Oliver Street	7.37m	1.338m

On its merits, the proposed subdivision is acceptable when taking into consideration the existing semi-detached dwellings along Aloha Street, Forster Street and Oliver Street and the varying lot sizes and street frontages. The proposed semi-detached dwellings also satisfy the desired future character of the Mascot Character Precinct.

### ***Part 3G- Stormwater Management***

The proposed development has provided two 2,000L rainwater tanks to be installed on each site. All rainwater collected from the roof will be directed towards these rainwater tanks as well as the absorption pits on the site. The application was referred to Council's Development Engineer who had no objection to the proposal subject to conditions of consent. Appropriate conditions have been recommended in the consent.

### ***Part 3H- Sustainable Design***

BASIX Certificate No. 714002M\_02 dated 6 April 2016 and prepared by The House Energy Rating Company of Aust. Pty Ltd is provided with the application, committing to environmental sustainable measures.

### ***Part 3K- Contamination***

The relevant requirements and objectives have been considered in the assessment of the development application. The subject site has long been used for residential purposes and contamination is unlikely. Furthermore, the application has been assessed against SEPP 55 and is found to be satisfactory. Site investigation is not required in this instance.

### ***Part 3L- Landscaping and Tree Management***

The development proposes to remove one small tree from the rear yard, one mature Callistemon street tree and one small tree from the front yard. The two trees on the site are not significant and are not covered by the TPO. The application was referred to Council's Landscape Architect for comment. Comments originally provided required the street tree to be retained and a redesign of the development to occur. As it would be involved a significant re-design to the front of the dwelling in terms of vehicular access and the tree was not significant for retention, Council accepted its removal.

### ***Part 3N- Waste Minimisation & Management***

A Waste Management Plan (WMP) was submitted with the application. Conditions are included to ensure all waste generated will be stockpiled, managed and disposed of appropriately.

### ***Part 4A- Dwelling Houses***

The development application has been assessed against the controls contained in *Part 4A of the DCP – Dwellings*. The following table compares the proposed development with the relevant provisions of this policy.

<b>Part</b>	<b>Control</b>	<b>Proposed</b>	<b>Complies</b>
<b>4A.2.4</b> Streetscape Presentation	<b>C3</b> Dwellings must reflect dominant roof lines and patterns of the existing streetscape.	The roof incorporates a hipped roof with 15A Aloha Street comprising a gable element at its front elevation to break up the	Yes- Acceptable



Part	Control	Proposed	Complies
		identicalness of the dwellings.	
	<b>C4</b> Buildings must address the street.	Both dwellings address the street with the dwellings facing Aloha Street. The front fence is also located along Aloha Street.	Yes
	<b>C6</b> Dwellings front door is to be readily apparent from the street.	The front door at 15 and 15A Aloha Street have their front entrances located off Aloha Street and are readily apparent from the street.	Yes
<b>4A.2.5</b> Height	<b>C1</b> The maximum height of buildings must not exceed the maximum height identified in the Height of Buildings Map and Clause 4.3 of the Botany Bay Local Environmental Plan 2013.	<p>A maximum height of 9 metres applies to the subject site.</p> <p>15 Aloha Street = 7.98m from the NGL 15A Aloha Street = 7.98m from the NGL.</p> <p>The maximum height of the dwellings complies with Council's requirements under the BBLEP 2013.</p>	Yes
	<b>C3</b> New buildings are to consider and respond to the predominant and characteristic height and storeys of buildings within the neighbourhood, and consider the topography and shape of the site.	<p>The dwellings have a maximum height of 8.5 metres. There are a number of two storey dwelling houses within the area. Considering that the site currently has a two storey dwelling house at the same height, the height is acceptable.</p> <p>As the site is impacted by flooding, a condition has been imposed in the consent requiring a higher finished floor level. The dwelling will raise the height of the dwelling by 600mm. This is not considered significant as the original proposal proposed a higher height to the amended plan and the increase will not contribute to additional</p>	Acceptable

Part	Control	Proposed	Complies
		shadow impact on the southern neighbours.	
<b>4A.2.6</b> Floor Space Ratio (FSR)	<b>C1</b> The maximum FSR of development is to comply with the Floor Space Ratio Map and Clauses 4.4, 4.4A and 4.4B of the Botany Bay Local Environmental Plan 2013.	<p>The maximum FSR requirement is 0.5:1</p> <p>15 Aloha Street has a site area of 224.10sqm while 15A Aloha Street has a site area of 221.35sqm.</p> <p><u>15 Aloha Street</u></p> <p>Proposed GFA: 117.37sqm Proposed FSR: 0.52:1</p> <p><u>15A Aloha Street</u></p> <p>Proposed GFA: 102.44sqm Proposed FSR: 0.46:1</p> <p>The FSR for 15A Aloha Street complies with Council's requirements under the BBLEP 2013.</p> <p>The FSR for 15 Aloha Street does not comply with the FSR requirement. A Clause 4.6 has been provided for consideration and is discussed in Note 1 below.</p>	<b>No- Refer to Note 1 above</b>
<b>4A.2.7</b> Site Coverage	<b>C2</b> Sites between 200sqm-250sqm, the maximum site coverage is 65%.	<p>15 Aloha Street = 96.62sqm (43.4%)</p> <p>15A Aloha Street = 96.62sqm (43.4%)</p>	Yes
<b>4A.2.8</b> Building Setbacks	<p><b>C1</b> Dwelling houses must comply with the following minimum setbacks as set out in <b>Table 1</b>.</p> <p>Less than 12.5m lot width:</p> <ul style="list-style-type: none"> <li>Front – comply with prevailing street setback or 6m min.</li> <li>Side – merit.</li> </ul>	<p><b>Front setback:</b></p> <p>15 Aloha Street: 5.6 metres 15A Aloha Street: 5.6 metres</p> <p><b>15 Aloha Street:</b></p>	Yes

Part	Control	Proposed	Complies
	<ul style="list-style-type: none"> <li>Rear – 4m min.</li> <li>Eaves – 450mm min.</li> </ul> <p>Note: The subject site has an average lot width of 12.19m however after subdivision each lot will have a street frontage width of 6.18 metres.</p>	<p><u>Northern Elevation:</u> Ground: 1.2m First: 1m- 1.5m</p> <p><b>15A Aloha Street:</b> <u>Southern Elevation:</u> Ground: 1.2m First: 1m- 1.5m</p> <p><b>Common Boundary:</b> The proposed development is for two semi-detached dwellings separated by a common fire rated brick party wall.</p> <p><b>15 Aloha Street:</b> Ground Floor: 11.6m First Floor: 11.6m</p> <p><b>15A Aloha Street:</b> Ground Floor: 11.6m First Floor: 16.17m</p> <p>450mm wide eaves</p>	
	<p><b>C5</b> Side and rear setbacks should be modulated to avoid the appearance of bulky or long walls. Side and rear setbacks should be stepped or walls articulated by projecting or recessing window elements.</p>	<p>The front entrance has been modulated so that it is not in line with the garages. The first floor at 15 Aloha Street has been modulated on the side elevation to require 1.5 metre setbacks at some points. 15A Aloha Street has redesigned their first floor so that modulation occurs along the side elevations and a large side setback at the rear is proposed to allow for adequate solar access. Front and side setbacks have incorporated a mix of material. The elevation also has provided articulation by mixing balcony with gable roofing and windows.</p>	Yes
<b>4A.2.9</b> Landscape Area	<p><b>C2</b> Development shall comply with the following minimum landscaped area</p>	<p>The minimum landscaped area for a site with an area less than 250sqm is 15%.</p>	Yes

Part	Control	Proposed	Complies
	<p>requirements, based on the area of the site in <b>Table 2</b>.</p> <p>Table 2 requires the following minimum landscaped area:</p> <p>(i) 15% for sites that are less than 250sqm</p>	<p>Both sites will have a total of 80.34sqm of permeable landscaping on the site. This results in 36% for each site. All landscaped area on site will be fully permeable deep soil planting. The landscape plan demonstrates that numerous trees and shrubs will be planted at the rear and front of both sites.</p>	
	<p><b>C8</b> The front setback is to be fully landscaped with trees and shrubs and is not to contain paved areas other than driveways and entry paths. Paving is restricted to a maximum of 50% of the front setback area.</p>	<p>Other than the entry path to the front doorway and concrete strips leading to the garages, the entire front setback will be landscaped area.</p>	Yes
	<p><b>C9</b> The front setback area must contain at least one tree for frontages up to 11.5 metres in width and 2 trees for frontages greater than this and properties located on corner blocks.</p>	<p>The front setback of each dwelling will consist of two x <i>Callistemon viminalis</i> trees as well as shrubs.</p>	Yes
<p><b>4A.3.1</b> Materials and Finishes</p>	<p><b>C1</b> A Schedule of Finishes and a detailed Colour Scheme for the building facade must accompany all Development Applications involving building works (refer to Council's Development Application Guide for further detail).</p>	<p>A Schedule of Colours and Finishes was not provided with the development application however is elaborated within the SEE. The development will be constructed out of rendered brick and exposed brick, cladding, aluminium windows, panel garage and balustrading.</p>	Yes
<p><b>4A.3.2</b> Roofs and Attics/Dormer</p>	<p><b>C1</b> Where roof forms in a street are predominantly pitched, then any proposed roof should provide a similar roof form and pitch.</p> <p><b>C3</b> A variety of roof forms will be considered, provided</p>	<p>The dwellings incorporate a hipped roof with a 15A Aloha Street incorporating a gable element at the front of the site to break the symmetry of the dwellings. The roofs have a 22.5 degree roof slope. The roof form positively reflects the</p>	Yes

Part	Control	Proposed	Complies
	that they relate appropriately to the architectural style of the proposed house and respect the scale and character of adjoining dwellings.	contemporary architectural style of the buildings and complements the character of existing dwellings along the street.	
<b>4A.3.4</b> Fences	<b>C8</b> Fences fronting a classified road are permitted to be 1.5 metres in height.	The plans demonstrate that each site will have a 600mm high front fence constructed out of brick and gate.	Yes
	<b>C18</b> Side fences of a height of 1.8 metres are not to extend beyond the front building line.  <b>Note:</b> Fences with untextured surfaces that present a blank appearance to the street are unsuitable and discouraged.	The existing side fences are to be retained.	As existing
	<b>C19</b> The maximum height of a rear fence is not to exceed 1.8 metres.	The existing rear fence is to be maintained.	As existing
<b>4A.4.1</b> Visual Privacy	<b>C2</b> Visual privacy for adjoining properties must be minimised by: <ul style="list-style-type: none"> <li>▪ using windows which are narrow or glazing</li> <li>▪ Ensuring that windows do not face directly on to windows, balconies or courtyards of adjoining dwellings</li> <li>▪ Screening opposing windows, balconies and courtyards; and</li> <li>▪ Increasing sill heights to 1.5 metres above floor level.</li> </ul>	<p>The proposal has been designed so that none of the new windows directly look into the neighbouring properties. There is one door on the ground floor of each dwelling along a side elevation. As there has been objections relating to the door in regards to visual and acoustic privacy, and Council sees no need for these doors, a condition has been imposed to remove the doors along the side elevations.</p> <p>The first floor contains two balconies at the rear of the dwellings. To prevent any overlooking, a condition has been imposed in the consent that 1.8 metre high privacy screens along the entire depth of the</p>	Yes. conditional

Part	Control	Proposed	Complies
		balconies are to be installed.	
	<b>C3</b> First floor balconies are only permitted when adjacent to a bedroom.	There is one balcony located at the rear of the dwellings off bedrooms which is acceptable.	Yes
<b>4A.4.3</b> Solar Access	<b>C1</b> Buildings (including alterations/additions/extensions) are to be designed and sited to maintain approximately 2 hours of solar access between 9am and 3pm on 21 June to windows in living areas (family rooms, rumpus, lounge and kitchens) and the principal open space areas such as swimming pools, patios and terraces, and drying areas of both the subject site and adjoining properties.	Amended shadow diagrams were provided with the development application. The shadow diagrams show that the property at 17 Aloha Street will receive at least 2 hours of sunlight to 50% of its private open space. There are three windows along the northern elevation of the neighbouring dwelling- one to a bedroom, one to a bathroom and one to a living room. The window to the living room originally did not receive any sunlight from the original proposal. The applicant has amended their design to remove one bedroom from 15A Aloha Street to allow for additional sunlight. The living room window will now receive sunlight from 2pm onwards during June 21.	<b>Acceptable – Refer to Note 3</b>
	<b>C2</b> Solar panels on adjoining houses that are used for domestic needs within that dwelling must not be overshadowed for more than two hours between 9am to 3pm in mid-winter.	There are no solar panels on the adjoining site that will be impacted by the proposal.	Yes
<b>4A.4.4</b> Private Open Space	<b>C2</b> For sites less than 250sqm, a minimum area of 25sqm applies.	Each site requires 25sqm of private open space.  Both lots will have approximately 66.6sqm of private open space.  POS of the proposed development complies with Council's controls.	Yes

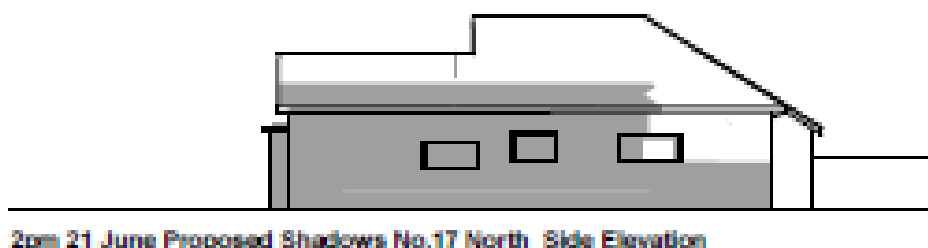
Part	Control	Proposed	Complies
<b>4A.4.7</b> Vehicle Access	<b>C1</b> Driveways within a property shall have a minimum width of 3 metres.	Both driveways have a minimum width of 3 metres and are located at the front of the site.	Yes
	<b>C6</b> The number of vehicle crossings is to be limited to one (1) per allotment.	Each site will have one vehicular crossing off Aloha Street.	Yes
<b>4A.4.8</b> Car Parking	<b>C1</b> Development must comply with Part 3A – Car Parking	The development provides two off-street parking spaces for each lot. Each dwelling will comprise of a single car garage within the building footprint and hard stand car parking space on the driveway at the front of the site.	Yes
	<b>C10</b> Garages, parking structures (carports and car spaces) and driveways are not to dominate the street. <b>Note:</b> Existing situations where garages dominate the street may not be used as a precedent to justify approval of other similar proposals.	Both garages have been setback behind the front building line and will not dominate the site when viewed from the street.	Acceptable
<b>4A.6</b> Ancillary development	<b>C1</b> The total gross floor area of ancillary structures must not exceed 60sqm.	There are no ancillary structures on either of the sites.	N/A

### Note 3 – Solar Access

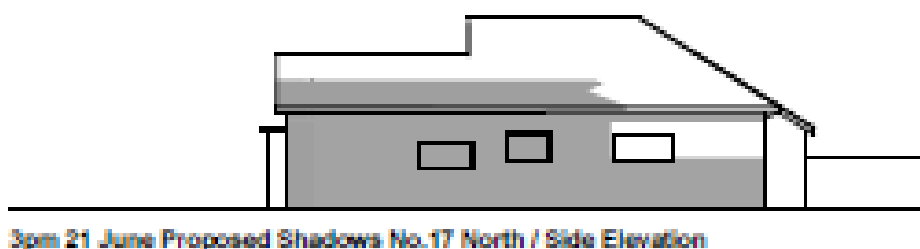
The subject site has an east to west orientation with east being the front of the site while west is the rear of the site. The dwelling house currently on the site is two storeys in nature and directly adjoins two single storey dwelling houses at 13 and 17 Aloha Street. Therefore, any overshadowing from the proposed development will occur to the property to the south.

The applicant has provided revised shadow diagrams as a result of amended plans submitted to Council reducing the bulk of the development at the rear of 15A Aloha Street. This involved removal of one of the bedrooms and increasing the rear setback to allow sunlight to the southern property. The neighbouring property at 17 Aloha Street currently has three windows along its northern elevation- one to a bedroom, one to a bathroom and one to a living room. Figures 13 and 14 below shows the final version of elevation shadow diagrams demonstrating the living room window will receive sunlight from 2pm onwards. The remaining windows are completely

overshadowed throughout the day however as they are not in principal living areas, this is acceptable. Prior to 2pm, the living room window is overshadowed at June 21.



**Figure 13. Proposed elevation shadow diagram- 2pm June 21**



**Figure 14. Proposed elevation shadow diagram- 3pm June 21**

Consideration has been given to the Land & Environment Court planning principle on the impact on solar access of neighbours from *Parsonage vs Ku-ring-gai* (2004) NSWLEC 347 and as amended by *The Benevolent Society vs Waverley Council* (2010) NSWLEC 1082 is addressed as follows:

- *The ease with which sunlight access can be protected is inversely proportional to the density of development. At low densities there is a reasonable expectation that a dwelling and some of its open space will retain its existing sunlight. (However, even at low densities there are sites and buildings that are highly vulnerable to being overshadowed). At higher densities sunlight is harder to protect and the claim to retain it is not as strong.*

Comment: The proposal is for two x two storey dwelling houses. This will replace an existing two storey dwelling house that currently occupies the site. The applicant has provided shadow diagrams of the existing development which demonstrates that there is shadow impact to two of the three windows during June 21. It is expected that the proposal will contribute to overshadowing however the proposal will be replacing an existing two storey dwelling which contributed similar shadow impact to the bedroom and bathroom on the neighbouring site.

- *The amount of sunlight lost should be taken into account, as well as the amount of sunlight retained.*

Comment: The applicant has provided a revised assessment of the shadow impact from the proposed development. The amended shadow diagrams demonstrate that there is an improvement in the amount of sunlight received to the living room window on the northern elevation as a result of reducing the bulk of the development at 15A Aloha Street. An assessment of the existing and proposed shadow impact is provided below:



#### Existing Shadow Diagrams

During 9am to 11am June 21, the three windows along the northern elevation at 17 Aloha Street are completely overshadowed by the existing house. From 12pm and onwards, the rear window to the living room will receive full sunlight. The other two windows to a bedroom and bathroom will continue to be overshadowed by the development. At 9am and between 12pm to 2pm, the rear yard at 17 Aloha Street will be overshadowed by the side boundary fence between the two properties and will receive sunlight to the majority of the rear setback. At 3pm, the shadow diagrams demonstrate that the adjoining property at 20/20A Forster Street will overshadow the rear yard at 17 Aloha Street. The dwelling on the subject site and at 20A Forster Street is two storey in nature and contribute to the shadow impact.

#### Proposed Shadow Diagrams

During 9am to 1pm at June 21, the three windows along the northern elevation at 17 Aloha Street will be overshadowed by the development. As part of the original design, the living room window and all windows in general would have been overshadowed by the development between 9am to 3pm. The applicant has amended the design of the dwellings by reducing the bulk of 15A Aloha Street at the rear. As a result of this amendment, the living room window will receive sunlight from 2pm onwards.

Discussions with the neighbouring property and photos provided of the internal areas in the living room demonstrate that the living area extends from the kitchen which has a window along its western elevation. Sunlight could be received in the afternoon hours and will result in borrowed light to the living room. However, as the development will receive two-thirds sunlight to the window at 2pm and full sunlight to the whole window at 3pm and onwards, the degree of impact is not as significant as what it originally was proposed as. It is noted that there is a greater degree of overshadowing to the neighbour however as the site currently consists of a two storey dwelling being replaced by two storey dwellings, this is acceptable. The rear yard will be overshadowed to a greater degree however will continue to receive the minimum 2 hours of sunlight to 50% of its area.

- *Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. The poor quality of a proposal's design may be demonstrated by a more sensitive design that achieves the same amenity without substantial additional cost, while reducing the impact on neighbours.*

Comment: The amended architectural plans have reduced the bulk of the dwelling by decreasing the size of 15A Aloha Street at the rear of the site to allow for greater sunlight to the living room window on the neighbouring property. The break in the built form will allow more sunlight than the original proposal. The proposal complies with the setback and height requirements and has a greater setback than the existing dwelling currently on site. The overshadowing is not considered to be a result of poor design.

- *For private open space to be assessed as receiving adequate sunlight, regard should be had of the size of the open space and the amount of it receiving sunlight. Self-evidently, the smaller the open space, the greater the proportion of it requiring sunlight for it to have adequate solar amenity. A useable strip adjoining the living area in sunlight usually provides better solar amenity, depending on the size of the space. The amount of sunlight on private open space should ordinarily be measured at ground level but regard should be had to*

*the size of the open space as, in a smaller private open space, sunlight falling on seated residents may be adequate.*

Comment: The size of the private open space to the two sites meets Council's requirement of 25sqm. As discussed above, the private open space at both 15 and 15A Aloha Street will received the minimum 2 hours of solar access to 50% of its area. Additionally, the aerial shadow diagrams demonstrate the southern properties private open space will also continue to receive 2 hours to the area during June 21, particularly as the size of the rear yard is larger than the subject sites.

- *Overshadowing by fences, roof overhangs and changes in level should be taken into consideration. Overshadowing by vegetation should be ignored, except that vegetation may be taken into account in a qualitative way, in particular dense hedges that appear like a solid fence.*

Comment: The existing side fences and eaves do contribute to minor overshadowing onto southern neighbours and onto the site. The side fence is existing therefore there is no change while the eave width is similar to the existing dwelling houses. The floor level of the building has been conditioned to be higher however it is not considered that it will significantly impact the adjoining properties. The existing Jacaranda tree located within the rear yard at 13 Aloha Street provides some overshadowing however this shadow impact is not to be taken into consideration as part of this proposal.

- *In areas undergoing change, the impact on what is likely to be built on adjoining sites should be considered as well as existing development.*

Comment: Two storey dwellings of similar size and scale are located around the locality and the proposal is not considered to cause a major impact on the future of the adjoining sites and its immediate surroundings as they have already been developed. There are a number of older, traditional one storey dwellings on the street and surrounding streets which are likely to be demolished and rebuilt in the future and it is likely that these dwellings will also have issues with overshadowing due to the orientation of the subdivision pattern which is north/south and east-west. The proposal is not considered to be excessive in height and correlates with the height of the existing dwelling house currently on the site.

### Summary

The planning principles on solar access have been considered with regard to the subject application. It is considered that having regard to these principles that the impacts of the development are acceptable.

### ***Part 8 – Mascot Character Precinct***

Part 8.7.2 Desired Future Character of the Mascot Precinct has been considered in the assessment of the application. This section provides rationale for determining the appropriateness and descriptive strategic direction for development in Mascot.

The site is located within the R2 Low Density Residential zone of the Mascot Precinct between Coward Street and Forster Street.

The proposal maintains the existing setbacks along the street and is consistent with the form of surrounding development in the street which is experiencing gradual redevelopment to newer style housing. The new dwellings are unlikely to significantly impact on the amenity of the adjacent properties, the proposed development will replace an existing dated two storey residential dwelling and is considered to enhance the public domain and streetscape within the Precinct.

The subject development application also maintains an average of 46% of the respective site areas as soft landscaping, both at the rear and front and complies with the landscaping requirements under the BBDCP 2013.

The desired future character relevant to the proposed new dwellings include:

- Encourage site layout and building styles and designs that promote commonality and a visual relationship with the surrounding built form and dwelling styles;
- Encourage dwelling styles that maintain and complement existing development patterns;
- Maintain and enhance low density residential low density residential accommodation in the form of detached/attached dwellings with a maximum height of 2 storeys in the remainder of the precinct;
- Encourage new development or alterations and additions to existing development to complement the height and architectural style found in the immediate vicinity, particularly where there is an established character;
- Maintain roof forms to reflect the characteristics of the prevailing designs within the street.

Both dwellings have been designed to address the street, are not considered to have an excessive bulk and scale, accommodate a mixture of setbacks to break up the front, side and rear elevations and incorporate different materials that are consistent with the existing development along Aloha Street and with two storey dwellings in the area. The dwellings are compliant in height, setback, site coverage, have ample amount of landscaping and private open space and can cater for two parking spaces on each site.

Accordingly, the proposal is considered suitable for the subject site and is considered compatible with the desired future character as described in the BBDCP 2013 for the Mascot precinct.

### **S.79C(1)(a)(iv) - Provisions of the Regulation**

The relevant provisions of the *Environmental Planning and Assessment Regulation 2000* have been taken into consideration in the assessment. The proposed conditions require compliance with AS 2601 with regards to the demolition of buildings on the site.

### **S.79C(1)(b) - Likely Impacts of Development**

As outlined in the assessment above, the proposed development will have no significant adverse environmental, social or economic impacts in the locality.

### **S.79C(1)(c) - Suitability of the site**

The subject site is not known to be affected by site constraints that are likely to have a significant adverse impact on the proposed development. The issue of likely site contamination has been considered, however, given the nature of the development, and the long standing use of the land for residential purposes, onsite investigation is not warranted.

The site is impacted by overland flow therefore the finished floor level of the ground floor is to be raised to meet Council's requirements. The application was referred to Councils Stormwater and Development Engineer who required the finished floor level of the ground floor to be raised to RL 7.80AHD. A condition has been imposed in the consent.

Accordingly, it is considered that the site is suitable to accommodate the development.

### **S.79C(1)(d) - Public Submissions**

In accordance with Part 2 of the BBDCP 2013 – Notification and Advertising the development application was notified to surrounding property owners for a fourteen (14) day period from 4 May to 18 May 2016. Three (3) objections were received as part of the proposal. Amended plans were notified for a fourteen day period between 15 June to 29 June 2016. Three objections were received from the original objectors. The issues raised in the latest round of objections are as follows:

- *Significant risk from any demolition and construction works*

Comment: Concerns were raised relating to potential damage occurring during demolition and construction works. Several conditions relating to dilapidation reports and photographic surveys have been conditioned within the consent to document any existing and new damage. New damage is to be fixed by the owners of 15 Aloha Street at no cost to the neighbouring properties.

- *Proposal will result in loss of light to northern elevation windows i.e. bedroom, living room and bathroom as well as to the rear yard and outdoor alfresco area on the southern adjoining property.*

Comment: The objector is concerned that the proposal would further impact the northern side of their home, not only with the bathroom and bedroom, but extending to their living room, kitchen, outdoor area and backyard as the proposal shows the extent to the length of the proposed dwelling. In essence, their concern is that the proposal would effectively provide shade all day long from our front yard through to our backyard, which would severely impact their family life. The existing two storey dwelling currently provides shadowing onto the northern elevation, particularly to the bedroom and bathroom. The applicant has amended their plans by setting in the first floor at 15A Aloha Street by reducing the development by one bedroom and increasing the rear floor setback. This allows for sunlight into the living room window from 2pm onwards during June 21. An analysis relating to solar analysis with the Planning Principle has been discussed in Note 3 above. The rear yard will continue to receive the minimum 2 hours of sunlight to 50% of their rear yard and to the alfresco area.

- *Potential retention of rainwater adjacent to 15 Aloha Street due to shadowed areas from the newly created shadows may cause further damage to the foundations at 17 Aloha Street*

Comment: The objector has raised this concern relating to water damage on their property:

*"Currently, my house has been affected by cracks and the floor dropping at the rear for a number of years. After having engineers view the house, they believe that the main reason for the fall is due to water running underneath our house as well as not being able to dry up. Clearly the double storey home next door has contributed to this as the sunlight is being prevented from reaching up the side of our house. The proposed dwelling would cause more issues as it would further prevent even more sunlight from reaching all the way up the side of our house and into our backyard."*

The amount of sunlight that will be provided to the rear yard of the neighbouring property complies with Council's minimum solar access controls. The water damage is an existing issue as a result of the existing two storey dwelling and as the amended plans has cut the development at 15A Aloha Street to allow for the existing sunlight to be retained in the afternoon to the living area, the degree of impact has not significantly changed. Should the development have been a single storey built form and comprise the same side setbacks, the amount of sunlight to the ground at the side setbacks will not receive sunlight. The lack of sunlight to this area could also be contributed by the side fence.

- *Serious privacy concerns and overlooking to the rear yard of the neighbouring properties and within bedrooms and living areas*

Comment: There is one balcony proposed at the rear of each first floor and is accessed off bedrooms. This is permissible within Council's controls. The depth of the balconies are not considered excessive however a condition of consent has been imposed requiring the entire depth of the balconies along the site elevations to install 1.8 metre high privacy screens to alleviate the overlooking issue.

- *Undue intrusion of family's personal space and privacy arising from the multiple tenanted premises at 15 Aloha Street particularly as tenants are walking up the side path between the two properties.*

Comment: Concerns related to visual privacy has not been demonstrated within the plans. Conditions have been imposed in the consent requiring the two doors along the side elevations are to be deleted from the plans as Council does not see their purpose. Additionally, 1.8 metre high privacy screens are to be installed along the entire depth of the rear balconies to prevent any overlooking onto the neighbouring sites. This will alleviate the issue of overlooking.

- *The existing property is currently being used as an unregistered boarding house*

Comment: Concerns are raised by the objectors that the existing dwelling house is currently used as a boarding house, particularly for university students. The existing use does not fall in the scope of this development application however a separate letter from the objector has been provided to Council's Compliance section for investigation. Council records show that the dwelling house has not been approved as a boarding house and has not been registered as a boarding house.

- *Council has the responsibility to long term residents of Mascot to ensure any new building application does not adversely affect the aesthetics of the existing community design*

Comment: An assessment of the local character of the area is discussed above within the report. The dwellings are considered to fit in with the subdivision pattern in the area and afford good outlook by having the development directly opposite the park. The dwellings are not out of character with existing two storey dwelling houses within the area and comply with all the numerical controls in Council's BBLEP and BBDGP 2013.

- *No knowledge of the intended use of the two dwelling houses.*

Comment: The proposal is for two separate dwelling houses. The dwellings are not to be used as a boarding house. A condition of consent has been imposed so that the development is not used or converted into a boarding house in the future. Should the

dwelling be converted into boarding houses, a development application for their use is to be submitted to Council for assessment.

- *Concerns that the rumpus room on the first floor of 15A Aloha Street has been changed to a bedroom however will allow for conversion back into a rumpus room to be used for the purposes of a boarding house and that the rooms will not be used as a living space or house multiple people*

Comment: The rumpus room at 15A Aloha Street has been removed as part of the latest round of amendments. This was done to reduce the bulk of the development at the rear and to increase the amount of sunlight to the rear living room windows on the neighbouring property. The use is not to be used as a boarding house and this has been conditioned in the consent. Should the development convert into a boarding house, a separate development application is to be provided to Council for assessment.

- *Reduced car parking on the street and child safety*

Comment: Concerns were raised that the development will lose two on-street car parking spaces as there will be two garages. The development has considered the site and has proposed one vehicular crossing rather than two separate vehicular crossings which would have further reduced car parking on the street. The existing vehicular crossing along the north-eastern side of the site is to be extinguished and replaced with kerb and guttering. Aloha Street contains dwelling houses on one side of the street with the other side consisting of the Memorial Park. This allows for greater parking for residents. Additionally, a number of the dwelling houses in the area have off-street car parking in the form of garages and carports. Discussions with the objector relating to a parked car that has been illegally parked in front of the neighbouring site is not in scope of this development application however this has been noted and passed onto Council's monitoring department.

- *Floor plan and land size exceeding 50% of the block size*

Comment: Concerns were raised that the proposed building footprint exceeds the 50% site coverage requirement. For sites less than 250sqm in area, Council requires a maximum site coverage area of 65%. The amended plans provided to Council demonstrate that the proposal will each have a total covered area of 96.62sqm or 43.4%. Therefore the development falls well below Council's requirements and complies. Should the application have been for a single detached dwelling house with the exact same building footprint, it would still comply with the 50% requirement.

- *The plans do not show the individual room usage of the proposed properties*

Comment: The notification plans do not contain floor plans therefore should the general public want to review the plans, they are to come into Council or the library. The dwellings contain on the ground floor an open plan kitchen, living and dining rooms, bathroom/laundry and garage. The first floor of 15 Aloha Street contains three bedrooms, study and a bathroom. The first floor at 15A Aloha Street contains two bedrooms, study and bathroom.

- The proposal appears to be a request for the property to be divided into 2 separate titles and introduce a new building form which is uncharacteristic in this area.

Comment: As discussed in Part 3E, the area comprises a number of semi-detached dwelling houses that are on their own allotment. The proposed development will act in the same manner. While there are no examples of two storey semi-detached dwelling houses, there

are examples of two storey detached dwellings that incorporate the same or similar sized buildings.

- *The rear of our property has been landscaped to provide privacy with the present property- this will not be the case when the property is extended.*

Comment: A condition of consent has been imposed to provide 1.8 metre high privacy screens along the depth of the rear balconies at the side elevation to prevent any overlooking into the neighbouring sites.

- *The proposed plans are not consistent with the present streetscape with the removal of the front fence and gate and front garden. There are also two street trees proposed however there is no room for these with the double driveway. Additionally, the streetscape will change with the removal of the nature strip and tree from the front of the site.*

Comment: The proposal will incorporate a 600mm high front fence and gate across the path to the front entrances. There is no fence or gate proposed across the driveway. This is consistent with the street. The development will remove one street tree to accommodate the double driveway. This has been referred to Council's Landscape Architect for comment. The planting of two street tree is acceptable as the existing street tree prevents development to occur on the site. As the tree is not significant, its removal is acceptable. There is a condition in the consent requesting that the nature strip be retained and restored in accordance to Council's requirements. The existing vehicular crossing is to be removed.

- *There is no consistency with the present spacing between 15 and 13 Aloha Street*

Comment: The application proposes side setbacks greater than 1 metre. This complies with Council's requirements relating to side setbacks. The first floor on both dwellings has been modulated with increased setbacks of 1.5 metres. The existing spacing is a result of the existing driveway and garage area to the side. The owner has the right to modify these setbacks in accordance with Council's controls.

- *The plans do not show windows at the ground floor and are not consistent with Council's controls.*

Comment: The notification plans do not provide windows on the plans. These are provided on the full set of plans available at Council's Administration building. A condition of consent has been imposed requiring windows within habitable areas along the side elevations to have minimum sill heights of 1.5 metres.

- *Concern is raised with the proximity of the double driveway to the corner of Forster Street and Forster and Aloha Street are used as a 'rat run' to avoid traffic lights at the intersection of Coward Street and Botany Road.*

Comment: The location of the double driveway is acceptable and will not add to increased traffic along the street. The property is not on the corner of the streets, but one dwelling off.

- *The height of the proposed development does not respect the height of the adjacent buildings and is increased over the present two storey residence.*

Comment: The dwelling will have a maximum height that is equal to the existing height of the dwelling house on the site. The height falls well under the 9 metre maximum height limit and is consistent with other two storey dwelling houses within the immediate area. The adjoining

properties are single storey however they are not heritage items which could possibly limit the size of the dwellings.

- *The existing sheds at the rear act as a boundary fence between 13 and 15 Aloha Street. Concern is raised that the removal of the sheds may possibly have asbestos. Removal of the fence will require a new fence to be installed.*

Comment: A condition has been imposed in the consent that should asbestos be found on the site, it will be removed in accordance with the WorkCover requirements. In relation to the side fence, a replacement fence is to be installed. This is to be discussed between the two neighbours.

- *A security fence is to be installed around the site during demolition and construction work to protect neighbours*

Comment: A condition of consent has been imposed requiring the site to be fenced during construction and demolition, particularly as there is no existing side fence as a result of the existing sheds.

- *The objector would like to be advised if new properties are required to have water tanks or solar panels as there is none demonstrated on the site.*

Comment: The plans demonstrate that each site will provide 2,000L rainwater tank which will be installed along the side boundary and as required by Council. Council does not have provisions for solar panels to be installed on dwellings.

## **S.79C(1)(e) - Public interest**

Granting approval to the proposed development will have no adverse impact on the public interest.

## **Financial Implications**

### **Section 94 Contributions**

The City of Botany Bay's Section 94 Development Contributions Plan 2016 became effective on 14 June 2016. The Plan applies to all development applications lodged before the commencement of this Plan, but not yet determined. The subject DA was lodged before the commencement of the Plan and is not yet determined and as such is applicable.

#### Contribution Rates

1 x New 2 Bedroom dwellings: \$12,064.06  
1 x New 3 Bedroom dwellings: \$16,810.28  
Total Contribution: \$28,874.34

#### Credit

Since there is an existing dwelling house on the existing lot, the applicant is entitled to a credit. The credit applies to the smaller of the new dwellings. The smallest dwelling is at 2 bedrooms and as such a credit applies to the 2 bedroom dwelling.

Credit applicable: \$12,064.06



Subtotal: \$28,874.34 - \$12,064.06 = \$16,810.28

### Total contribution

The total Section 94 Contribution applicable to the proposed development is **\$16,810.28**. In accordance with the Plan, the contribution is to be paid prior to the release of the subdivision certificate.

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## Conclusion

Development Application No. 16/52 for the demolition of the existing dwelling and structures, subdivision of the site into two Torrens Title allotments and construction of two x two storey semi-detached dwelling houses at 15 Aloha Street, Mascot, has been assessed in accordance with the relevant requirements of the *Environmental Planning and Assessment Act 1979*. The proposed development is consistent with the local character of the area and is compatible with the smaller allotments along the street and around the site. A small variation to the FSR for one of the lots is supported. The development is not considered to impact on the amenity of the neighbouring property and has a good visual outlook to the park directly opposite the site. Therefore, it is recommended that the proposal be approved subject to conditions of consent in the attached Schedule.

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## Attachment

### Schedule 1 – Conditions of Consent

**Premises: 15 Aloha Street, Mascot**

**DA No: 16/52**

### SCHEDULE OF CONSENT CONDITIONS

#### GENERAL CONDITIONS

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

Drawing N°	Author	Dated Received
Dwg No. A104- Ground Floor Plan- Rev D	Nathan Lester Architecture	Dated 1 August 2016; Received 8 August 2016
Dwg No. A105- First Floor and Site Plan- Rev D		Dated 1 August 2016; Received 8 August 2016
Dwg No. A110- Subdivision Concept Plan and Additional Shadows- Rev D		Dated 1 August 2016; Received 8 August 2016
Dwg No. A200- Elevations- Rev D		Dated 1 August 2016; Received 8 August 2016
Dwg No. A300- Sections- Rev D		Dated 1 August 2016; Received 8 August 2016

Dwg No. A500- Erosion and Sediment Control Plan		Dated 31 January 2016; Received 11 April 2016
Dwg No. L001- Landscape Plan- Rev A		Dated 29 February 2016; Received 11 April 2016

Reference Documents	Author	Date Received
BASIX Certificate No. 714002M_02	The House Energy Rating Company of Aust. Pty Ltd	Dated 6 April 2016; Received 11 April 2016
Survey Plan	Hill and Blume Consulting Surveyors	Dated 29 September 2015; Received
Cover Letter for amended plans	Nathan Lester Architecture	Dated 1 August 2016; Received 8 August 2016
Cover Letter addressing Issue 3 and 4 of the additional information letter	Planet Urban Planning and Development Consultants	Dated 2 June 2016; Received 6 June 2016
Ground Floor/Site Stormwater Drainage Plan, Notes and Details	Law and Dawson	Dated March 2016; Received 6 June 2016
Statement of Environmental Effects	Nathan Lester Architecture	Dated January 2016; Received 11 April 2016
Statement of Environmental Effects- Appendix A- Solar Analysis	-	Received 6 June 2016
Waste Management Plan- 1	Scott Lester	Dated 29 February 2016; Received 11 April 2016
Waste Management Plan- 2	-	Received 6 June 2016
Stormwater Drainage Certificate	Law and Dawson	Dated 8 April 2016; Received 11 April 2016
Dwg No. 106- Existing 21 <sup>st</sup> June Shadows- Rev D	Nathan Lester Architecture	Dated 1 August 2016; Received 8 August 2016
Dwg No. 108- Proposed 21 <sup>st</sup> June Shadows- Rev D	Nathan Lester Architecture	Dated 1 August 2016; Received 8 August 2016
Clause 4.6- Exception to Development Standard- Floor Space Ratio	Planet Urban Planning and Development Consultants	Dated September 2016; Received September 2016

2. This Consent relates to land in Lot 34 in DP 14642 and, as such, building works must not encroach on to adjoining lands or the adjoining public place.
3. The following shall be complied with:
  - a) All building work must be carried out in accordance with the provisions of the Building Code of Australia;
  - b) In accordance with Clause 94 *Environment Planning & Assessment Regulation 2000*, an automatic smoke detection and alarm system for early warning of

occupants must be installed in the building (dwellings). The installation must satisfy the following:-

- i) smoke alarms must comply with AS3786 - 1993;
  - ii) smoke alarms must be connected to the consumer mains power where consumer power is supplied to the building; and
  - iii) be located in a position as required by Vol 2. BCA.
4. Pursuant to clause 97A(3) of the *Environmental Planning & Assessment Regulation 2000*, it is a condition of this development consent that all the commitments listed in the relevant BASIX Certificate (as referenced at Condition No. 1) for the development are fulfilled.

Note:

- a) Relevant BASIX Certificate means:
    - i) A BASIX Certificate that was applicable to the development when this development consent was granted (or, if the development consent is modified under Section 96 of the Act, a BASIX Certificate that is applicable to the development when this development consent is modified); or
    - ii) If a replacement BASIX Certificate accompanies any subsequent application for a construction certificate, the replacement BASIX Certificate.
  - b) BASIX Certificate has the meaning given to that term in the *Environmental Planning and Assessment Regulation 2000*.
5. The consent given does not imply that works can commence until such time that:
- a) Detailed plans and specifications of the building have been endorsed with a Construction Certificate by:-
    - i) The consent authority; or,
    - ii) An accredited certifier; and
  - b) The person having the benefit of the development consent:-
    - i) Has appointed a principal certifying authority; and
    - ii) Has notified the consent authority and the Council (if the Council is not the consent authority) of the appointment; and
    - iii) The person having the benefit of the development consent has given at least 2 days notice to the council of the persons intention to commence the erection of the building.

**CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE ISSUE OF ANY SUBDIVISION CERTIFICATE**

6. For compliance with the conditions of consent, a separate application must be made for a subdivision certificate. The application is to be accompanied by documentary evidence demonstrating compliance with all conditions of consent. Submission of a subdivision certificate application accompanied by a linen plan with six (6) copies and appropriate fees.
7. Prior to the issue of a Subdivision Certificate, a Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained. Application must be made through an authorised Water Servicing Coordinator. Please refer to “Your Business” section of Sydney Water’s web site at [www.sydneywater.com.au](http://www.sydneywater.com.au) then the “e-developer” icon or telephone 13 20 92.
  - a) Following application a “Notice of Requirements” will detail water and sewer extensions to be built and charges to be paid. Please make early contact with the Co-ordinator, since building of water/sewer extensions can be timed consuming and may impact on other services and building, driveway or landscape design.
  - b) The Section 73 Certificate must be submitted to the Principal Certifying Authority prior to the release of the linen plan or occupation of the development.
8. Prior to the issue of Subdivision Certificate, a Certificate of Survey from a Registered Surveyor shall be submitted to the Principal Certifying Authority showing all the structures are wholly located within the property boundary.
9. Prior to the issue of the Subdivision Certificate, Positive Covenant and Restriction on the Use of Land on the Title under Section 88B of the Conveyancing Act 1919 shall be created in favour of Council as the benefiting authority for the as-built on-site detention system. The standard wording of the terms of the Positive Covenant and Restriction on the Use of Land are available in Council. The relative location of the on-site detention system, in relation to the building footprint, shall be shown on a scale sketch and attached as an annexure to the plans/ forms.
10. Prior to the issue of Subdivision Certificate, maintenance schedule of the on-site detention system shall be prepared by a qualified engineer and included in the Positive Covenant of the 88B Instrument, as a cross-reference or appendix.

**CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE ISSUE OF ANY CONSTRUCTION CERTIFICATE**

11. Prior to the issue of the Construction Certificate the required Long Service Levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act 1986 has to be paid. The Long Service Levy is payable at 0.35% of the total cost of the development, however this is a State Government Fee and can change without notice.
12. The applicant must prior to the obtainment of the approved plans and specifications pay the following fees:-
  - a) Builders Security Deposit \$13,400.00 (Condition No. 16)

- |    |                          |                                |
|----|--------------------------|--------------------------------|
| b) | Development Control      | \$1,260.00                     |
| c) | Section 94 Contributions | \$16,810.28 (Condition No. 13) |
13. The payment of the following monetary contributions in accordance with Botany Bay Section 94 Contributions Plan 2016. This result is a total contribution of **\$16,810.28**, to be paid to Council prior to the issue of the Construction Certificate.
  14. Prior to the issue of the Construction Certificate, revised plans are to be provided to the certifying authority requiring the following modifications:
    - a) The doors on the ground floor along the northern side elevation (15 Aloha Street) and southern side elevation (15A Aloha Street) are to be removed.
    - b) Installation of 1.8 metre high privacy screens along the entire depth (side elevations) of the balconies at the rear of the dwellings to prevent overlooking into the adjoining rear properties.
    - c) All windows within habitable areas along the side setbacks are to have a minimum sill height of 1.5 metres.
  15. Prior to the issue of the Construction Certificate, the applicant shall contact "Dial Before You Dig on 1100" to obtain a Service Diagram for, and adjacent to, the property. The sequence number obtained from "Dial Before You Dig" shall be forwarded to Principal Certifying Authority. Any damage to utilities/services will be repaired at the applicant's expense.
  16. Prior to the issue of any Construction Certificate, the applicant shall lodge a Damage Deposit of \$13,400.00 (GST Exempt) by way of cash deposit or unconditional bank guarantee to Council against possible damage to Council's asset during the course of the building works. The deposit will be refunded subject to inspection by Council 12 months after the completion of all works relating to the proposed development and Final Occupational Certificate has been issued.
  17. Prior to the issue of any Construction Certificate, at the proposed point of construction site entry, a full photographic survey showing the existing conditions of Council's infrastructure shall be submitted to Council and the Principal Certifying Authority. The survey shall detail the physical conditions and identify any existing damages to the road, kerb, gutter, footpath, driveways, street trees, street signs and any other Council assets fronting the property and extending to a distance of 20m from the development. Failure to do so will result in the applicant being liable for any construction related damages to these assets. Any damage to Council's infrastructure during the course of this development shall be restored at the applicant's cost.
  18. A dilapidation report of 13 and 17 Aloha Street, including a photographic survey prepared by a Practising Structural Engineer, must be prepared in respect of the property known as 15 Aloha Street. A copy of the dilapidation report together with the accompanying photographs shall be given to the above property owner/s, and a copy lodged with Principal Certifying Authority prior the release of the Construction Certificate.
  19. Prior to the issue of any Construction Certificate, all driveways/access ramps/vehicular crossings shall conform to the current Australian Standards AS 2890.1 and Council's Infrastructure Specifications. These include but are not limited to E-01, E-04 and E-07. As part of this development, two new concrete driveway shall be constructed. A new

three (3) metre wide driveway layback shall be constructed as part of two new driveways. A minimum of one (1.0) metre of kerb and gutter either side of the driveway layback shall be replaced to enable the correct tie-in with the existing kerb and gutter.

20. Prior to the issue of the Construction Certificate, a plan (written and/or diagrammatic) shall be submitted and approved by the Certifying Authority, showing the storage location of construction building materials and plants and the method of access to the property. No storage of construction materials and plants to be allowed in road reserve area.
21. Prior to the issue of any Construction Certificate, detail design and construction plans in relation to stormwater management and disposal system for the development shall be submitted to the Certifying Authority for approval. *(The detail drawings and specifications shall be prepared by a suitably qualified and experienced civil engineer and to be in accordance with Botany Bay Development Control Plan 'Stormwater Management Technical Guidelines', AS/NSZ 3500 – Plumbing and Drainage Code and the BCA. All drawings shall correspond with the approved architectural plans. The plans shall incorporate but not limited to:*
  - a) the provision for a On-site Stormwater Infiltration System designed to retain all 1 in 100 year storm events and satisfying all relevant Council and Australian Standards,  
  
Note: a Rainwater Tank may be used as an alternative, for which up to half of the capacity may contribute towards the on-site detention system / infiltration trench
  - b) all calculations shall be submitted to Council for assessment.
22. All plumbing stacks, vent pipes and the like shall be kept within the building and suitably concealed from view. This condition does not apply to the venting to atmosphere of the stack above roof level. Details shall be submitted to the Principal Certifying Authority prior to issue of the Construction Certificate.
23. Prior to the issue of any Construction Certificate, detail design and construction plans in relation to the habitable areas shall be submitted to the Principal Certifying Authority for approval. The plans shall incorporate but not limited to the floor level of the habitable areas of the building shall be RL 7.80 AHD.
24. The building shall be constructed in accordance with AS2021- 2000: *Acoustics, Aircraft Noise Intrusion, Building Siting and Construction*, the details of which must be prepared by a practicing professional acoustical consultant. The report shall be submitted to Principal certifying authority prior to the release of the Construction Certificate and the building plans endorsed with the required acoustical measures.

The measures required shall be undertaken in accordance with the provisions of AS 2021 – 2000: *Acoustics - Aircraft Noise Intrusion - Building Siting and Construction* to establish components of construction to achieve indoor design sound levels in accordance with Table 3.3 of AS2021 – 2000 shall be incorporated into the construction of the building.

The work detailed in the report includes:

- a) Appropriate acoustic glazing to stated windows and doors,
- b) Detailed roof and ceiling construction,

- c) Wall and ceiling corner details and,
- d) External door specification,
- e) Acoustically treated mechanical ventilation.

**Note:** In many cases the applicant chooses to install air conditioning to meet mechanical ventilation requirements above. If they do it will require consideration of the noise from the air conditioner (advice concerning noise from air conditioners is attached below).

**CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE COMMENCEMENT OF ANY DEVELOPMENT OR WORK**

25. The Principal Certifying Authority must be satisfied that: -

- a) In the case of work to be done by a licensee under the Home Building Act: -
  - i) Has been informed in writing of the licensee name and contractor licence number, and;
  - ii) Is satisfied that the licensee has complied with the requirements of Part 6 of the Home Building Act 1989; or,
- b) In the case of work to be done by any other person: -
  - i) Has been informed in writing of the persons name and owner-builder permit number, or;
  - ii) Has been given a declaration signed by the owner of the land that states that the reasonable market cost of the labour and materials involved in the work is less than the amount prescribed for the purposes of the definition of *owner builder work* in Section 29 the Home Building Act 1989.

26. Prior to the commencement of works, the applicant must inform Council, in writing, of:

- a) The name of the contractor, and licence number of the licensee who has contracted to do, or intends to do, the work: or
- b) The name and permit number of the owner-builder who intends to do the work;
- c) The Council also must be informed if: -
  - i) A contract is entered into for the work to be done by a different licensee; or
  - ii) Arrangements for the doing of the work are otherwise changed.

27. The site to which this approval relates must be adequately fenced or other suitable measures employed that are acceptable to the Principal Certifying Authority to restrict public access to the site and building works. Such fencing or other measures must be in place before the approved activity commences.

28. Building plans must be lodged through a Sydney Water Tap In Service for approval prior to commencement of works.

29. This Consent shall not preclude the demolisher from giving notice to other statutory authorities, such as Sydney Water Corporation, WorkCover, etc.
30. If the land to which the application relates is served by a common sewerage system that is also used by others, then measures must be placed in effect and prior to the commencement of work to ensure the operation of the sewerage system is without disruption to other joint users.
31. Erosion and sediment control devices shall be installed prior to the commencement of any demolition, excavation or construction works upon the site in order to prevent sediment and silt from site works (including demolition and/or excavation) being conveyed by stormwater into Council's stormwater system, natural watercourses, bushland, trees and neighbouring properties. In this regard, all stormwater discharge from the site shall meet the requirements of the Protection of Environment Operations Act 1997 and the Department of Environment, Climate Change and Water guidelines. These device shall be maintained in a serviceable condition AT ALL TIMES throughout the entire demolition, excavation and construction phases of the development and for a minimum one (1) month period after the completion of the development, where necessary.
32. Prior to commencement of any works, application(s) shall be made to Council's Customer Services Counter for the following approvals and permits on Council's property/road reserve under Road Act 1993 and Local Government Act 1993 as appropriate: -
- ( It should be noted that any works shown within Council's road reserve or other Council Lands on the development approval plans are indicative only and no approval for these works is given until this condition is satisfied.)
- a) Permit to erect hoarding on or over a public place, including Council's property/road reserve
  - b) Permit to construction works, place and/or storage building materials on footpaths, nature strips
  - c) Permit for roads and footways occupancy (long term/ short term)
  - d) Permit to construct vehicular crossings, footpath, kerb and gutter over road reserve
  - e) Permit to open road reserve area, including roads, footpaths, nature strip, vehicular crossing or for any purpose whatsoever
  - f) Permit to place skip/waste bin on footpath and/or nature strip
  - g) Permit to use any part of Council's road reserve or other Council lands

### **DURING WORKS**

33. The proposed development shall comply with the following:
- a) A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:
    - i) Stating that unauthorised entry to the work site is prohibited;



- ii) Showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours;
    - iii) The Development Approval number; and
    - iv) The name of the Principal Certifying Authority including an after hours contact telephone number.
  - b) Any such sign is to be removed when the work has been completed.
34. The demolisher shall comply with Australian Standard 2601 - 2001 "Demolition of Structures".
35. Vibration levels induced by the demolition activities shall not exceed 1mm/sec peak particle velocity (ppv) when measured at the footing of any occupied building.
36. Prior to the commencement of demolition work a licensed demolisher who is registered with WorkCover NSW must prepared a Work Method Statement to the satisfaction of the Principal Certifying Authority (Council or an accredited certifier) and a copy shall be sent to Council (if it is not the PCA). A copy of the Statement shall also be submitted to WorkCover NSW.

The statement must be in compliance with AS2601:1991 – 'Demolition of Structures', the requirements of WorkCover NSW and conditions of the Development Approval, and shall include provisions for:

- a) Enclosing and making the site safe, any temporary protective structures must comply with the "Guidelines for Temporary Protective Structures (April 2001)";
- b) Induction training for on-site personnel;
- c) Inspection and removal of asbestos, contamination and other hazardous materials (by appropriately licensed contractors);
- d) Dust control – Dust emission must be minimised for the full height of the building. A minimum requirement is that perimeter scaffolding, combined with chain wire and shade cloth must be used, together with continuous water spray during the demolition process. Compressed air must not be used to blow dust from the building site;
- e) Disconnection of Gas and Electrical Supply;
- f) Fire Fighting – Fire fighting services on site are to be maintained at all times during demolition work. Access to fire services in the street must not be obstructed;
- g) Access and Egress – No demolition activity shall cause damage to or adversely affect the safe access and egress of this building;
- h) Waterproofing of any exposed surfaces of adjoining buildings;
- i) Control of water pollution and leachate and cleaning of vehicles tyres – Proposals shall be in accordance with the "Protection of the Environmental Operations Act 1997";
- j) Working hours, in accordance with this Development Consent;
- k) Confinement of demolished materials in transit;
- l) Proposed truck routes, in accordance with this Development Consent;

- m) Location and method of waste disposal and recycling in accordance with the "Waste Minimisation and Management Act 1995".
  - n) Sewer – common sewerage system ad08.
- 37. Precautions to be taken shall include compliance with the requirements of the WorkCover Authority of New South Wales, including but not limited to:
  - a) Protection of site workers and the general public.
  - b) Erection of hoardings where appropriate.
  - c) Asbestos handling and disposal where applicable.
  - d) Any disused service connections shall be capped off.
  - e) The disposal of refuse is to be to an approved waste disposal depot.
- 38. Hazardous or Special Wastes arising from the demolition process shall be removed and disposed of in accordance with the requirements of WorkCover NSW and the Department of Environment, Climate Change and Water and with the provisions of the:
  - a) Occupational Health and Safety Act, 2000;
  - b) Occupational Health and Safety Regulation 2001;
  - c) Protection Of the Environment Operations Act 1997 (NSW); and
  - d) NSW Department of Environment and Climate Change Waste Classification Guidelines (2008).
- 39. Any material containing asbestos found on site during the demolition process the shall be removed and disposed of in accordance with:
  - a) WorkCover NSW requirements. An appropriately licensed asbestos removalist must complete all asbestos works if they consist of the removal of more than 10m2 of bonded asbestos and/or any friable asbestos;
  - b) Protection of the Environment Operations Act 1997;
  - c) Protection of the Environment Operation (Waste) Regulation;
  - d) DECC Waste Classification Guidelines 2008.
  - e) No demolition materials shall be burnt or buried on the site.
- 40. The demolition and disposal of materials incorporating lead such as lead paint and dust shall be conducted in accordance with:
  - a) AS2601-2001 - Demolition of structure.
  - b) AS4361.2-1998 – Guide to Lead Paint Management-Residential and Commercial Buildings
- 41. In order to ensure safe handling of asbestos materials, the re-use or sale of asbestos building materials is strictly prohibited.

42. No demolition materials shall be burnt or buried on the site.
- 43.
- a) To ensure that utility authorities and Council are advised of any effects to their infrastructure by the development, the applicant shall: -
    - i) Carry out a survey of all utility and Council services within the site including relevant information from utility authorities and excavation if necessary to determine the position and level of services.
    - ii) Negotiate with the utility authorities (eg Energy Australia, Sydney Water and Telecommunications Carriers) and Council in connection with: -
      - 1 The additional load on the system; and
      - 2 The relocation and/or adjustment of the services affected by the construction.
  - b) Any costs in the relocation, adjustment, and provision of land or support of services as requested by the service authorities and Council are to be the responsibility of the developer.
44. Should the demolition process require a building waste container(s) (builders' skip), then such container must not be placed or left upon the public road, footpath, reserve or the like without the prior approval of the Council. The use of any part of Council's road reserve must also have prior approval of Council.
45. Throughout the construction period, Council's warning sign for soil and water management shall be displayed on the most prominent point of the building site, visible to both the street and site workers. A copy of the sign is available from Council's Customer Service Counter.
46. The approved Waste Management Plan shall be complied with at all times during demolition, construction and on-going use of the site.
47. All possible and practicable steps shall be taken to prevent nuisance to the inhabitants of the surrounding neighbourhood from wind-blown dust, debris, noise and the like.
- 48.
- a) All excavations and backfilling shall be executed safely and in accordance with appropriate professional standards; and all excavations shall be properly guarded and protected to prevent them from being dangerous to life or property;
  - b) Existing structures and or services on this and adjoining properties are not endangered during any demolition excavation or construction work associated with the above project. The applicant is to provide details of any shoring, piercing, or underpinning prior to the commencement of any work. The construction shall not undermine, endanger or destabilise any adjacent structures.
  - c) As the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

- i) Protect and support the adjoining premises from possible damage from the excavation, and
- ii) Where necessary, underpin the adjoining premises to prevent any such damage.

49. The following shall be complied with during construction and demolition:

a) Construction Noise

Noise from construction activities associated with the development shall comply with the NSW Environment Protection Authority's Environmental Noise Manual – Chapter 171 and the Protection of the Environment Operations Act 1997.

b) Level Restrictions

i) Construction period of 4 weeks and under:

The L10 sound pressure level measured over a period of not less than 15 minutes when the construction site is in operating must not exceed the background level by more than 20dB(A).

ii) Construction period greater than 4 weeks and not exceeding 26 weeks:

The L10 sound pressure level measured over a period of not less than 15 minutes when the construction site is in operating must not exceed the background level by more than 10 dB(A).

c) Time Restrictions

i) Monday to Friday 07:00am to 05:00pm

ii) Saturday 08:00am to 01:00pm

iii) No Construction to take place on Sundays or Public Holidays.

d) Silencing

All possible steps should be taken to silence construction site equipment.

50. The applicant shall conduct all construction and related deliveries wholly on site. If any use of Council's road reserve is required then separate applications are to be made at Council's Customer Services Department.

51.

- a) In order to prevent vehicles tracking soil or other materials onto public roads and washing of materials into the street drainage system or watercourse, during Excavation, Construction and Deliveries, access to the site shall be available in all weather conditions. The area shall be stabilised and protected from erosion; and,
- b) In addition, concrete trucks and any other trucks that used for the transportation of building materials or similar, shall not traffic soil cement or other materials onto

the road reserve. Hosing down of vehicle tyres shall only be conducted in a suitable off-street area where wash waters do not enter the stormwater system or enter Council's land.

- c) Hosing down or hosing/washing out of any truck (concrete truck), plant (eg concrete pumps) or equipment (eg wheelbarrows) on Council's road reserve or other property is strictly prohibited. Fines and cleaning costs will apply to any breach of this condition.
  - d) Pavement surfaces adjacent to the ingress and egress points are to be swept and kept clear of earth, mud and other materials at all times and in particular at the end of each working day or as directed by Council's Engineer.
  - e) Building operations such as brick cutting, washing tools or brushes and mixing mortar shall not be carried out on public roadways or footways or in any other locations which could lead to the discharge of materials into the stormwater drainage system or onto Council's lands.
52. During Demolition, Excavation and Construction, care must be taken to protect Council's infrastructure, including street signs, footpath, kerb, gutter and drainage pits etc. Protecting measures shall be maintained in a state of good and safe condition throughout the course of construction. The area fronting the site and in the vicinity of the development shall also be safe for pedestrian and vehicular traffic at all times. Any damage to Council's infrastructure (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete delivery vehicles) shall be fully repaired in accordance with Council's specification and AUS-SPEC at no cost to Council.
53. During construction work the Council nature strip shall be maintained in a clean and tidy state at all times. The nature strip shall be suitably replaced where damaged due to construction work in accordance with Council Specification at the completion of construction, and at the Applicant's expense.
54. Inspections must be conducted by Council's Engineer at the following occasions:
- a) Formwork inspection of driveway layback and adjacent kerb and gutter prior to laying of concrete,
  - b) Formwork inspection of Council's kerb and gutter prior to laying of concrete,
  - c) Formwork inspection of Council's footpath prior to laying of concrete,
  - d) Final inspection of driveway layback and adjacent kerb and gutter,
  - e) Final inspection of Council's kerb and gutter,
  - f) Final inspection of Council's footpath.
55. The Applicant has permission to remove one (1) Street tree (Callistemon sp.) located within the Council nature strip in Aloha Street in front of the property. Note: Trees are not permitted to be removed until the Construction Certificate has been issued.
56. Tree removal shall be undertaken by the Applicant at their own expense and adhere to the following:

(a) A qualified Arborist with their own public liability insurance must be engaged.

(b) All work is to take place on the Council road reserve with the appropriate safety and directional signage implemented to ensure public safety and access otherwise road and footpath closures require a Council Road Occupancy Permit.

(c) A Dial-Before-You-Dig enquiry is required prior to stump grinding the trunk and shall occur without damage to Council infrastructure or underground services/utilities.

Council will take no responsibility for any damage incurred to persons, property or services during the tree removal works.

57. In order to ensure that one (1) existing Jacaranda tree within the neighbouring property (13 Aloha St) beside the rear setback northern boundary is protected during construction, and the health and structural stability ensured, the following is required:
58. Prior to commencing demolition/any works the trees are to be physically protected by fencing underneath the canopy dripline using 1.8 metre high chainwire fence to form the Tree Protection Zone (TPZ). The fence shall remain in place until construction is complete.
59. Fencing shall be erected to ensure the public footway is unobstructed.
60. Before any works commence on site, the Applicant is required to contact Council for an inspection and/or provide photographic evidence of the fenced TPZ's. Council approval is required prior commencement of any work.
61. All detailed Construction Certificate plans shall show trees to be protected and the TPZ.
62. All TPZ's as well as the entire Council nature strip are a "No-Go" zone. There shall be no access to the property excluding the existing crossover, no stockpiling, storage or sorting of waste or building materials, no construction work, no concrete mixing, strictly no washing down of concrete mixers or tools, no chemicals mixed/disposed of, no excavation or filling, no service trenching. Any unavoidable work within the fenced zone shall be under the direction of Council's Tree Officer.
63. It is the Applicant's responsibility to ensure that there is no damage to the canopy, trunk or root system (including the surrounding soil) of any tree. There shall be no canopy pruning unless approval has been granted by Council's Tree Officer under separate application, with neighbour's consent.
64. Masonry boundary fencing/walls or retaining walls shall be of piered or bridged construction to minimise damage to major or structural tree roots where applicable. Trench or strip footings are not permitted. If a tree root 40mm diameter or greater is in the location of a pier and the root cannot be cut without compromising the tree, the pier will need to be relocated and the root bridged.
65. The Applicant shall undertake any tree maintenance/remedial pruning as required by Council at the completion of construction.

If there is any contravention of these tree preservation conditions, or a tree was found to be damaged (including roots), in decline, dead or pruned without permission, then Council will invoice the Applicant for costs associated with remedial pruning work or tree replacement. For trees on private property, the Applicant will be required to undertake tree maintenance/replacement work, as specified by Council.

**CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE ISSUE OF A OCCUPATION CERTIFICATE**

66. Prior to the issue of any Occupation Certificate, all applications associated with works on Council's land must be made at least 7-10 days prior to the programmed completion of works and all construction must be completed and approved by Council.
67. Prior to release of the Occupation Certificate the developer must submit to the Principal Certification Authority an acoustic report to verify that the measures stated in the acoustic report have been carried out and certify that the construction meets the above requirements. The report must be prepared by a qualified practicing acoustic engineer (who is a member of either the Australian Acoustical Society or the Association of Australian Acoustical Consultants).
68. Prior to the issue of an Occupation Certificate, documentation from a practising civil engineer shall be submitted to the Principal Certifying Authority certifying that the stormwater drainage system has been constructed generally in accordance with the approved stormwater management construction plan(s) and accepted practice.
69. Prior to the issue of any Occupation Certificate, inspection reports (formwork and final) for the works on the road reserve shall be obtained from Council's engineer and submitted to the Principal Certifying Authority attesting that this condition has been appropriately satisfied.
70. Prior to the issue of any Occupation Certificate, the applicant shall carry out the following works:
  - a) On Aloha Street, adjacent to development, reconstruct the existing footpath for the full length of the proposed new properties in accordance with Council Infrastructure Specifications; and
  - b) On Aloha Street, adjacent to development, reconstruct the existing kerb and gutter for the full length of the proposed new properties in accordance with Council Infrastructure Specifications.
71. Any damage not shown in the photographic survey submitted to Council before site works have commenced will be assumed to have been caused by the site works (unless evidence to prove otherwise). All damages as a result from site works shall be rectified at the applicant's expense to Council's satisfaction, prior to occupancy of the development and release of damage deposit.
72. Prior to the issue of any Occupation Certificate(s), a restriction on Use of Land and Positive Covenant(s) shall be imposed on the development. The following covenants shall be imposed under Section 88(E) of the Conveyancing Act 1919 and lodged with the NSW Land and Property Information:
  - a) Restriction on Use of Land for On-Site Infiltration System. Refer to Appendix A of the Stormwater Management Technical Guidelines for suggested wording.
73.
  - a) Two (2) street trees shall be installed in the nature strip by Council at the Applicant's expense. The Applicant shall make a payment to Council of \$950 (\$475/ 75L tree) for the purchasing and installation of the new street trees, and their establishment costs, prior to the issue of the Construction Certificate.

- b) The new trees will be planted by Council once construction work is complete, including any driveway crossovers. It is the Applicant's responsibility to notify Council when construction is complete and the new street tree may be planted without risk of further damage. Species to be installed: *Callistemon viminalis* cv.
- 74. The Council nature strip in Aloha Street shall be repaired and/or replaced and maintained in accordance with Council Specification at the completion of all construction work at the Applicant's expense.
- 75. Prior to use and occupation of the building an Occupation Certificate must be obtained under Section 109C(1)(c) and 109N of the Environmental Planning and Assessment Act, 1979.

#### **CONDITIONS WHICH MUST BE SATISFIED FOR THE ONGOING USE**

- 76. Ongoing maintenance of the grass nature strips shall be undertaken by the occupier, strata or owner. Maintenance includes mowing, watering and maintaining an even coverage of grass. Maintenance **does not include** pruning, trimming or any work to Council's street tree assets located on the Council nature strip under any circumstances at any time, including new street trees. All pruning is undertaken by Council only.
- 77. The buildings are not be used as a boarding house.
- 78. The building is approved as a single dwelling on each site for use and occupation by a single family. It shall not be used for separate residential occupation or as separate residential flats. No plumbing fixtures, fittings, walls shall be deleted or added, doorways enclosed or any other changes made from the approved plans in Condition No. 1 of this Consent without the prior Consent of the Council.
- 79. The stormwater drainage system (including all pits, pipes, absorption, detention structures, treatment devices, infiltration systems and rainwater tanks) shall be regularly cleaned, maintained and repaired to ensure the efficient operation of the system from time to time and at all times. The system shall be inspected after every rainfall event to remove any blockage, silt, debris, sludge and the like in the system. All solid and liquid waste that is collected during maintenance shall be disposed of in a manner that complies with the appropriate Environmental Guidelines.
- 80. All intruder alarms shall be fitted with a timing device in accordance with the requirements of *Regulation 12A of the Noise Control Act, 1975, and AS2201, Parts 1 and 2 - 1978 Intruder alarm systems*.
- 81.
  - a) Air conditioning units are not to be visible from the street or public place and are not to obscure windows/window frames or architectural features of the dwelling.
  - b) Noise from any air-conditioning units (measured as the  $L_{aeq\ 15\ minute}$ ) is not to exceed the background level (measured as the  $L_{a90\ 15\ minute}$ ) by more than 5dBA at any time. The measurement is to be taken at boundary of the property. If the noise from the air conditioner contains any annoying characteristics, the measurements are to be corrected in accordance with the New South Wales Industrial Noise Policy. In addition noise from any air conditioning units are not to be audible within habitable room of other residence before 7am or after 10pm (Monday to Friday) or before 8am or after 10pm (Sat/Sun/Public Holidays).



Note: In order to meet this condition, the compressors and any other noise generating part of the air conditioning unit, are to be located a sufficient distance from any residential boundary to permit the sound from the unit to decay sufficiently to meet the standard, or enclosed in a suitable acoustic enclosure.

82. The applicant being informed that this approval shall be regarded as being otherwise in accordance with the information and particulars set out and described in the Development Application registered in Council's records as Development Application No. 16/52 dated as 11 April 2016 and that any alteration, variation, or extension to the use, for which approval has been given, would require further approval from Council.

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## Council Meeting

12/10/2016

Item No	9.3
Subject	<b>Refusal of Planning Proposal – 51-53 Rhodes Street, Hillsdale</b>
Report by	Stephanie Lum, Senior Strategic Planner
File	(B) S14/63

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## Summary

On 9 April 2015, the former City of Botany Bay received a Planning Proposal for 51-53 Rhodes Street, Hillsdale (Lot 7 DP 8542) prepared by Willana Associates on behalf of the owner, Palmpoint Pty Ltd. The proposal seeks to change the zoning of the site from B7 - Business Park to B4 - Mixed Use; increase the FSR from 1:1 to 1.5:1; and increase the height from 12 metres to 22 metres. The intended outcome of the Planning Proposal is to facilitate the delivery of the redevelopment of the site to accommodate a residential flat building development and commercial/light industrial ground floor tenancy to the street frontage.

The site is located within the study area of the *Denison Street Land Use Safety Study Review of Planning Controls* Report which recommends that it would not be appropriate to rezone this area for higher density residential uses due to the risks associated with the Denison Street dangerous goods route and the hazards at the Botany Industrial Park. Accordingly, it is recommended that the Planning Proposal be refused.

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## Council Resolution

Resolved by the Administrator:

That this item be deferred for one month so that further discussions can take place between Council staff and the applicant.

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## Officer Recommendation

- 1 That Council refuse the Planning Proposal for 51-53 Rhodes Street, Hillsdale based on the risk issues identified in the *Denison Street Land Use Safety Study Review of Planning Controls* Report; and
  - 2 That Council notify the applicant of the decision and refund any remaining application fees.
- 

## Background

The subject site is located in the Banksmeadow Industrial Precinct in Hillsdale; adjoins the land covered by SEPP Three Ports (2013); and is in close proximity to Denison Street and the Botany Industrial Park (BIP) (i.e. major hazard land uses).

A Quantitative Risk Assessment (QRA) of dangerous goods movements on Denison Street, Hillsdale was undertaken by the former City of Botany Bay in partnership with the Department of Planning and Environment (DP&E), who engaged Scott Lister (a risk consultant) to undertake the study.

The QRA was required as part of the assessment of an application for a Bunnings store at 140-148 Denison Road, Hillsdale (DA No. 11/224) that was determined by the Joint Regional Planning Panel (JRPP) on 1 April 2015. The purpose of the study was to understand the level of risk associated with dangerous goods (DG) transport on Denison Street to inform the determination on the proposed Bunnings development as well as other potential future developments around the BIP.

Following the finalisation of the QRA, the DP&E requested a sensitivity analysis be undertaken to estimate the contribution of increased DG Class 2.1 movements (flammable gases) from the bulk liquids port to 4,000 movements per year to the overall risk. The results of this analysis were published in the *Addendum to Dangerous Goods Transport QRA, Denison Street Hillsdale* (Addendum Report).

Due to the proximity of the site to Denison Street and the BIP, the subject site is affected by the findings of the *Dangerous Goods Transport QRA, Denison Street Hillsdale* and *Addendum to Dangerous Goods Transport QRA, Denison Street Hillsdale*. The findings of the Addendum Report indicate that there is a greater level of risk associated with the Planning Proposal than the submission suggests. The current dangerous goods transport risk affecting the site alone is nearing the maximum acceptable risk criterion for residential development which may increase in the future and subsequently render the use of the site for residential accommodation intolerable.

Given the likely exposure to risks from dangerous goods transport incidents and potential incidents from the BIP, it is imperative that the significant increase in residential density proposed is considered thoroughly, taking into account accurate information, and with a comprehensive understanding of the implications of all increased development in the area.

Accordingly, at its meeting on 1 July 2015, the former City of Botany Bay Council resolved to defer detailed assessment of the Planning Proposal until a working group has been formed with the DP&E to address the findings of the QRA and Addendum, and the potential impacts to Council's planning controls. It was concluded that when the working group was in a position to determine the implications upon planning controls of the area, the proposal could be more adequately assessed with a greater understanding of the real impacts of significantly increasing public exposure to risk related incidents in the area.

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## Issues

The QRA recommended that the former City of Botany Bay Council review its planning controls for the area to ensure that new development does not result in a significant exposure to risks from dangerous goods transport incidents. Accordingly, the former Council engaged a risk consultant, Arriscar Pty Ltd, to review the current planning controls in context of the results of the Transport QRA and Addendum Report, as well as the societal risk from the BIP. The consultant's findings are published in the *Denison Street Land Use Safety Study Review of Planning Controls* Report (Planning Controls Report) which is provided in **Attachment 1**.

The Report identifies risk-related planning measures surrounding Denison Street, Hillsdale to inform land use safety decisions for existing and future developments. Some of the

measures may involve restrictions on the use of land for the continued safety of residents and workers in the area.

At its meeting on 7 September 2016, the former Council considered a report on the Study and resolved that:

- 1 The contents of this report are noted;
- 2 Council make the report *Denison Street Land Use Safety Study Review of Planning Controls* public on its website; and
- 3 A further report on the possible changes required to the current planning controls be presented at a future Development Committee Meeting.

Council officers are now working closely with the DP&E to prepare risk-related planning measures which may include amendments to the *Botany Bay Local Environmental Plan (BBLEP) 2013* and the *Botany Bay Development Control Plan (BBDCP) 2013* to address the issues identified in the *Denison Street Land Use Safety Study Review of Planning Controls* Report.

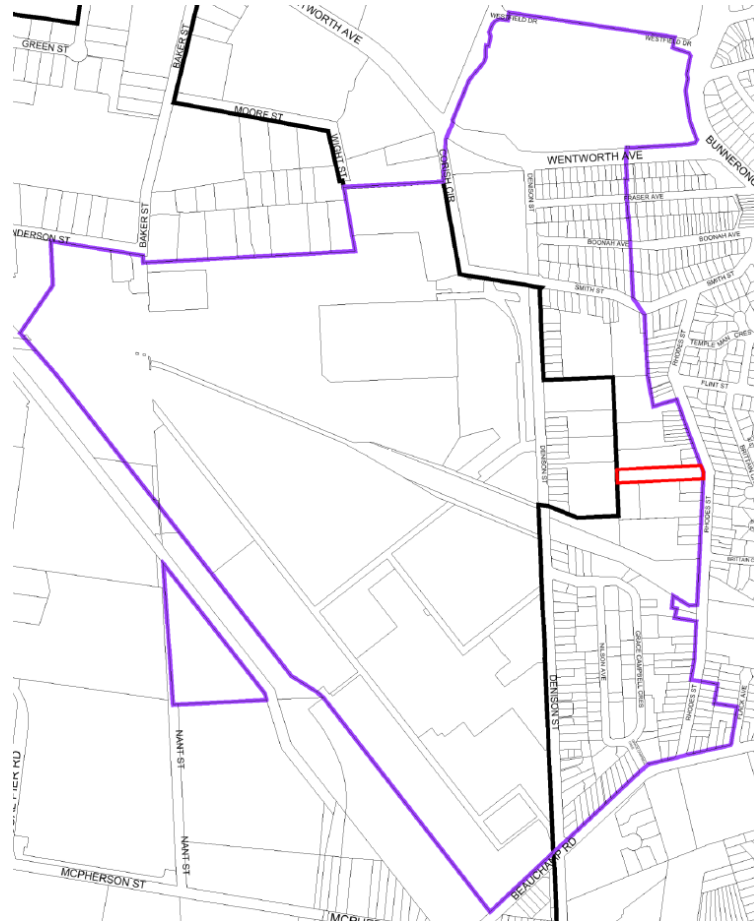
The subject site at 51-53 Rhodes Street, Hillsdale is located in Area H (Business Park Zone in the Banksmeadow Industrial Precinct) of the Study Area as indicated in **Figure 1** below. In regards to Area H, the Report makes the following recommendations:

- Prohibit sensitive uses within this Area;
- It would not be appropriate to rezone this Area for higher density residential uses due to potential contribution to the cumulative societal risk;
- Any proposed population intensification (including residential and commercial uses) will require a societal risk assessment. Consent must not be based on complying with individual risk criteria alone; and
- Lower risk general and light industries that will not increase the cumulative risk in the Study Area are the preferred type of development in this Area.

The Planning Proposal for 51-53 Rhodes Street, Hillsdale seeks to change the zoning of the site from B7 - Business Park to B4 - Mixed Use; increase the FSR from 1:1 to 1.5:1; and increase the height from 12 metres to 22 metres. The intended outcome of the Planning Proposal is to facilitate the delivery of the redevelopment of the site to accommodate a residential flat building development and commercial/light industrial ground floor tenancy to the street frontage.

Therefore, the proposal will result in higher density residential uses and population intensification which is inconsistent with the recommendations of the Report.

Accordingly, it is recommended that in light of the recommendations of the Report and the risk issues, the Planning Proposal be refused.



**Figure 1 – Study Area (outlined in purple) and the subject site (outlined in red).**

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## Financial Implications

On 9 April 2015, Palmpoint Pty Ltd lodged the Planning Proposal with the former City of Botany Bay accompanied with an application fee of \$25,000 (the fee required by the 2015/16 Fees and Charges). A portion of the application fee was utilised by the former Botany Bay Council to engage Arriscar Pty Ltd to undertake the Planning Controls Report. It is recommended that in light of the findings of the Report, the Planning Proposal be refused and any remaining funds be refunded to the applicant.

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## Conclusion

The former City of Botany Bay received a Planning Proposal for 51-53 Rhodes Street, Hillsdale seeking to rezone the site and increase the maximum FSR and height to permit residential flat buildings. The site is located near both Denison Street which is a dangerous

goods route and the Botany Industrial Park which contains major hazardous industries and operations.

The proposal is inconsistent with the *Denison Street Land Use Safety Study Review of Planning Controls* Report which recommends that it would not be appropriate to rezone this Area for higher density residential uses due to potential contribution to the cumulative societal risk.

In light of the findings of the Report, it is recommended that the Planning Proposal be refused and any remaining funds not expended from the application be refunded.

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## **Community Engagement**

Nil.

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## **Attachments**

*Denison Street Land Use Safety Study Review of Planning Controls* Report

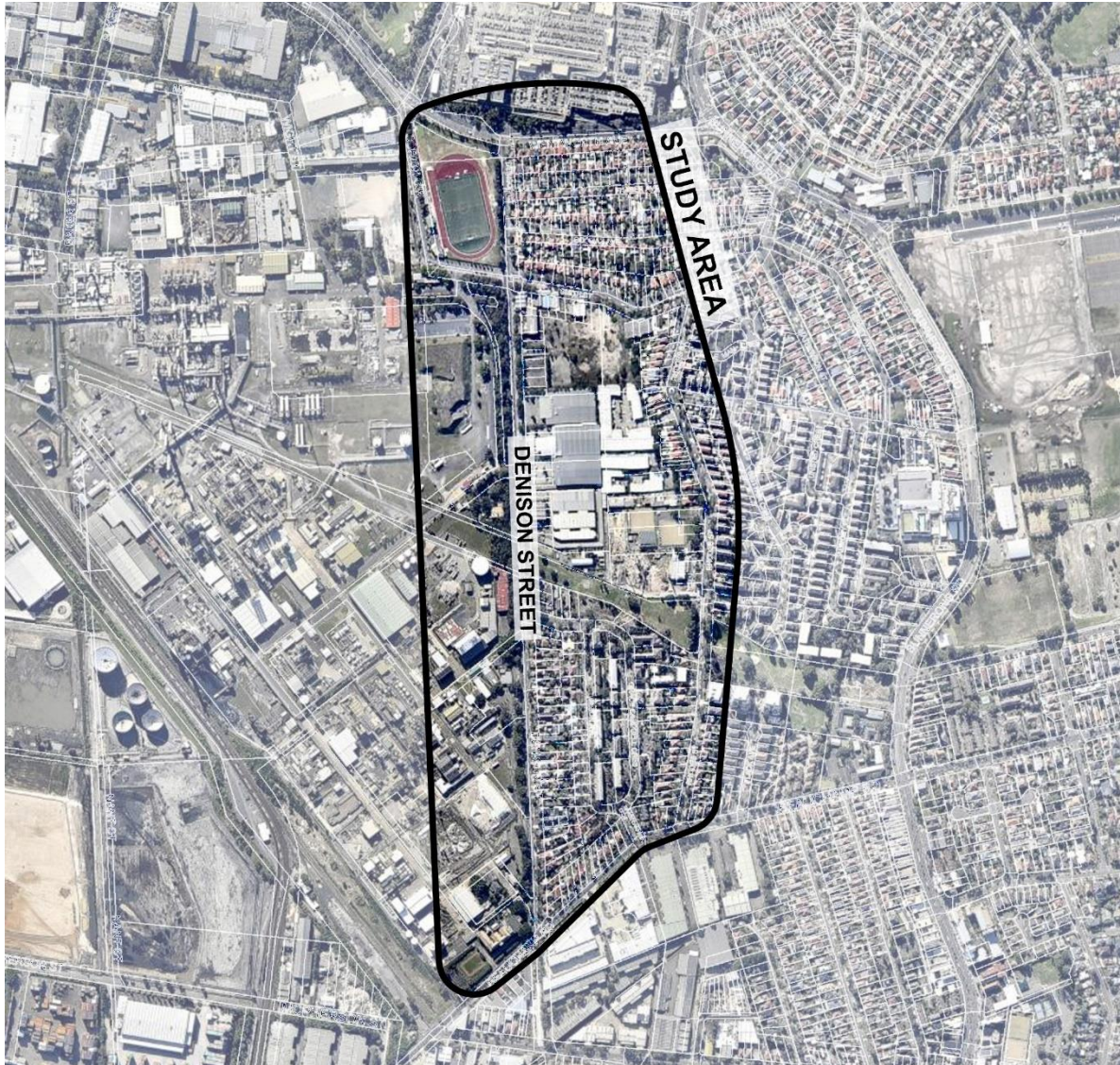


# Review of Planning Controls

## Denison Street, Hillsdale

For Botany Bay City Council

16 August 2016



Doc. No.: J-000166-REP-RPC

Revision: 0

## DISTRIBUTION LIST

Name	Organisation	From (Issue)	To (Issue)
Cathy McMahon	Botany Bay Council	A	Current
Project Master File	Arriscar Pty Ltd	A	Current

## DOCUMENT HISTORY AND AUTHORISATION

Rev	Date	By	Description	Check	Approved
A	13-Apr-16	PS	Consultation draft (Not for circulation).	JL & RR	RR
B	9-May-16	PS	Consultation draft (Not for circulation) incorporating feedback from BBCC	RR	RR
C	29-Jun-16	PS	Draft incorporating feedback from DP&E	JL	PS
0	16-Aug-16	PS	Final report.	RR	RR

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## Summary

The Botany Industrial Park and Port Botany industrial facilities generate significant movements of bulk and packaged dangerous goods (DGs) by road in the local government area of Botany Bay City Council (BBCC). Some packaged goods trucks and bulk liquids road tanker trucks use a 1 km stretch of road at Denison Street, Hillsdale.

To inform the Joint Regional Planning Panel (JRPP) on the risks posed by DG transport on a proposed Bunnings Warehouse at 25-49 Smith Street Hillsdale, BBCC in partnership with the Department of Planning and Environment (DP&E) commissioned a Quantitative Risk Assessment (QRA) of Dangerous Goods (DG) movements on Denison Street, Hillsdale ('Transport QRA').

The Transport QRA Report [Ref. 25] recommended that BBCC should":

*"review its planning controls for the area, in light of this study, to ensure new development does not result in a significant exposure to risks from dangerous goods transport incidents. For example, it may be desirable to discourage intensification of residential development within areas with an individual fatality risk in excess of one chance in a million, as indicated in HIPAP 4, Section 2.5.2.1".*

BBCC is undertaking a review of the Botany Bay Development Control Plan (BBDCP2013) and is preparing a new DCP specifically for land covered by the new 'Three Ports' State Environmental Planning Policy (SEPP). To assist in this review, BBCC engaged Arriscar Pty Limited (Arriscar) to undertake a review of land use safety planning controls due to the proximity of the Botany Industrial Park (BIP) and the transport of Dangerous Goods (DGs) along Denison Street.

The Review included consideration of:

- Current and predicted future development in the Study Area.
- Current, and predicted changes to, transport of DGs along Denison Street.
- Available risk assessments for the Study Area, including:
  - *Dangerous Goods Transport QRA, Denison Street Hillsdale* (12 February 2015) [Ref. 25].
  - *Addendum to Dangerous Goods Transport QRA, Denison Street Hillsdale* (19 May 2015) [Ref. 24].
  - *Quantitative Risk Assessment, Summary Report, Botany Industrial Park* [Ref. 27].

The implications of future redevelopment in the Study Area and changes to DG heavy vehicle movements along Denison Street were considered when developing the proposed risk-based planning controls. For example, the forecast population growth could increase the demand for higher density residential development to the east of Rhodes Street. There would also be a corresponding increase in DG truck traffic along Denison Street. Based on information from Ports NSW, a 50% increase in DG heavy vehicle movements along Denison Street would appear to be a reasonable conservative assumption over the next 10 years.

It is important to note that:

- A detailed verification of the currently available quantitative risk assessments (QRAs) was excluded from the scope of the Review (Refer to Section 1.3). The proposed risk-based planning controls are based on the risk results presented in these available QRAs, provided for this Review to Arriscar by BBCC.

- There are no established quantitative risk criteria in NSW for land use safety planning due to the transport of DGs (Refer to Section 6.1). Therefore, the proposed risk-based planning controls are based on the risk criteria for fixed facilities in NSW, which are consistent with criteria that have been adopted in previous QRAs and international practice.

Within the four main precincts in the Study Area, there are 20 areas where the combination of land use zoning and major risk contributor/s warrants specific risk-based planning controls (Refer to Section 7.2). The large number of areas arises because the Study Area includes nine different land use zones (B3, B4, B5, B7, R2, R3, RE1, IN1 and SP1) and the dominant risk contributor (e.g. cumulative location-specific individual fatality risk, cumulative injury / irritation risk and/or cumulative societal risk) varies throughout the Study Area.

A guide for land use safety planning has been provided for each of the 20 specific areas, and this includes recommendations for restrictions on some categories of future development. How these risk-based planning controls are to be implemented needs to be determined by BBCC as some of the proposed controls will only apply to some specific parts the Study Area and should not be applied to all other similarly zoned areas defined within the Local Environmental Plan.

The current zoning, and any potential restrictions on future rezoning (particularly to a more sensitive use category), is identified for each area. Also, the proposed controls for future developments (i.e. potentially hazardous industry and/or other types of development in the vicinity of existing potentially hazardous industry) are included, together with the basis for each of the recommended planning controls.

The proposed risk based planning controls will need to be periodically reviewed as new QRAs become available (e.g. as required by the development consent conditions for the BIP) and/or if the NSW government establishes quantitative risk criteria for the transport of DGs. It will continue to be important to ensure all underlying assumptions and data sources (e.g. truck accident frequency) are thoroughly scrutinised in any future QRAs and it may be appropriate to undertake a sensitivity analysis to test the impact of the data and assumptions.

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## Notation

Abbreviation	Description
ALARP	As Low As Reasonably Practicable
Arriscar	Arriscar Pty Limited
ARTC	Australian Rail Track Corporation
BBCC	Botany Bay City Council
BBLEP2013	Botany Bay Local Environmental Plan 2013
BBDCP2013	Botany Bay Development Control Plan 2013
BIP	Botany Industrial Park
BLEVE	Boiling Liquid Expanding Vapour Explosion
DCP	Development Control Plan
DG/s	Dangerous Good/s
DP&E	Department of Planning and Environment
FN Curve	Log-log plat of cumulative frequency of fatality versus of number of fatalities
HIPAP	Hazardous Industry Planning Advisory Paper
IMT	Intermodal Terminal. A facility used to transfer freight from one transport mode to another, for example from road to rail.
JRPP	Joint Regional Planning Panel
km	kilometre
kPa	Kilo-Pascals
kW/m <sup>2</sup>	Kilo-Watts per square metre
LEP	Local Environmental Plan
LGA	Local Government Area
LSIFR	Location-Specific Individual Fatality Risk
LUSS	Land Use Safety Study
m	metre
MHF	Major Hazard Facility
NSW	New South Wales
p.a.	Per annum
QRA	Quantitative Risk Assessment
RAC	Risk Assessment Criteria
Ref	Reference
RFB	Residential flat building

Abbreviation	Description
RMS	Roads and Maritime Services
SEPP	State Environmental Planning Policy
SPC	Special Purpose Company
TEU	Twenty-foot equivalent unit. A unit of measurement equal to the space occupied by a standard twenty foot container. One 40 foot container is equal to two TEU.
Three Ports SEPP	State Environmental Planning Policy (Three Ports) 2013



## 1 INTRODUCTION

### 1.1 Background

The Botany Industrial Park and Port Botany industrial facilities generate significant movements of dangerous goods (DGs) by road in the local government area of Botany Bay City Council (BBCC). Some packaged goods trucks and bulk liquids road tanker trucks use Denison Street, Hillsdale.

To inform the Joint Regional Planning Panel (JRPP) on the risks posed by DG transport on a proposed Bunnings Warehouse at 25-49 Smith Street Hillsdale, BBCC in partnership with the Department of Planning and Environment (DP&E) commissioned a Quantitative Risk Assessment (QRA) of Dangerous Goods (DG) movements on Denison Street, Hillsdale ('Transport QRA').

The Transport QRA Report [Ref. 25] recommended that BBCC should":

*"review its planning controls for the area, in light of this study, to ensure new development does not result in a significant exposure to risks from dangerous goods transport incidents. For example, it may be desirable to discourage intensification of residential development within areas with an individual fatality risk in excess of one chance in a million, as indicated in HIPAP 4, Section 2.5.2.1".*

There are some existing risk-based land use safety planning controls within the Botany Bay Local Environmental Plan 2013 (BBLEP2013). For example:

- Part 6.2.8 of the Botany Bay Development Control Plan (BBDCP2013) outlines the recommendations of three previous studies undertaken by the State Government concerning risk in the Banksmeadow / Randwick area and includes planning controls for employment / industrial development.
- Part 8 — Character Precincts (for Hillsdale and Botany) of BBDCP2013 includes planning controls for residential development.

BBCC is undertaking a review of the BBDCP2013 and is preparing a new DCP specifically for land covered by the new 'Three Ports' State Environmental Planning Policy (SEPP). As part of this review, BBCC has engaged Arriscar Pty Limited (Arriscar) to undertake a review of land use safety planning controls due to the proximity of the Botany Industrial Park and the transport of Dangerous Goods (DGs) along Denison Street.

This report provides details of the land use planning controls review conducted by Arriscar for the Denison Street truck transport route.

### 1.2 Objectives

In the Hazardous Industry Planning Advisory Paper (HIPAP) No. 10 – *Land Use Safety Planning* [Ref. 8, Section 4.2.1], it is stated that it is important for local councils to have "policies and follow procedures for ensuring appropriate zoning and development assessment in areas that could be impacted by major accidents".

BBCC's current policies and procedures for land use safety planning in the Study Area are included as risk-based development controls in the BBDCP2013 [Ref. 1].

Therefore, the overall objective was to review the BBCC's existing risk-based planning controls for the Study Area and to propose any amendments that will assist Council to make informed land use safety decisions for existing and future development.

A secondary objective is to address the relevant recommendation from the Transport QRA [Ref. 25] in relation to their applicability to the Study Area.

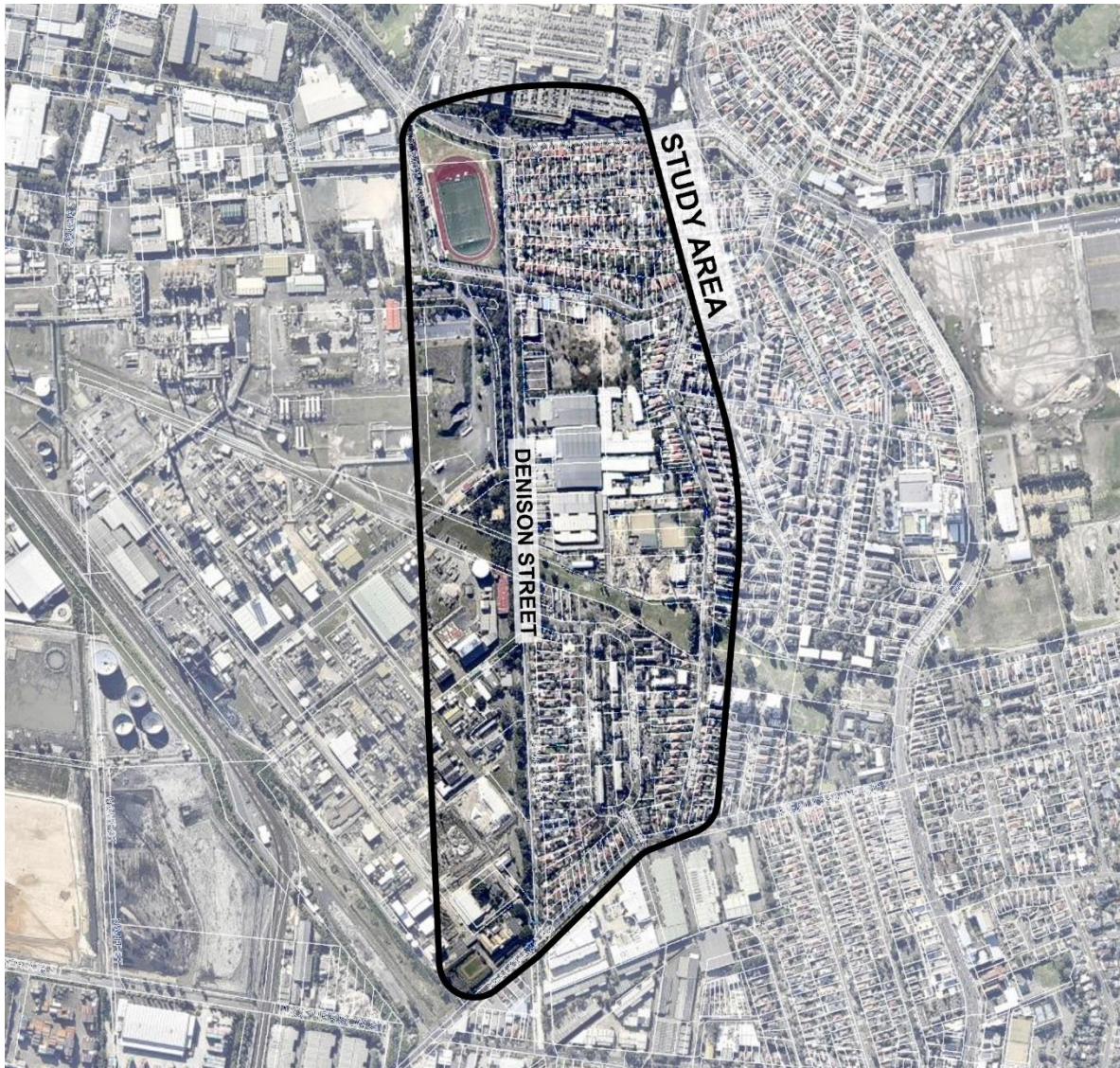
### 1.3 Scope of Work

The scope of work, as reported in BBCC's project brief, includes:

1. A review of the existing:
  - a. land uses and development standards in BBLEP2013; and
  - b. planning controls in the BBDCP2013,as they relate to the Study Area shown in Figure 1 and in the context of the findings and recommendations of the QRA for DG movements on Denison Street.
2. Identification of BCC's existing planning controls and standards that are relevant to the risk within the study area and therefore require review.
3. Reviewing the identified existing planning controls and standards against the results / findings of the key risk studies, in the context of strategic land use safety planning.
4. Recommending any necessary amendments to the relevant existing planning controls and standards.

The scope of the review did not include verification of the data and results included in any of the currently available QRAs for the Study Area. This includes, *inter alia*, the: *Dangerous Goods Transport QRA, Denison Street Hillsdale* (12 February 2015) [Ref. 25]; *Addendum to Dangerous Goods Transport QRA, Denison Street Hillsdale* (19 May 2015) [Ref. 24]; and *Quantitative Risk Assessment, Summary Report, Botany Industrial Park* [Ref. 27].

**Figure 1 Study Area**





## 2 APPROACH

The review involved the following key activities:

- Inception (kick-off) meeting with BBCC and visit to the Study Area.
- Briefings with representatives from BBCC, DP&E, NSW Ports, Transport NSW, Roads and Maritime Services (RMS) and Australian Rail Track Corporation (ARTC).
- Development of the proposed (draft) amendments to the existing planning controls and standards, based on a review of:
  - Existing planning control documents relating to the Study Area, including:
    - *Botany Bay Development Control Plan 2013* [Ref. 1].
    - *Botany Bay Local Environmental Plan 2013* [Ref. 14].
    - *State Environmental Planning Policy (Three Ports) 2013* (Three Ports SEPP) [Ref. 15].
    - *Botany / Randwick Industrial Area Land Use Safety Study* (2001) [Ref. 9].
  - Current and predicted future development in the Study Area.
  - Current, and predicted changes to, transport of DGs along Denison Street.
  - Available risk assessments for the Study Area, including:
    - *Dangerous Goods Transport QRA, Denison Street Hillsdale* (12 February 2015) [Ref. 25].
    - *Addendum to Dangerous Goods Transport QRA, Denison Street Hillsdale* (19 May 2015) [Ref. 24].
    - *Quantitative Risk Assessment, Summary Report, Botany Industrial Park* [Ref. 27].
  - Consideration of the relevant risk criteria for land use safety planning in the Study Area, including from the transport of DGs. This included a review of the risk criteria from HIPAP No. 4, *Risk Criteria for Land Use Safety Planning* (2011) [Ref. 7] and HIPAP No. 10, *Land Use Safety Planning* (2011) [Ref. 8].
- Finalisation of the proposed amendments to the existing planning controls and reporting.

### 3 DESCRIPTION OF STUDY AREA

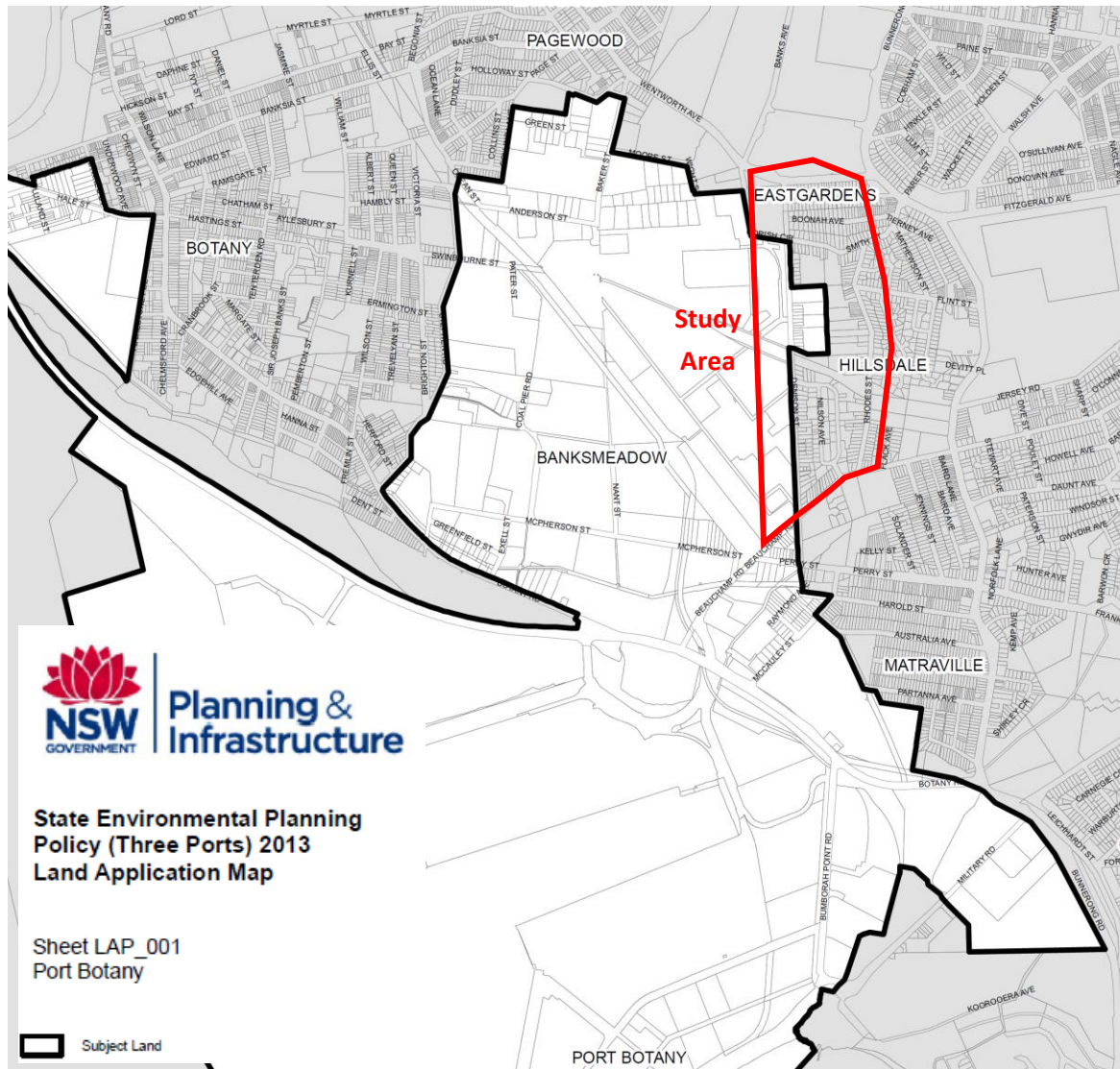
#### 3.1 Introduction

The Study Area partly overlaps two of BBCC's planning precincts: Hillsdale and Eastgardens (Refer to Figure 2). It also partly overlaps land that falls under the Three Ports SEPP, which is principally the Botany Industrial Park (BIP) to the west of Denison Street (Refer to Figure 3), and includes part of the Banksmeadow Industrial Precinct (Refer to Section 3.1.2).

**Figure 2 BBCC Planning Precincts [Ref. 1]**



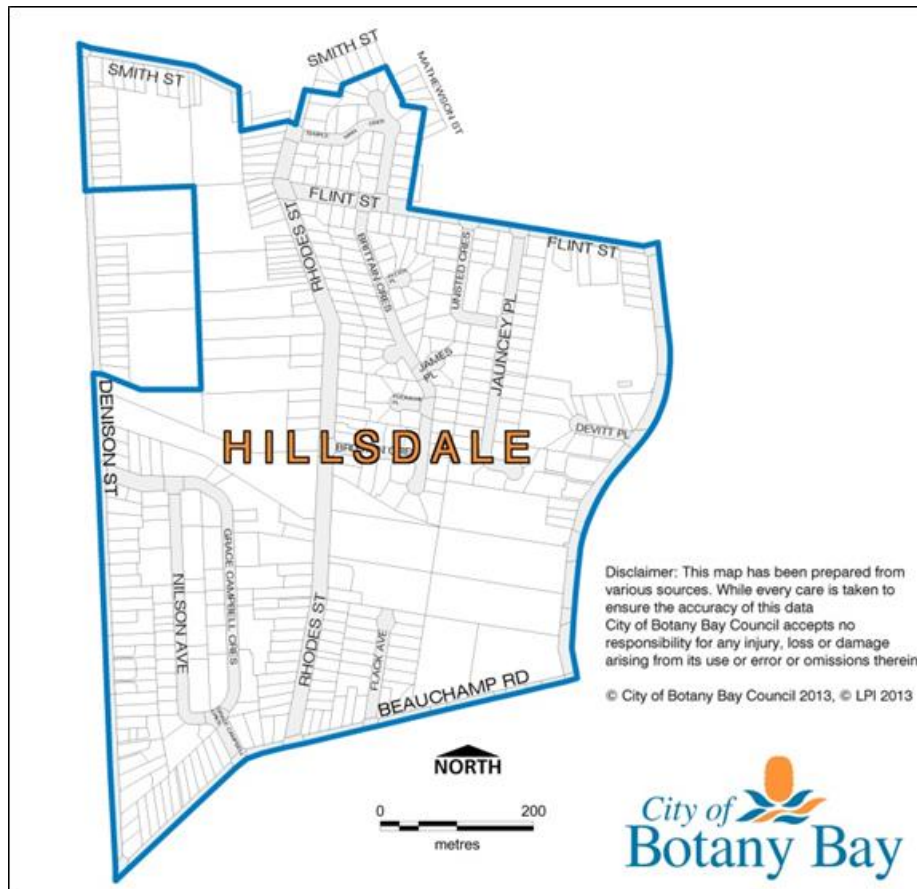
**Figure 3 Land Application Map for Three Ports SEPP [Ref. 4]**



### 3.1.1 Hillsdale Precinct

The Hillsdale Precinct is generally bounded by Smith Street, Bunnerong Road, Beauchamp Road and Denison Street (Refer to Figure 4). Rhodes Street Reserve bisects Hillsdale (between Denison Street and Rhodes Street).

**Figure 4 Hillsdale Precinct [Ref. 1]**



Two and three storey Residential Flat Buildings (RFB) are the dominant multi-unit residential style building type to the east of Rhodes Street. These sites were traditionally detached dwelling sites redeveloped for flat buildings in the 1960s-1970s. More recently, some RFBs have been approved (under construction) to the east and west of Rhodes Street near the Bowling Club.

Villa and townhouse developments occupy the western side of Nilson Avenue and are in the vicinity of Flint Street, Unsted Crescent and Jauncey Place. Dwelling Houses are scattered throughout the Precinct, with the majority located on Rhodes Street (south of the Rhodes Street Reserve) and along Beauchamp Road/Denison Street.

The Hillsdale Local Centre, which is not located within the Study Area, includes major supermarkets and specialty stores.

### **3.1.2 Eastgardens Precinct**

The Eastgardens Precinct (Refer to Figure 5) includes: the Westfield Eastgardens shopping centre (North of Wentworth Avenue); low density detached dwelling houses (South of Wentworth Avenue in Fraser Avenue, Boonah Avenue, Bunnerong Road, Tierney Avenue, Matheson Street and Smith Street); and the Hensley Athletic Field (Bounded by Wentworth Avenue, Denison Street, Smith Street and Corish Circle).

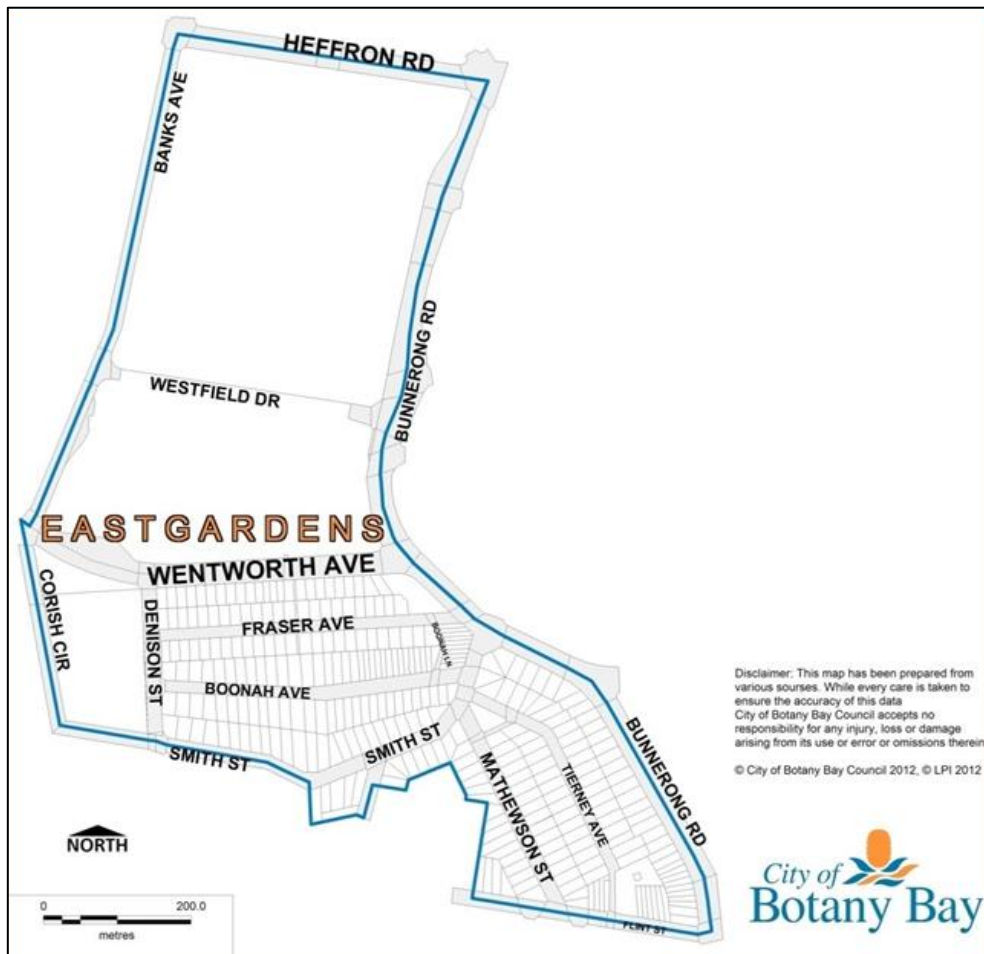
Westfield Eastgardens is a major shopping centre in the area and includes a major bus interchange facility with bus routes connecting Eastgardens with the City, Bondi Junction, Burwood, Rockdale, Little Bay, Port Botany and La Perouse. The shopping centre is bounded by an approved masterplan comprising 2205 dwellings to the north, and a golf course to the west.



Hensley Athletic Field is the only major open space area within this Precinct. It includes: a running track and field events area for athletics; an infield area for field sports such as soccer, rugby league and cricket practice nets.

There are two small pocket parks in the Precinct: (i) Tierney Avenue Reserve at the corner of Flint Street and Tierney Avenue; and (ii) Muller Reserve at the corner of Tierney Avenue and Mathewson Street.

**Figure 5 Eastgardens Precinct [Ref. 1]**



### 3.1.3 Banksmeadow Industrial Precinct

The Study Area includes part of the Banksmeadow Industrial Precinct (Refer to Figure 6).

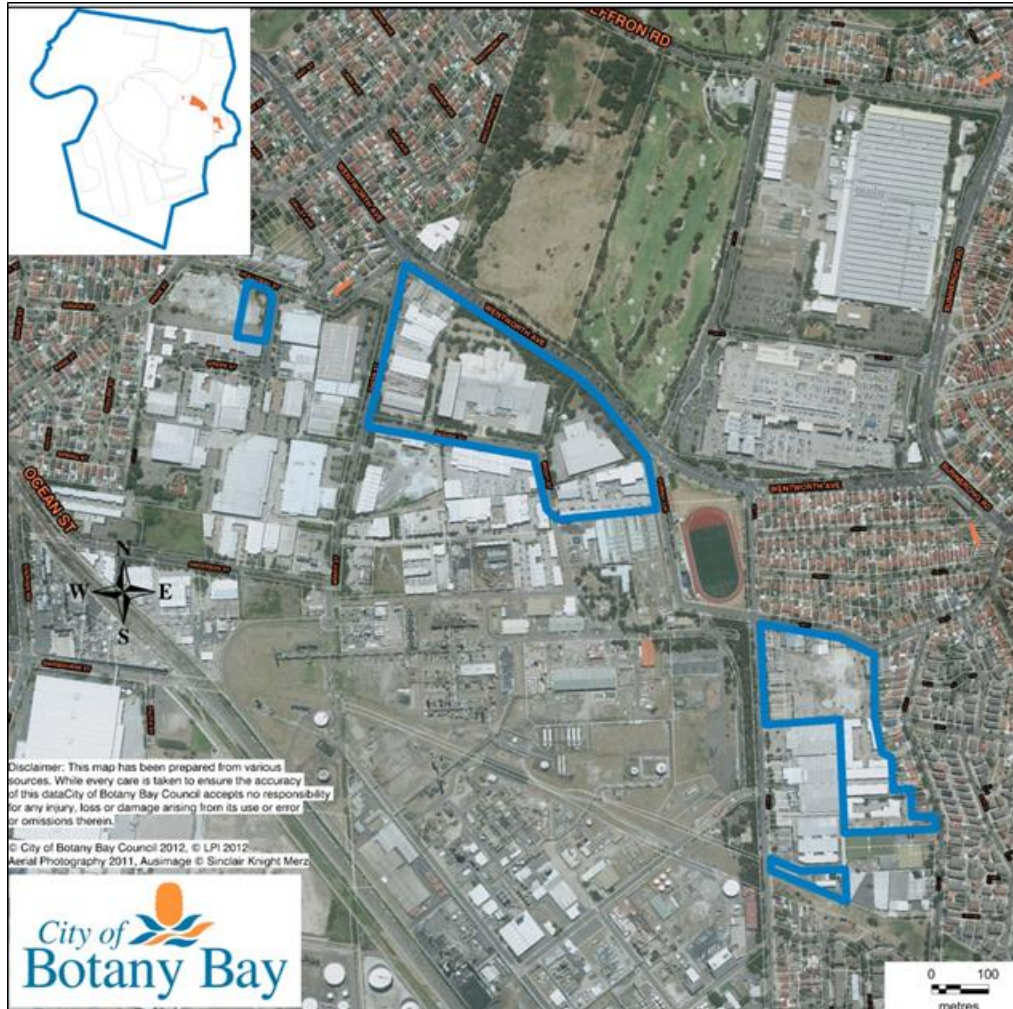
The Banksmeadow Industrial Precinct includes the following areas [Ref. 1, Part 6.2.8]:

- An area zoned IN2 Light Industrial bounded by Wentworth Avenue, Baker Street, Moore Street, Wight Street, & Corish Circle;
- The B7 Business Park at 32 Page Street, Pagewood; and
- The B5 Business Development and B7 Business Park along Denison, Smith and Rhodes Streets Hillsdale. Note: This is the only part of the Banksmeadow Industrial Precinct located within the Study Area and it is bordered by residential uses in the Hillsdale and Eastgarden Precincts. Refer to Appendix A for description of B5 and B7 land use zones.



The remaining industrial area (Refer to Section 3.1.4) in the Study Area is zoned under the State Environmental Planning Policy (Three Ports) 2013.

**Figure 6 Banksmeadow Industrial Precinct [Ref. 1]**



The main land uses in this Precinct include manufacturing, warehousing and transport. The Bunnings hardware store, which is currently under construction, is the largest single use in the Study Area (Bounded by Denison Street and Smith Street).

### 3.1.4 Three Ports SEPP

The Three Ports SEPP applies to the leased port areas (i.e. land leased to a private port operator under the Ports Assets (Authorised Transactions) Act 2012) as well as surrounding land that needs to be maintained for port-related and industrial uses.

The Study Area is outside of the port lease area, but does include land that is covered by the Three Ports SEPP (Refer to Figure 3). The Minister for Planning is the relevant consent authority for State Significant Development and the BBCC is the relevant consent authority for other developments on this land as per Clause 8 of the Three Ports SEPP [Ref. 15].

This area also includes a number of pipelines carrying hazardous substances such as natural gas and jet fuel (Note: These pipelines are located outside the Study Area).

The Botany Industrial Park (BIP), which is located to the west of Denison Street, is the largest industrial use within the Study Area. This area is covered by the Three Ports SEPP and several companies own and operate plants at the BIP. The facilities at the BIP include: a chloralkali plant (manufacture of chlorine, hydrochloric acid, caustic soda, ferric chloride, and sodium hypochlorite), operated by Ixom (Formerly operated by Orica); an olefines plant and plastics manufacturing plants operated by Qenos; and a surfactants facility operated by Huntsman Chemicals. These are potentially hazardous facilities and are categorised as Major Hazard Facilities (MHFs) in accordance with the NSW Work Health and Safety Regulations [Ref. 16].

Land covered by the Three Ports SEPP is also located to the east of Denison Street (Refer to Figure 3). This is currently used for manufacturing and warehousing (i.e. Similar to the adjacent Banksmeadow Industrial Precinct – Refer to Section 3.1.3).

### 3.2 Land Use Zoning

Land use zones for the Study Area are defined in the BBLEP2013 [Ref. 14] and Three Ports SEPP [Ref. 15]. All of the land in the Study Area that this covered by the Three Ports SEPP is zoned for general industrial use (IN1) [Ref. 5]. The section of the land use zone map from the BBLEP2013 that is applicable to the Study Area is reproduced below (Refer to Figure 7).

The description of each relevant zone (i.e. B5, R2, etc. as shown on Figure 7) from the BBLEP2013 and Three Ports SEPP is reproduced in Appendix A. Each zone description includes:

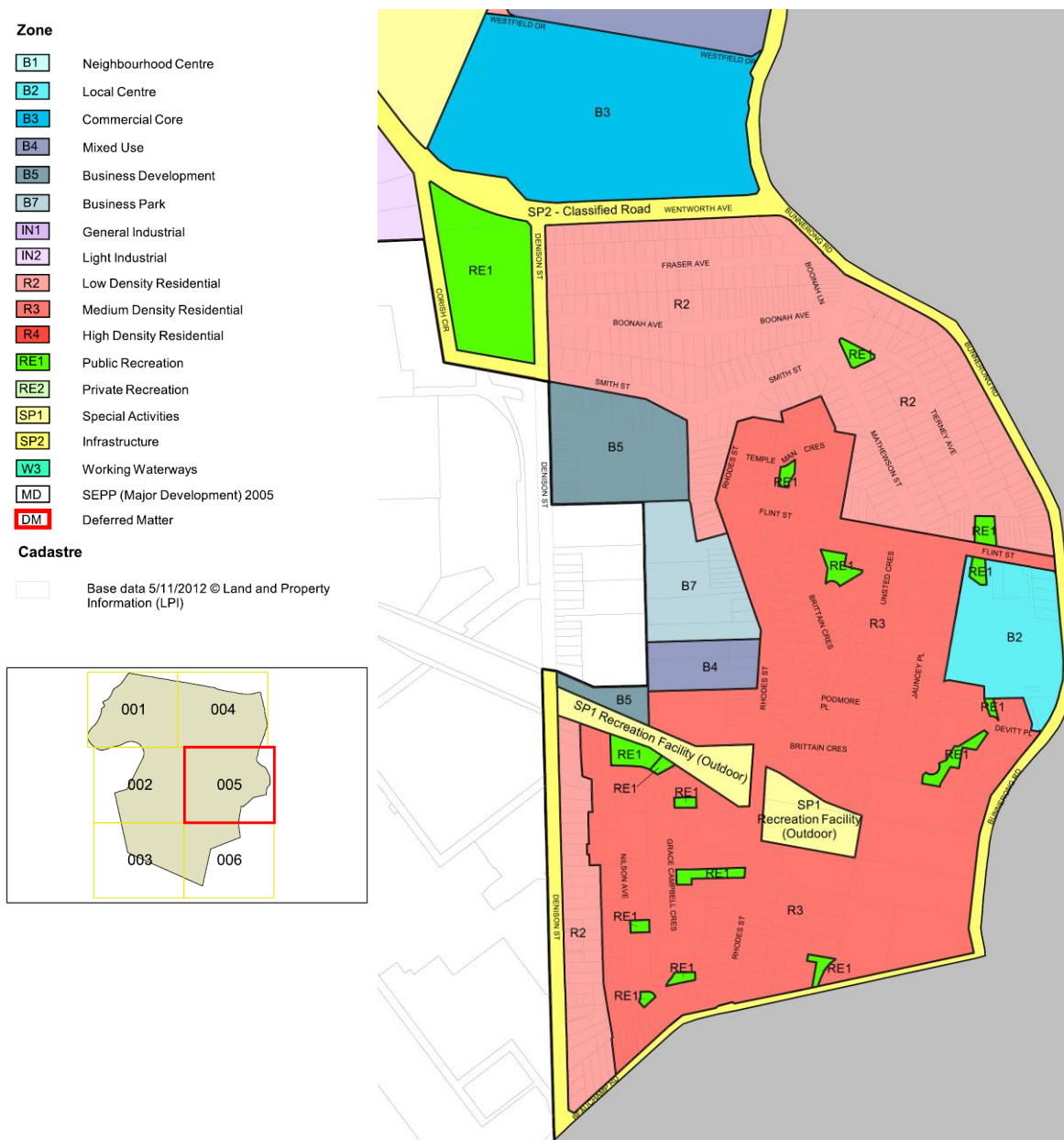
- The objectives for development;
- Development that may be carried out without development consent;
- Development that may be carried out only with development consent; and
- Development that is prohibited.

The consent authority is required to have regard to the objectives for development in a zone when determining a development application in respect of land within the zone.

Additional permitted uses also apply for the Hensley Athletics Field and Rhodes Street Reserve [Ref. 14, Schedule 1]. Specifically:

- Development at the Hensley Athletics Field for the purposes of a car park, entertainment facility, food and drink premises, function centre and registered club is permitted with development consent.
- Development at the Rhodes Street Reserve for the purposes of a recreation area is permitted with development consent.

**Figure 7 Land Use Zones in Study Area [Ref. 14]**



### 3.3 Population

Current and forecast population data for the Hillsdale - Eastgardens precincts is presented on the forecast.id website [Ref. 12]. Whilst the average number of persons per household is forecast to remain relatively constant (viz. 2.57 in 2011 to 2.58 by 2026), the total population is forecast to grow from 6,103 in 2011 to 9,306 by 2026 - an increase of over 1,200 households with an average annual growth rate of 1.89% to 4.25% [Ref. 12]. The forecast.id data is reproduced in Table 1 below.

The forecast.id data does not indicate where the additional households would be located and it is not clear if the forecast growth can be accommodated within the existing land use zones (particularly the R3 zone for medium density residential uses) or if future rezoning will be necessary. However, recent development applications for medium density residential units to the west of Rhodes Street (Refer to Section 3.4) would suggest that land to the east of Rhodes Street has already been developed for this use.

**Table 1 Population Forecast for Hillsdale – Eastgardens [Ref. 12]**

	Forecast year					
	2011	2016	2021	2026	2031	2036
Population	6,103	6,883	7,558	9,306	11,126	12,691
Change in population (5 yrs)	--	780	676	1,748	1,820	1,565
Average annual change	--	2.43%	1.89%	4.25%	3.64%	2.67%
Households	2,373	2,664	2,941	3,611	4,334	4,988
Average household size	2.57	2.58	2.57	2.58	2.57	2.54
Dwellings	2,437	2,740	3,033	3,743	4,503	5,196
Dwelling occupancy rate	97.37	97.23	96.97	96.47	96.25	96.00

### 3.4 Current and Predicted Future Development

#### 3.4.1 Residential Development

Up to 568 additional dwellings are forecast for the Hillsdale and Eastgardens Precincts between 2016 and 2021 (Refer to data presented in Table 1). At the time of this Review, the following residential development applications were being considered by BBCC in the Study Area:

- 41 to 45 Rhodes Street – Demolition of the existing buildings (a vehicle repair building and residential dwelling) and the erection of a 6 storey residential apartment building with 46 apartments.
- 51 to 53 Rhodes Street – Three multi-storey residential apartment buildings with 70-85 residential apartments. This Site is currently zoned B7 Business Park and would require rezoning to permit residential development.
- 42 Beauchamp Road – Replacement of existing residential dwelling with 2 x 3 bedroom townhouses and 1 x 4 bedroom townhouse. This was refused on 14/4/16.

These development applications appear to be representative of the recent residential intensification in the Study Area, which includes a mixture of medium density apartments and townhouses. For example, the multi-storey apartment complex currently being constructed at 39 Rhodes Street includes three apartment blocks and up to 250 apartments.

The current residential development applications for the Study Area, which represent only a part of the Hillsdale and Eastgardens Precincts, suggest that the increases being forecast in Table 1 are not unrealistic.

#### 3.4.2 Commercial and Industrial Development

An expansion to the Westfields Eastgardens shopping centre was approved in March 2015. This extension to level 3 has been estimated to increase the number of staff by 168 and persons visiting the centre by c. 84 per day [Ref. 26].

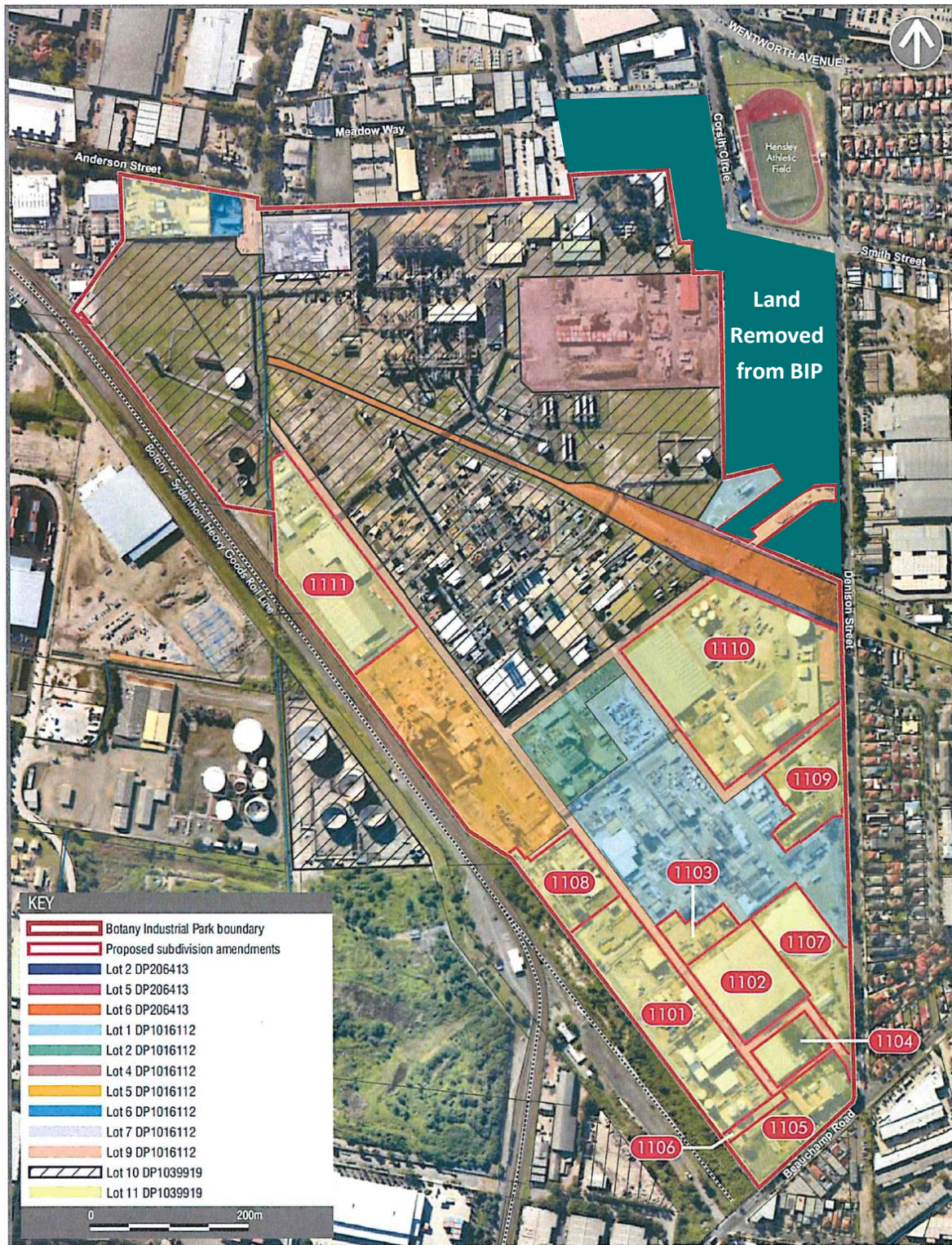
A subdivision of the BIP was approved by the DP&E in August 2015 [Ref. 2]. This reduced the area occupied by the BIP and has released some land for future development along Denison Street and



Corish Circle. This land (Refer to Figure 8) is still within the area that is covered by the Three Ports SEPP and is still zoned for general industrial use (IN1).

No current or predicted future major industrial developments were identified within the Study Area.

**Figure 8 Sub-Division of BIP Approved in August 2015 [Ref. 2]**



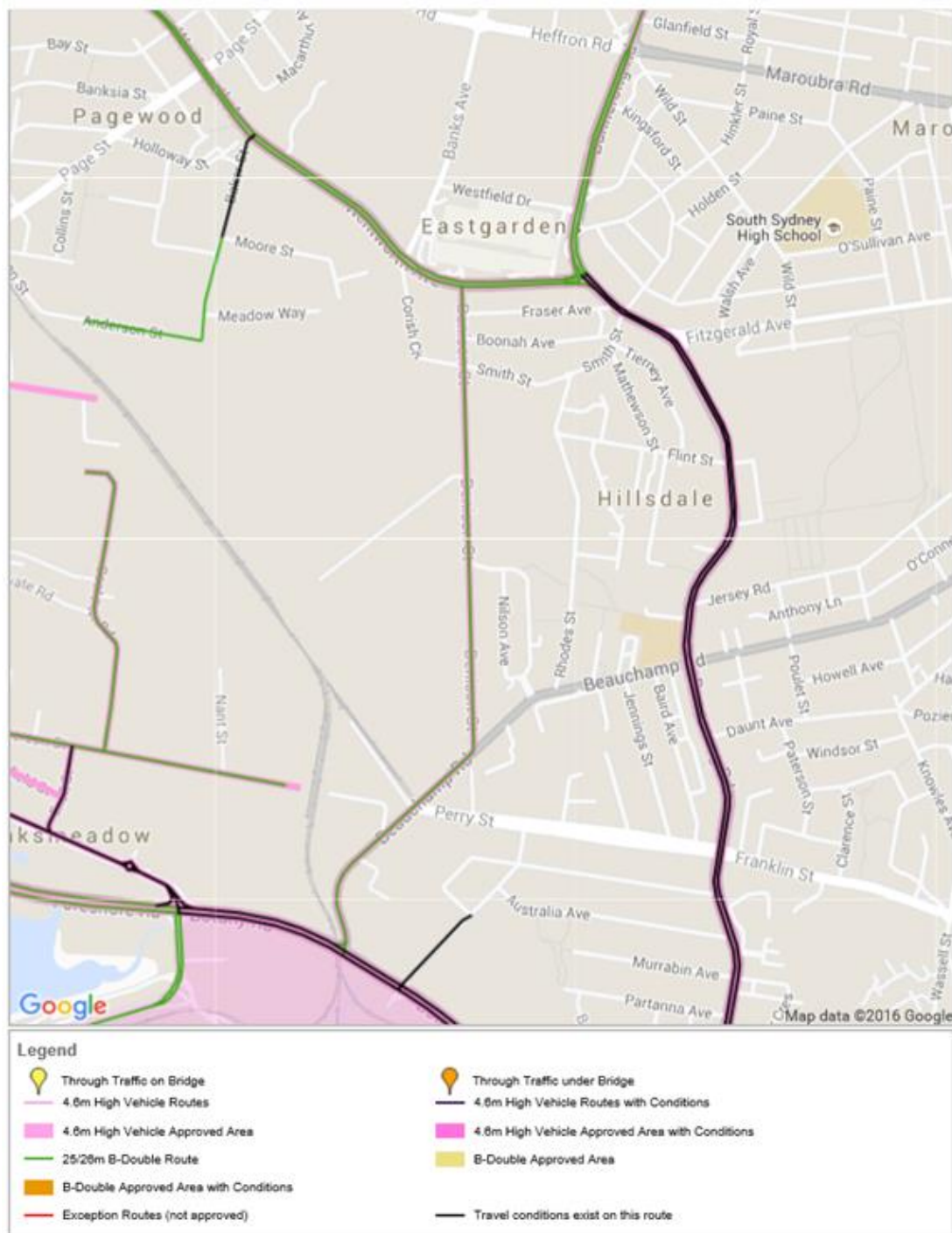


### 3.5 Roads and Traffic Management

Denison Street is a Roads and Maritime Services (RMS) approved road for heavy vehicles, including vehicles 4.6 m high and B-double trucks up to 25/26 m long (Refer to Figure 9).

Although referred to as a 'designated DG route' in the Botany-Randwick Land Use Safety Study (LUSS, and subsequently cited in the BBDCP2013 – Refer to Section 7.1), this designation appears to have been created for the LUSS and is not based on an RMS policy. RMS does not designate specific roads for the transport of DGs (Note: DGs are prohibited in Sydney's road tunnels).

**Figure 9 Heavy Vehicle Access for Denison Street [Ref. 20]**



The only proposed change to traffic management on Denison Street is provision of a new intersection (with traffic lights) to access the Bunnings development (under construction). This intersection will control access to / from the new Bunnings Access Road and is proposed to include a restriction on right hand turns from Denison Street (Northbound) into the Bunnings Access Road between 6 am and 10 am Monday to Friday [Ref. 21]. A new left-hand exit lane will be provided for southbound traffic on Denison Street to access the new Bunnings Access Road.

### **3.6 Summary of Key Points**

The following characteristics of the Study Area are particularly relevant for the review of development controls:

- There are multiple precincts in the Study Area: Hillsdale; Eastgardens; and, the Banksmeadow Industrial Precinct. These precincts include a mixture of residential, industrial / commercial and recreational land uses.
- The Hillsdale Precinct and Banksmeadow Industrial Precinct overlap.
- The industrial zoned land covered by the Three Ports SEPP is land that should be maintained for port-related and industrial use [Ref. 15]. The subdivision of the BIP, approved in August 2015, has released some land for future development along Denison Street and Corish Circle.
- There are adjacent residential and industrial land uses, including multiple MHFs in the BIP.
- The forecast population growth could increase the demand for higher density residential development to the east of Rhodes Street.

## 4 TRANSPORT OF DANGEROUS GOODS IN STUDY AREA

### 4.1 Current Transport of DGs

An estimate of the frequency of DG heavy vehicle movements along Denison Street is included in the DG Transport QRA ('Transport QRA' and 'Transport QRA Addendum') issued by Scott-Lister in 2015 [Ref. 24 and 25]. It is reported in Section 1 of the more recent Transport QRA Addendum [Ref. 24] that the DG heavy vehicle movements were based on:

- Survey data collected by ROAR Data Pty Ltd (Traffic counts collected during June to July, 2012) [Ref. 23];
- Maximum potential traffic movements from the BIP, based on maximum approved operational capacity and consultation with BIP operators; and
- Northbound through traffic of 4,000 movements per year of DG Class 2.1 liquefied flammable gases (principally LPG) from the bulk liquid and gas storage facilities in Port Botany. Note: This was not included in the original Transport QRA and was added to the later Transport QRA Addendum.

Based on this information, Scott-Lister estimated the frequency of DG heavy vehicle movements along Denison Street [Ref. 25].

It was assumed in the Transport QRA and Transport QRA Addendum that the heavy vehicles travelling south to Port Botany were empty and the heavy vehicles travelling north were full [Ref. 25, Section A2.1]. Therefore, the majority of the southbound vehicle movements are 'empty' vehicles. The 'empty' DG Class 2 and Class 3 bulk tankers were still assumed to contain a heel of liquid and were modelled accordingly [Ref. 25, Section A2.1].

Although not explicitly stated in the Transport QRA and Transport QRA Addendum, the reported data appears to include both packaged DGs and bulk DGs. This is based on the observation that the cited ROAR survey data [Ref. 23] includes vehicle types used for packaged and bulk DGs (viz. Rigid, Rigid Tanker, Articulated, Articulated Tanker, B-Double and B-Double Tanker) and that Chlorine is referred to in Section 2.1.1 of the Transport QRA as being transported in "drums, cylinders or isotainers". The distribution of packaged vs. bulk DG movements cannot be determined from the information provided in the Transport QRA and Transport QRA Addendum, although the emphasis would appear to be on bulk DG movements (i.e. tankers).

In 2003, Sydney Ports' (now NSW Ports) estimated that 1% of the total containerised trade through Port Botany would be transported via Beauchamp Road [Cited in Ref. 19, Section 7.3], which would then presumably follow Denison Street. In 2015, NSW Ports reported that "around 10 per cent of port related trucks using Beauchamp Road/Denison Street to travel to and/or from Port Botany" [Ref. 17, p.49], and this % appears to include both containerised and bulk trade.

In 2015, NSW Ports reported that that there were 3,900 heavy vehicle movements per day at the port [Ref. 17, p.47], which includes approximately: 3,580 trucks per day (full and empty containers) and 320 bulk tankers per day from the bulk liquid and gas storage facilities. 10% of the 320 bulk liquid tankers per day equates to 11,680 tankers per year along Denison Street. This is very close to the total northbound (i.e. laden) vehicle movements used in the Transport QRA Addendum for the southern section of Denison Street (i.e. prior to additional laden vehicles entering Denison Street from Gate 3 at the BIP).

In 2015, NSW Ports reported that that the total container trade at Port Botany was 2.3 million TEUs [Ref. 17, p.37]. Currently, approximately 3% of containerised goods include DGs.



## 4.2 Predicted Changes to DG Transport

It is difficult to predict accurately how the transport of DGs will change along Denison Street in the future. There are many external factors that could change the frequency of vehicle movements and/or the type of DGs being transported. These factors include: major changes to road infrastructure (e.g. such as the proposed WestConnex project); changes to the modes of transport for DGs (e.g. more or less use of rail infrastructure); and/or changes to the global and local market for DGs (viz. changes to the type and quantity of chemicals imported / exported through Port Botany and those produced locally). Therefore, the longer the forecast period, the greater would be the uncertainty associated with any prediction.

Over the next 10 years, NSW Ports has predicted that the frequency of bulk tanker movements at Port Botany could increase to between 390 to 430 tankers per day (Refer to Table 2). This represents an increase of approximately 22% to 34% on the 390 actual movements per day in 2015 [Ref. 17]. This increased volume is currently predicted to remain relatively constant through to 2045 (Refer to Table 2).

Over the same 10 years, NSW Ports has predicted that the frequency of container truck movements (full / empty containers) at Port Botany could increase to between 4,310 to 5,270 trucks per day (Refer to Table 2); an increase of approximately 20% to 47% on the 2015 actual movements of 3,580 per day [Ref. 17]. The longer term forecast is an increase of approximately 80% (Refer to Table 2).

**Table 2 Forecast Increase to Heavy Vehicle Movements (per day) at Port Botany [Ref. 17]**

Heavy Vehicle Type	Year			
	2015	2025	2035	2045
Trucks (Full / empty containers)	3,580	4,310 to 5,270	5,310 to 6,470	5,910 to 6,470
Bulk Tankers	320	390 to 430	390 to 430	390 to 430
Total =	3,900	4,700 to 5,700	5,700 to 6,900	6,300 to 6,900

In 2015, NSW Ports reported that that the total container trade at Port Botany was forecast to grow from 2.3 million TEUs in 2015 to: between 3.4 and 4.3 million TEUs per year by 2025; and, between 7.5 million and 8.4 million TEUs per year by 2045 [Ref. 17, p.37]. NSW Ports does not believe that the proportion of containerised goods including DGs (currently c. 3%) will change in the next 5 to 10 years.

It is understood from discussions with ARTC and NSW Ports that there is no current plan to increase the proportion of DGs transported by rail.

## 4.3 Summary of Key Points on DG movements in Study Area

The following points summarise the discussions in Sections 4.1 and 4.2.

- The scope of this Review did not include a detailed verification of the transport data used in any of the currently available QRAs for the Study Area (Refer to Section 1.3). However, based on the information presented in Section 4.1:

- The frequency of DG heavy vehicle movements for Denison Street reported in the Transport QRA / Transport QRA Addendum [Ref. 24 and 25] and in the NSW Ports' 30 Year Master Plan [Ref. 17] appear to be comparable when applied for 2015. However, the uncertainty in this data could be high due to the relatively short survey period (viz. June to July, 2012) reported in the Transport QRA / Transport QRA Addendum.
- The data reported in the Transport QRA / Transport QRA Addendum [Ref. 24 and 25] appears to include both packaged DGs and bulk DGs, although the emphasis would appear to be on bulk DG movements (i.e. tankers). The split is unknown.
- It is reported in the Transport QRA / Transport QRA Addendum [Ref. 24 and 25] that the DG heavy vehicle movements were based on the maximum potential traffic movements from the BIP (i.e. based on maximum approved operational capacity). It is not known if the facilities operate to the approved capacity.
- NSW Ports has predicted that the frequency of bulk DG tanker movements at Port Botany could increase by 34% over the next 10 years, and will then remain relatively constant through to 2045 (Refer to Section 4.2). A similar proportional increase may be applicable for Denison Street, although many factors have the potential to affect the frequency of vehicle movements and/or the type of DGs being transported at this specific location (Refer to Section 4.2).
- It is understood from discussions with ARTC and NSW Ports that there is no current plan to increase the proportion of DGs transported by rail.
- A 50% increase to DG heavy vehicle movements along Denison Street would appear to be a reasonable conservative assumption for the Study Area over the next 10 years.

## 5 RISK ANALYSES FOR STUDY AREA

### 5.1 Introduction

Quantitative Risk Assessments (QRA) and Land Use Safety Studies (LUSS) have been undertaken for the industrial facilities in the Study Area since 1985. These studies have, on occasion, also included consideration of DG transport along Denison Street.

The first risk study undertaken by the DP&E specifically for land use safety planning was in 1985 and included the industrial facilities in the Botany-Randwick area and Port Botany. This was followed by two LUSSs: (i) The *Port Botany Land Use Safety Study* in 1996; and; the *Botany / Randwick Industrial Area Land Use Safety Study* in 2001.

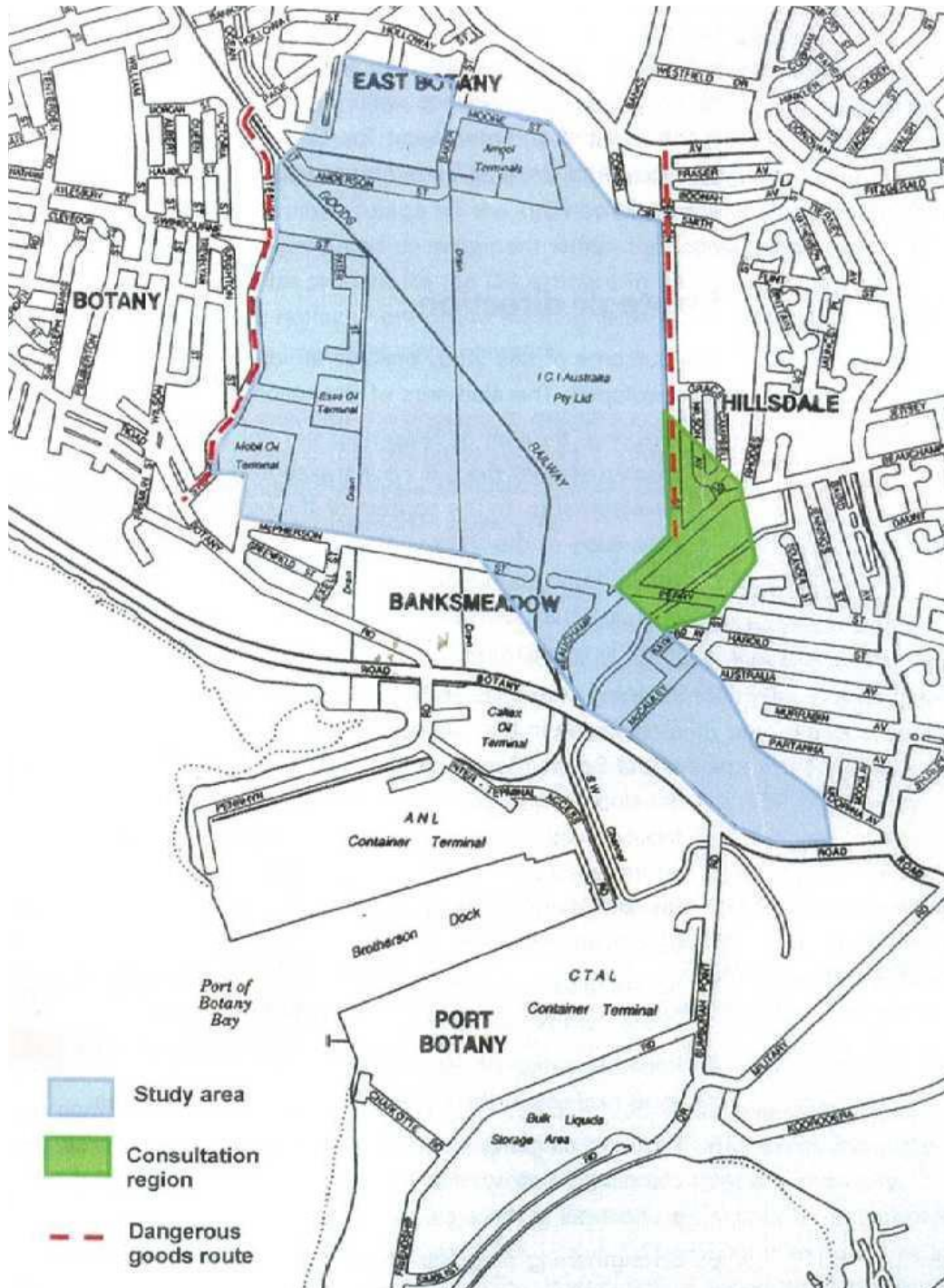
The most relevant QRAs for industrial facilities and DG transport in the Study Area, currently include:

- Industrial facilities:
  - *Quantitative Risk Assessment, Summary Report, Botany Industrial Park* [Ref. 27].
- DG transport:
  - *Port Botany Expansion Preliminary Hazard Analysis (June 2003)* [Ref. 19].
  - *Dangerous Goods Transport QRA, Denison Street Hillsdale (12 February 2015)* [Ref. 25] and *Addendum to Dangerous Goods Transport QRA, Denison Street Hillsdale (19 May 2015)* [Ref. 24].

### 5.2 Land Use Safety Studies for Botany-Randwick Industrial Area

The risk study undertaken by the DP&E in 1985 for the industrial facilities in the Botany-Randwick area recommended there be no intensification of residential development within areas identified in the study and that planning controls be implemented accordingly. A similar finding was made in the most recent LUSS for the Botany-Randwick industrial area in 2001 [Ref. 9], however, the extent of the cumulative individual risk contours has progressively reduced as operations have changed. In particular, the change to the Chlorine production process at the Ixom facility (including ceasing the bulk storage of liquid chlorine) has significantly reduced the cumulative risk. Only part of the Hillsdale Precinct is now identified in the 2001 LUSS as being an area where 'residential intensification' or 'sensitive use intensification' should be specifically reviewed in consultation with the DP&E (Refer to Figure 10). Note: The 2001 LUSS did not include the impacts of DG traffic along Stephen Road and Denison Street.

**Figure 10 Consultation Region from 2001 LUSS [Ref. 9]**



The key recommendations from the 2001 LUSS are summarised in the current BBDCP2013 as follows:

1. Future developments in the Botany / Randwick industrial area should be subject to early risk assessment and comprehensive environmental impact processes to conclusively demonstrate they will not contribute to risk impacts outside the industrial area that are inappropriate for surrounding land uses.

2. Effective land use safety planning should be implemented to allow future developments in the area, and to reconcile any potential land use planning conflicts.
3. A process of regular reviews and updates for site safety management systems should be undertaken.
4. Emergency plans and procedures, and fire prevention and protection systems should be kept up-to-date.
5. Industrial facilities should adopt community right-to-know principles to ensure the community is adequately informed about activities, associated risks and safety management measures adopted within the Botany / Randwick industrial area.

### 5.3 QRA for Botany Industrial Park

In 2012, a cumulative QRA was undertaken by Sherpa Consulting (Sherpa) for the facilities in the Botany Industrial Park (BIP) [Ref. 27]. This QRA ('2012 BIP QRA') was carried out to comply with the following Condition of Consent [Ref. 10]:

#### **Site Cumulative Risk Assessment**

- (a) *The SPC will maintain an updated Cumulative Risk Assessment for the BIP. The Assessment report: shall include individual fatality, injury and irritation risk and societal risk using the most recently available population and meteorological data. This report and all documentation shall be in accordance with the Department's Hazardous Industry Planning Advisory Paper No 6: Hazard Analysis Guidelines.*
- (b) *Each member of SPC must provide the relevant information and resources to the SPC to ensure that the Assessment is reviewed and updated as necessary.*
- (c) *The Site Cumulative Risk Assessment report shall be maintained as a 'living document' and updated as modifications occur on the BIP. The updated report shall be submitted to the Director-General for approval on a three yearly basis.*
- (d) *All State significant development applications submitted to the Department for consideration containing a preliminary hazard analysis must include updated BIP Cumulative Risk Assessment results.*

(Note: 'SPC' stands for 'Special Purpose Company'. The SPC was set up for the BIP to address this, and other Conditions of Consent).

The Condition of Consent requiring a site cumulative risk assessment was subsequently modified in 2015 and the standard renewal period for the QRA was extended from 3 to 5 years. The modified Condition of Consent is as follows [Ref. 2]:

#### **Site Cumulative Risk Assessment**

- (a) *The SPC shall maintain an updated Quantitative Risk Assessment for the BIP. This Risk Assessment shall be updated:*
  - i. *if there is a change at the BIP, which will significantly change the results of the Risk Assessment; or*
  - ii. *if required by the Secretary; or*
  - iii. *in accordance with the provisions of the Work Health and Safety Regulation 2011; or*
  - iv. *at least every 5 years.*



- (b) Each quantitative risk assessment (or update to such an assessment) shall include individual, fatality, injury, and irritation risks and societal risks using the most recently available population and meteorological data. Each quantitative risk assessment (or update to such an assessment) shall be in accordance with Hazardous Industry Planning Advisory Paper No. 6 – Guidelines for Hazard Analysis (DoP, 2011).*
- (c) Each member of SPC shall provide the relevant information and resources to the SPC to ensure that each quantitative risk assessment (or update to such an assessment) is reviewed and updated as necessary.*
- (d) Each quantitative risk assessment (or update to such an assessment) shall be submitted to the Secretary for approval.*

The QRA model was first compiled in 2006; and, the 2012 version, which included some relatively minor updates made as a result of the MHF/Safety Report process, only included some minimal differences to the overall risk results presented in the 2010 version [Ref. 27, Section 1.6].

The 2012 BIP QRA did not include [Ref. 27, Section 2.10]:

- Vehicle movements within the BIP.
- Vehicle transport to and from the BIP.
- Pipelines external to the BIP.

In Section 8.4 of the 2012 BIP QRA it is reported that “the largest impact distance is from a liquid chlorine leak from an in-transit 13 tonne road tanker”. Other high consequence events with the potential to affect populations in proximity to the BIP are listed in Section 1.9 of the BIP QRA as follows:

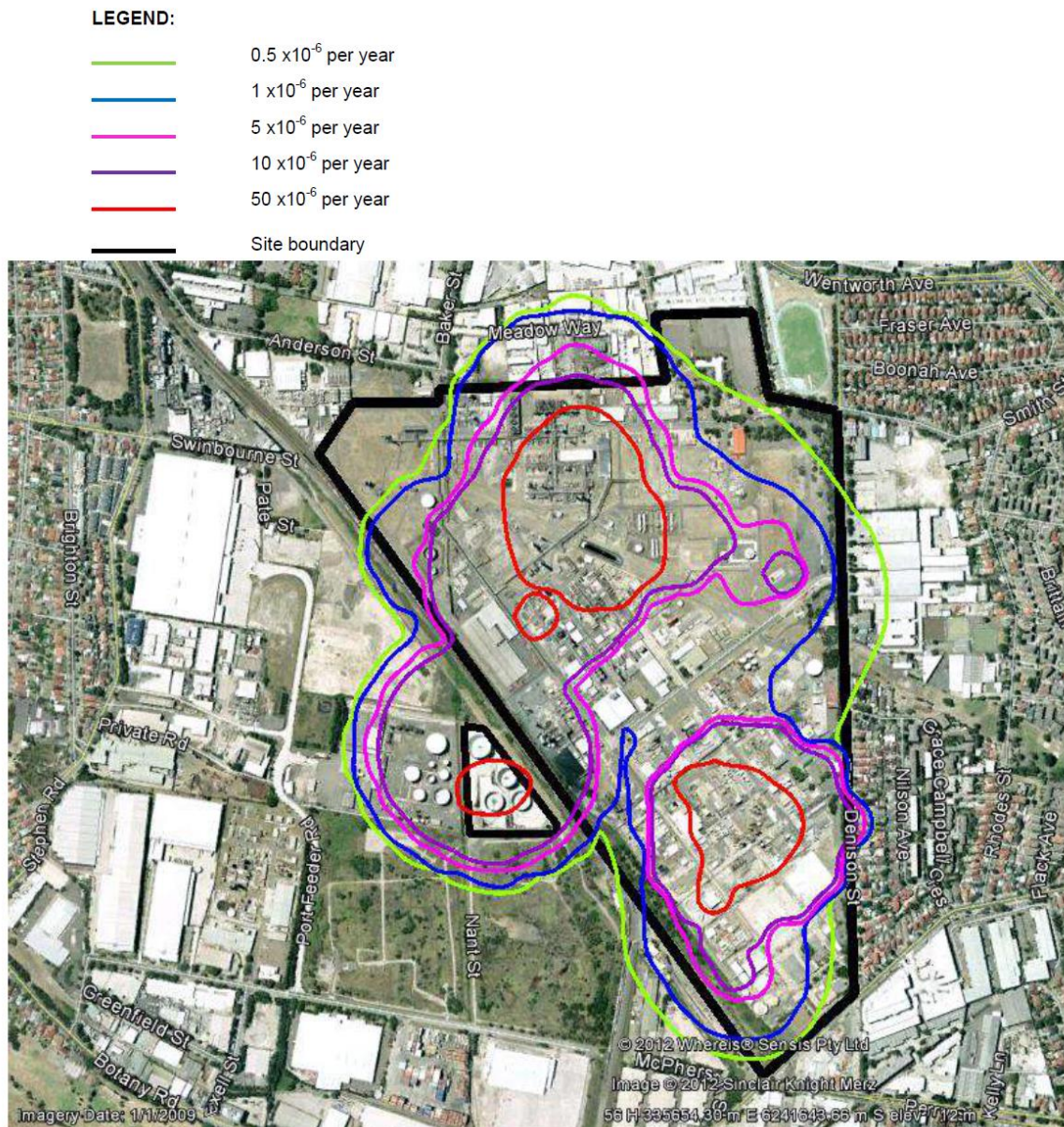
- Flashfire / explosions due to large leak or rupture of the ethylene sphere.
- Flashfire / explosions (including BLEVEs) due to large leak or rupture of the propane / propylene storages.
- Ethylene oxide decomposition events.
- Liquid chlorine leaks from in-transit road tanker or in-transit drums.

### **5.3.1 Individual Fatality Risk**

The cumulative individual fatality risk contours included in the 2012 BIP QRA are shown on Figure 11. Whilst the cumulative individual fatality risk contours generally comply with the DP&E’s relevant risk criteria for proposed developments (Refer to Section 6.2.3.1), there is a small encroachment (c. 30 m) of the  $1 \times 10^{-6}$  per year individual fatality risk contour to the east of the Huntsman facility across the Denison Street eastern BIP boundary into the residential area [Ref. 27, Section 10.1] (Refer to Figure 11).

The  $0.5 \times 10^{-6}$  per year contour extends approximately 50 to 100 m beyond the BIP site boundary in most directions, but does not reach any sensitive land uses [Ref. 27, Section 1.7] (Refer to Figure 11). The individual fatality risk at the nearest sensitive use (viz. Matraville Public School around 400 m from the Denison St boundary) is reported to be below  $1 \times 10^{-8}$  per year [Ref. 27, Section 1.7].

**Figure 11 Cumulative Individual Fatality Risk for BIP in 2012 [Ref. 27]**



### 5.3.2 Injury Risk

The cumulative individual injury risk contours included in the 2012 BIP QRA are shown on Figure 12 (Heat Radiation  $\geq 4.7 \text{ kW/m}^2$ ), Figure 13 (Overpressure  $\geq 7 \text{ kPa}$ ), Figure 14 (Acute Toxic Injury) and Figure 15 (Acute Toxic Irritation).

The  $50 \times 10^{-6}$  per year injury risk contours for heat radiation ( $\geq 4.7 \text{ kW/m}^2$ ) and overpressure ( $\geq 7 \text{ kPa}$ ) marginally extend into residential areas along Denison Street.

The  $50 \times 10^{-6}$  per year acute toxic injury and irritation risk contours extend several hundred metres into residential areas (Predominantly south of the Rhodes Street Reserve and west of Rhodes Street).



**Figure 12 Cumulative Risk of Heat Radiation  $\geq 4.7 \text{ kW/m}^2$  for BIP in 2012 [Ref. 27]**

**LEGEND:**



**Figure 13 Cumulative Risk of Overpressure  $\geq 7 \text{ kPa}$  for BIP in 2012 [Ref. 27]**

**LEGEND:**





**Figure 14 Cumulative Acute Toxic Injury Risk (ERPG-3) for BIP in 2012 [Ref. 27]**


**LEGEND:**

  $10 \times 10^{-6}$  per year



**Figure 15 Cumulative Acute Toxic Irritation Risk (ERPG-2) for BIP in 2012 [Ref. 27]**

**LEGEND:**

  $50 \times 10^{-6}$  per year





### 5.3.3 Risk of Property Damage and Accident Propagation

The cumulative property damage and accident propagation risk contours included in the 2012 BIP QRA are shown on Figure 16 (Heat Radiation  $\geq 23 \text{ kW/m}^2$ ) and Figure 17 (Overpressure  $\geq 14 \text{ kPa}$ ). The  $50 \times 10^{-6}$  per year risk contours for heat radiation ( $\geq 23 \text{ kW/m}^2$ ) and overpressure ( $\geq 14 \text{ kPa}$ ) do not extend beyond the boundary of the BIP into any industrial use areas along Denison Street.

**Figure 16 Cumulative Risk of Heat Radiation  $\geq 23 \text{ kW/m}^2$  for BIP in 2012 [Ref. 27]**

LEGEND:



**Figure 17 Cumulative Risk of Overpressure  $\geq 14 \text{ kPa}$  for BIP in 2012 [Ref. 27]**

LEGEND:



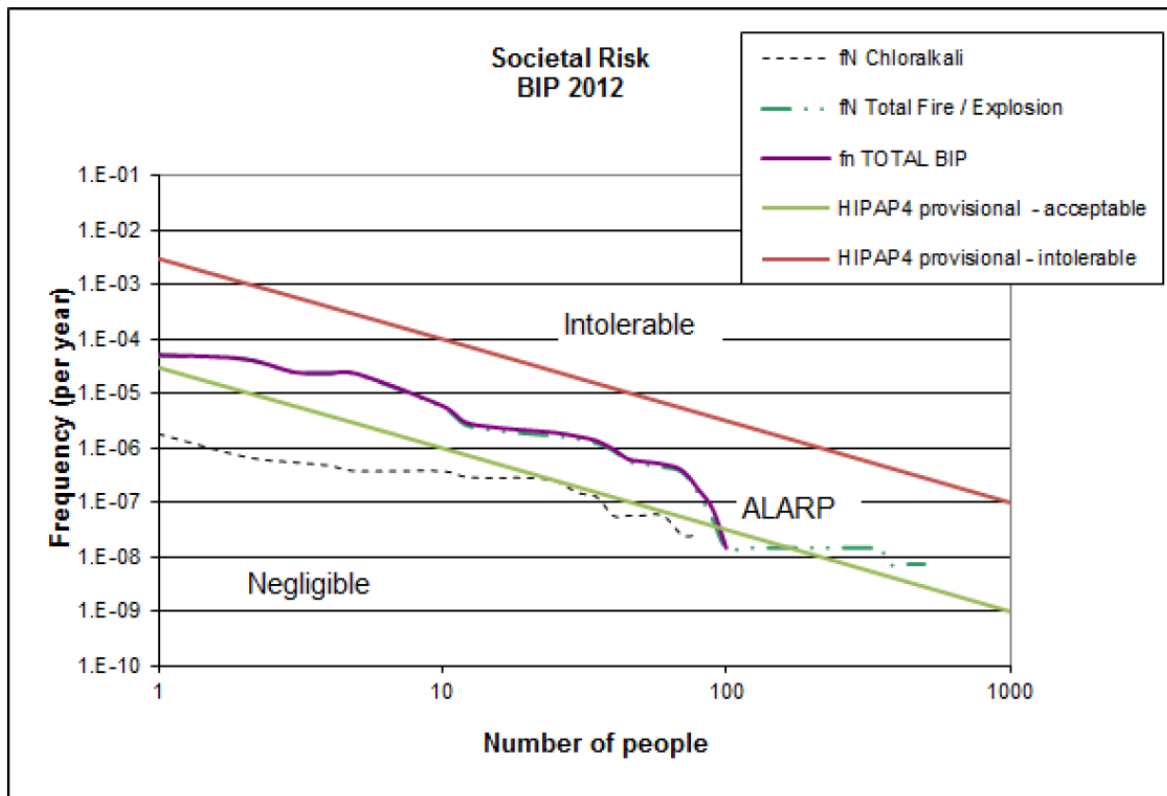
### 5.3.4 Societal Fatality Risk

The societal fatality risk results ('FN Curve') included in the 2012 BIP QRA are shown on Figure 18. These results exclude the populations at the BIP, Nant Street, the rail corridor and Southlands; and this approach is reported to have been agreed with the DP&E [Ref. 27, Section 9.5.2].

It is reported in the 2012 BIP QRA that the societal risk is dominated by fire / explosion events (viz. > 80%, which is difficult to determine on Figure 18 as this almost coincides with the 'total' curve), rather than toxic exposure events (viz. c. 10%-15%) [Ref. 27, Section 9.5.2].

The societal risk results ('FN Curve') for the toxic events alone is wholly within the 'Negligible' risk zone (Refer to Figure 18). The societal risk results ('FN Curve') for all events is predominantly within the 'Tolerable if ALARP' zone and does not extend into the 'Intolerable' zone (Refer to Figure 18).

**Figure 18 Societal Fatality Risk for BIP in 2012 [Ref. 27]**



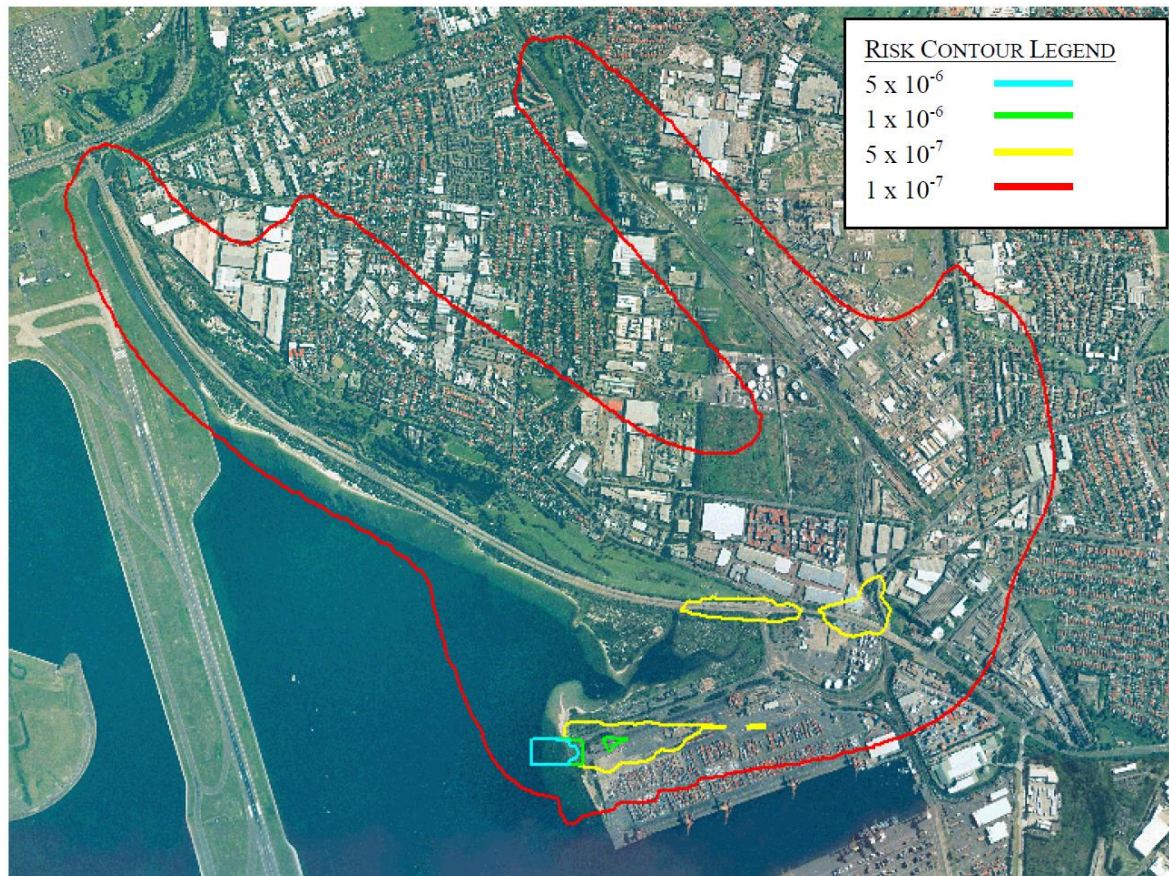
## 5.4 QRAs for Transport of Dangerous Goods

### 5.4.1 Port Botany Terminal Expansion

In 2003, Qest Consulting Group undertook a QRA for the expansion of the container terminal at Port Botany [Ref. 19]. This included an estimate of the individual fatality risk associated with a forecast 3.4 million TEUs throughput for the entire terminal (i.e. not just the throughput for the expansion) and only included the transport of containerised DGs [Ref. 19, Section 7.2]. The individual fatality risk along Denison Street (Refer to Figure 19) was based on Sydney Ports' (now NSW Ports) estimate that 1% of the total containerised trade would be transported via Beauchamp Road [Ref. 19, Section 7.3], which would then presumably follow Denison Street.



**Figure 19 Cumulative Individual Fatality Risk for Transport of 3.4 Million TEUs - Port Botany Terminal Expansion, 2003 [Ref. 19]**



The total trade of containerised goods in 2015 was 2.1 million TEUs per year and based on NSW Ports' current forecast estimates (Refer to Section 4.2) it is not expected to reach 3.4 million TEUs until c. 2025. Therefore, the individual fatality risk contour shown on Figure 19 may still be valid (Assuming the mix of DGs has not significantly changed).

#### 5.4.2 QRA for Transport of DGs on Denison Street

In February 2015, Scott-Lister issued a Transport QRA for movement of DGs along Denison Street [Ref. 25]. Later in 2015, Scott-Lister issued an addendum [Ref. 24] to include the risks associated with an additional 4,000 movements per year of DG Class 2.1 liquefied flammable gases (principally LPG) from the bulk liquids berth in Port Botany. As noted in Section 4.1, the Scott-Lister Transport QRA and Transport QRA Addendum appear to predominantly focus on bulk DG movements (i.e. road tankers) and the transport of Chlorine in "drums, cylinders or isotainers"

In Section 2.2.2 of the Transport QRA [Ref. 25] it is reported that an analysis of the RMS accident data was undertaken and this revealed that 66% of accidents had occurred at main intersections and the remaining 33% had occurred "mid-block". Therefore, 66% of the release frequency was allocated to the three main intersections (22% at each) at:

- Denison Street and Beauchamp Road;
- Denison Street and Wentworth Avenue; and
- Denison Street and BIP Gate 3.

The remaining release frequency was evenly distributed along Denison St.

More recent crash data (Refer to Table 3) was obtained from RMS for Denison Street (Including the intersections at Wentworth Avenue and Beauchamp Road) for 1 Jan 2010 to 31 Dec 2014 [Ref. 22]. This includes *all* vehicle types and would appear to justify the assumption from the Transport QRA that the majority of crashes may be expected to occur at intersections (Refer to Table 3). The majority of the reported crashes involved multiple vehicles (c. 94%) and did not result in an injury (c. 67%). Approximately two-thirds of the reported crashes occurred between midday and 7 pm.

**Table 3 Vehicle Crash Data for Denison Street (2010 to 2014) [Ref. 22]**

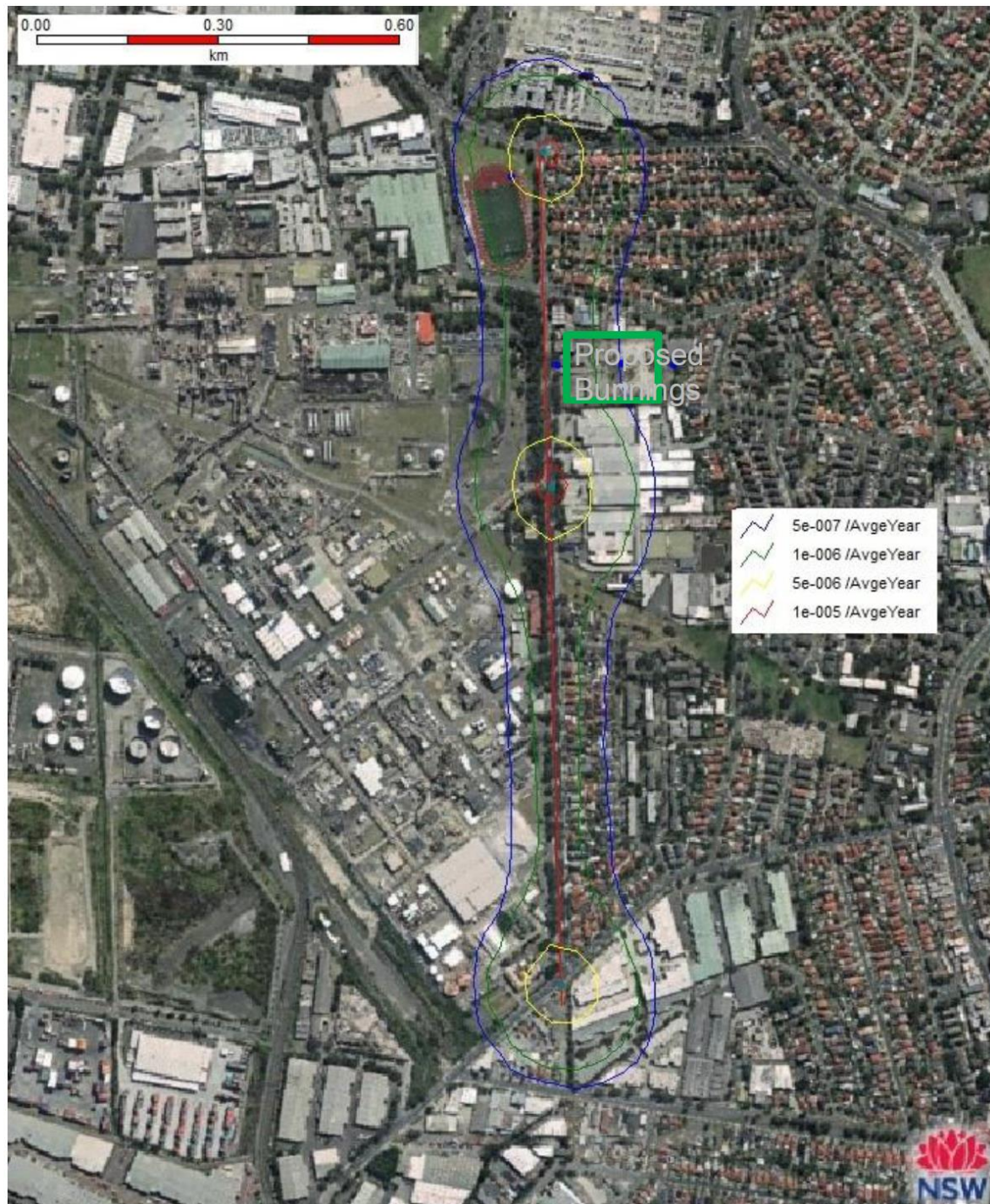
Location Type	No. of Crashes	%
Intersection (Includes up to 10 m from an intersection)	41	83.7%
Non intersection	8	16.3%
Collision Type	No. of Crashes	%
Single Vehicle	3	6.1%
Multi Vehicle	46	93.9%

The effect of assuming a higher accident rate at intersections is clearly indicated by the shape of the cumulative individual fatality risk contours (Refer to Figure 20). The magnitude and extent of the contours is the greatest in the vicinity of three intersections, particularly the intersection of Denison Street and BIP Gate 3.

In Section 3.1.1 of the Transport QRA it is reported that events involving the transport of Polymer Grade Propylene (PGP) account for over 65% of the 'near field' fatality risk and events involving the transport of Chlorine account for over 97% of 'far field' fatality risk (i.e. at the extremity of the contours presented) [Ref. 25].



**Figure 20 Cumulative Individual Fatality Risk for Transport of DGs along Denison St [Ref. 24]**



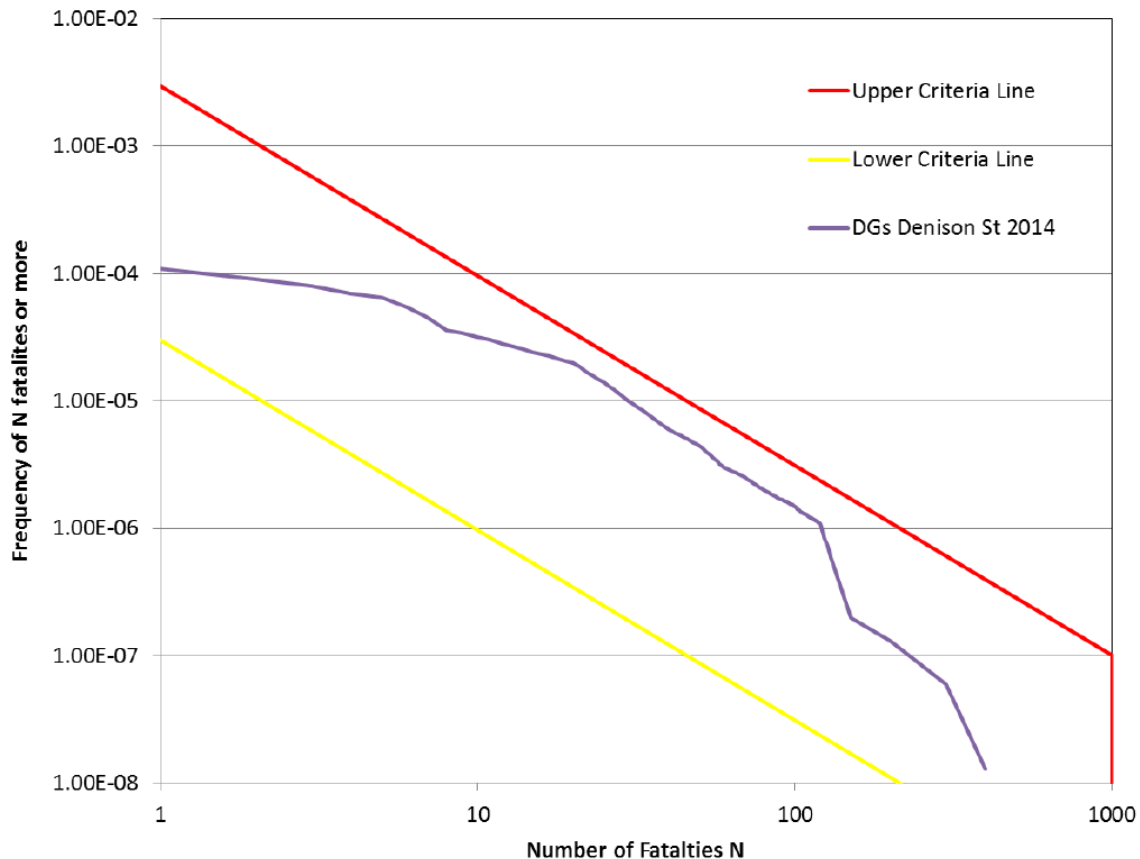
The maximum fatality risk from transport of containerised goods along Denison Street (Refer to Figure 19) appears to be an order of magnitude lower than the corresponding risk from transport of (predominantly) bulk DGs (Refer to Figure 20).

The societal fatality risk results ('FN Curve') included in the Transport QRA Addendum are shown on Figure 21 [Ref. 24]. These results include nearby industrial populations in addition to all other population categories, as described in the Transport QRA [Ref. 25, Appendix A, Section 2.4].

The societal risk results ('FN Curve') for all DG transport events is predominantly within the 'Tolerable if ALARP' zone and does not extend into the 'Intolerable' zone (Refer to Figure 21).

However, it is noted that the societal risk results ('FN Curve') included in the Transport QRA Addendum is closer to the 'Intolerable' zone than for the fixed facilities at the BIP (Refer to Figure 18 in Section 5.3.4). This may be in part due to the population at the BIP being excluded from the societal risk calculations in the 2012 BIP QRA, whereas it was included in the societal risk calculations in the Transport QRA (Note: This is consistent with the standard practice for QRAs of fixed industrial facilities and the transport of DGs).

**Figure 21 Societal Fatality Risk for Transport of DGs along Denison St [Ref. 24]**



## 5.5 Cumulative Risk for Fixed Facilities and Transport of DGs

### 5.5.1 Current Cumulative Risk

There are no cumulative individual fatality risk contours presented in the available risk assessments that show the combined individual fatality risk for the fixed facilities at the BIP and the transport of DGs along Denison Street. The cumulative individual fatality risk for the fixed facilities at the BIP and the transport of DGs along Denison Street can only be estimated from Figure 11 (Section 5.3.1) and Figure 20 (Section 5.4.2).

There are two locations where the cumulative individual fatality risk would increase sufficiently to be relevant for development of planning controls in the Study Area: (i) to the east of the intersection of Denison Street and BIP Gate 3; and (ii) the location where the  $1 \times 10^{-6}$  per year individual fatality risk contour from the fixed facilities at the BIP extends across Denison Street. The individual fatality risk from the transport of DGs along Denison Street appears to be the major contributor at both of these locations.

The following issues were considered when developing the planning controls for the Study Area:

- The DP&E's societal risk criteria (viz. upper and lower criteria lines shown on Figure 22 below) do not strictly apply for the transport of DGs (Refer to Section 6.3). However, due to the absence of any other equivalent criteria in NSW, these have previously been adopted in the Transport QRA and Transport QRA Addendum [Ref. 24, 25].
- The DP&E's societal risk criteria are not 'scalable' to the length of the road network being considered (i.e. the criteria do not change irrespective of the length of road being considered). This is partly addressed in the Netherlands by only applying a similar upper criterion to the 'worst-case' 1 km road segment (Refer to Section 6.3). In this case, Denison Street is approximately 1 km long.

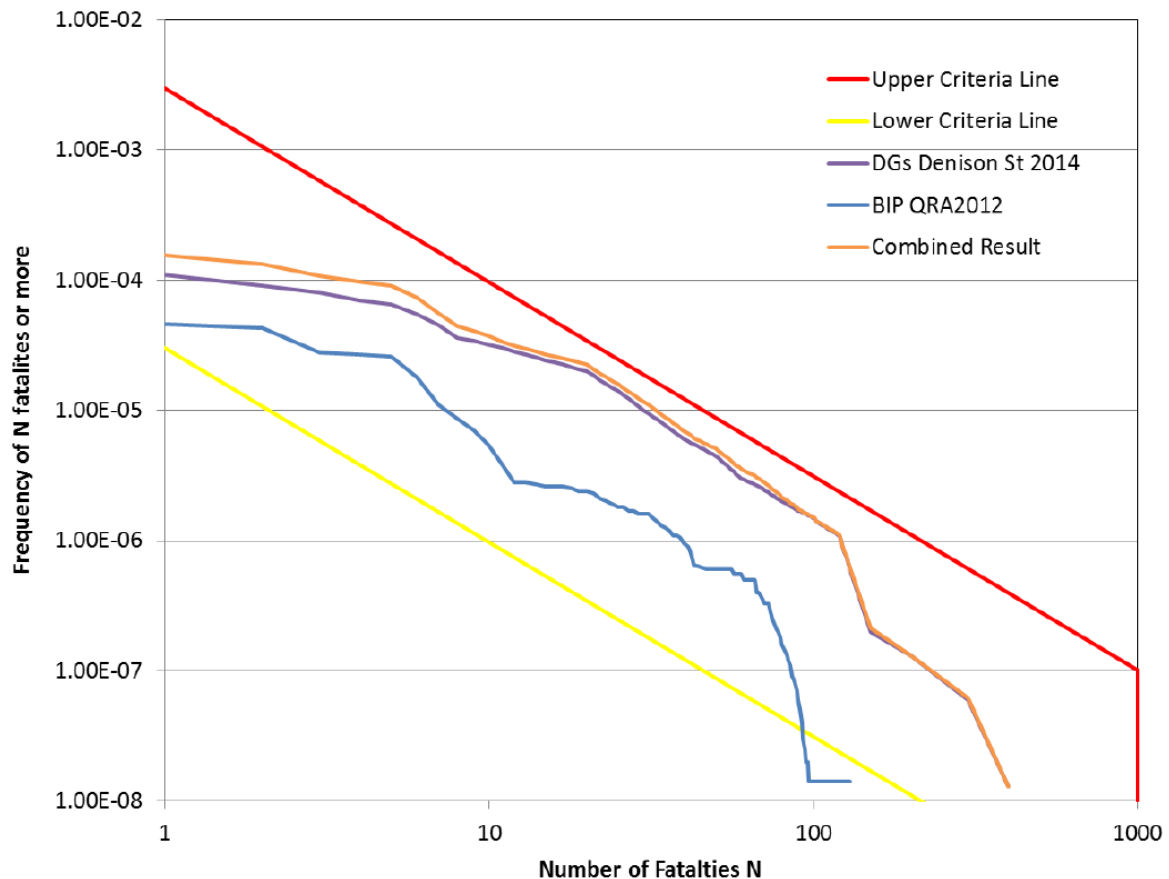
The population at the BIP was excluded from the societal risk calculations in the 2012 BIP QRA, whereas it was included in the societal risk calculations in the Transport QRA. This is consistent with the standard practice for QRAs of fixed industrial facilities and the transport of DGs, and is another reason why the societal risk results ('FN Curves') are not normally combined (As in the Netherlands – Refer to Section 6.3).

The cumulative societal risk ('FN Curve') for the fixed facilities at the BIP and the transport of DGs along Denison Street is provided in the Transport QRA Addendum [Ref. 24]. It appears that the 'FN Curve' from the 2012 BIP QRA [Ref. 27] and Transport QRA [Ref. 25] have been combined to obtain a cumulative 'FN Curve', which is included in the Transport QRA Addendum [Ref. 24]. Details of how this cumulative 'FN Curve' was determined are not available in the Transport QRA Addendum [Ref. 24]. This Review is based on the cumulative 'FN Curve' in the Transport QRA Addendum [Ref. 25] and a projection based on the future changes to DG movements along Denison Street.

The cumulative societal risk ('FN Curve') is wholly within the 'Tolerable if ALARP' zone and is relatively close to the 'Intolerable' zone (Refer to Figure 22). It is noted that the transport of DGs along Denison Street is the dominant contributor to the cumulative societal risk results ('FN Curve').



**Figure 22 Cumulative Societal Fatality Risk for Fixed Facilities at the BIP and Transport of DGs along Denison St [Ref. 24]**



### 5.5.2 Predicted Change to Cumulative Risk

The predicted change to the cumulative individual fatality risk over the next 10 years for the fixed facilities at the BIP and the transport of DGs along Denison Street can be estimated from Figure 11 (Section 5.3.1) and Figure 20 (Section 5.4.2) based on the assumption that the risk contribution from the transport of DGs along Denison Street will potentially increase by up to 50% due to the projected increase in DG traffic (Refer to Section 4.2).

If it assumed that the individual fatality risk due to the transport of DGs along Denison Street will increase by 50% over the next 10 years, and that the individual fatality risk contribution from the fixed facilities at the BIP will remain constant, then:

- To the south of the Rhodes Reserve:
  - The future location of the  $0.5 \times 10^{-6}$  per year cumulative individual fatality risk contour would probably extend to the eastern side of Nilson Avenue.
  - The future location of the  $1 \times 10^{-6}$  per year cumulative individual fatality risk contour would be closer to Nilson Avenue, potentially close to the current location of the  $0.5 \times 10^{-6}$  per year individual fatality risk contour shown in the Transport QRA Addendum (Refer to Figure 20 in Section 5.4.2).
  - The future cumulative individual fatality risk is not expected to reach  $10 \times 10^{-6}$  per year at the Rhodes Reserve or any of the other small reserves in the Study Area to the south of Rhodes Reserve.

- The future cumulative individual fatality risk is not expected to reach  $50 \times 10^{-6}$  per year.
- To the east of BIP Gate 3:
  - The future location of the  $0.5 \times 10^{-6}$  per year cumulative individual fatality risk contour would extend further into the Banksmeadow Industrial Precinct, but probably would not extend as far as Rhodes Street.
  - The future location of the  $1 \times 10^{-6}$  per year cumulative individual fatality risk contour would extend further east into the Banksmeadow Industrial Precinct, potentially as far as the current location of the  $0.5 \times 10^{-6}$  per year individual fatality risk contour shown in the Transport QRA Addendum (Refer to Figure 20 in Section 5.4.2).
  - The future location of the  $5 \times 10^{-6}$  per year cumulative individual fatality risk contour would extend further east into the Three Ports SEPP land to the east of BIP Gate 3, but is not expected to extend as far as the Banksmeadow Industrial Precinct (Except possibly into the part of the Banksmeadow Industrial Precinct adjacent to the Rhodes Reserve).
  - The future cumulative individual fatality risk is not expected to reach  $50 \times 10^{-6}$  per year.
- To the north of BIP Gate 3:
  - The future location of the  $0.5 \times 10^{-6}$  per year cumulative individual fatality risk contour would extend further east and north into the Eastgardens Precinct (A similar distance as for east of BIP Gate 3 – see above).
  - The future location of the  $1 \times 10^{-6}$  per year cumulative individual fatality risk contour would extend further east and north into the Eastgardens Precinct, but is not expected to extend as far as the current location of the  $0.5 \times 10^{-6}$  per year individual fatality risk contour shown in the Transport QRA Addendum (Refer to Figure 20 in Section 5.4.2).
  - The future location of the  $5 \times 10^{-6}$  per year cumulative individual fatality risk contour at the intersection of Denison Street and Wentworth Avenue would only marginally extend across the southern boundary of the Eastgardens Shopping Centre.
  - The future location of the  $10 \times 10^{-6}$  per year cumulative individual fatality risk contour at the intersection of Denison Street and Wentworth Avenue would extend into the Hensley Athletic Field, but is not expected to extend as far as the current location of the  $5 \times 10^{-6}$  per year individual fatality risk contour shown in the Transport QRA Addendum (Refer to Figure 20 in Section 5.4.2).
  - The future cumulative individual fatality risk is not expected to reach  $50 \times 10^{-6}$  per year.

A 50% increase in the transport of DGs along Denison Street will potentially increase the cumulative societal risk ('FN Curve') close to the 'Intolerable' zone (Refer to Figure 22). The risk is still in the ALARP range, which does not automatically mean that it is 'tolerable', but it means that it is 'tolerable if ALARP criteria are satisfied', i.e. risk must be reduced further to as low as reasonably practicable.

Therefore, even where the future cumulative individual fatality risk complies with the relevant DP&E fatality risk criteria, a development proposal may still be inappropriate if there is an increase in the

population density, as the FN curve may exceed the tolerability limit. For example, the future cumulative individual fatality risk at Hensley Athletic Field is predominantly less than the DP&E criterion of 10 pmpy (with only a marginal exceedence in the north east corner). A development at the Hensley Athletic Field that complies with the DP&E criterion for individual fatality risk may not comply with the cumulative societal risk ('FN Curve') criterion if it significantly increases the population density (e.g. new stands for spectators).

It is difficult to determine the permissible future population density for all lots within the Study Area based on the information in the available QRAs. However, any intensification of the population to the east of Denison Street (particularly to approximately halfway between Denison Street and Rhodes Street) is expected to drive the future cumulative societal risk ('FN Curve') into the 'Intolerable' zone. Similarly, since the population at the BIP is included in the calculation of the societal risk ('FN Curve') from transport of DGs along Denison Street, any intensification of the population to the west of Denison Street (particularly where the individual fatality risk is higher) is expected to drive the cumulative societal risk ('FN Curve') into the 'Intolerable' zone.

## 5.6 Summary of Key Points

The following observations can be made from a review of existing risk literature for the study area.

- The most recent QRA for the BIP was undertaken in 2012 by Sherpa Consulting [Ref. 27]. This QRA ('2012 BIP QRA') did not include vehicle transport to and from the BIP or the population at the BIP (Refer to Section 5.3). The risk due to road transport of DGs was assessed separately by Scott-Lister and the most recent risk results for Denison Street are presented in the 2015 Transport QRA Addendum [Ref. 24].
- Whilst the cumulative individual fatality risk contours from the existing facilities presented in the 2012 BIP QRA generally comply with the DP&E's relevant risk criteria for proposed developments (Refer to Section 6.2.3.1), there is a small encroachment (c. 30 m) of the  $1 \times 10^{-6}$  per year individual fatality risk contour to the east of the Huntsman facility across the Denison Street eastern BIP boundary into the residential area [Ref. 27, Section 10.1] (Refer to Figure 11).
- The extent of the acute toxic injury and irritation risk contours presented in the 2012 BIP QRA (Refer to Figure 14 and Figure 15 in Section 5.3.2) is greater than the 'consultation zone' shown in the Botany-Randwick LUSS in 2001 (Refer to Section 5.2).
- The societal risk ('FN Curve') presented in the 2012 BIP QRA is predominantly within the 'Tolerable if ALARP' zone and does not extend into the 'Intolerable' zone (Refer to Figure 18 in Section 5.3.4). It is reported in the 2012 BIP QRA that the societal risk is dominated by fire / explosion events (viz. > 80%), rather than toxic exposure events (viz. c. 10%-15%) [Ref. 27, Section 9.5.2].
- The cumulative individual and societal risks ('FN Curve') from the 2012 BIP QRA comply with the risk criteria applicable for existing use situations (Refer to Section 6.2.5).
- To comply with the relevant development consent condition (Refer to Section 5.3), the 2012 BIP QRA is due to be updated in 2017.
- The subdivision of the BIP, approved in August 2015, has released some land for future development along Denison Street and Corish Circle. This will potentially introduce new populations that were not included in the 2012 BIP QRA (Since this land would have been considered part of the BIP at that time and therefore any population would have been excluded from the societal risk calculations – Refer to Section 5.3.4).

- The individual fatality risk contour included in the QRA for the container terminal expansion at Port Botany [Ref. 19] is assumed to be valid for containerised DG movements through to c. 2025 (Refer to Section 5.4.1).
- The individual fatality risk contours presented in the Transport QRA Addendum may be valid for 2015, however, the risk may potentially increase by up to 50% over the next 10 years due to the projected increase in DG traffic (Refer to Section 4.2).
- The intersection of Denison Street and Smith Street and the new intersection to access the Bunnings development do not appear to have been considered as major intersections in the Transport QRA and Transport QRA Addendum. Consequently, these intersections were not allocated an increased accident rate in the same way as the other main intersections (viz. Denison Street and Beauchamp Road; Denison Street and Wentworth Avenue; and Denison Street and BIP Gate 3). Furthermore, a review of more recent accident data for Denison Street (Refer to Section 5.4.2) suggests that a higher proportion of accidents occur at intersections than was assumed in the Transport QRA and Transport QRA Addendum. The net effect of these observations is that the larger risk contours shown at the intersections should probably also apply for the two additional intersections and hence the risk on the road between the intersections may have been overestimated. However, this would not appear to be so significant as to affect the overall conclusions from the Transport QRA and Transport QRA Addendum.
- The societal risk results ('FN Curve') included in the Transport QRA Addendum is closer to the 'Intolerable' zone than for the fixed facilities at the BIP (Refer to Figure 18 in Section 5.3.4). This may be in part due to the population at the BIP being excluded from the societal risk calculations in the 2012 BIP QRA, whereas it was included in the societal risk calculations in the Transport QRA.
- The cumulative individual and societal risks ('FN Curve') from the Transport QRA and Transport QRA Addendum comply with the risk criteria applicable for existing use situations (Refer to Section 6.2.5 – Note: In the absence of established quantitative risk criteria in NSW for land use safety planning due to the transport of DGs, the (location-specific) individual fatality risk and societal risk criteria for fixed facilities have been used).
- There are no cumulative individual fatality risk contours presented in the available risk assessments that show the combined fatality risk for the fixed facilities at the BIP and the transport of DGs along Denison Street. The cumulative individual fatality risk for the fixed facilities at the BIP and the transport of DGs along Denison Street can only be estimated from Figure 11 (Section 5.3.1) and Figure 20 (Section 5.4.2). There are two locations where the cumulative individual fatality risk would increase sufficiently to be relevant for development of planning controls in the Study Area: (i) the intersection of Denison Street and BIP Gate 3; and (ii) the location where the  $1 \times 10^{-6}$  per year contour from the fixed facilities at the BIP extends across Denison Street. The individual fatality risk from the transport of DGs along Denison Street appears to be the major contributor at both of these locations.
- The projected increase in DG traffic along Denison Street over the next 10 years (Refer to Section 4.2) will marginally increase the extent of the cumulative individual fatality risk contours. This increase does not materially affect the nature of the proposed planning controls, but will eventually affect the extent of the area where development should be limited (e.g. future residential development within the extent of the  $1 \times 10^{-6}$  per year cumulative individual fatality risk contour).

- The projected increase in DG traffic along Denison Street over the next 10 years will have a significant effect on the cumulative societal risk as it will potentially increase the cumulative societal risk ('FN Curve') to very close to the 'Intolerable' zone (Refer to Figure 22). If the projected increase in DG traffic occurs in conjunction with intensification of the population in the Study Area, then the cumulative societal risk ('FN Curve') is likely to extend into the 'Intolerable' zone. It is not possible with the existing risk reports available to predict exactly when and where this will occur due to the large number of factors involved.

## **6 RISK CRITERIA FOR LAND USE SAFETY PLANNING**

### **6.1 Introduction**

Land use safety planning (including the development of planning controls) for the Study Area, requires an understanding of the hazards and risks posed by the relevant potentially hazardous operations. However, a hazard and risk analysis cannot be carried out in isolation and requires criteria against which the acceptability of the estimated risk can be assessed.

Qualitative and quantitative risk criteria for land use safety planning have been established in NSW by the Department of Planning & Environment (DP&E) and these apply for three broad contexts [Ref. 7 (Section 2.1.4) and Ref. 8 (Section 5.1.2)]:

1. Strategic planning (Zoning and rezoning).
2. Assessment of development for potentially hazardous development.
3. Assessment of development in the vicinity of potentially hazardous development.

The qualitative and quantitative risk criteria for land use safety planning currently established in NSW, which may be common to more than one context, are summarised in Section 6.2.

There are no established quantitative risk criteria in NSW for land use safety planning due to the transport of DGs. Therefore, the (location-specific) individual fatality risk and societal risk criteria for fixed facilities have been used to assess the risks from the transport of DGs (Refer to Section 6.3). The established qualitative principles should still be considered (Refer to Section 6.2.1).

The risk criteria used to establish the development controls for the Study Area are summarised in Section 6.4.

### **6.2 Risk Criteria for Land Use Safety Planning in NSW**

Two aspects of risk need to be considered for land use safety planning [Ref. 7, Section 2) and Ref. 8, Section 5.2]:

- individual risk, which considers the acceptability of a particular level of risk to an exposed individual; and
- societal risk, which takes into account society's aversion to accidents which can result in multiple fatalities.

#### **6.2.1 Qualitative Risk Criteria**

While it is relevant to have quantitative risk criteria, qualitative principles are equally important. These are applicable for all three planning contexts and include [Ref. 7 (Section 2) and Ref. 8 (Section 5.2)]:

- all 'avoidable' risks should be avoided;
- particular attention needs to be given to eliminating or reducing major hazards, irrespective of whether numerical criteria are met;
- as far as possible, the consequences of significant events should be kept within facility boundaries; and
- where the risk from an existing installation is already high, further development should not pose any incremental risk.

## 6.2.2 Strategic Planning (Zoning)

Strategic planning (Zoning and rezoning) is typically undertaken by the relevant planning authorities as part of a periodic review of the LEP and DCP (i.e. not as a result of a specific development application) or if a planning proposal is submitted to the relevant planning authority.

When assessing the zoning around a potentially hazardous facility, it is important to ensure that this will not introduce or aggravate existing land use safety conflicts. As noted in HIPAP No. 10 [Ref.8, Section 5.3]: “When considering strategic planning, the primary emphasis needs to be on the suitability of land for the proposed range of uses, having regard to existing risk exposure and the sensitivity of the current land use. For example, it would be inappropriate for land to be zoned for residential or more sensitive uses if there was already a significant risk exposure from nearby industrial activities.”

In addition to the qualitative risk criteria (Refer to Section 6.2.1), the quantitative risk criteria set out in HIPAP No. 10 [Ref. 8, Section 5.5] are relevant to strategic planning (Zoning and rezoning). These quantitative criteria are discussed in Section 6.2.4 of this report.

If a land use safety conflict arises from a rezoning decision (i.e. the relevant risk criteria for the new zone would be exceeded), then the parties to the rezoning should bear the responsibility for resolving the conflict [Ref. 8, Section 4.2.4]. Possible approaches include [Ref. 8, Section 4.2.4]:

- (a) Rezoning of risk affected portions of the land to a less sensitive use;
- (b) Placing conditions of consent on new development that will reduce the risk exposure for people within the development to less than the relevant risk criteria (Note: while this approach may be feasible for industrial or commercial land uses, it is not appropriate for sensitive uses); and
- (c) Negotiation with the Operator of the risk source to implement appropriate risk reduction measures.

## 6.2.3 Assessment of Development for Potentially Hazardous Development

In addition to the qualitative risk criteria (Refer to Section 6.2.1), quantitative risk criteria for the assessment of development for potentially hazardous development are included in HIPAP No. 4 [Ref. 7]. The main quantitative criteria are for: individual fatality risk; injury risk; property damage and incident propagation; and environmental damage.

### 6.2.3.1 Individual Fatality Risk

The individual fatality risk imposed by a proposed industrial activity should be low relative to the background risk. This forms the basis for the following location-specific individual fatality risk (‘LSIFR’) criteria adopted by the NSW DP&E [Ref. 7].



**Table 4 Individual Fatality Risk Criteria [Ref. 7]**

Land Use	Risk Criterion [per million per year]
Hospitals, schools, child care facilities and old age housing developments	0.5
Residential developments and places of continuous occupancy, such as hotels and tourist resorts	1
Commercial developments, including offices, retail centres, warehouses with showrooms, restaurants and entertainment centres	5
Sporting complexes and active open space areas	10
Industrial sites	50 *

\* HIPAP No. 4 allows flexibility in the interpretation of this criterion. For example, 'where an industrial site involves only the occasional presence of people, such as in the case of a tank farm, a higher level of risk may be acceptable'.

The DP&E has adopted a fatality risk criterion of  $1 \times 10^{-6}$  p.a. (or 1 chance of fatality per million per year) for residential area exposure because this risk is very low in relation to typical background risks for individuals in NSW.

### 6.2.3.2 Injury Risk

The DP&E has adopted risk criteria for levels of effects that may cause injury to people but will not necessarily cause fatality. Criteria are included in HIPAP No. 4 [Ref. 7] for potential injury caused by exposure to heat radiation, explosion overpressure and toxic gas/ smoke/dust.

The DP&E's suggested injury risk criterion for heat radiation is as follows:

- *Incident heat flux radiation at residential and sensitive use areas should not exceed 4.7 kW/m<sup>2</sup> at a frequency of more than 50 chances in a million per year.*

The DP&E's suggested injury/damage risk criterion for explosion overpressure is as follows:

- *Incident explosion overpressure at residential and sensitive use areas should not exceed 7 kPa at frequencies of more than 50 chances in a million per year.*

The DP&E's suggested injury risk criteria for toxic gas/ smoke/dust exposure are as follows:

- *Toxic concentrations in residential and sensitive use areas should not exceed a level which would be seriously injurious to sensitive members of the community following a relatively short period of exposure at a maximum frequency of 10 in a million per year.*
- *Toxic concentrations in residential and sensitive use areas should not cause irritation to eyes or throat, coughing or other acute physiological responses in sensitive members of the community over a maximum frequency of 50 in a million per year.*

### 6.2.3.3 Risk of Property Damage and Accident Propagation

The DP&E's criteria for risk of damage to property and accident propagation are as follows [Ref. 7]:

- *Incident heat flux radiation at neighbouring potentially hazardous installations or at land zoned to accommodate such installations should not exceed a risk of 50 in a million per year for the 23 kW/m<sup>2</sup> heat flux level.*

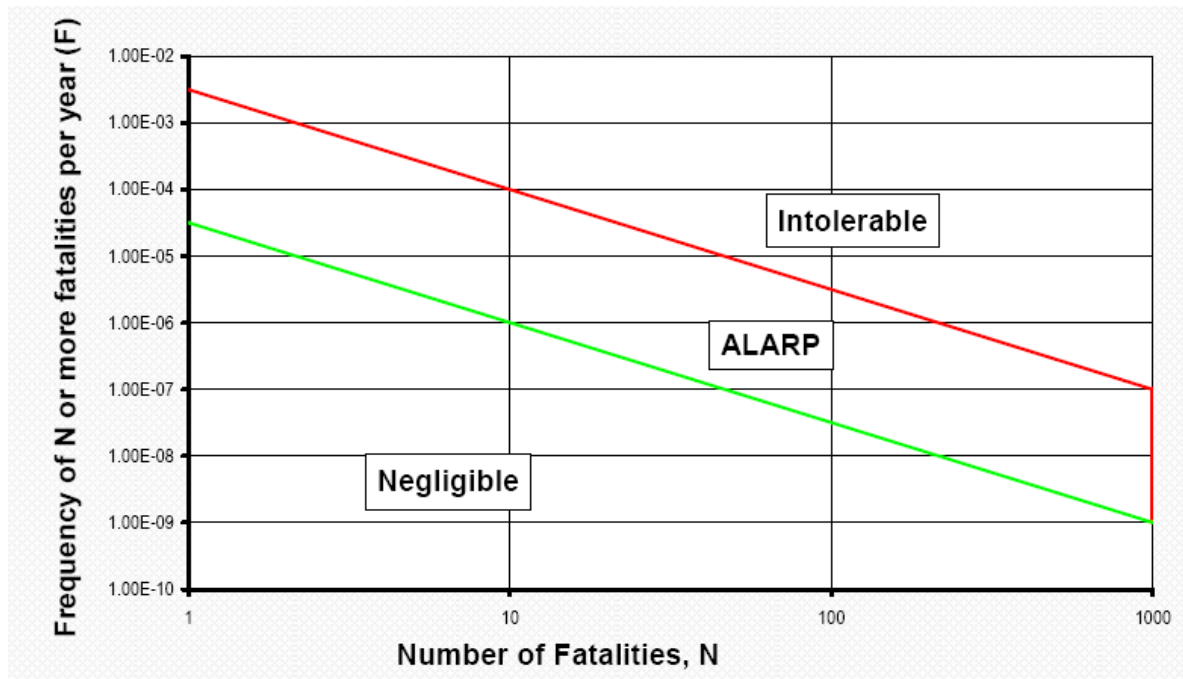


- Incident explosion overpressure at neighbouring potentially hazardous installations, at land zoned to accommodate such installations or at nearest public buildings should not exceed a risk of 50 in a million per year for the 14 kPa explosion overpressure level.

#### 6.2.3.4 Societal Fatality Risk

The DP&E's suggested societal risk criteria (Refer to Figure 23), take into account the fact that society is particularly intolerant of accidents, which though infrequent, have a potential to create multiple fatalities [Ref. 7 and 8]. Below the negligible line, provided other individual criteria are met, societal risk is not considered significant. Above the intolerable level, an activity is considered undesirable, even if individual risk criteria are met. Within the 'As Low As Reasonably Practicable' (ALARP) region, the emphasis is on reducing risks as far as possible towards the negligible line. Provided other quantitative and qualitative criteria of HIPAP 4 are met, and additional risk reduction measures considered to reduce the risk to as low as reasonably practicable, the risks from the activity would be considered tolerable in the ALARP region.

**Figure 23 Indicative Societal Risk Criteria [Ref. 7 and 8]**



#### 6.2.3.5 Risk to Biophysical Environment

The DP&E suggests the following criteria for assessing the risk to the biophysical environment:

- Industrial developments should not be sited in proximity to sensitive natural environmental areas where the effects (consequences) of the more likely accidental emissions may threaten the long-term viability of the ecosystem or any species within it.
- Industrial developments should not be sited in proximity to sensitive natural environmental areas where the likelihood (probability) of impacts that may threaten the long-term viability of the ecosystem or any species within it is not substantially lower than the background level of threat to the ecosystem.

#### 6.2.4 Assessment of Development in the Vicinity of Potentially Hazardous Development

In addition to the qualitative risk criteria (Refer to Section 6.2.1), quantitative risk criteria for the assessment of development in the vicinity of potentially hazardous development are included in HIPAP No. 10 [Ref. 8, Section 5.5].

The following principles apply to residential and sensitive use development in the vicinity of existing industry [Ref. 8, Section 5.5.2.1]:

- the half in a million per year individual fatality risk level is an appropriate criterion above which no intensification of sensitive use development should take place;
- the one in a million per year individual fatality risk level is an appropriate criterion above which no intensification of residential development should take place;
- residential intensification may be appropriate where mitigating measures can be implemented to reduce risk exposure to less than the one in a million per year individual fatality risk level, provided the pre-mitigation residual risk levels are below the 10 in a million per year individual fatality risk level; and
- no residential intensification should take place where pre-mitigation residual risk levels are in excess of the 10 in a million per year individual fatality risk level.

For other types of development (e.g. commercial, industrial) in the vicinity of existing industry, the relevant fatality risk criteria are the same as for a new industrial development (Refer to Section 6.2.3.1). Where these criteria are initially exceeded, commercial and industrial land development may be appropriate where mitigating measures can be implemented to reduce risk exposure to less than the target individual fatality risk level [Ref. 8, Section 5.5.2.2].

The possible injury and irritation impacts should also be considered in the case of proposed development for residential and sensitive uses [Ref. 8, Section 5.5.3]. The relevant risk criteria are the same as for a new industrial development (Refer to Section 5.3.2).

If a development proposal involves a significant intensification of population (e.g. medium to high density residential development, shopping complexes) in the vicinity of potentially hazardous facility, then the change in societal risk needs to be taken into account, even if individual risk criteria are met [Ref. 8, Section 5.5.4].

The *incremental* societal risk should be compared against the indicative societal risk criteria (Refer to Figure 23 in Section 6.2.3.4). If the *incremental* societal risk lies within the 'Negligible' region, then the development should not be precluded and if it lies within the 'Tolerable if ALARP' region, then options should be considered to relocate people away from the affected areas [Ref. 8, Section 5.5.4]. If, after taking this step, there is still a significant portion of the societal risk plot within the 'Tolerable if ALARP' region, the proposed development should only be approved if benefits clearly outweigh the risks [Ref. 8, Section 5.5.4].

#### 6.2.5 Risk Criteria for Existing Land Uses

In Section 3 of HIPAP No. 4 [Ref. 7], it is noted that the implementation of the risk criteria should differentiate between existing land use situations and new situations. This is to reflect a tighter locational and technological standard applying now than at earlier times.

For existing situations, the following principles should be applied [Ref. 7, Section 3]:

- The criteria suggested in Section 6.2.4 are still relevant.

- Safety updates/reviews and risk reduction at facilities where resultant levels are in excess of the  $10 \times 10^{-6}$  individual fatality risk level should be implemented to ensure that operational and organisational safety measures are in place to reduce the likelihood of major hazardous events to low levels. A target level is to be established on an area basis.
- Intensification of hazardous activities in an existing complex accommodating a number of industries of a hazardous nature should only be allowed if the resultant  $1 \times 10^{-6}$  individual fatality risk level is not exceeded by the proposed facility and subject to cumulative risk threshold considerations.
- Mitigating the impact on existing residential areas from existing hazardous activities (in addition to safety review/updates) should essentially include specific area-based emergency plans. Emergency planning should be on the basis of consequences for credible scenarios with emphasis on areas within the  $1 \times 10^{-6}$  risk contour.

### 6.3 Risk Criteria for Land Use Safety Planning due to Transport of DGs

There are no established quantitative risk criteria in NSW for land use safety planning related to the transport of DGs. Therefore, the individual fatality risk and societal (fatality) risk criteria for fixed facilities have been used, which is consistent with the approach adopted in previous QRAs in NSW and a review of international approaches (See below). The established qualitative principles should still be considered (Refer to Section 6.2.1).

In 2014, DNV GL published a review of risk criteria adopted by European Countries for the transport of DGs [Ref. 11]. Significantly different approaches were identified in the DNV GL report, with some countries having no criteria at all and others having qualitative / quantitative criteria that were not explicitly stated in relevant legislation. The following finding is included in Section 5.5 of the DNV GL report (Note: RAC = Risk Acceptance Criteria):

“It appears that the only approaches considered immediately suitable as harmonised RAC are approaches used in the Netherlands and Spain. It is significant that these are very different to each other, being mainly quantitative in the Netherlands and based on judgement in Spain” [Ref. 11].

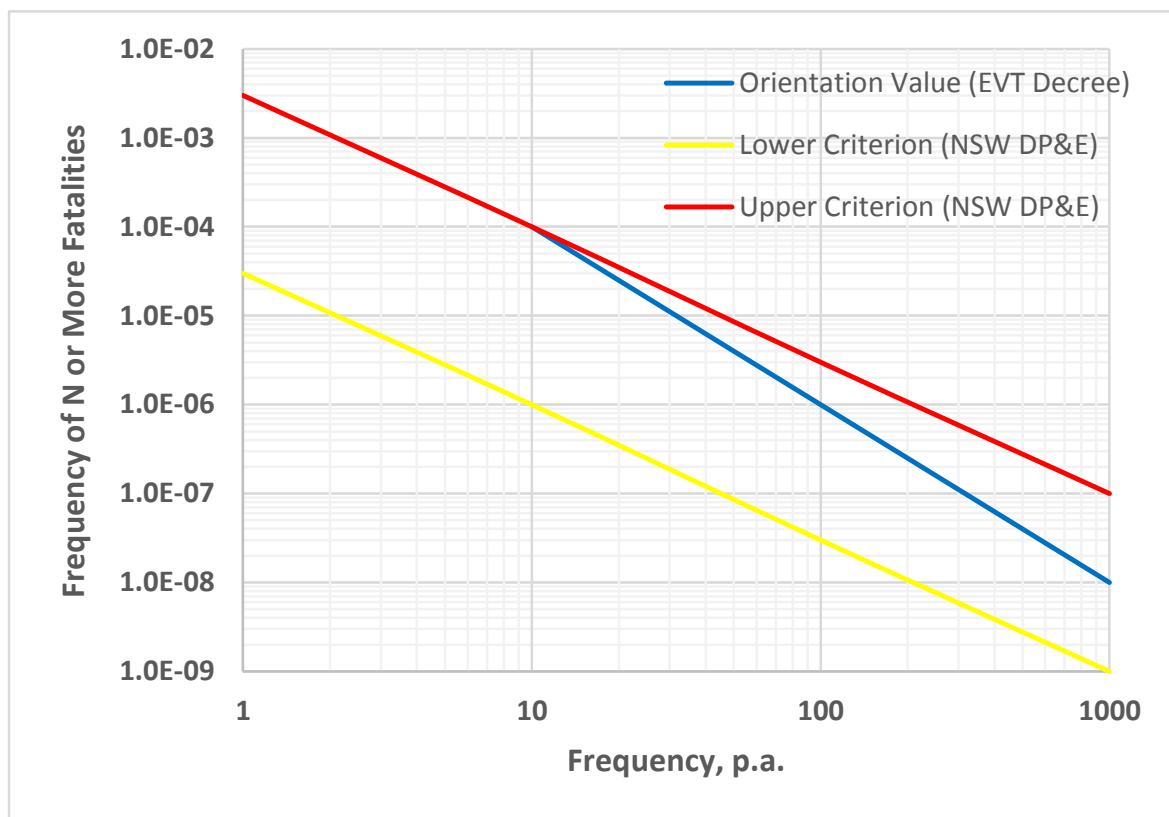
The quantitative criteria used in the Netherlands for DG transport are very similar to the quantitative risk criteria adopted in NSW for fixed facilities (See below).

In the Netherlands, the Externe Veiligheid Transportroutes (‘External Safety Transport Routes’) decree of 11 November 2013, includes the following risk criteria for the transport of dangerous goods:

- Individual fatality risk criterion: The individual fatality risk criterion in the EVT Decree [Ref. 13], which is referred to as a ‘limit value’, is  $1 \times 10^{-6}$  per year. This applies for a person who would stay sustained and unprotected at a location and is therefore defined on the same basis as the NSW DP&E individual fatality risk criterion for residential land uses due to fixed facilities (viz.  $1 \times 10^{-6}$  per year - Refer to Section 6.2.3.1).

- Societal risk ('FN Curve') criterion: A single criterion line (Referred to as an 'orientation value') is included in the EVT Decree. This is defined as the: "value for the group risk represented by the line connecting the dots where the probability of an accident with ten or more fatalities  $10^{-4}$  per year, the risk of an accident with 100 or more fatalities  $10^{-6}$  per year and the probability of an accident with 1000 or more fatalities  $10^{-8}$  per year". The 'orientation value' is shown on Figure 24 below, together with the lower and upper indicative societal risk criterion lines for NSW. The 'orientation value' applies to the 'worst-case' 1 km transport route segment and only applies for incidents capable of causing 10 or more fatalities. It is understood to include all people along the DG route, but excludes any individuals involved in the transport activity (i.e. DG vehicle driver).

**Figure 24 Societal Risk 'Orientation Value' for DG Transport in the Netherlands [Ref. 13]**



During this review, quantitative individual fatality risk and societal fatality risk criteria were not identified for DG transport in any other non-European countries (e.g. Hong Kong, USA). Nor were quantitative criteria identified for injury or property damage risks.

The quantitative individual fatality risk and societal fatality risk criteria currently being used in the Netherlands for DG transport are similar to the quantitative risk criteria adopted in NSW for fixed facilities. Therefore, the risk criteria for individual fatality risk and societal (fatality) risk due to DG transport in the Study Area were assumed to be the same as the current criteria for fixed facilities. This is consistent with the approach adopted in the Transport QRA and Transport QRA Addendum.

#### **6.4 Risk Criteria Proposed for Study Area**

Qualitative and quantitative risk criteria for land use safety planning have been established in NSW by the DP&E for three broad contexts [Ref. 7 (Section 2.1.4) and Ref. 8 (Section 5.1.2)]:

- strategic planning (Zoning and rezoning);
- assessment of development for potentially hazardous development; and
- assessment of development in the vicinity of potentially hazardous development.

These criteria are applicable for land use safety planning in the Study Area and are summarised in Table 5.

**Table 5 Summary of Risk Criteria for Land Use Safety Planning in the Study Area**

Land Use Safety Planning Context	Risk Source	Risk Receptor	Risk Criteria for Land Use Safety Planning in the Study Area
Strategic Planning (Zoning and Rezoning)	Existing potentially hazardous fixed facility	Existing land use (i.e. Zoning) or proposed change to land use category (i.e. Rezoning) <i>Note: 'Industrial', 'residential', etc. uses, as defined in Section 2.4.2.1 of HIPAP No. 4, may not align with land use zones defined in the LEP (e.g. IN1, etc.).</i>	Existing land uses (i.e. Zoning), and any proposed change to land uses (i.e. Rezoning), should be consistent with all relevant qualitative and quantitative risk criteria from HIPAP No. 4 and HIPAP No. 10 (Refer to Section 6.2.1, Section 6.2.2 and Section 6.2.4). Risk mitigation measures, and/or rezoning of risk affected portions of the land to a less sensitive use, should be considered if the risk criteria are not being met (Refer to Section 6.2.2).  Although not explicitly stated in HIPAP No. 4 and HIPAP No. 10, strategic planning decisions should be based on the cumulative risks from all risk sources. This approach is consistent with the DP&E's LUSS for the Botany-Randwick area [Ref. 9] and the development consent conditions for the BIP, which require a cumulative risk assessment [Ref. 2].
	Existing potentially hazardous transport operation		There are no established quantitative risk criteria in NSW for land use safety planning related to the transport of DGs. Therefore, the (location-specific) individual fatality risk and societal risk criteria for fixed facilities should be used to assess the risks from the transport of DGs (Refer to Section 6.3). The established qualitative principles should still be considered (Refer to Section 6.2.1).  Existing land uses (i.e. Zoning), and any proposed change to land uses (i.e. Rezoning), in the Study Area should be consistent with the quantitative risk criteria (Refer to Section 6.2.5 and Section 6.3).  Although not explicitly stated in HIPAP No. 4 and HIPAP No. 10, strategic planning decisions should be based on the cumulative risks from all risk sources. This approach is consistent with the QRA undertaken for transport of DGs along Denison Street [Ref. 24 and 25], in which the cumulative (location-specific) individual fatality risk and cumulative societal risk were assessed (i.e. for the BIP <u>and</u> transport of DGs along Denison Street). Note: Whilst this is appropriate for the Study Area, the assessment of cumulative societal risk from fixed facilities and transport of DGs might not be appropriate for other areas (Refer to Section 6.3). There is still one difficulty in this approach for the present study. The cumulative risk on Denison street is due to BIP industrial activity from fixed installations, as well as DG transport in Denison street. The latter is not contributed entirely by BIP, but a significant part from Port Botany facilities. Therefore, any risk reduction on Denison Street must not be placed entirely on BIP Operators, if these facilities comply with the fixed facilities risk criteria.

Land Use Safety Planning Context	Risk Source	Risk Receptor	Risk Criteria for Land Use Safety Planning in the Study Area
Assessment of Development for Potentially Hazardous Development	New potentially hazardous fixed facility or modifications to an existing potentially hazardous fixed facility	Existing land use (i.e. Zoning) <i>Note: 'Industrial', 'residential', etc. uses, as defined in Section 2.4.2.1 of HIPAP No. 4, may not align with land use zones defined in the LEP (e.g. IN1, etc.).</i>	<p>A new potentially hazardous fixed facility, or modifications to an existing potentially hazardous fixed facility, should be assessed against all relevant qualitative and quantitative risk criteria from HIPAP No. 4 and HIPAP No. 10 (Refer to Section 6.2.1 and Section 6.2.3).</p> <p>Typically, the risk for a proposed development is assessed based on the incremental risk from this development alone (i.e. not cumulatively with other potentially hazardous developments). However, the development consent conditions for the BIP require a cumulative risk assessment [Ref. 2] and therefore the risks associated with any modifications to the BIP, including new facilities/subdivisions within the boundary of the BIP, should be assessed cumulatively.</p> <p>If another potentially hazardous development (i.e. outside BIP) were to affect the Study Area, then it should be assessed individually and in the context of the cumulative risk presented in the BIP QRA [Ref. 27] and Transport QRA Addendum [Ref. 24].</p>
	New or modified potentially hazardous transport operation		<p>There are no established quantitative risk criteria in NSW for land use safety planning due to the transport of DGs. Therefore, the (location-specific) individual fatality risk and societal risk criteria for fixed facilities should be used to assess the risks from the transport of DGs (Refer to Section 6.3). The established qualitative principles should still be considered (Refer to Section 6.2.1).</p> <p>Any proposed changes to the transport of DGs within the Study Area (Including new operations or modifications to existing operations), should be assessed individually and in the context of the cumulative risk presented in the BIP QRA [Ref. 27] and Transport QRA Addendum [Ref. 24].</p>

Land Use Safety Planning Context	Risk Source	Risk Receptor	Risk Criteria for Land Use Safety Planning in the Study Area
Assessment of Development in the Vicinity of Potentially Hazardous Development	Existing potentially hazardous fixed facility	Development in the vicinity of an existing potentially hazardous fixed facility and/or transport operation (e.g. increase in number of potentially exposed individuals due to residential or commercial intensification)	<p>Any development in the vicinity of an existing potentially hazardous fixed facility should be consistent with all relevant qualitative and quantitative risk criteria from HIPAP No. 10 (Refer to Section 6.2.1 and Section 6.2.4). A proposed development may still be appropriate if mitigating measures can be implemented to reduce the risk exposure to less than the relevant criteria (Refer to Section 6.2.4).</p> <p>Although not explicitly stated in HIPAP No. 10, the assessment of a proposed development in the vicinity of an existing potentially hazardous fixed facility should be based on the cumulative risk from all risk sources. Therefore, any proposed development in the Study Area should be assessed in the context of the cumulative risks presented in the BIP QRA [Ref. 17] and Transport QRA Addendum [Ref. 16].</p> <p>For societal risk, the incremental societal risk should be compared against the indicative criteria in HIPAP 10 (Refer to Section 6.2.4). If this incremental societal risk lies within the negligible region, then the development should not be precluded. If incremental risks lie within the ALARP region, options should be considered to relocate people away from the affected areas. If, after taking this step, there is still a significant portion of the societal risk plot within the ALARP region, the proposed development should only be approved if the benefits clearly outweigh the risks, and other reasonably practicable risk reduction measures are adopted.</p>
	Existing potentially hazardous transport operation		<p>There are no established quantitative risk criteria in NSW for land use safety planning relating to the transport of DGs. Therefore, the (location-specific) individual fatality risk and societal risk criteria for fixed facilities should be used to assess the risks from the transport of DGs (Refer to Section 6.3). The established qualitative principles should still be considered (Refer to Section 6.2.1).</p> <p>Although not explicitly stated in HIPAP No. 10, the assessment of a proposed development in the vicinity of an existing potentially hazardous transport operation should be based on the cumulative risk from all risk sources. Therefore, any proposed development in the Study Area should be assessed in the context of the cumulative risks presented in the BIP QRA [Ref. 17] and Transport QRA Addendum [Ref. 16].</p> <p>For societal risk, the incremental societal risk should be compared against the indicative criteria in HIPAP 10 (Refer to Section 6.2.4). If this incremental societal risk lies within the negligible region, then the development should not be precluded. If incremental risks lie within the ALARP region, options should be considered to relocate people away from the affected areas. If, after taking this step, there is still a significant portion of the societal risk plot within the ALARP region, the proposed development should only be approved if the benefits clearly outweigh the risks.</p>



## 6.5 Summary of Key Points

- Qualitative and quantitative risk criteria for land use safety planning have been established in NSW by the DP&E for three broad contexts: strategic planning (Zoning and rezoning); assessment of development for potentially hazardous development; and assessment of development in the vicinity of potentially hazardous development. These criteria are applicable for land use safety planning in the Study Area.
- There are no established quantitative risk criteria in NSW for land use safety planning due to the transport of DGs. Therefore, the (location-specific) individual fatality risk and societal risk criteria for fixed facilities should be used to assess the risks from the transport of DGs (Refer to Section 6.3).
- The application of the risk criteria is based on a risk assessment that inherently contains a number of assumptions, primarily the truck accident frequency applicable to the Study Area.

## 7 PLANNING CONTROLS FOR STUDY AREA

### 7.1 Current Risk-Related Planning Controls

The risk-related planning controls in the BBDCP2013 are currently included in: Part 6 ('Employment Zones', which includes the IN1 and IN2 industrial zones and the B5 and B7 business zones); and, Part 8 ('Character Zones', which are predominantly the residential precincts in the Study Area). There are no risk-related planning controls in the BBDCP2013 for the IN1 zoned land covered by the Three Ports SEPP.

The relevant text from Part 6 and Part 8 of the BBDCP2013 is reproduced below in Sections 7.1.1 - 7.1.3.

#### 7.1.1 Hillsdale Precinct (Part 8.2 of DCP)

The existing and desired future character of the Hillsdale Precinct (Refer to Section 3.1.1) is included in Part 8.2 of the BBDCP2013 [Ref. 1]. Risk-related development controls are referred to in Part 8.2.1 of the BBDCP2013 for the existing local character and Part 8.2.1 for the desired future character. The relevant text from these parts is reproduced below.

#### Extract from Section 8.2.1 of the Botany Bay Development Control Plan 2013 [Ref. 1]

##### **Risk**

The Botany / Randwick industrial area forms a significant industrial complex of State and National significance. The location of the industrial area, within the vicinity of residential areas, has required that safety studies into the cumulative risk of industrial activity be undertaken to quantify and measure hazard risk associated with such activities.

The Department of Planning & Environment has released three studies that investigate industrial operations and make land use planning recommendations. Studies released to date include the '*Risk Assessment Study for the Botany / Randwick Industrial Complex and Port Botany*' (1985), the '*Port Botany Land Use Safety Study*' (1996) and the '*Botany / Randwick Industrial Area Land Use Safety Study*' (2001).

##### **A Risk Assessment Study for the Botany / Randwick Industrial Complex and Port Botany - 1985**

Analysis of hazard risk implications within the Botany / Randwick Industrial area was first examined in 1985 by Planning NSW (formerly the Department of Environment and Planning) within a report titled '*A Risk Assessment Study for the Botany / Randwick Industrial Complex and Port Botany*'. The risk assessment study was initiated by the Department in response to concerns expressed by community groups and local councils about the intensification of potentially hazardous installations and associated facilities in the area and their risk implications on nearby residential land uses.

The recommendations from the 1985 study that relate to residential risk implications and land use controls under recommendation 12, state that:

- No intensification of residential developments should be allowed within areas identified in the study;
- Provisions within a planning instrument that permit an increase in existing residential dwelling density should be reviewed;
- New residential intensification within the cumulative risk areas identified within the study should be the subject of the Director's concurrence.

The study had no statutory significance under the Environmental Planning and Assessment Act 1979 and subsequently relied on the support of Council to implement the recommendations contained in the study. Council has supported the recommendations of the study relating to land use planning and has in practice referred residential development applications, which aim to intensify development to Planning NSW for concurrence.

#### **Port Botany Land Use Safety Study – 1996**

Port Botany is a major infrastructure facility that handles and accommodates activities involving hazardous materials including - loading / unloading, storage and distribution of dangerous goods and materials.

The Port Botany Land Use Safety Study was undertaken by the Department of Planning to update the 1985 Study, develop updated cumulative risk contours (to provide a framework for assessment and decision making for future developments) and formulate a strategic land use safety framework.

The recommendations of the Study were:

- Future developments in the Port should undergo early risk assessment and comprehensive environmental impact processes to demonstrate that the use will not contribute to any cumulative risk – as identified in the Port area.
- Development controls are put in place to ensure there is no significant increase in the number of people exposed to risk – as identified in the residential risk contour.
- Individual site studies are undertaken to develop programs that are then implemented to create risk reduction and safety management measures.
- The Port and Port users prepare emergency plans / procedures and fire prevention / protection systems.
- The Port and Port users adopt a program to ensure the community is adequately informed on Port activities, associated risks and safety management measures.

#### **Botany / Randwick Industrial Area Land Use Safety Study**

Planning NSW in 2001 published the 'Botany / Randwick Industrial Area Land Use Safety Study' with the objectives of:

- Updating the 1985 cumulative risk study for the Botany / Randwick industrial area;
- Developing a framework for the efficient assessment and decision making for future developments; and
- Formulating a strategic land use safety framework for future developments in the Botany / Randwick Industrial Area and surround land uses.

The review investigated two cases based on two industrial scenarios. The cases were aimed at identifying the cumulative risk levels resulting from the industrial area under the current conditions (pre – 2001) and a predicted future case (2001). An explanation of the cases are as follows:-

- The Existing Case (Pre-2001): The Orica mercury cell chlorine plant and chlorine liquefaction facilities and associated bulk chlorine storage. Risks associated with the chlorine plant include incidences such as a chlorine vapour cloud release due to equipment failure or due to fire / radiation impacts on the plant and storage from a fire in the vicinity.

- The Future Case (2001): The Existing Orica chlorine plant being replaced with membrane production facilities. The bulk storage of chlorine has ceased. The removal of chlorine liquefaction and storage on site will reduce the likelihood of chlorine releases occurring.

It should be noted that Council received a letter from the then Planning NSW dated 31 October 2002 advising that the recommendations in the Land Use Safety Study for the Future Case now apply. The Future Case applied from 31 October 2002.

The key findings of the Botany / Randwick Industrial Area Land Use Safety Study has been a significant improvement in the cumulative risk areas that result from the industrial operations located within the Botany / Randwick industrial area

Recommendations that resulted from the study were:

1. Future developments in the Botany / Randwick industrial area should be subject to early risk assessment and comprehensive environmental impact processes to conclusively demonstrate they will not contribute to risk impacts outside the industrial area that are inappropriate for surrounding land uses.
2. Effective land use safety planning should be implemented to allow future developments in the area, and to reconcile any potential land use planning conflicts.
3. A process of regular reviews and updates for site safety management systems should be undertaken.
4. Emergency plans and procedures, and fire prevention and protection systems should be kept up-to-date.
5. Industrial facilities should adopt community right-to-know principles to ensure the community is adequately informed about activities, associated risks and safety management measures adopted within the Botany / Randwick industrial area.

Implementation of recommendations 1, 3, 4, and 5 listed above are the responsibility of State, Local Governments and industry to administer through consultation and development approvals. Implementation of recommendation 2 is achieved by the City of Botany Bay Council through the preparation of this Development Control Plan to give the Study status under the Environmental Planning and Assessment Act 1979.

#### Extract from Section 8.2.2 of the Botany Bay Development Control Plan 2013 [Ref. 1]

##### **Risk**

- Recognise that development within the 'Consultation Region' identified in **Figure 4** that will result in 'residential intensification' or 'sensitive use intensification' will require the concurrence of the Department of Planning & Environment.
- Recognise that development for 'residential intensification', 'sensitive use intensification', and development that will result in increased traffic volumes or access points onto Denison Street (being a designated Dangerous Goods Route) must:

- Consider a transport risk assessment report. The contents and outcomes of a transport risk assessment report are to be in general accordance with the principles outlined in the *Hazardous Industry Advisory Paper N° 6: Guidelines for Hazard Analysis* (Planning NSW, 1992), *Hazardous Industry Advisory Paper N° 4: Risk Criteria for Land Use Safety Planning* (Planning NSW, 1992), 'Hazardous Industry Planning Advisory Paper No. 10 Land Use Safety Planning' published by the NSW Department of Planning in January 2011 and 'Hazardous Industry Planning Advisory Paper No. 11 – Route Selection' dated January 2011.
- Receive development concurrence for the application from the Department of Planning & Environment.
- Any other applications for development adjacent to / or within the vicinity of routes designated as 'Dangerous Goods Routes' will be assessed under the relevant Council planning instruments and controls.
- Where a site is considered by Council to be located partly within any region or adjacent to a dangerous goods route defined in this plan, any development on the site will be assessed and viewed as though it was located within the area with the more stringent risk-related development controls specified in this development control plan.

**Note:** In 2012, BBCC commissioned a traffic count for Denison Street (in both directions, north and south); which includes a separate count for dangerous goods traffic as Council wanted to compare the overall traffic to the dangerous goods traffic. Whilst this data is available to applicants who are required to prepare a Transport Risk Assessment Report, the data is over 12 months old and depending on the proposed development Council may require a new Transport Risk Survey to be conducted at the applicant's costs. Please contact Council for more information.

**Figure 4 - Consultation Region shown in Blue**



#### **Definitions:**

**Dangerous Goods Routes** means identified within the Botany/Randwick Industrial Area Land Use Safety Study.

The Botany / Randwick Industrial Area Land Use Safety Study does not include an assessment of the risk implications of dangerous goods transport, but does identify some routes as having a significant likelihood of carrying such goods. The routes identified within the Botany / Randwick Industrial Area Land Use Safety Study form a wider local and regional road network that may also carry traffic containing dangerous goods. The consideration of risk arising from the transportation of dangerous goods on this local and regional road network and the impacts this may have on residential and sensitive use development within the Study area needs to be considered as part of the assessment process for future development activity.

**Residential intensification** means an increase in the number of dwellings or an increase in the number of rooms providing temporary or permanent accommodation.

Residential land uses considered incompatible with residential fatality risk, injury or irritation risk (as defined in *Hazardous Industry Planning Advisory Paper No.4 – Risk Criteria for Land Use Safety Planning* - Planning NSW, 1992) resulting from operations within the Botany / Randwick industrial area under this plan include dwelling houses, hotels, motels, and caretakers residences resulting from any of the following:

- The alteration and / or addition of an existing building;
- The conversion and / or utilisation of an existing building or vacant land;
- The subdivision of land to create a new allotment; and
- The rezoning of land.

**Sensitive use intensification** means the establishment of a sensitive use or an increase in the gross operational floor space of an existing building that is occupied by a sensitive land use.

Sensitive land uses that are considered incompatible with fatality risk, injury or irritation risk (as defined in *Hazardous Industry Planning Advisory Paper No.4 – Risk Criteria for Land Use Safety Planning* - Planning NSW, 1992) resulting from operations within the Botany / Randwick industrial area under this plan include:- child care centres, nursing homes, educational establishments, hospitals and units for aged persons.

### 7.1.2 Eastgardens Precinct (Part 8.8 of DCP)

The existing and desired future character of the Eastgardens Precinct (Refer to Section 3.1.2) is included in Part 8.8 of the DCP [Ref. 1]. Risk-related development controls are referred to in Part 8.8.1 of the DCP for the existing local character and Part 8.8.1 for the desired future character. The relevant text from these parts is reproduced below.

#### Extract from Section 8.8.1 of the Botany Bay Development Control Plan 2013 [Ref. 1]

##### **Risk**

Eastgardens is adjacent to the Botany / Randwick industrial area which forms a significant industrial complex of State and National significance. The location of the industrial area, within the vicinity of residential areas, has required that safety studies into the cumulative risk of industrial activity be undertaken to quantify and measure hazard risk associated with such activities.

The Department of Planning & Environment has released three studies that investigate industrial operations and make land use planning recommendations. Studies released to date include the 'Risk Assessment Study for the Botany / Randwick Industrial Complex and Port Botany' (1985), the

'Port Botany Land Use Safety Study' (1996) and the 'Botany / Randwick Industrial Area Land Use Safety Study' (2001).

#### **A Risk Assessment Study for the Botany / Randwick Industrial Complex and Port Botany - 1985**

Analysis of hazard risk implications within the Botany / Randwick Industrial area was first examined in 1985 by Planning NSW (formerly the Department of Environment and Planning) within a report titled 'A Risk Assessment Study for the Botany / Randwick Industrial Complex and Port Botany'. The risk assessment study was initiated by the Department in response to concerns expressed by community groups and local councils about the intensification of potentially hazardous installations and associated facilities in the area and their risk implications on nearby residential land uses.

The recommendations from the 1985 study that relate to residential risk implications and land use controls under recommendation 12, state that:-

- no intensification of residential developments should be allowed within areas identified in the study;
- provisions within a planning instrument that permit an increase in existing residential dwelling density should be reviewed;
- new residential intensification within the cumulative risk areas identified within the study should be the subject of the Director's concurrence.

The study had no statutory significance under the Environmental Planning and Assessment Act 1979 and subsequently relied on the support of Council to implement the recommendations contained in the study. Council has supported the recommendations of the study relating to land use planning and has in practice referred residential development applications, which aim to intensify development to Planning NSW for concurrence.

#### **Port Botany Land Use Safety Study – 1996**

Port Botany is a major infrastructure facility that handles and accommodates activities involving hazardous materials including - loading / unloading, storage and distribution of dangerous goods and materials.

The Port Botany Land Use Safety Study was undertaken by the Department of Planning to update the 1985 Study, develop updated cumulative risk contours (to provide a framework for assessment and decision making for future developments) and formulate a strategic land use safety framework.

The recommendations of the Study were:

- Future developments in the Port should undergo early risk assessment and comprehensive environmental impact processes to demonstrate that the use will not contribute to any cumulative risk – as identified in the Port area.
- Development controls are put in place to ensure there is no significant increase in the number of people exposed to risk – as identified in the residential risk contour.
- Individual site studies are undertaken to develop programs that are then implemented to create risk reduction and safety management measures.
- The Port and Port users prepare emergency plans / procedures and fire prevention / protection systems.
- The Port and Port users adopt a program to ensure the community is adequately informed on Port activities, associated risks and safety management measures.



## Botany / Randwick Industrial Area Land Use Safety Study

Planning NSW in 2001 published the *'Botany / Randwick Industrial Area Land Use Safety Study'* with the objectives of:

- Updating the 1985 cumulative risk study for the Botany / Randwick industrial area;
- Developing a framework for the efficient assessment and decision making for future developments;
- Formulating a strategic land use safety framework for future developments in the Botany / Randwick Industrial Area and surround land uses.

The review investigated two cases based on two industrial scenarios. The cases were aimed at identifying the cumulative risk levels resulting from the industrial area under the current conditions (pre – 2001) and a predicted future case (2001). An explanation of the cases are as follows:

- The Existing Case (Pre-2001): The Orica mercury cell chlorine plant and chlorine liquefaction facilities and associated bulk chlorine storage. Risks associated with the chlorine plant include incidences such as a chlorine vapour cloud release due to equipment failure or due to fire / radiation impacts on the plant and storage from a fire in the vicinity.
- The Future Case (2001): The Existing Orica chlorine plant being replaced with membrane production facilities. The bulk storage of chlorine has ceased. The removal of chlorine liquefaction and storage on site will reduce the likelihood of chlorine releases occurring.

It should be noted that Council received a letter from the then Planning NSW dated 31 October 2002 advising that the recommendations in the Land Use Safety Study for the Future Case now apply. The Future Case applied from 31 October 2002.

The key findings of the Botany / Randwick Industrial Area Land Use Safety Study has been a significant improvement in the cumulative risk areas that result from the industrial operations located within the Botany / Randwick industrial area.

Recommendations that resulted from the study were:

1. Future developments in the Botany / Randwick industrial area should be subject to early risk assessment and comprehensive environmental impact processes to conclusively demonstrate they will not contribute to risk impacts outside the industrial area that are inappropriate for surrounding land uses.
2. Effective land use safety planning should be implemented to allow future developments in the area, and to reconcile any potential land use planning conflicts.
3. A process of regular reviews and updates for site safety management systems should be undertaken.
4. Emergency plans and procedures, and fire prevention and protection systems should be kept up-to-date.
5. Industrial facilities should adopt community right-to-know principles to ensure the community is adequately informed about activities, associated risks and safety management measures adopted within the Botany / Randwick industrial area.

Implementation of recommendations 1, 3, 4, and 5 listed above are the responsibility of State, Local Governments and industry to administer through consultation and development approvals. Implementation of recommendation 2 is achieved by the City of Botany Bay Council through the



preparation of this Development Control Plan to give the Study status under the Environmental Planning and Assessment Act 1979.

Extract from Section 8.8.2 of the Botany Bay Development Control Plan 2013 [Ref. 1]

**Risk**

- Recognise that development for ‘residential intensification’, ‘sensitive use intensification’, and development that will result in increased traffic volumes or access points onto Denison Street (being a designated Dangerous Goods Route) must:
  - Consider a transport risk assessment report. The contents and outcomes of a transport risk assessment report are to be in general accordance with the principles outlined in the *Hazardous Industry Advisory Paper N° 6: Guidelines for Hazard Analysis* (Planning NSW, 1992), *Hazardous Industry Advisory Paper N° 4: Risk Criteria for Land Use Safety Planning* (Planning NSW, 1992), ‘*Hazardous Industry Planning Advisory Paper No. 10 Land Use Safety Planning*’ published by the NSW Department of Planning in January 2011 and ‘*Hazardous Industry Planning Advisory Paper No. 11 – Route Selection*’ dated January 2011.
  - Receive development concurrence for the application from the Department of Planning & Environment.
- Any other applications for development adjacent to / or within the vicinity of routes designated as ‘Dangerous Goods Routes’ will be assessed under the relevant Council planning instruments and controls.
- Where a site is considered by Council to be located adjacent to a dangerous goods route defined in this plan, any development on the site will be assessed and viewed as though it was located within the area with the more stringent risk-related development controls specified in this development control plan.

**Note:** Council in 2012 commissioned a traffic count for Denison Street (in both directions, north and south); which includes a separate count for dangerous goods traffic as Council wanted to compare the overall traffic to the dangerous goods traffic. Whilst this data is available to applicants who are required to prepare a Transport Risk Assessment Report, the data is over 12 months old and depending on the proposed development Council may require a new Transport Risk Survey to be conducted at the applicant’s costs. Please contact Council for more information.

**Definitions:**

**Dangerous Goods Routes** means identified within the Botany/Randwick Industrial Area Land Use Safety Study.

The Botany / Randwick Industrial Area Land Use Safety Study does not include an assessment of the risk implications of dangerous goods transport, but does identify some routes as having a significant likelihood of carrying such goods. The routes identified within the Botany / Randwick Industrial Area Land Use Safety Study form a wider local and regional road network that may also carry traffic containing dangerous goods. The consideration of risk arising from the transportation of dangerous goods on this local and regional road network and the impacts this may have on residential and sensitive use development within the Study area needs to be considered as part of the assessment process for future development activity.

**Residential intensification** means an increase in the number of dwellings or an increase in the number of rooms providing temporary or permanent accommodation.

Residential land uses considered incompatible with residential fatality risk, injury or irritation risk (as defined in *Hazardous Industry Planning Advisory Paper No.4 – Risk Criteria for Land Use Safety Planning* - Planning NSW, 1992) resulting from operations within the Botany / Randwick industrial area under this plan include dwelling houses, hotels, motels, and caretakers residences resulting from any of the following:-

- The alteration and / or addition of an existing building;
- The conversion and / or utilisation of an existing building or vacant land;
- The subdivision of land to create a new allotment; and
- The rezoning of land.

**Sensitive use intensification** means the establishment of a sensitive use or an increase in the gross operational floor space of an existing building that is occupied by a sensitive land use.

Sensitive land uses that are considered incompatible with fatality risk, injury or irritation risk (as defined in *Hazardous Industry Planning Advisory Paper No.4 – Risk Criteria for Land Use Safety Planning* - Planning NSW, 1992) resulting from operations within the Botany / Randwick industrial area under this plan include:- child care centres, nursing homes, educational establishments, hospitals and units for aged persons.

### 7.1.3 Banksmeadow Industrial Precinct (Parts 6.2.8 and 6.3.15 of the DCP)

Part 6 of the DCP includes planning controls for 'employment zones' (i.e. IN1 and IN2 industrial zones and the B5 and B7 business zones). Risk-related development controls for the Banksmeadow Industrial Precinct are referred to in Part 6.2.8 of the DCP. Risk-related development controls applicable for all employment zones are also included in Part 6.3.15 and these include a cross-reference to Part 6.2.8. The relevant text from these parts is reproduced below.

Extract from Section 6.2.8 of the Botany Bay Development Control Plan 2013 [Ref. 1]

#### Controls

##### General

- |           |                                                                                                                                                                                                                                                                                                                                              |
|-----------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>C1</b> | Business Park and industrial uses with access from Rhodes Street or Smith Street are to have low vehicular generation characteristics and exclude the use of container handling or semi-trailers.                                                                                                                                            |
| <b>C2</b> | Development on the B7 Business Park Zone at the corner of Holloway and Green Streets are to have their commercial offices (or other non-industrial activity) fronting Holloway Street and the school with a return (no less than 10m) to Green Street. All industrial activities are to be undertaken behind the commercial building buffer. |
| <b>C3</b> | The transport of hazardous substances should be directed away from residential areas and a Traffic Route Study showing the proposed traffic route of such transport is required.                                                                                                                                                             |
| <b>C4</b> | Development fronting Denison Street, Rhodes Street, and Smith Street are to have their commercial offices (or other non-industrial activity) fronting the road/street. All industrial activities are to be undertaken behind the commercial building buffer.                                                                                 |

<b>C5</b>	Development is not to adversely impact on the surrounding established residential areas through noise, traffic, pollution and risk.
<b>C6</b>	A survey is required to identify any pipelines, easements etc affecting the development site. If the pipeline enters Council land an appropriate deed of agreement is to be executed.
<b>C7</b>	Redevelopment of land at the corner of Denison Street & Beauchamp Road (the Orica site) is to take into account the road widening affectation proposed by RMS.
<b>C8</b>	<p>Developments within the vicinity of Floodvale Drain, Springvale Drain and Bunnerong Stormwater Channel No. 11 (SWC 11 – Sydney State Water) shall submit a detailed Flood Study/Assessment for 1 in 100 year average recurrence interval (ARI) design storm events and probable maximum flood (PMF). The Flood Study/Assessment is to be prepared by a suitably qualified and experienced civil engineer. The Flood Study/Assessment is required to:</p> <ul style="list-style-type: none"> <li>(i) Be in accordance with the current version of Australian Rainfall and Runoff (ARR) and the NSW Floodplain Development Manual; and</li> <li>(ii) Consider the impacts from Climate Change and Sea Level Rise.</li> </ul>
<b>C9</b>	<p>Development shall:</p> <ul style="list-style-type: none"> <li>(i) Have finished floor levels of a minimum 500mm above the 1 in 100 year flood level for habitable areas and 300mm for industrial areas and garages; and</li> <li>(ii) Not impede the passage of floodwater to cause a rise (afflux) in the flood level upstream and/or increase the downstream velocities of flow.</li> </ul>
<b>C10</b>	<p>Restricted Access Vehicles (RAV) classified by Roads and Maritime Services (RMS) (including B-Doubles) are not permitted to access:</p> <ul style="list-style-type: none"> <li>(i) Holloway Street;</li> <li>(ii) Green Street;</li> <li>(iii) Ocean Street;</li> <li>(iv) Swinbourne Street;</li> <li>(v) Stephen Road;</li> <li>(vi) Smith Street; and</li> <li>(vii) Rhodes Street.</li> </ul>
<b>C11</b>	The maximum size of vehicle accessing Smith Street and Rhodes Street is restricted to Medium Rigid Vehicles (MRV) as defined by AS2890.2.
<b>Risk Management:</b>	
<b>C12</b>	<p>In order to address the recommendations, a Risk Assessment Evaluation is required to accompany all applications for sites:</p> <ul style="list-style-type: none"> <li>(i) Within the study area of the Botany/Randwick Industrial Area Land Use Safety Study - 2001; and/or</li> <li>(ii) Affected by the recommendations of the Port Botany Land Use Safety Study Overview Report - 1996.</li> </ul> <p><b>Note:</b> Recommendation No. 2-2.2 of the Port Botany Safety Study states that proposals for the development or redevelopment of residential, commercial or high density developments</p>

outside the Port area, particularly inside the one in a million residential risk contour, identified in figure 2 of the Port Botany Land Use Safety Study Overview Report should not take place.

- C13** The Risk Assessment Evaluation to Council is to be completed by a qualified risk management professional and take into account the nature of the proposed business and the proximity of the site to surrounding hazardous facilities. The report is to recommend safety procedures to be followed.

The report needs to conclude whether or not the activities proposed for the premises constitute an escalation of existing hazards, and that the risk posed by neighbouring uses in the exposure of hazards to the site is acceptable.

Applicants are to refer to the applicable Hazardous Industry Planning Advisory Papers (HIPAPs) and other guidelines such as *Applying SEPP 33* and *Multi-level Risk Assessment* found at <http://www.planning.nsw.gov.au/planning-guidelines-for-hazardous-development>

- C14** If a site fronts Denison Street a Transport Risk Assessment Report is required to be lodged with Council. The assessment report to Council should be completed by a qualified risk management professional and address the hazard analysis methodology outlined within the Hazardous Industry Advisory Paper N° 6: Guidelines for Hazard Analysis. The areas of assessment should include:

- (i) Identification of potential release scenarios, including analysis of the hazards associated with transport of potentially hazardous materials;
- (ii) Estimation of release frequencies, using information available from such sources as Botany Bay City Council, the Bureau of Statistics and from the Roads and Traffic Authority, NSW;
- (iii) Assessment of consequences in terms of effect zones following the ignition or dispersion of a release, including the assessment of the evaporation and permeation of a spill and of the resulting heat radiation in case of ignition;
- (iv) Estimation of risk by combining release frequencies, consequences, and population distribution for the particular route under survey; and
- (v) Comparing the estimated risk with relevant tolerability criteria and guidelines.

Results from the traffic hazard analysis should be assessed on the basis of generally accepted land use safety guidelines provided in the 'Hazardous Industry Planning Advisory Paper N° 4: Risk Criteria for Land Use Safety Planning' published by Planning NSW in 1992 and 'Hazardous Industry Planning Advisory Paper No. 10 Landuse Safety Planning' published by the NSW Department of Planning in January 2011.

**Note:** Council in 2012 commissioned a traffic count for Denison Street (in both directions, north and south); which includes a separate count for dangerous goods traffic as Council wanted to compare the overall traffic to the dangerous goods traffic. Whilst this data is available to applicants who are required to prepare a Transport Risk Assessment Report, the data is over 12 months old and depending on the proposed development Council may require a new Transport Risk Survey to be conducted at the applicant's costs. Please contact Council for more information.

- C15** Where a site is considered by Council to be located partly adjacent to a dangerous goods route defined in this plan, any development on the site will be assessed and viewed as though

it was located within the area or route with the more stringent risk-related development controls specified in this development control plan.

**Dangerous Goods Routes** means identified within the Botany/Randwick Industrial Area Land Use Safety Study.

The Botany / Randwick Industrial Area Land Use Safety Study does not include an assessment of the risk implications of dangerous goods transport, but does identify some routes as having a significant likelihood of carrying such goods. The routes identified within the Botany / Randwick Industrial Area Land Use Safety Study form a wider local and regional road network that may also carry traffic containing dangerous goods. The consideration of risk arising from the transportation of dangerous goods on this local and regional road network and the impacts this may have on residential and sensitive use development within the Study area needs to be considered as part of the assessment process for future development activity.

**Sensitive use intensification** means the establishment of a sensitive use or an increase in the gross operational floor space of an existing building that is occupied by a sensitive land use.

Sensitive land uses that are considered incompatible with fatality risk, injury or irritation risk (as defined in *Hazardous Industry Planning Advisory Paper No.4 – Risk Criteria for Land Use Safety Planning* - Planning NSW, 1992) resulting from operations within the Botany / Randwick industrial area under this plan include:- child care centres, nursing homes, educational establishments, hospitals and units for aged persons.

**Additional information:** A number of other Hazardous Industry Planning Advisory Papers (HIPAPs) and other guidelines have been issued by the Department of Planning & Environment to assist stakeholders in implementing an integrated risk assessment process and can be found at <http://www.planning.nsw.gov.au/planning-guidelines-for-hazardous-development>

Applicants are also to refer to **Part 6.3.15 - Risk**.

#### Extract from Section 6.3.15 of the Botany Bay Development Control Plan 2013 [Ref. 1]

##### **Controls**

- C1** Should the proposed use involve the storage and/or transport hazardous substances Council will require an assessment of the Development Application under **State Environmental Planning Policy No. 33 - Hazardous and Offensive Development**.

**Note:** All applications to carry out potentially hazardous or potentially offensive development will have to be advertised.

- C2** Development Applications to carry out potentially hazardous development will also have to be supported by a Preliminary Hazard Analysis (PHA). Applicants should refer to the provisions of **State Environmental Planning Policy No. 33 - Hazardous and Offensive Development**

**Note:** Applicants are to refer to the applicable Hazardous Industry Planning Advisory Papers (HIPAPs) and other guidelines such as *Applying SEPP 33* and *Multi-level Risk Assessment* found on the Department of Planning and Environment's website at <http://www.planning.nsw.gov.au/planning-guidelines-for-hazardous-development>

**C3** Development adjacent or adjoining sites/uses/pipelines that involve the storage and/or transport of hazardous substances are to prepare a risk assessment in accordance with the Hazardous Industry Planning Advisory Papers.

**Note:** Banksmeadow Industrial Precinct has specific risk related controls that have to be complied with. If your site is within the Banksmeadow Industrial Precinct you need to also refer to the Precinct controls in **Part 6.2.8 - Banksmeadow Industrial Precinct**.

#### 7.1.4 Three Ports SEPP

The Three Ports SEPP applies to land at the three ports covering both the lease areas (i.e. land leased to a private port operator under the Ports Assets (Authorised Transactions) Act 2012) as well as surrounding land that needs to be maintained for port-related and industrial uses. The Study Area is outside of the lease area and therefore the BBCC is the relevant consent authority for this land in accordance with Clause 8 of the Three Ports SEPP [Ref. 15].

There are no risk-related planning controls in the BBDCP2013 for the IN1 zoned land covered by the Three Ports SEPP.

## 7.2 Proposed Planning Controls

Within the Study Area, there are 20 areas where the combination of land use zoning and major risk contributor/s warrants specific risk-based planning controls (Refer to Figure 25). The large number of areas arises because the Study Area includes nine different land use zones (B3, B4, B5, B7, R2, R3, RE1, IN1 and SP1) and the dominant risk contributor (e.g. cumulative LSIFR, cumulative injury / irritation risk and/or cumulative societal risk) varies throughout the Study Area. For example, to the east of the Orica chloralkali plant, the LSIFR is the dominant risk near Denison Street, but the cumulative injury / injury risk and societal risk are more relevant to the east of Nilson Avenue.

A summary table is included after Figure 25 for each of the 20 specific areas. The information in each table provides a guide for land use safety planning throughout the Study Area. How this is achieved needs to be determined by BBCC in conjunction with the DP&E as some of the proposed controls will only apply to the areas identified in Figure 25 and should not be applied to all other similarly zoned areas defined within the BBLEP2013. For example, sensitive use developments (e.g. child care centres) are currently 'permitted with consent' in areas zoned RE1; however, this type of development should be prohibited in Area A (Hensley Athletic Field), despite its RE1 zoning, since the cumulative risk from the fixed facilities and DG transport along Denison Street exceeds the relevant DP&E risk criteria for land use safety planning.

The current zoning, and any potential restrictions on future rezoning (particularly to a more sensitive use category), is identified in each table for each area. Also, the proposed controls for future developments (i.e. potentially hazardous industry and/or other types of development in the vicinity of existing potentially hazardous industry) are included, together with the basis for each control. If it is proposed to change a control from the current BBLEP2013, then this is highlighted in red.

The following points are of interest:

1. If the projected increase in DG traffic occurs in conjunction with intensification of the population in the Study Area, then the cumulative societal risk ('FN Curve') is likely to extend into the 'Intolerable' zone (Refer to Section 5.5.2). Therefore, any modification to an existing development that may increase population density (i.e. including subdivision, multiple occupancy, etc.) in the Study Area should be reviewed on a case-by-case basis.



2. For Areas close to the BIP and Denison Street, any increase in population density will be constrained by the cumulative individual fatality risk and/or the cumulative societal risk ('FN Curve') and therefore applies for all types of development, not only sensitive use and residential development (Refer to Section 6.2.4).
3. An increase to population density becomes progressively less significant with increasing distance from the BIP and Denison Street, particularly beyond the 0.5 pmpy cumulative individual fatality risk contour. Therefore, increasing the population density at the eastern extremity of the Study Area may be permissible if it can be demonstrated that the development will have a negligible incremental contribution to the cumulative societal risk ('FN Curve'). This has been used as a basis for the proposed planning controls.
4. In the vicinity of the BIP and Denison Street, the societal risk ('FN Curve') is relatively high. The predominant risk contributors are fires in near field and toxic gas exposure in far field. Therefore, the proposed planning controls have not included provision to permit developments by meeting the target individual risk of fatality alone through implementation of mitigating measures (Refer to Section 6.2.4). This approach is consistent with the relevant qualitative risk criteria (Refer to Section 6.2.1).
5. The cumulative individual and societal risks ('FN Curve') from the BIP QRA and Transport QRA / Transport QRA Addendum comply with the risk criteria applicable for existing use situations (Refer to Section 6.2.5). Therefore, the proposed controls are only applicable for: (i) proposed new developments; and/or (ii) modifications to existing developments where these would result in an increase to the average population density (Refer to Section 7.2.1). Alterations to an existing development that do not increase the average population density should be in accordance the BBCC's current assessment process.
6. Where a particular category of new development and/or modification to an existing development would not comply with the relevant risk criteria, then the proposed control has been categorised as 'Prohibited' in the relevant summary table (e.g. child care facilities in Area A). It is recognised that this terminology may have a slightly different context in the NSW statutory planning framework, particularly as the 'Industrial', 'residential', etc. land use categories defined in HIPAP No. 4 do not perfectly align with the zones defined in the LEP (e.g. IN1, etc.). Therefore, how this prohibition is achieved through the relevant planning instrument/s needs to be determined by BBCC in conjunction with the DP&E (This is addressed in Recommendation No. 1 - Refer to Section 8).

### 7.2.1 Population Intensification Issues

The following definition of population intensification should be included in the DCP:

**Population intensification** means any change that increases the average population density. This may include, but is not limited, to:

- The addition of a building or room for new occupants or an increase to the number of rooms providing temporary or permanent accommodation (e.g. hotel rooms);
- Increasing the gross operational area for non-residential buildings (e.g. child care centres, commercial buildings, etc. that may, or may not, be permanently occupied);
- The conversion and / or utilisation of an existing building or vacant land for additional occupation;

- *The subdivision of land to create a new allotment for additional occupation; and*
- *The rezoning of land for a uses with a higher average population density (e.g. rezoning from low density residential to medium density residential).*

*Population intensification is potentially relevant for all categories of development (e.g. recreational, residential, commercial, industrial, etc.).*

*For residential development, increasing the number of rooms providing temporary or permanent accommodation within the same residence would not normally be considered population intensification. However, this would be considered population intensification for a hotel, motel, boarding house, etc.*

All future development applications for a new development, or a modification to an existing development, in the Study Area that are listed as potentially 'Permissible with Consent' in the relevant tables following Figure 25, must include a risk assessment.

### **7.2.2 Assessment of Development for Potentially Hazardous Development**

- (a) A new potentially hazardous fixed facility, or modifications to an existing potentially hazardous fixed facility, should be assessed against all relevant qualitative and quantitative risk criteria from HIPAP No. 4 and HIPAP No. 10 (Refer to Section 6.2.1 and Section 6.2.3). Such a development may be subject to other development approval requirements (e.g. under the EP&A Act, SEPP No. 33, existing conditions of development consent, etc.).
- (b) The risk for a proposed development is typically assessed based on the incremental risk from this development alone (i.e. not cumulatively with other potentially hazardous developments). However, the development consent conditions for the BIP require a cumulative risk assessment [Ref. 2] and therefore the risks associated with any modifications to the BIP, including new facilities/subdivisions within the boundary of the BIP, should be assessed cumulatively.
- (c) If another potentially hazardous development (i.e. outside BIP) has the potential to affect the risk profile in the Study Area, then it should be assessed individually and in the context of the cumulative risk presented in the most recent available risk assessments for the Study Area (Including the individual and societal risks from fixed facilities and transport of DGs).

### **7.2.3 Assessment of Development in the Vicinity of Potentially Hazardous Development**

- (a) Any development in the vicinity of an existing potentially hazardous fixed facility should be consistent with all relevant qualitative and quantitative risk criteria from HIPAP No. 10 (Refer to Section 6.2.1 and Section 6.2.4). A proposed development may still be appropriate if mitigating measures can be implemented to reduce the risk exposure to less than the relevant criteria (Refer to Section 6.2.4).



- (b) Although not explicitly stated in HIPAP No. 10, the assessment of a proposed development in the vicinity of an existing potentially hazardous fixed facility should be based on the cumulative risk from all risk sources. Therefore, any proposed development within the Study Area should be assessed in the context of the most recent available risk assessments for the Study Area (Including the individual and societal risks from fixed facilities and transport of DGs).
- (c) For societal risk, the incremental societal risk should be compared against the indicative criteria in HIPAP 10 (Refer to Section 6.2.4). If this incremental societal risk lies within the negligible region, then the development should not be precluded on risk grounds. If incremental risks lie within the ALARP region, options should be considered to relocate people away from the affected areas. If, after taking this step, there is still a significant portion of the societal risk plot within the ALARP region, the proposed development may only be approved if the benefits clearly outweigh the risks.

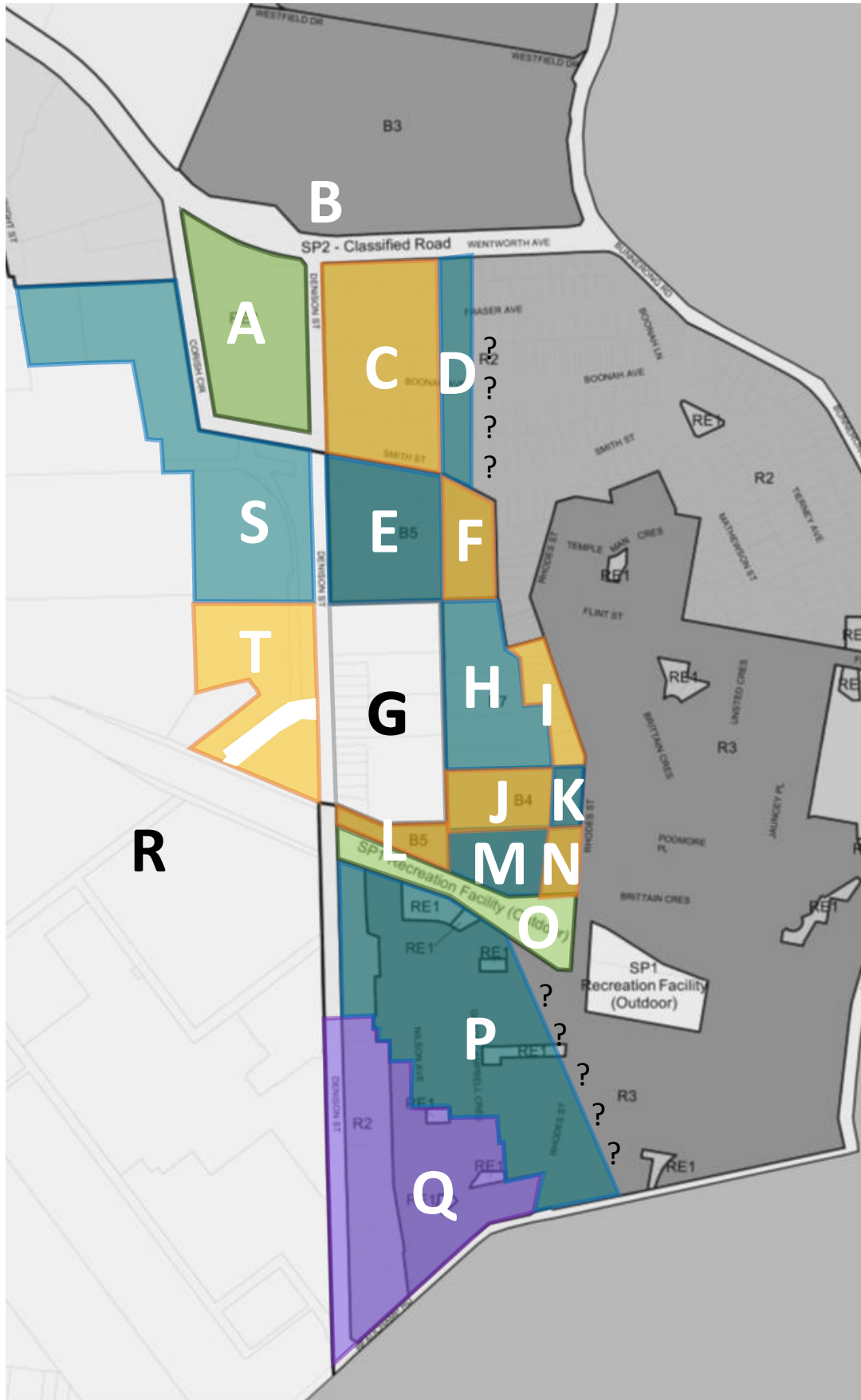
#### **7.2.4 Assessment of Potentially Hazardous Transport Operations**

- (a) A Transport Risk Assessment report should be submitted with all future development applications with the potential to directly or indirectly affect DG traffic along Denison Street. For example, this could include developments outside the Study Area that might significantly increase non-DG traffic along Denison Street, and therefore have the potential to affect the predicted accident rate for DG traffic. This will require ongoing consultation between BBCC and Ports NSW, its neighbouring Councils and the DP&E.
- (b) There are no established quantitative risk criteria in NSW for land use safety planning due to the transport of DGs (Refer to Section 6.3). Therefore, the (location-specific) individual fatality risk and societal risk criteria for fixed facilities should be used to assess the risks from the transport of DGs (Refer to Section 6.3). The established qualitative principles should also be considered (Refer to Section 6.2.1).
- (c) Any proposed changes to the transport of DGs the Study Area (Including new operations or modifications to existing operations), should be assessed individually and in the context of the cumulative risk presented in the most recent available risk assessments for the Study Area (Including the individual and societal from fixed facilities and transport of DGs).

#### **7.2.5 Assessment of Development in the Vicinity of Existing Potentially Hazardous Transport Operations**

- (a) Although not explicitly stated in HIPAP No. 10, the assessment of a proposed development in the vicinity of an existing potentially hazardous transport operation should be based on the cumulative risk from all risk sources. Therefore, any proposed development in the Study Area should be assessed in the context of the cumulative risks presented in the most recent available risk assessments for the Study Area (Including the individual and societal from fixed facilities and transport of DGs).
- (b) For societal risk, the incremental societal risk should be compared against the indicative criteria in HIPAP 10 (Refer to Section 6.2.4). If this incremental societal risk lies within the negligible region, then the development should not be precluded. If incremental risks lie within the ALARP region, options should be considered to relocate people away from the affected areas. If, after taking this step, there is still a significant portion of the societal risk plot within the ALARP region, the proposed development should only be approved if the benefits clearly outweigh the risks.

**Figure 25 Areas Requiring Specific Risk-Based Planning Controls**



## Area A – Hensley Athletics Field

<b>Description</b>	Lots bounded by Wentworth Avenue, Corish Crescent and Denison Street (i.e. principally Hensley Athletics Field).
<b>Zoning</b>	<p><b>RE1 - Public Recreation (With Additional Permitted Uses)</b></p> <p>The zoning for this Area is primarily for recreational uses (viz. Defined as ‘open space’ uses in HIPAP No. 4). However, child care centres and respite day care centres (viz. Defined as ‘sensitive uses’ in HIPAP No. 4) are also permissible with consent.</p> <p>Environmental works are permitted without consent. These works are not expected to introduce large populations and a higher LSIFR criterion would typically apply (viz. equivalent to an industrial use as defined in HIPAP No. 4) than for the other permissible uses.</p> <p>It would not be appropriate to rezone this Area for residential or sensitive uses based on the cumulative LSIFR (See below).</p>
<b>Individual Risk</b>	The cumulative LSIFR is $\geq 0.5$ pmpy at this Area, with a maximum LSIFR of c. 10 pmpy near the NE corner at the intersection of Wentworth Avenue and Denison Street. The cumulative acute toxic injury (10 pmpy) and irritation (50 pmpy) contours do not extend to this Area.
<b>Societal Risk</b>	It is not possible to determine the contribution to the cumulative societal risk (‘FN Curve’) for the population at this specific Area based on the available risk assessments. However, relatively high populations may be present during sporting events and this will contribute to the cumulative societal risk (‘FN Curve’) for the Study Area.

Category of Development for Land Use Safety Planning *	Current Control	Proposed New Development or Modification to Existing Development	
		Proposed Control	Basis
<b>SENSITIVE USES</b> (Hospitals, schools, child-care facilities & old age housing)	Permitted with consent	Prohibited	The cumulative LSIFR is $\geq 0.5$ pmpy at this Area. There are no existing sensitive use developments and future sensitive use developments are to be prohibited.
<b>RESIDENTIAL</b> (Residential developments & places of continuous occupancy, such as hotels & tourist resorts)	Prohibited	Prohibited	The cumulative LSIFR is $\geq 1$ pmpy at this Area. There are no existing residential developments and future residential developments are prohibited.
<b>COMMERCIAL</b> (Including offices, retail centres, warehouses with showrooms, restaurants & entertainment centres)	Permitted with consent	Permitted with consent	The cumulative LSIFR is $\leq 5$ pmpy for most of this Area (Note: Commercial development is unlikely to be permitted in the NE corner of this Area where the LSIFR is $\geq 5$ pmpy). There are no existing commercial developments; however, these developments may be permitted in the future. Any proposed population intensification will require a societal risk assessment. Consent must not be based on complying with individual risk criteria alone.
<b>OPEN SPACE</b> (Sporting complexes & active open space areas)	Permitted with consent	Permitted with consent	The cumulative LSIFR is $\leq 10$ pmpy for most of this Area. There are existing open space uses in this Area. Any proposed population intensification will require a societal risk assessment. Consent must not be based on complying with individual risk criteria alone.
<b>INDUSTRIAL</b>	Prohibited	Prohibited	This Area is not zoned for industrial uses. There are no existing industrial uses and future industrial uses are prohibited.

\* Note: ‘Industrial’, ‘residential’, etc. uses, as defined in HIPAP No. 4, may not align with zones defined in the LEP (e.g. IN1, etc.).

## Area B – Commercial Core Zone North of Wentworth Avenue

<b>Description</b>	Lot/s in Study Area to the north of Wentworth Avenue (i.e. principally Westfields Shopping Centre).
<b>Zoning</b>	<p><b>B3 – Commercial Core</b></p> <p>The zoning for this Area is primarily for retail, business, office, entertainment, and community uses (viz. Defined as ‘residential’ or ‘commercial’ uses in HIPAP No. 4) including: commercial premises; community facilities; educational establishments; entertainment facilities; function centres; hotel or motel accommodation; information and education facilities; medical centres; passenger transport facilities; recreation facilities (indoor); and, registered clubs. However, respite day care centres (viz. Defined as ‘sensitive uses’ in HIPAP No. 4), and other ‘sensitive uses’ that are not specifically prohibited (e.g. child care facilities, hospitals) are also permissible with consent and should be prohibited in the southern part of this Area based on the cumulative LSIFR.</p> <p>It would not be appropriate to rezone the southern part of this Area for residential or sensitive uses based on the cumulative LSIFR (See below).</p>
<b>Individual Risk</b>	The cumulative LSIFR is $\geq 0.5$ pmpy for the southern part of this Area, with a maximum LSIFR of c. 10 pmpy at the intersection of Wentworth Avenue and Denison Street. The cumulative acute toxic injury (10 pmpy) and irritation (50 pmpy) contours do not extend to this Area.
<b>Societal Risk</b>	It is not possible to determine the contribution to the cumulative societal risk (‘FN Curve’) for the population at this specific Area based on the available risk assessments. However, relatively high populations may be present during operating hours and this will contribute to the cumulative societal risk (‘FN Curve’) for the Study Area.

Category of Development for Land Use Safety Planning *	Current Control	Proposed New Development or Modification to Existing Development	
		Proposed Control	Basis
<b>SENSITIVE USES</b> (Hospitals, schools, child-care facilities & old age housing)	Permitted with consent	Prohibited (South) or Permitted with consent (North)	The cumulative LSIFR is $\geq 0.5$ pmpy for the southern part of this Area. Any proposed population intensification for the northern part of this Area will require a societal risk assessment. Consent must not be based on complying with individual risk criteria alone.
<b>RESIDENTIAL</b> (Residential developments & places of continuous occupancy, such as hotels & tourist resorts)	Prohibited or Permitted with consent #	Prohibited (South) or Permitted with consent (North)	# Currently: residential accommodation is prohibited; and, hotels / motels and tourist & visitor accommodation are permitted with consent. The cumulative LSIFR is $\geq 1$ pmpy for the southern part of this Area. Any proposed population intensification for the northern part will require a societal risk assessment. Consent must not be based on complying with individual risk criteria alone.
<b>COMMERCIAL</b> (Including offices, retail centres, warehouses with showrooms, restaurants & entertainment centres)	Permitted with consent	Permitted with consent	The cumulative LSIFR is $\leq 5$ pmpy for most of this Area (Note: Commercial development is unlikely to be permitted near the intersection of Denison St and Wentworth Avenue where the LSIFR is $\geq 5$ pmpy). There are existing commercial uses in this Area. Any proposed population intensification will require a societal risk assessment. Consent must not be based on complying with individual risk criteria alone.
<b>OPEN SPACE</b> (Sporting complexes & active open space areas)	Permitted with consent #	Permitted with consent	# Currently, recreation areas and recreation facilities (indoor) are permitted with consent. Any proposed population intensification will require a societal risk assessment. Consent must not be based on complying with individual risk criteria alone.
<b>INDUSTRIAL</b>	Prohibited	Prohibited	This Area is not zoned for industrial uses. There are no existing industrial uses and future industrial uses are prohibited.

\* Note: ‘Industrial’, ‘residential’, etc. uses, as defined in HIPAP No. 4, may not align with zones defined in the LEP (e.g. IN1, etc.).

## Area C – Low Density Residential Zone in Eastgardens Precinct

<b>Description</b>	Lots bounded by Wentworth Avenue, Denison Street and Smith Street in Eastgardens Precinct.
<b>Zoning</b>	<p><b>R2 – Low Density Residential</b></p> <p>The zoning for this Area is primarily for residential uses and places of continuous occupancy (as defined in HIPAP No. 4), including: attached dwellings; bed and breakfast accommodation; boarding houses; community facilities; dwelling houses; group homes; multi dwelling housing; places of public worship; recreation areas; residential flat buildings; and semi-detached dwellings. Home occupations are permitted without consent.</p> <p>Child care centres, health consulting rooms, hospitals and respite day care centres (viz. Defined as ‘sensitive uses’ in HIPAP No. 4) and neighbourhood shops and office premises (viz. Defined as ‘commercial uses’ in HIPAP No. 4) are also permissible with consent.</p> <p>Building identification signs, business identification signs, environmental protection works and flood mitigation works are permissible with consent.</p> <p>It would not be appropriate to rezone this Area for higher density residential or sensitive uses based on the cumulative LSIFR and societal risk (See below).</p>
<b>Individual Risk</b>	The cumulative LSIFR is $\geq 0.5$ pmpy at this Area, with a maximum LSIFR of c. 10 pmpy in the NW corner at the intersection of Wentworth Avenue and Denison Street. The cumulative acute toxic injury (10 pmpy) and irritation (50 pmpy) contours do not extend to this Area.
<b>Societal Risk</b>	It is not possible to determine the contribution to the cumulative societal risk (‘FN Curve’) for the population at this specific Area based on the available risk assessments. However, residential populations are expected to be present all the time and this will contribute to the cumulative societal risk (‘FN Curve’) for the Study Area.

Category of Development for Land Use Safety Planning *	Current Control	Proposed New Development or Modification to Existing Development	
		Proposed Control	Basis
<b>SENSITIVE USES</b> (Hospitals, schools, child-care facilities & old age housing)	Permitted with consent	Prohibited	The cumulative LSIFR is $\geq 0.5$ pmpy at this Area.
<b>RESIDENTIAL</b> (Residential developments & places of continuous occupancy, such as hotels & tourist resorts)	Permitted with consent	Prohibited	The cumulative LSIFR is $\geq 1$ pmpy at this Area.
<b>COMMERCIAL</b> (Including offices, retail centres, warehouses with showrooms, restaurants & entertainment centres)	Permitted with consent #	Permitted with consent	<p># Currently, neighbourhood shops and office premises are permitted with consent.</p> <p>The cumulative LSIFR is <math>\leq 5</math> pmpy for most of this Area (Note: Commercial development is unlikely to be permitted in the NW corner where the LSIFR is <math>\geq 5</math> pmpy).</p> <p>There are no existing commercial developments; however, these developments may be permitted in the future.</p> <p>Any proposed population intensification will require a societal risk assessment. Consent must not be based on complying with individual risk criteria alone.</p>
<b>OPEN SPACE</b> (Sporting complexes & active open space areas)	Permitted with consent #	Permitted with consent	<p># Currently, recreation areas are permitted with consent.</p> <p>The cumulative LSIFR is <math>\leq 10</math> pmpy at this Area (Except for a small area in the NW corner at the intersection of Wentworth Avenue and Denison Street).</p> <p>Any proposed population intensification will require a societal risk assessment. Consent must not be based on complying with individual risk criteria alone.</p>
<b>INDUSTRIAL</b>	Prohibited	Prohibited	<p>This Area is not zoned for industrial uses.</p> <p>There are no existing industrial uses and future industrial uses are prohibited.</p>

\* Note: ‘Industrial’, ‘residential’, etc. uses, as defined in HIPAP No. 4, may not align with zones defined in the LEP (e.g. IN1, etc.).

## Area D – Low Density Residential Zone in Eastgardens Precinct

<b>Description</b>	Lots bounded by Wentworth Avenue and Smith Street in Eastgardens Precinct.
<b>Zoning</b>	<p><b>R2 – Low Density Residential</b></p> <p>The zoning for this Area is primarily for residential uses and places of continuous occupancy (as defined in HIPAP No. 4), including: attached dwellings; bed and breakfast accommodation; boarding houses; community facilities; dwelling houses; group homes; multi dwelling housing; places of public worship; recreation areas; residential flat buildings; and semi-detached dwellings. Home occupations are permitted without consent.</p> <p>Child care centres, health consulting rooms, hospitals and respite day care centres (viz. Defined as ‘sensitive uses’ in HIPAP No. 4) and neighbourhood shops and office premises (viz. Defined as ‘commercial uses’ in HIPAP No. 4) are also permissible with consent.</p> <p>Building identification signs, business identification signs, environmental protection works and flood mitigation works are permissible with consent.</p> <p>It would not be appropriate to rezone this Area for higher density residential or sensitive uses based on the cumulative LSIFR and societal risk (See below).</p>
<b>Individual Risk</b>	The cumulative LSIFR is $\geq 0.5$ pmpy at this Area, with a maximum LSIFR of c. 1 pmpy at the boundary with Area C. The cumulative acute toxic injury (10 pmpy) and irritation (50 pmpy) contours do not extend to this Area.
<b>Societal Risk</b>	It is not possible to determine the contribution to the cumulative societal risk (‘FN Curve’) for the population at this specific Area based on the available risk assessments. However, residential populations are expected to be present all the time and this will contribute to the cumulative societal risk (‘FN Curve’) for the Study Area.

Category of Development for Land Use Safety Planning *	Current Control	Proposed New Development or Modification to Existing Development	
		Proposed Control	Basis
<b>SENSITIVE USES</b> (Hospitals, schools, child-care facilities & old age housing)	Permitted with consent	Prohibited *	The cumulative LSIFR is $\geq 0.5$ pmpy at this Area. * The eastern boundary of this area is difficult to determine from the available risk assessments (This area of uncertainty is indicated by the ‘?’ symbols on Figure 25).
<b>RESIDENTIAL</b> (Residential developments & places of continuous occupancy, such as hotels & tourist resorts)	Permitted with consent	Permitted with consent	The cumulative LSIFR is $\leq 1$ pmpy at this Area. Any proposed population intensification will require a societal risk assessment. Consent must not be based on complying with individual risk criteria alone.
<b>COMMERCIAL</b> (Including offices, retail centres, warehouses with showrooms, restaurants & entertainment centres)	Permitted with consent #	Permitted with consent	# Currently, neighbourhood shops and office premises are permitted with consent. The cumulative LSIFR is $\leq 5$ pmpy at this area. There are no existing commercial developments; however, these developments may be permitted in the future. Any proposed population intensification will require a societal risk assessment. Consent must not be based on complying with individual risk criteria alone.
<b>OPEN SPACE</b> (Sporting complexes & active open space areas)	Permitted with consent #	Permitted with consent	# Currently, recreation areas are permitted with consent. The cumulative LSIFR is $\leq 10$ pmpy at this Area. Any proposed population intensification will require a societal risk assessment. Consent must not be based on complying with individual risk criteria alone.
<b>INDUSTRIAL</b>	Prohibited	Prohibited	This Area is not zoned for industrial uses. There are no existing industrial uses and future industrial uses are prohibited.

\* Note: ‘Industrial’, ‘residential’, etc. uses, as defined in HIPAP No. 4, may not align with zones defined in the LEP (e.g. IN1, etc.).



## Area E – Business Development Zone in Banksmeadow Industrial Precinct

<b>Description</b>	Lot/s in Banksmeadow Industrial Precinct bounded by Denison Street and Smith Street (i.e. principally Bunnings Development).
<b>Zoning</b>	<p><b>B5 – Business Development</b></p> <p>The zoning for this Area is primarily for business and warehouse uses, and bulky goods premises that require a large floor area (viz. Defined as ‘commercial’ uses in HIPAP No. 4), including: bulky goods premises; food and drink premises; garden centres; hardware and building supplies; high technology industries; landscaping material supplies; neighbourhood shops; passenger transport facilities; vehicle sales or hire premises; warehouse or distribution centres. However, child care centres and respite day care centres (viz. Defined as ‘sensitive uses’ in HIPAP No. 4) and tourist &amp; visitor accommodation (viz. Defined as ‘residential uses’ in HIPAP No. 4) are also permissible with consent and should be prohibited based on the cumulative LSIFR (see below). Recreation areas (viz. Defined as ‘open space uses’ in HIPAP No. 4) are also permissible with consent.</p> <p>It would not be appropriate to rezone this Area for residential or sensitive uses based on the cumulative LSIFR (See below).</p>
<b>Individual Risk</b>	The cumulative LSIFR is $\geq 1$ pmpy for this Area. The maximum LSIFR appears to be $\leq 5$ pmpy. The cumulative acute toxic injury (10 pmpy) and irritation (50 pmpy) contours do not extend to this Area.
<b>Societal Risk</b>	It is not possible to determine the contribution to the cumulative societal risk (‘FN Curve’) for the population at this specific Area based on the available risk assessments. However, relatively high populations may be present during operating hours and this will contribute to the cumulative societal risk (‘FN Curve’) for the Study Area.

Category of Development for Land Use Safety Planning *	Current Control	Proposed New Development or Modification to Existing Development	
		Proposed Control	Basis
<b>SENSITIVE USES</b> (Hospitals, schools, child-care facilities & old age housing)	Permitted with consent	Prohibited	The cumulative LSIFR is $\geq 0.5$ at this Area.
<b>RESIDENTIAL</b> (Residential developments & places of continuous occupancy, such as hotels & tourist resorts)	Permitted with consent #	Prohibited	# Currently, tourist & visitor accommodation is permitted with consent. The cumulative LSIFR is $\geq 1$ pmpy at this Area.
<b>COMMERCIAL</b> (Including offices, retail centres, warehouses with showrooms, restaurants & entertainment centres)	Permitted with consent	Permitted with consent	The cumulative LSIFR is $\leq 5$ pmpy at this Area. There are existing commercial uses in this Area. Any proposed population intensification will require a societal risk assessment. Consent must not be based on complying with individual risk criteria alone.
<b>OPEN SPACE</b> (Sporting complexes & active open space areas)	Permitted with consent #	Permitted with consent	# Currently, recreation areas are permitted with consent. The cumulative LSIFR is $\leq 10$ pmpy at this Area. Any proposed population intensification will require a societal risk assessment. Consent must not be based on complying with individual risk criteria alone.
<b>INDUSTRIAL</b>	Permitted with consent #	Permitted with consent	# Currently, high-technology industry is permitted with consent. The cumulative LSIFR is $\leq 50$ pmpy at this Area. Any proposed population intensification will require a societal risk assessment. Consent must not be based on complying with individual risk criteria alone.

\* Note: ‘Industrial’, ‘residential’, etc. uses, as defined in HIPAP No. 4, may not align with zones defined in the LEP (e.g. IN1, etc.).

## Area F – Business Development Zone in Banksmeadow Industrial Precinct

<b>Description</b>	Lot/s in Banksmeadow Industrial Precinct bounded by Area E and Smith Street.
<b>Zoning</b>	<b>B5 – Business Development</b> The zoning for this Area is primarily for business and warehouse uses, and bulky goods premises that require a large floor area (viz. Defined as ‘commercial’ uses in HIPAP No. 4), including: bulky goods premises; food and drink premises; garden centres; hardware and building supplies; high technology industries; landscaping material supplies; neighbourhood shops; passenger transport facilities; vehicle sales or hire premises; warehouse or distribution centres. However, child care centres and respite day care centres (viz. Defined as ‘sensitive uses’ in HIPAP No. 4), tourist & visitor accommodation (viz. Defined as ‘residential uses’ in HIPAP No. 4) and recreation areas (viz. Defined as ‘open space uses’ in HIPAP No. 4) are also permissible with consent.
<b>Individual Risk</b>	The cumulative LSIFR is $\leq 0.5$ pmpy at this Area, with a maximum LSIFR of c. 0.5 pmpy near the boundary with Area E. The cumulative acute toxic injury (10 pmpy) and irritation (50 pmpy) contours do not extend to this Area.
<b>Societal Risk</b>	It is not possible to determine the contribution to the cumulative societal risk (‘FN Curve’) for the population at this specific Area based on the available risk assessments. However, relatively high populations may be present during operating hours and this will contribute to the cumulative societal risk (‘FN Curve’) for the Study Area.

Category of Development for Land Use Safety Planning *	Current Control	Proposed New Development or Modification to Existing Development	
		Proposed Control	Basis
<b>SENSITIVE USES</b> (Hospitals, schools, child-care facilities & old age housing)	Permitted with consent	Permitted with consent	The cumulative LSIFR is $\leq 0.5$ pmpy at this Area. Any proposed population intensification will require a societal risk assessment. Consent must not be based on complying with individual risk criteria alone.
<b>RESIDENTIAL</b> (Residential developments & places of continuous occupancy, such as hotels & tourist resorts)	Permitted with consent #	Permitted with consent	# Currently, tourist & visitor accommodation is permitted with consent. The cumulative LSIFR is $\leq 0.5$ pmpy at this Area. Any proposed population intensification will require a societal risk assessment. Consent must not be based on complying with individual risk criteria alone.
<b>COMMERCIAL</b> (Including offices, retail centres, warehouses with showrooms, restaurants & entertainment centres)	Permitted with consent	Permitted with consent	The cumulative LSIFR is $\leq 5$ pmpy at this Area. There are no existing commercial developments; however, these developments may be permitted in the future. Any proposed population intensification will require a societal risk assessment. Consent must not be based on complying with individual risk criteria alone.
<b>OPEN SPACE</b> (Sporting complexes & active open space areas)	Permitted with consent #	Permitted with consent	# Currently, recreation areas are permitted with consent. The cumulative LSIFR is $\leq 10$ pmpy at this Area. Any proposed population intensification will require a societal risk assessment. Consent must not be based on complying with individual risk criteria alone.
<b>INDUSTRIAL</b>	Permitted with consent #	Permitted with consent	# Currently, high-technology industry is permitted with consent. The cumulative LSIFR is $\leq 50$ pmpy at this Area. Any proposed population intensification will require a societal risk assessment. Consent must not be based on complying with individual risk criteria alone.

\* Note: ‘Industrial’, ‘residential’, etc. uses, as defined in HIPAP No. 4, may not align with zones defined in the LEP (e.g. IN1, etc.).



## Area G – Land Covered by Three Ports SEPP (East of Denison Street)

<b>Description</b>	Lot/s to the east of Denison Street covered by the Three Ports SEPP.
<b>Zoning</b>	<p><b>IN1 – General Industrial</b></p> <p>The zoning for this Area is primarily for port-related general industrial uses (viz. Defined as ‘commercial’ or ‘industrial’ uses in HIPAP No. 4), including: boat building and repair facilities; business premises; depots; food and drink premises; freight transport facilities; general industries; jetties; light industries; neighbourhood shops; office premises; signage; truck depots; vehicle body repair workshops; vehicle repair stations; warehouse or distribution centres; waste or resource management facilities.</p> <p>It would not be appropriate to rezone this Area for residential or sensitive uses based on the cumulative LSIFR and acute toxic irritation risk (See below).</p>
<b>Individual Risk</b>	<p>The cumulative LSIFR is <math>\geq 1</math> pmpy at this Area and is <math>\geq 5</math> pmpy for the western half adjacent to Denison Street. The maximum LSIFR appears to be c. 10 pmpy, however this only occurs near the BIP Gate 3 on Denison Street. The cumulative acute toxic injury (10 pmpy) contour does not appear to extend to this Area. The cumulative acute toxic irritation (50 pmpy) contour does extend to this Area.</p>
<b>Societal Risk</b>	<p>It is not possible to determine the contribution to the cumulative societal risk (‘FN Curve’) for the population at this specific Area based on the available risk assessments. However, relatively high populations may be present during operating hours and this will contribute to the cumulative societal risk (‘FN Curve’) for the Study Area.</p>

Category of Development for Land Use Safety Planning *	Current Control	Proposed New Development or Modification to Existing Development	
		Proposed Control	Basis
<b>SENSITIVE USES</b> (Hospitals, schools, child-care facilities & old age housing)	Prohibited	Prohibited	The cumulative LSIFR is $\geq 0.5$ pmpy, and the cumulative acute toxic irritation risk is $\geq 50$ pmpy, at this Area.
<b>RESIDENTIAL</b> (Residential developments & places of continuous occupancy, such as hotels & tourist resorts)	Prohibited	Prohibited	The cumulative LSIFR is $\geq 1$ pmpy at this Area. The cumulative acute toxic irritation risk is $\geq 50$ pmpy at this area.
<b>COMMERCIAL</b> (Including offices, retail centres, warehouses with showrooms, restaurants & entertainment centres)	Prohibited *	Prohibited *	The cumulative LSIFR is $\leq 5$ pmpy at the eastern, and $\geq 5$ pmpy at the western, half of this Area. * Office premises, shops, etc. are only permissible in this area if they are associated with, or ancillary to, a port-related industrial use (See below). Other commercial uses are prohibited.
<b>OPEN SPACE</b> (Sporting complexes & active open space areas)	Prohibited	Prohibited	This Area is not zoned for open space uses. There are no existing open space uses and future open space uses are prohibited.
<b>INDUSTRIAL</b>	Permitted with consent	Permitted with consent *	The cumulative LSIFR is $\leq 50$ pmpy at this Area. * Lower risk general and light industries that will not increase the cumulative risk in the Study Area would be the preferred type of development in this Area. Any proposed population intensification will require a societal risk assessment. Consent must not be based on complying with individual risk criteria alone.

\* Note: ‘Industrial’, ‘residential’, etc. uses, as defined in HIPAP No. 4, may not align with zones defined in the LEP (e.g. IN1, etc.).

## Area H – Business Park Zone in Banksmeadow Industrial Precinct

<b>Description</b>	Lot/s in Banksmeadow Industrial Precinct bounded by Areas F, G, H and I.
<b>Zoning</b>	<p><b>B7 – Business Park</b></p> <p>The zoning for this Area is primarily for office and light industrial uses (viz. Defined as ‘commercial’ or ‘industrial’ uses in HIPAP No. 4), including: food and drink premises; light industries; neighbourhood shops; office premises; passenger transport facilities; vehicle sales or hire premises; warehouse or distribution centres. However, child care centres and respite day care centres (viz. Defined as ‘sensitive uses’ in HIPAP No. 4) are also permissible with consent and should be prohibited based on the cumulative LSIFR (see below).</p> <p>Home occupations are permitted without consent and dwelling houses and home industries (viz. Defined as ‘residential’ uses in HIPAP No. 4) are permissible with consent. Recreation areas and recreation facilities (indoor) (viz. Defined as ‘open space uses’ in HIPAP No. 4) are also permissible with consent.</p> <p>It would not be appropriate to rezone this Area for sensitive uses based on the cumulative LSIFR (See below).</p>
<b>Individual Risk</b>	The cumulative LSIFR is $\geq 0.5$ pmpy at this Area, with a maximum LSIFR of c. 1 pmpy near the boundary with Area G. The cumulative acute toxic injury (10 pmpy) and irritation (50 pmpy) contours do not extend to this Area.
<b>Societal Risk</b>	It is not possible to determine the contribution to the cumulative societal risk (‘FN Curve’) for the population at this specific Area based on the available risk assessments. However, some people may be present and this will contribute to the cumulative societal risk (‘FN Curve’) for the Study Area.

Category of Development for Land Use Safety Planning *	Current Control	Proposed New Development or Modification to Existing Development	
		Proposed Control	Basis
<b>SENSITIVE USES</b> (Hospitals, schools, child-care facilities & old age housing)	Permitted with consent	Prohibited	The cumulative LSIFR is $\geq 0.5$ pmpy at this Area.
<b>RESIDENTIAL</b> (Residential developments & places of continuous occupancy, such as hotels & tourist resorts)	Permitted with consent	Permitted with consent *	The cumulative LSIFR is $\leq 1$ pmpy at this Area. * Higher density residential development (including hotels, etc.) is prohibited under the current zoning and is unlikely to be permissible in this Area due to its potential contribution to the cumulative societal risk. It would not be appropriate to rezone this Area for higher density residential uses. Any proposed population intensification will require a societal risk assessment. Consent must not be based on complying with individual risk criteria alone.
<b>COMMERCIAL</b> (Including offices, retail centres, warehouses with showrooms, restaurants & entertainment centres)	Permitted with consent	Permitted with consent	The cumulative LSIFR is $\leq 5$ pmpy at this Area. Any proposed population intensification will require a societal risk assessment. Consent must not be based on complying with individual risk criteria alone.
<b>OPEN SPACE</b> (Sporting complexes & active open space areas)	Permitted with consent #	Permitted with consent	# Currently, recreation areas and recreation facilities (indoor) are permitted with consent. The cumulative LSIFR is $\leq 10$ pmpy at this Area. Any proposed population intensification will require a societal risk assessment. Consent must not be based on complying with individual risk criteria alone.
<b>INDUSTRIAL</b>	Permitted with consent	Permitted with consent *	The cumulative LSIFR is $\leq 50$ pmpy at this Area. * Lower risk general and light industries that will not increase the cumulative risk in the Study Area would be the preferred type of development in this Area. Any proposed population intensification will require a societal risk assessment. Consent must not be based on complying with individual risk criteria alone.

\* Note: ‘Industrial’, ‘residential’, etc. uses, as defined in HIPAP No. 4, may not align with zones defined in the LEP (e.g. IN1, etc.).

## Area I – Business Park Zone in Hillsdale Precinct

<b>Description</b>	Lot/s in Banksmeadow Industrial Precinct bounded by Area H and Rhodes Street.
<b>Zoning</b>	<p><b>B7 – Business Park</b></p> <p>The zoning for this Area is primarily for office and light industrial uses (viz. Defined as ‘commercial’ or ‘industrial’ uses in HIPAP No. 4), including: food and drink premises; light industries; neighbourhood shops; office premises; passenger transport facilities; vehicle sales or hire premises; warehouse or distribution centres. However, child care centres and respite day care centres (viz. Defined as ‘sensitive uses’ in HIPAP No. 4) are also permissible with consent.</p> <p>Home occupations are permitted without consent and dwelling houses and home industries (viz. Defined as ‘residential’ uses in HIPAP No. 4) are permissible with consent. Recreation areas and recreation facilities (indoor) (viz. Defined as ‘open space uses’ in HIPAP No. 4) are also permissible with consent.</p>
<b>Individual Risk</b>	The cumulative LSIFR is $\leq 0.5$ pmpy at this Area. The cumulative acute toxic injury (10 pmpy) and irritation (50 pmpy) contours do not extend to this Area.
<b>Societal Risk</b>	It is not possible to determine the contribution to the cumulative societal risk (‘FN Curve’) for the population at this specific Area based on the available risk assessments. However, some people may be present and this will contribute to the cumulative societal risk (‘FN Curve’) for the Study Area.

Category of Development for Land Use Safety Planning *	Current Control	Proposed New Development or Modification to Existing Development	
		Proposed Control	Basis
<b>SENSITIVE USES</b> (Hospitals, schools, child-care facilities & old age housing)	Permitted with consent	Permitted with consent	The cumulative LSIFR is $\leq 0.5$ pmpy at this Area.
<b>RESIDENTIAL</b> (Residential developments & places of continuous occupancy, such as hotels & tourist resorts)	Permitted with consent	Permitted with consent *	The cumulative LSIFR is $\leq 1$ pmpy at this Area. * Higher density residential development (including hotels, etc.) is prohibited under the current zoning. Any proposed population intensification will require a societal risk assessment. Consent must not be based on complying with individual risk criteria alone.
<b>COMMERCIAL</b> (Including offices, retail centres, warehouses with showrooms, restaurants & entertainment centres)	Permitted with consent	Permitted with consent	The cumulative LSIFR is $\leq 5$ pmpy at this Area. Any proposed population intensification will require a societal risk assessment. Consent must not be based on complying with individual risk criteria alone.
<b>OPEN SPACE</b> (Sporting complexes & active open space areas)	Permitted with consent #	Permitted with consent	# Currently, recreation areas and recreation facilities (indoor) are permitted with consent. The cumulative LSIFR is $\leq 10$ pmpy at this Area. Any proposed population intensification will require a societal risk assessment. Consent must not be based on complying with individual risk criteria alone.
<b>INDUSTRIAL</b>	Permitted with consent	Permitted with consent *	The cumulative LSIFR is $\leq 50$ pmpy at this Area. * Lower risk general and light industries that will not increase the cumulative risk in the Study Area would be the preferred type of development in this Area. Any proposed population intensification will require a societal risk assessment. Consent must not be based on complying with individual risk criteria alone.

\* Note: ‘Industrial’, ‘residential’, etc. uses, as defined in HIPAP No. 4, may not align with zones defined in the LEP (e.g. IN1, etc.).

## Area J – Mixed Use Zone in Hillsdale Precinct

<b>Description</b>	Lot/s in Hillsdale Precinct bounded by Areas G, H, M and K.
<b>Zoning</b>	<p><b>B4 – Mixed Use</b></p> <p>The zoning for this Area is primarily for a mixture of business, office, residential and retail development (viz. Defined as ‘residential’, ‘commercial’ or ‘industrial’ uses in HIPAP No. 4), including: boarding houses; commercial premises; community facilities; dwelling houses; educational establishments; entertainment facilities; function centres; hotel or motel accommodation; information and education facilities; light industries; medical centres; passenger transport facilities; recreation facilities (indoor); registered clubs; residential flat buildings; restricted premises; and shop top housing. However, child care centres, respite day care centres and seniors housing (viz. Defined as ‘sensitive uses’ in HIPAP No. 4) are also permissible with consent and should be prohibited based on the cumulative LSIFR (see below).</p> <p>Home occupations are permitted without consent.</p> <p>Recreation areas (viz. Defined as ‘open space uses’ in HIPAP No. 4) are also permissible with consent.</p>
<b>Individual Risk</b>	The cumulative LSIFR is $\geq 0.5$ pmpy at this Area, with a maximum LSIFR of c. 1 pmpy near the boundary with Area G. The cumulative acute toxic injury (10 pmpy) and irritation (50 pmpy) contours do not extend to this Area (Although the 50 pmpy irritation contour appears to be close to the SW corner of this Area).
<b>Societal Risk</b>	It is not possible to determine the contribution to the cumulative societal risk (‘FN Curve’) for the population at this specific Area based on the available risk assessments. However, some people may be present and this will contribute to the cumulative societal risk (‘FN Curve’) for the Study Area.

Category of Development for Land Use Safety Planning *	Current Control	Proposed New Development or Modification to Existing Development	
		Proposed Control	Basis
<b>SENSITIVE USES</b> (Hospitals, schools, child-care facilities & old age housing)	Permitted with consent	Prohibited	The cumulative LSIFR is $\geq 0.5$ pmpy at this Area.
<b>RESIDENTIAL</b> (Residential developments & places of continuous occupancy, such as hotels & tourist resorts)	Permitted with consent	Permitted with consent *	The cumulative LSIFR is $\leq 1$ pmpy at this Area. * Higher density residential development (including hotels, etc.) is permissible with consent under the current zoning. Any proposed population intensification will require a societal risk assessment. Consent must not be based on complying with individual risk criteria alone.
<b>COMMERCIAL</b> (Including offices, retail centres, warehouses with showrooms, restaurants & entertainment centres)	Permitted with consent	Permitted with consent	The cumulative LSIFR is $\leq 5$ pmpy at this Area. Any proposed population intensification will require a societal risk assessment. Consent must not be based on complying with individual risk criteria alone.
<b>OPEN SPACE</b> (Sporting complexes & active open space areas)	Permitted with consent #	Permitted with consent	# Currently, recreation areas and recreation facilities (indoor) are permitted with consent. The cumulative LSIFR is $\leq 10$ pmpy at this Area. Any proposed population intensification will require a societal risk assessment. Consent must not be based on complying with individual risk criteria alone.
<b>INDUSTRIAL</b>	Permitted with consent	Permitted with consent *	The cumulative LSIFR is $\leq 50$ pmpy at this Area. * Lower risk general and light industries that will not increase the cumulative risk in the Study Area would be the preferred type of development in this Area. Any proposed population intensification will require a societal risk assessment. Consent must not be based on complying with individual risk criteria alone.

\* Note: ‘Industrial’, ‘residential’, etc. uses, as defined in HIPAP No. 4, may not align with zones defined in the LEP (e.g. IN1, etc.).

## Area K – Mixed Use Zone in Hillsdale Precinct

<b>Description</b>	Lot/s in Hillsdale Precinct bounded by Area J and Rhodes Street.
<b>Zoning</b>	<p><b>B4 – Mixed Use</b></p> <p>The zoning for this Area is primarily for a mixture of business, office, residential and retail development (viz. Defined as ‘residential’, ‘commercial’ or ‘industrial’ uses in HIPAP No. 4), including: boarding houses; commercial premises; community facilities; dwelling houses; educational establishments; entertainment facilities; function centres; hotel or motel accommodation; information and education facilities; light industries; medical centres; passenger transport facilities; recreation facilities (indoor); registered clubs; residential flat buildings; restricted premises; and shop top housing. However, child care centres, respite day care centres and seniors housing (viz. Defined as ‘sensitive uses’ in HIPAP No. 4) are also permissible with consent.</p> <p>Home occupations are permitted without consent.</p> <p>Recreation areas (viz. Defined as ‘open space uses’ in HIPAP No. 4) are also permissible with consent.</p>
<b>Individual Risk</b>	The cumulative LSIFR is $\leq 0.5$ pmpy at this Area. The cumulative acute toxic injury (10 pmpy) and irritation (50 pmpy) contours do not extend to this Area (Although the 50 pmpy irritation contour appears to be close to the SW corner of this Area).
<b>Societal Risk</b>	It is not possible to determine the contribution to the cumulative societal risk (‘FN Curve’) for the population at this specific Area based on the available risk assessments. However, some people may be present and this will contribute to the cumulative societal risk (‘FN Curve’) for the Study Area.

Category of Development for Land Use Safety Planning *	Current Control	Proposed New Development or Modification to Existing Development	
		Proposed Control	Basis
<b>SENSITIVE USES</b> (Hospitals, schools, child-care facilities & old age housing)	Permitted with consent	Permitted with consent	The cumulative LSIFR is $\leq 0.5$ pmpy at this Area.
<b>RESIDENTIAL</b> (Residential developments & places of continuous occupancy, such as hotels & tourist resorts)	Permitted with consent	Permitted with consent *	The cumulative LSIFR is $\leq 1$ pmpy at this Area. * Higher density residential development (including hotels, etc.) is permissible with consent under the current zoning. Any proposed population intensification will require a societal risk assessment. Consent must not be based on complying with individual risk criteria alone.
<b>COMMERCIAL</b> (Including offices, retail centres, warehouses with showrooms, restaurants & entertainment centres)	Permitted with consent	Permitted with consent	The cumulative LSIFR is $\leq 5$ pmpy at this Area. Any proposed population intensification will require a societal risk assessment. Consent must not be based on complying with individual risk criteria alone.
<b>OPEN SPACE</b> (Sporting complexes & active open space areas)	Permitted with consent #	Permitted with consent	# Currently, recreation areas and recreation facilities (indoor) are permitted with consent. The cumulative LSIFR is $\leq 10$ pmpy at this Area. Any proposed population intensification will require a societal risk assessment. Consent must not be based on complying with individual risk criteria alone.
<b>INDUSTRIAL</b>	Permitted with consent	Permitted with consent *	The cumulative LSIFR is $\leq 50$ pmpy at this Area. * Lower risk general and light industries that will not increase the cumulative risk in the Study Area would be the preferred type of development in this Area. Any proposed population intensification will require a societal risk assessment. Consent must not be based on complying with individual risk criteria alone.

\* Note: ‘Industrial’, ‘residential’, etc. uses, as defined in HIPAP No. 4, may not align with zones defined in the LEP (e.g. IN1, etc.).

## Area L – Business Development Zone in Banksmeadow Industrial Precinct

<b>Description</b>	Lot/s in Banksmeadow Industrial Precinct adjacent to Denison Street and Rhodes Street Reserve
<b>Zoning</b>	<p><b>B5 – Business Development</b></p> <p>The zoning for this Area is primarily for business and warehouse uses, and bulky goods premises that require a large floor area (viz. Defined as ‘commercial’ uses in HIPAP No. 4), including: bulky goods premises; food and drink premises; garden centres; hardware and building supplies; high technology industries; landscaping material supplies; neighbourhood shops; passenger transport facilities; vehicle sales or hire premises; warehouse or distribution centres. However, child care centres and respite day care centres (viz. Defined as ‘sensitive uses’ in HIPAP No. 4) and tourist &amp; visitor accommodation (viz. Defined as ‘residential uses’ in HIPAP No. 4) are also permissible with consent and should be prohibited based on the cumulative LSIFR (see below). Recreation areas (viz. Defined as ‘open space uses’ in HIPAP No. 4) and high-technology industry (viz. Defined as an ‘industrial use’ in HIPAP No. 4) are also permissible with consent.</p> <p>It would not be appropriate to rezone this Area for residential or sensitive uses based on the cumulative LSIFR and acute toxic irritation risk (See below).</p>
<b>Individual Risk</b>	The cumulative LSIFR is $\geq 1$ pmpy at this Area. The maximum LSIFR appears to be $\leq 5$ pmpy. The cumulative acute toxic injury (10 pmpy) contour does not appear to extend to this Area. The cumulative acute toxic irritation (50 pmpy) contour does extend to this Area.
<b>Societal Risk</b>	It is not possible to determine the contribution to the cumulative societal risk (‘FN Curve’) for the population at this specific Area based on the available risk assessments. However, relatively high populations may be present during operating hours and this will contribute to the cumulative societal risk (‘FN Curve’) for the Study Area.

Category of Development for Land Use Safety Planning *	Current Control	Proposed New Development or Modification to Existing Development	
		Proposed Control	Basis
<b>SENSITIVE USES</b> (Hospitals, schools, child-care facilities & old age housing)	Permitted with consent	Prohibited	The cumulative LSIFR is $\geq 0.5$ at this Area. The cumulative acute toxic irritation risk is $\geq 50$ pmpy at this area.
<b>RESIDENTIAL</b> (Residential developments & places of continuous occupancy, such as hotels & tourist resorts)	Permitted with consent #	Prohibited	# Currently, tourist & visitor accommodation is permitted with consent. The cumulative LSIFR is $\geq 1$ pmpy at this Area. The cumulative acute toxic irritation risk is $\geq 50$ pmpy at this area.
<b>COMMERCIAL</b> (Including offices, retail centres, warehouses with showrooms, restaurants & entertainment centres)	Permitted with consent	Permitted with consent	The cumulative LSIFR is $\leq 5$ pmpy at this Area. There are existing commercial uses in this Area. Any proposed population intensification will require a societal risk assessment. Consent must not be based on complying with individual risk criteria alone.
<b>OPEN SPACE</b> (Sporting complexes & active open space areas)	Permitted with consent #	Permitted with consent	# Currently, recreation areas are permitted with consent. The cumulative LSIFR is $\leq 10$ pmpy at this Area. Any proposed population intensification will require a societal risk assessment. Consent must not be based on complying with individual risk criteria alone.
<b>INDUSTRIAL</b>	Permitted with consent #	Permitted with consent	# Currently, high-technology industry is permitted with consent. The cumulative LSIFR is $\leq 50$ pmpy at this Area. Any proposed population intensification will require a societal risk assessment. Consent must not be based on complying with individual risk criteria alone.

\* Note: ‘Industrial’, ‘residential’, etc. uses, as defined in HIPAP No. 4, may not align with zones defined in the LEP (e.g. IN1, etc.).



## Area M – Medium Density Residential Zone in Hillsdale Precinct

<b>Description</b>	Lot/s in Hillsdale Precinct bounded by Areas J, L, N and O.
<b>Zoning</b>	<p><b>R3 – Medium Density Residential</b></p> <p>The zoning for this Area is primarily for medium density residential uses and places of continuous occupancy (as defined in HIPAP No. 4), including: attached dwellings; bed and breakfast accommodation; boarding houses; community facilities; dwelling houses; group homes; multi dwelling housing; places of public worship; residential flat buildings; and, semi-detached dwellings. Child care centres, respite day care centres and seniors housing (viz. Defined as ‘sensitive uses’ in HIPAP No. 4) and neighbourhood shops and office premises (viz. Defined as ‘commercial’ uses in HIPAP No. 4) are also permissible with consent.</p> <p>Home occupations are permitted without consent.</p> <p>Recreation areas (viz. Defined as ‘open space uses’ in HIPAP No. 4) are also permissible with consent.</p>
<b>Individual Risk</b>	The cumulative LSIFR is $\leq 0.5$ pmpy at this Area. The cumulative acute toxic injury (10 pmpy) contour does not appear to extend to this Area. The cumulative acute toxic irritation (50 pmpy) contour does extend to this Area.
<b>Societal Risk</b>	It is not possible to determine the contribution to the cumulative societal risk (‘FN Curve’) for the population at this specific Area based on the available risk assessments. However, some people may be present and this will contribute to the cumulative societal risk (‘FN Curve’) for the Study Area.

Category of Development for Land Use Safety Planning *	Current Control	Proposed New Development or Modification to Existing Development	
		Proposed Control	Basis
<b>SENSITIVE USES</b> (Hospitals, schools, child-care facilities & old age housing)	Permitted with consent	Prohibited	The cumulative LSIFR is $\leq 0.5$ pmpy at this Area. However, the cumulative acute toxic irritation risk is $\geq 50$ pmpy at this area.
<b>RESIDENTIAL</b> (Residential developments & places of continuous occupancy, such as hotels & tourist resorts)	Permitted with consent	Prohibited	The cumulative LSIFR is $\leq 1$ pmpy at this Area. However, the cumulative acute toxic irritation risk is $\geq 50$ pmpy at this area.
<b>COMMERCIAL</b> (Including offices, retail centres, warehouses with showrooms, restaurants & entertainment centres)	Permitted with consent	Permitted with consent	The cumulative LSIFR is $\leq 5$ pmpy at this Area. Any proposed population intensification will require a societal risk assessment. Consent must not be based on complying with individual risk criteria alone.
<b>OPEN SPACE</b> (Sporting complexes & active open space areas)	Permitted with consent #	Permitted with consent	# Currently, recreation areas are permitted with consent. The cumulative LSIFR is $\leq 10$ pmpy at this Area. Any proposed population intensification will require a societal risk assessment. Consent must not be based on complying with individual risk criteria alone.
<b>INDUSTRIAL</b>	Prohibited	Prohibited	This Area is not zoned for industrial uses. There are no existing industrial uses and future industrial uses are prohibited.

\* Note: ‘Industrial’, ‘residential’, etc. uses, as defined in HIPAP No. 4, may not align with zones defined in the LEP (e.g. IN1, etc.).

## Area N – Medium Density Residential Zone in Hillsdale Precinct

<b>Description</b>	Lot/s in Hillsdale Precinct bounded by Area M and Rhodes Street.
<b>Zoning</b>	<p><b>R3 – Medium Density Residential</b></p> <p>The zoning for this Area is primarily for medium density residential uses and places of continuous occupancy (as defined in HIPAP No. 4), including: attached dwellings; bed and breakfast accommodation; boarding houses; community facilities; dwelling houses; group homes; multi dwelling housing; places of public worship; residential flat buildings; and, semi-detached dwellings. Child care centres, respite day care centres and seniors housing (viz. Defined as ‘sensitive uses’ in HIPAP No. 4) and neighbourhood shops and office premises (viz. Defined as ‘commercial’ uses in HIPAP No. 4) are also permissible with consent.</p> <p>Home occupations are permitted without consent.</p> <p>Recreation areas (viz. Defined as ‘open space uses’ in HIPAP No. 4) are also permissible with consent.</p>
<b>Individual Risk</b>	The cumulative LSIFR is $\leq 0.5$ pmpy at this Area. The cumulative acute toxic injury (10 pmpy) and irritation (50 pmpy) contours do not extend to this Area.
<b>Societal Risk</b>	It is not possible to determine the contribution to the cumulative societal risk (‘FN Curve’) for the population at this specific Area based on the available risk assessments. However, some people may be present and this will contribute to the cumulative societal risk (‘FN Curve’) for the Study Area.

Category of Development for Land Use Safety Planning *	Current Control	Proposed New Development or Modification to Existing Development	
		Proposed Control	Basis
<b>SENSITIVE USES</b> (Hospitals, schools, child-care facilities & old age housing)	Permitted with consent	Permitted with consent	The cumulative LSIFR is $\leq 0.5$ pmpy at this Area. The cumulative acute toxic injury risk is $\leq 10$ pmpy, and the cumulative acute toxic irritation risk is $\leq 50$ pmpy, at this Area. Any proposed population intensification will require a societal risk assessment. Consent must not be based on complying with individual risk criteria alone.
<b>RESIDENTIAL</b> (Residential developments & places of continuous occupancy, such as hotels & tourist resorts)	Permitted with consent	Permitted with consent	The cumulative LSIFR is $\leq 1$ pmpy at this Area. The cumulative acute toxic injury risk is $\leq 10$ pmpy, and the cumulative acute toxic irritation risk is $\leq 50$ pmpy, at this Area. Any proposed population intensification will require a societal risk assessment. Consent must not be based on complying with individual risk criteria alone.
<b>COMMERCIAL</b> (Including offices, retail centres, warehouses with showrooms, restaurants & entertainment centres)	Permitted with consent	Permitted with consent	The cumulative LSIFR is $\leq 5$ pmpy at this Area. Any proposed population intensification will require a societal risk assessment. Consent must not be based on complying with individual risk criteria alone.
<b>OPEN SPACE</b> (Sporting complexes & active open space areas)	Permitted with consent #	Permitted with consent	# Currently, recreation areas are permitted with consent. The cumulative LSIFR is $\leq 10$ pmpy at this Area. Any proposed population intensification will require a societal risk assessment. Consent must not be based on complying with individual risk criteria alone.
<b>INDUSTRIAL</b>	Prohibited	Prohibited	This Area is not zoned for industrial uses. There are no existing industrial uses and future industrial uses are prohibited.

\* Note: ‘Industrial’, ‘residential’, etc. uses, as defined in HIPAP No. 4, may not align with zones defined in the LEP (e.g. IN1, etc.).



## Area O – Rhodes Street Reserve

<b>Description</b>	Lots bounded by Denison Street and Rhodes Street (i.e. principally Rhodes Street Reserve).
<b>Zoning</b>	<p><b>SP1 – Special Activities</b></p> <p>The zoning for this Area is primarily for the purpose shown on the Land Zoning Map (i.e. recreational uses, which are defined as ‘open space’ uses in HIPAP No. 4).</p> <p>Environmental works are permitted without consent. These works are not expected to introduce large populations and a higher LSIFR criterion would typically apply (viz. equivalent to an industrial use as defined in HIPAP No. 4) than for the other permissible uses.</p> <p>It would not be appropriate to rezone this Area for residential or sensitive uses based on the cumulative LSIFR and acute toxic injury risk (See below).</p>
<b>Individual Risk</b>	The cumulative LSIFR is $\geq 0.5$ pmpy for the western half of this Area, with a maximum LSIFR $\leq 5$ pmpy at the NW corner near Denison Street. The cumulative acute toxic injury (10 pmpy) contour does not extend to this Area. The cumulative acute toxic irritation (50 pmpy) contour does extend to this Area.
<b>Societal Risk</b>	It is not possible to determine the contribution to the cumulative societal risk (‘FN Curve’) for the population at this specific Area based on the available risk assessments. However, relatively low populations may be present at the park and this will contribute to the cumulative societal risk (‘FN Curve’) for the Study Area.

Category of Development for Land Use Safety Planning *	Current Control	Proposed New Development or Modification to Existing Development	
		Proposed Control	Basis
<b>SENSITIVE USES</b> (Hospitals, schools, child-care facilities & old age housing)	Prohibited	Prohibited	The cumulative LSIFR is $\geq 0.5$ pmpy at the western half of this Area. The cumulative acute toxic irritation risk is $\geq 50$ pmpy at this Area. This Area is not zoned for sensitive uses. There are no existing sensitive uses and future sensitive uses are prohibited.
<b>RESIDENTIAL</b> (Residential developments & places of continuous occupancy, such as hotels & tourist resorts)	Prohibited	Prohibited	The cumulative LSIFR is $\geq 1$ pmpy at the western half of this Area. The cumulative acute toxic irritation risk is $\geq 50$ pmpy at this Area. This Area is not zoned for residential uses. There are no existing residential uses and future residential uses are prohibited.
<b>COMMERCIAL</b> (Including offices, retail centres, warehouses with showrooms, restaurants & entertainment centres)	Prohibited	Prohibited	The cumulative LSIFR is $\leq 5$ pmpy at this Area. This Area is not zoned for commercial uses. There are no existing commercial uses and future commercial uses are prohibited.
<b>OPEN SPACE</b> (Sporting complexes & active open space areas)	Permitted with consent	Permitted with consent	The cumulative LSIFR is $\leq 10$ pmpy at this Area. There are existing open space uses in this Area. Any proposed population intensification will require a societal risk assessment. Consent must not be based on complying with individual risk criteria alone.
<b>INDUSTRIAL</b>	Prohibited	Prohibited	This Area is not zoned for industrial uses. There are no existing industrial uses and future industrial uses are prohibited.

\* Note: ‘Industrial’, ‘residential’, etc. uses, as defined in HIPAP No. 4, may not align with zones defined in the LEP (e.g. IN1, etc.).

## Area P – Low and Medium Residential Zone in Hillsdale Precinct

<b>Description</b>	Lot/s in Hillsdale Precinct bounded by Denison Street and Rhodes Street.
<b>Zoning</b>	<p>The zoning in this Area includes low and medium density residential and small open spaces for public recreation.</p> <p><b>R2 – Low Density Residential / R3 – Medium Density Residential</b></p> <p>The R2 and R3 zoning in this Area is primarily for low and medium residential uses and places of continuous occupancy (as defined in HIPAP No. 4), including: attached dwellings; bed and breakfast accommodation; boarding houses; community facilities; dwelling houses; group homes; multi dwelling housing; places of public worship; recreation areas; residential flat buildings; and semi-detached dwellings.</p> <p>Home occupations are permitted without consent in the R2 and R3 zones.</p> <p>Child care centres, health consulting rooms, hospitals and respite day care centres (viz. Defined as ‘sensitive uses’ in HIPAP No. 4) and neighbourhood shops and office premises (viz. Defined as ‘commercial uses’ in HIPAP No. 4) are also permissible with consent in the R2 and/or R3 zones.</p> <p><b>RE1 - Public Recreation</b></p> <p>The RE1 zoning in this Area is primarily for recreational uses (viz. Defined as ‘open space’ uses in HIPAP No. 4). However, child care centres and respite day care centres (viz. Defined as ‘sensitive uses’ in HIPAP No. 4) are also permissible with consent.</p> <p>Environmental works are permitted without consent. These works are not expected to introduce large populations and a higher LSIFR criterion would typically apply (viz. equivalent to an industrial use as defined in HIPAP No. 4) than for the other permissible uses.</p>
<b>Individual Risk</b>	The cumulative LSIFR is $\geq 1$ pmpy at this Area (principally to the west of Nilson Avenue). The cumulative acute toxic injury (10 pmpy) and irritation (50 pmpy) contours extend to this Area.
<b>Societal Risk</b>	It is not possible to determine the contribution to the cumulative societal risk (‘FN Curve’) for the population at this specific Area based on the available risk assessments. However, residential populations are expected to always be present and this will contribute to the cumulative societal risk (‘FN Curve’) for the Study Area.

Category of Development for Land Use Safety Planning *	Current Control	Proposed New Development or Modification to Existing Development	
		Proposed Control	Basis
<b>SENSITIVE USES</b> (Hospitals, schools, child-care facilities & old age housing)	Permitted with consent	Prohibited *	The cumulative LSIFR is $\geq 0.5$ pmpy at this Area (principally to the west of Nilson Avenue). The cumulative acute toxic injury risk is $\geq 10$ pmpy and/or the cumulative acute toxic irritation risk is $\geq 50$ pmpy, at this Area. * The eastern boundary of this Area is difficult to determine from the available risk assessments (This area of uncertainty is indicated by the row of ‘?’ symbols on Figure 25).
<b>RESIDENTIAL</b> (Residential developments & places of continuous occupancy, such as hotels & tourist resorts)	Permitted with consent	Prohibited *	The cumulative LSIFR is $\geq 1$ pmpy at this Area (principally to the west of Nilson Avenue). The cumulative acute toxic injury risk is $\geq 10$ pmpy and/or the cumulative acute toxic irritation risk is $\geq 50$ pmpy, at this Area. * The eastern boundary of this Area is difficult to determine from the available risk assessments (This area of uncertainty is indicated by the row of ‘?’ symbols on Figure 25).
<b>COMMERCIAL</b> (Including offices, retail centres, warehouses with showrooms, restaurants & entertainment centres)	Permitted with consent	Permitted with consent	The cumulative LSIFR is $\leq 5$ pmpy at this Area. There are no existing commercial developments; however, these developments may be permitted in the future. Any proposed population intensification will require a societal risk assessment. Consent must not be based on complying with individual risk criteria alone.

Category of Development for Land Use Safety Planning *	Current Control	Proposed New Development or Modification to Existing Development	
		Proposed Control	Basis
<b>OPEN SPACE</b> (Sporting complexes & active open space areas)	Permitted with consent	Permitted with consent	The cumulative LSIFR is ≤10 pmpy at this Area. There are existing open space uses in this Area. Any proposed population intensification will require a societal risk assessment. Consent must not be based on complying with individual risk criteria alone.
<b>INDUSTRIAL</b>	Prohibited	Prohibited	This Area is not zoned for industrial uses. There are no existing industrial uses and future industrial uses are prohibited.

\* Note: 'Industrial', 'residential', etc. uses, as defined in HIPAP No. 4, may not align with zones defined in the LEP (e.g. IN1, etc.).

## Area Q – Low and Medium Residential Zone in Hillsdale Precinct

<b>Description</b>	Lot/s in Hillsdale Precinct bounded by Denison Street and Rhodes Street (Principally the 'consultation zone from the 2001 LUSS).
<b>Zoning</b>	<p>The zoning in this Area includes low and medium density residential and small open spaces for public recreation.</p> <p><b>R2 – Low Density Residential / R3 – Medium Density Residential</b></p> <p>The R2 and R3 zoning in this Area is primarily for low and medium residential uses and places of continuous occupancy (as defined in HIPAP No. 4), including: attached dwellings; bed and breakfast accommodation; boarding houses; community facilities; dwelling houses; group homes; multi dwelling housing; places of public worship; recreation areas; residential flat buildings; and semi-detached dwellings.</p> <p>Home occupations are permitted without consent in the R2 and R3 zones.</p> <p>Child care centres, health consulting rooms, hospitals and respite day care centres (viz. Defined as 'sensitive uses' in HIPAP No. 4) and neighbourhood shops and office premises (viz. Defined as 'commercial uses' in HIPAP No. 4) are also permissible with consent in the R2 and/or R3 zones.</p> <p><b>RE1 - Public Recreation</b></p> <p>The RE1 zoning in this Area is primarily for recreational uses (viz. Defined as 'open space' uses in HIPAP No. 4). However, child care centres and respite day care centres (viz. Defined as 'sensitive uses' in HIPAP No. 4) are also permissible with consent.</p> <p>Environmental works are permitted without consent. These works are not expected to introduce large populations and a higher LSIFR criterion would typically apply (viz. equivalent to an industrial use as defined in HIPAP No. 4) than for the other permissible uses.</p>
<b>Individual Risk</b>	The cumulative LSIFR is $\geq 1$ pmpy at this Area (principally to the west of Nilson Avenue), with a maximum LSIFR of c. 5 pmpy in the SW corner near the intersection of Beauchamp Road and Denison Street. The cumulative acute toxic injury (10 pmpy) and irritation (50 pmpy) contours extend to this Area.
<b>Societal Risk</b>	It is not possible to determine the contribution to the cumulative societal risk ('FN Curve') for the population at this specific Area based on the available risk assessments. However, residential populations are expected to always be present and this will contribute to the cumulative societal risk ('FN Curve') for the Study Area.

Category of Development for Land Use Safety Planning *	Current Control	Proposed New Development or Modification to Existing Development	
		Proposed Control	Basis
<b>SENSITIVE USES</b> (Hospitals, schools, child-care facilities & old age housing)	Permitted with consent	Prohibited	<p>The cumulative LSIFR is <math>\geq 0.5</math> pmpy at this Area (principally to the west of Nilson Avenue).</p> <p>The cumulative acute toxic injury risk is <math>\geq 10</math> pmpy and the cumulative acute toxic irritation risk is <math>\geq 50</math> pmpy, at this Area.</p>
<b>RESIDENTIAL</b> (Residential developments & places of continuous occupancy, such as hotels & tourist resorts)	Permitted with consent	Prohibited	<p>The cumulative LSIFR is <math>\geq 1</math> pmpy at this Area (principally to the west of Nilson Avenue).</p> <p>The cumulative acute toxic injury risk is <math>\geq 10</math> pmpy and the cumulative acute toxic irritation risk is <math>\geq 50</math> pmpy, at this Area.</p>
<b>COMMERCIAL</b> (Including offices, retail centres, warehouses with showrooms, restaurants & entertainment centres)	Permitted with consent	Permitted with consent	<p>The cumulative LSIFR is <math>\leq 5</math> pmpy for most of this Area (Note: Commercial development is unlikely to be permitted in the SW corner of this Area where the LSIFR is <math>\geq 5</math> pmpy).</p> <p>There are no existing commercial developments; however, these developments may be permitted in the future.</p> <p>Any proposed population intensification will require a societal risk assessment. Consent must not be based on complying with individual risk criteria alone.</p>

Category of Development for Land Use Safety Planning *	Current Control	Proposed New Development or Modification to Existing Development	
		Proposed Control	Basis
<b>OPEN SPACE</b> (Sporting complexes & active open space areas)	Permitted with consent	Permitted with consent	The cumulative LSIFR is ≤10 pmpy at this Area. There are existing open space uses in this Area. Any proposed population intensification will require a societal risk assessment. Consent must not be based on complying with individual risk criteria alone.
<b>INDUSTRIAL</b>	Prohibited	Prohibited	This Area is not zoned for industrial uses. There are no existing industrial uses and future industrial uses are prohibited.

\* Note: 'Industrial', 'residential', etc. uses, as defined in HIPAP No. 4, may not align with zones defined in the LEP (e.g. IN1, etc.).

## Area R – Land Covered by Three Ports SEPP (Botany Industrial Park)

<b>Description</b>	Lot/s to the west of Denison Street covered by the Three Ports SEPP (Principally BIP).
<b>Zoning</b>	<p><b>IN1 – General Industrial</b></p> <p>The zoning for this Area is primarily for port-related general industrial uses (viz. Defined as ‘commercial’ or ‘industrial’ uses in HIPAP No. 4), including: boat building and repair facilities; business premises; depots; food and drink premises; freight transport facilities; general industries; jetties; light industries; neighbourhood shops; office premises; signage; truck depots; vehicle body repair workshops; vehicle repair stations; warehouse or distribution centres; waste or resource management facilities.</p> <p>It would not be appropriate to rezone this Area for residential or sensitive uses based on the cumulative LSIFR and acute toxic irritation risk (See below).</p>
<b>Individual Risk</b>	<p>The maximum cumulative LSIFR is <math>\geq 50</math> pmpy at this Area. The cumulative LSIFR is typically between 1 and 5 pmpy at the boundary of this Area (In some areas these risk levels are reached beyond the boundary of this Area).</p> <p>The cumulative acute toxic injury (10 pmpy) and irritation (50 pmpy) contours extend to most of this Area. Other injury and property damage contours are also located within the boundary of this Area (Refer to Section 5.3).</p>
<b>Societal Risk</b>	It is not possible to determine the contribution to the cumulative societal risk (‘FN Curve’) for the population at this specific Area based on the available risk assessments. However, relatively high populations may be present during operating hours and this will contribute to the cumulative societal risk (‘FN Curve’) for the Study Area.

Category of Development for Land Use Safety Planning *	Current Control	Proposed New Development or Modification to Existing Development	
		Proposed Control	Basis
<b>SENSITIVE USES</b> (Hospitals, schools, child-care facilities & old age housing)	Prohibited	Prohibited	The cumulative LSIFR is $\geq 0.5$ pmpy at this Area.
<b>RESIDENTIAL</b> (Residential developments & places of continuous occupancy, such as hotels & tourist resorts)	Prohibited	Prohibited	The cumulative LSIFR is $\geq 1$ pmpy at this Area.
<b>COMMERCIAL</b> (Including offices, retail centres, warehouses with showrooms, restaurants & entertainment centres)	Prohibited *	Prohibited *	The cumulative LSIFR is $\geq 5$ pmpy for the majority of this Area. * Office premises, shops, etc. are only permissible in this area if they are associated with, or ancillary to, a port-related industrial use (See below). Other commercial uses are prohibited.
<b>OPEN SPACE</b> (Sporting complexes & active open space areas)	Prohibited	Prohibited	This Area is not zoned for open space uses. There are no existing open space uses and future open space uses are prohibited.
<b>INDUSTRIAL</b>	Permitted with consent	Permitted with consent	The cumulative LSIFR is $\geq 50$ pmpy at this Area and this is primarily from the existing potentially hazardous industries in the BIP. A new potentially hazardous industrial development, or modifications to the existing BIP facilities, is potentially permissible with consent in accordance with SEPP No. 33. Any proposed population intensification will require a societal risk assessment. Consent must not be based on complying with individual risk criteria alone.

\* Note: ‘Industrial’, ‘residential’, etc. uses, as defined in HIPAP No. 4, may not align with zones defined in the LEP (e.g. IN1, etc.).

## Area S – Land Covered by Three Ports SEPP (West of Denison Street)

<b>Description</b>	Lot/s to the west of Denison Street (North of BIP Gate 3) covered by the Three Ports SEPP.
<b>Zoning</b>	<p><b>IN1 – General Industrial</b></p> <p>The zoning for this Area is primarily for port-related general industrial uses (viz. Defined as ‘commercial’ or ‘industrial’ uses in HIPAP No. 4), including: boat building and repair facilities; business premises; depots; food and drink premises; freight transport facilities; general industries; jetties; light industries; neighbourhood shops; office premises; signage; truck depots; vehicle body repair workshops; vehicle repair stations; warehouse or distribution centres; waste or resource management facilities.</p> <p>It would not be appropriate to rezone this Area for residential or sensitive uses based on the cumulative LSIFR (See below).</p>
<b>Individual Risk</b>	The cumulative LSIFR is $\geq 0.5$ pmpy at most of this Area. The maximum cumulative LSIFR is $\leq 5$ pmpy. The cumulative acute toxic injury (10 pmpy) and irritation (50 pmpy) contours do not extend to this Area.
<b>Societal Risk</b>	It is not possible to determine the contribution to the cumulative societal risk (‘FN Curve’) for the population at this specific Area based on the available risk assessments. However, relatively high populations may be present during operating hours and this will contribute to the cumulative societal risk (‘FN Curve’) for the Study Area.

Category of Development for Land Use Safety Planning *	Current Control	Proposed New Development or Modification to Existing Development	
		Proposed Control	Basis
<b>SENSITIVE USES</b> (Hospitals, schools, child-care facilities & old age housing)	Prohibited	Prohibited	The cumulative LSIFR is $\geq 0.5$ pmpy at this Area.
<b>RESIDENTIAL</b> (Residential developments & places of continuous occupancy, such as hotels & tourist resorts)	Prohibited	Prohibited	The cumulative LSIFR is $\geq 1$ pmpy at this Area.
<b>COMMERCIAL</b> (Including offices, retail centres, warehouses with showrooms, restaurants & entertainment centres)	Prohibited *	Prohibited *	The cumulative LSIFR is $\leq 5$ pmpy at this Area. * Office premises, shops, etc. are only permissible in this area if they are associated with, or ancillary to, a port-related industrial use (See below). Other commercial uses are prohibited.
<b>OPEN SPACE</b> (Sporting complexes & active open space areas)	Prohibited	Prohibited	This Area is not zoned for open space uses. There are no existing open space uses and future open space uses are prohibited.
<b>INDUSTRIAL</b>	Permitted with consent	Permitted with consent *	The cumulative LSIFR is $\leq 50$ pmpy at this Area. * Lower risk general and light industries that will not increase the cumulative risk in the Study Area would be the preferred type of development in this Area. Any proposed population intensification will require a societal risk assessment. Consent must not be based on complying with individual risk criteria alone.

\* Note: ‘Industrial’, ‘residential’, etc. uses, as defined in HIPAP No. 4, may not align with zones defined in the LEP (e.g. IN1, etc.).

## Area T – Land Covered by Three Ports SEPP (West of Denison Street)

<b>Description</b>	Lot/s to the west of Denison Street (Near BIP Gate 3) covered by the Three Ports SEPP.
<b>Zoning</b>	<p><b>IN1 – General Industrial</b></p> <p>The zoning for this Area is primarily for port-related general industrial uses (viz. Defined as ‘commercial’ or ‘industrial’ uses in HIPAP No. 4), including: boat building and repair facilities; business premises; depots; food and drink premises; freight transport facilities; general industries; jetties; light industries; neighbourhood shops; office premises; signage; truck depots; vehicle body repair workshops; vehicle repair stations; warehouse or distribution centres; waste or resource management facilities.</p> <p>It would not be appropriate to rezone this Area for commercial, residential or sensitive uses based on the cumulative LSIFR and acute toxic irritation risk (See below).</p>
<b>Individual Risk</b>	The cumulative LSIFR is $\geq 5$ pmpy at this Area and is c. 10 pmpy near the BIP Gate 3 entrance on Denison Street. The cumulative acute toxic injury (10 pmpy) and irritation (50 pmpy) contours extend to this Area.
<b>Societal Risk</b>	It is not possible to determine the contribution to the cumulative societal risk (‘FN Curve’) for the population at this specific Area based on the available risk assessments. However, relatively high populations may be present during operating hours and this will contribute to the cumulative societal risk (‘FN Curve’) for the Study Area.

Category of Development for Land Use Safety Planning *	Current Control	Proposed New Development or Modification to Existing Development	
		Proposed Control	Basis
<b>SENSITIVE USES</b> (Hospitals, schools, child-care facilities & old age housing)	Prohibited	Prohibited	The cumulative LSIFR is $\geq 0.5$ pmpy at this Area. The cumulative acute toxic injury risk is $\geq 10$ pmpy, and the cumulative acute toxic irritation risk is $\geq 50$ pmpy, at this Area.
<b>RESIDENTIAL</b> (Residential developments & places of continuous occupancy, such as hotels & tourist resorts)	Prohibited	Prohibited	The cumulative LSIFR is $\geq 1$ pmpy at this Area. The cumulative acute toxic injury risk is $\geq 10$ pmpy, and the cumulative acute toxic irritation risk is $\geq 50$ pmpy, at this Area.
<b>COMMERCIAL</b> (Including offices, retail centres, warehouses with showrooms, restaurants & entertainment centres)	Prohibited *	Prohibited *	The cumulative LSIFR is $\geq 5$ pmpy at this Area. * Office premises, shops, etc. are only permissible in this area if they are associated with, or ancillary to, a port-related industrial use (See below). Other commercial uses are prohibited.
<b>OPEN SPACE</b> (Sporting complexes & active open space areas)	Prohibited	Prohibited	This Area is not zoned for open space uses. There are no existing open space uses and future open space uses are prohibited.
<b>INDUSTRIAL</b>	Permitted with consent	Permitted with consent *	The cumulative LSIFR is $\leq 50$ pmpy at this Area. * Lower risk general and light industries that will not increase the cumulative risk in the Study Area would be the preferred type of development in this Area. Any proposed population intensification will require a societal risk assessment. Consent must not be based on complying with individual risk criteria alone.

\* Note: ‘Industrial’, ‘residential’, etc. uses, as defined in HIPAP No. 4, may not align with zones defined in the LEP (e.g. IN1, etc.).



### 7.3 Summary of Key Points

The risk-related planning controls in the current BBDCP2013:

- Are included in Part 6 ('Employment Zones') and Part 8 ('Character Zones'). Part 6 only covers the industrial land in the Study Area (i.e. Banksmeadow Industrial Precinct), however, there are also provisions in Part 8 to apply the risk-related planning controls from Part 6 in adjacent areas (This approach is consistent with the recommendations from the Botany Randwick LUSS [Ref. 9]). The inclusion of risk-related planning controls in multiple Parts of the BBDCP2013 (Including in multiple sections in Part 8) is potentially confusing and increases the likelihood of inconsistencies.
- Do not specifically address the land within the Study Area that is covered by the Three Ports SEPP (Refer to Section 7.1.4).
- Include a summary of the previous LUSSs and QRAs (Note: The BBDCP2013 does not specifically refer to the Transport QRA Addendum). This information is included to provide a historical basis for the risk-related planning controls, but is not required to apply the risk-related planning controls. It is suggested that the historical information be removed from next revision of the BBDCP.
- Sometimes refer to superseded versions of the HIPAPs.
- Include a definition of 'residential intensification' and 'sensitive use intensification'. The definition of 'residential intensification' includes: "an increase in the number of rooms providing temporary or permanent accommodation". If the maximum floor space ratios for a dwelling house are met (As already specified in Clause 4.4 of the LEP), then increasing the number of rooms within a single dwelling should not be considered residential intensification.
- Require that industrial development fronting Denison Street have their commercial offices (or other non-industrial activity) fronting the road/street. All industrial activities are to be undertaken behind the commercial building buffer.
- Require a Transport Risk Assessment Report to be lodged with Council if a site fronts Denison Street. However, a site that does not front Denison Street could increase the movement of DGs along Denison Street. Applications that potentially affect DG traffic along Denison Street (Directly or indirectly) should require a Transport Risk Assessment Report to be lodged with Council.

The proposed risk-related planning controls:

- Identify specific areas within the Study Area where new development, or a modification to an existing development (Including intensification of population), should be prohibited or may potentially be permitted with consent.
- Require a risk assessment to be submitted with a development application for any use that may potentially be permitted with consent.
- Do not supersede any other development approval requirements (e.g. under the EP&A Act, SEPP No. 33, existing conditions of development consent, etc.) that may apply for development of a new potentially hazardous industry, or modification to an existing potentially hazardous industry, in the Study Area.
- Should replace all of the risk-related planning controls in Part 6 ('Employment Zones') and Part 8 ('Character Zones') of the BBDCP2013 and do not need to include a summary of the

previous LUSSs and QRAs. It is suggested that these be included in a new Part of the next revision of the BBDCP (With cross-referencing in Part 6 and 8 as required).

- Include a revised definition for 'intensification of population', which is applicable for all types of development (i.e. not only residential and sensitive uses).
- Require a Transport Risk Assessment report to be submitted for all future development applications with the potential to affect DG traffic along Denison Street. For example, this could include developments outside the Study Area that might significantly increase non-DG traffic along Denison Street, and therefore have the potential to affect the predicted accident rate for DG traffic.

## 8 RECOMMENDATIONS

The following recommendations are included to assist BBCC in making informed land use safety decisions for existing and future development in the Study Area:

1. BBCC should implement the proposed risk-based planning controls, as outlined in Section 7.2, as soon as practicable. Exactly how this is achieved will need to be determined by BBCC as some of the proposed controls will only apply to some parts of the Study Area and should not be applied to all other similarly zoned areas defined within the BBLEP2013.
2. BBCC should require a risk assessment to be submitted with a development application for any use that is categorised as 'permitted with consent' where the development may potentially significantly increase the population density in the Study Area (As per Recommendation No. 7 above). Approval should be contingent on the proponent demonstrating compliance with relevant risk guidelines.
3. BBCC should require a Transport Risk Assessment report to be submitted for all future development applications with the potential to affect DG traffic along Denison Street. For example, this could include developments outside the Study Area that might significantly increase non-DG traffic along Denison Street, and therefore have the potential to affect the predicted accident rate for DG traffic. Approval should be contingent on the proponent demonstrating compliance with relevant risk guidelines, including evaluation of possible alternative routes.

Note: For DG traffic, the screening threshold criteria in the NSW DP&E's *Applying SEPP 33* guidelines [Ref. 6 (Table 2)] would be appropriate. For non-DG traffic, an increase in total vehicle movements of >50% is likely to be significant.

4. BBCC should consider adopting the proposed risk-related planning controls to replace all of the risk-related planning controls in Part 6 ('Employment Zones') and Part 8 ('Character Zones') of the BBDCP2013. It is suggested that these be included in a new Part of the next revision of the BBDCP (With cross-referencing in Part 6 and 8 as required), which should also include land covered by the Three Ports SEPP. It may also be appropriate to consolidate the risk-related planning controls for other relevant areas in the Botany Bay district (e.g. along Stephen Road) in this new Part of the DCP.
5. The summary of the previous LUSSs and QRAs included in the BBDCP2013 be removed from next revision of the BBDCP.
6. A revised definition for 'intensification of population', as outlined in Section 7.2, should be included in the next revision of the BBDCP. This is applicable for all types of development (i.e. not only residential and sensitive uses).
7. BBCC should review the risk-based planning controls for the Study Area every 5 years (at a minimum) to ensure they are still appropriate based on the most recent available risk assessments for the Study Area (Including for the fixed industrial facilities and transport of DGs).
8. BBCC should review DG transport in the Study Area every 5 years (at a minimum) and update the Transport QRA if there is a significant change. It may also be appropriate to extend the DG review and Transport QRA to include Wentworth Avenue (up to intersection with Bunnerong Road and the intersection with Banks Avenue).

The review should be timed to coincide with the next update of the BIP QRA (which is also required to be updated every five years) to allow any updated risk results to be considered in

the next periodic review of the risk-based planning controls (As per Recommendation No. 7 above). As the next revision of the BIP QRA is due in c. 2017, it may be appropriate in the first instance to review / update the Transport QRA and risk-based planning controls in c. 2017.

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# Appendices

## **Appendix A Land Use Zones**

Land use zone descriptions are included in the BBLEP2013 [Ref. 1] and Three Ports SEPP [Ref. 15]. The descriptions for the relevant zones in the Study Area are reproduced below.

### **A.1 Local Environmental Plan**

#### **Zone B3 Commercial Core**

##### **1 Objectives of zone**

- To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.
- To encourage appropriate employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.

##### **2 Permitted without consent**

Nil

##### **3 Permitted with consent**

Commercial premises; Community facilities; Educational establishments; Entertainment facilities; Function centres; Hotel or motel accommodation; Information and education facilities; Medical centres; Passenger transport facilities; Recreation facilities (indoor); Registered clubs; Respite day care centres; Restricted premises; Roads; Any other development not specified in item 2 or 4

##### **4 Prohibited**

Advertising structures; Agriculture; Air transport facilities; Airstrips; Animal boarding or training establishments; Biosolids treatment facilities; Boat building and repair facilities; Boat launching ramps; Boat sheds; Camping grounds; Caravan parks; Cemeteries; Charter and tourism boating facilities; Correctional centres; Crematoria; Depots; Eco-tourist facilities; Electricity generating works; Environmental facilities; Exhibition homes; Exhibition villages; Extractive industries; Farm buildings; Forestry; Freight transport facilities; Heavy industrial storage establishments; Helipads; Highway service centres; Home-based child care; Home businesses; Home occupations; Home occupations (sex services); Industrial retail outlets; Industrial training facilities; Industries; Jetties; Marinas; Mooring pens; Moorings; Mortuaries; Open cut mining; Port facilities; Recreation facilities (major); Recreation facilities (outdoor); Research stations; Residential accommodation; Resource recovery facilities; Rural industries; Sewage treatment plants; Sex services premises; Storage premises; Transport depots; Truck depots; Vehicle body repair workshops; Vehicle repair stations; Warehouse or distribution centres; Waste disposal facilities; Water recreation structures; Water recycling facilities; Water supply systems; Wharf or boating facilities; Wholesale supplies

#### **Zone B4 Mixed Use**

##### **1 Objectives of zone**

- To provide a mixture of compatible land uses.
- To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.

##### **2 Permitted without consent**

Home occupations.



### **3 Permitted with consent**

Boarding houses; Child care centres; Commercial premises; Community facilities; Dwelling houses; Educational establishments; Entertainment facilities; Function centres; Hotel or motel accommodation; Information and education facilities; Light industries; Medical centres; Passenger transport facilities; Recreation facilities (indoor); Registered clubs; Residential flat buildings; Respite day care centres; Restricted premises; Roads; Seniors housing; Shop top housing; Any other development not specified in item 2 or 4.

### **4 Prohibited**

Advertising structures; Agriculture; Air transport facilities; Airstrips; Animal boarding or training establishments; Biosolids treatment facilities; Boat building and repair facilities; Boat launching ramps; Boat sheds; Camping grounds; Caravan parks; Cemeteries; Charter and tourism boating facilities; Correctional centres; Crematoria; Depots; Eco-tourist facilities; Electricity generating works; Environmental facilities; Exhibition homes; Exhibition villages; Extractive industries; Farm buildings; Forestry; Freight transport facilities; Heavy industrial storage establishments; Helipads; Highway service centres; Home occupations (sex services); Industrial training facilities; Industries; Jetties; Marinas; Mooring pens; Moorings; Mortuaries; Open cut mining; Port facilities; Recreation facilities (major); Research stations; Residential accommodation; Resource recovery facilities; Rural industries; Sewage treatment plants; Sex services premises; Storage premises; Transport depots; Truck depots; Vehicle body repair workshops; Vehicle repair stations; Warehouse or distribution centres; Waste disposal facilities; Water recreation structures; Water recycling facilities; Water supply systems; Wharf or boating facilities; Wholesale supplies.

## **Zone B5 Business Development**

### **1 Objectives of zone**

- To enable a mix of business and warehouse uses, and bulky goods premises that require a large floor area, in locations that are close to, and that support the viability of, centres.

### **2 Permitted without consent**

Nil.

### **3 Permitted with consent**

Bulky goods premises; Child care centres; Food and drink premises; Garden centres; Hardware and building supplies; High technology industries; Landscaping material supplies; Neighbourhood shops; Passenger transport facilities; Respite day care centres; Roads; Vehicle sales or hire premises; Warehouse or distribution centres; Any other development not specified in item 2 or 4.

### **4 Prohibited**

Agriculture; Air transport facilities; Airstrips; Animal boarding or training establishments; Biosolids treatment facilities; Boat building and repair facilities; Boat launching ramps; Boat sheds; Camping grounds; Caravan parks; Cemeteries; Charter and tourism boating facilities; Correctional centres; Crematoria; Depots; Eco-tourist facilities; Electricity generating works; Environmental facilities; Environmental protection works; Exhibition homes; Exhibition villages; Extractive industries; Farm buildings; Forestry; Freight transport facilities; Heavy industrial storage establishments; Helipads; Highway service centres; Home-based child care; Home businesses; Home occupations; Home occupations (sex services); Industrial retail outlets; Industrial training facilities; Industries; Jetties; Marinas; Mooring pens; Moorings; Mortuaries; Open cut mining; Port facilities; Recreation facilities (major); Recreation facilities (outdoor); Research stations; Residential accommodation; Resource

recovery facilities; Restricted premises; Retail premises; Rural industries; Sewage treatment plants; Sex services premises; Storage premises; Transport depots; Truck depots; Vehicle body repair workshops; Vehicle repair stations; Veterinary hospitals; Waste disposal facilities; Water recreation structures; Water recycling facilities; Water supply systems; Wharf or boating facilities; Wholesale supplies.

### **Zone B7 Business Park**

#### **1 Objectives of zone**

- To provide a range of office and light industrial uses.
- To encourage employment opportunities.
- To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.
- To encourage uses in the arts, technology, production and design sectors.

#### **2 Permitted without consent**

Home occupations.

#### **3 Permitted with consent**

Child care centres; Dwelling houses; Food and drink premises; Home industries; Light industries; Neighbourhood shops; Office premises; Passenger transport facilities; Respite day care centres; Roads; Vehicle sales or hire premises; Warehouse or distribution centres; Any other development not specified in item 2 or 4.

#### **4 Prohibited**

Advertising structures; Agriculture; Air transport facilities; Airstrips; Amusement centres; Animal boarding or training establishments; Biosolids treatment facilities; Boat launching ramps; Boat sheds; Camping grounds; Caravan parks; Cemeteries; Charter and tourism boating facilities; Correctional centres; Crematoria; Depots; Eco-tourist facilities; Electricity generating works; Entertainment facilities; Environmental facilities; Environmental protection works; Exhibition homes; Exhibition villages; Extractive industries; Farm buildings; Forestry; Freight transport facilities; Heavy industrial storage establishments; Helipads; Highway service centres; Home-based child care; Home occupations (sex services); Industrial training facilities; Industries; Jetties; Marinas; Mooring pens; Moorings; Mortuaries; Open cut mining; Port facilities; Recreation facilities (major); Recreation facilities (outdoor); Registered clubs; Research stations; Residential accommodation; Resource recovery facilities; Restricted premises; Retail premises; Rural industries; Sewage treatment plants; Sex services premises; Tourist and visitor accommodation; Transport depots; Truck depots; Vehicle body repair workshops; Vehicle repair stations; Waste disposal facilities; Water recreation structures; Water recycling facilities; Water supply systems; Wharf or boating facilities.

### **Zone R2 Low Density Residential**

#### **1 Objectives of zone**

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

- To encourage development that promotes walking and cycling.

## **2 Permitted without consent**

Home occupations

## **3 Permitted with consent**

Attached dwellings; Bed and breakfast accommodation; Boarding houses; Building identification signs; Business identification signs; Child care centres; Community facilities; Dwelling houses; Environmental protection works; Flood mitigation works; Group homes; Health consulting rooms; Hospitals; Multi dwelling housing; Neighbourhood shops; Office premises; Places of public worship; Recreation areas; Residential flat buildings; Respite day care centres; Roads; Semi-detached dwellings

## **4 Prohibited**

Any development not specified in item 2 or 3

### **Zone R3 Medium Density Residential**

#### **1 Objectives of zone**

- To provide for the housing needs of the community within a medium density residential environment.
- To provide a variety of housing types within a medium density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To encourage development that promotes walking and cycling.

## **2 Permitted without consent**

Home occupations

## **3 Permitted with consent**

Attached dwellings; Bed and breakfast accommodation; Boarding houses; Child care centres; Community facilities; Dwelling houses; Group homes; Multi dwelling housing; Neighbourhood shops; Office premises; Places of public worship; Residential flat buildings; Respite day care centres; Roads; Semi-detached dwellings; Seniors housing; Any other development not specified in item 2 or 4

## **4 Prohibited**

Advertising structures; Agriculture; Air transport facilities; Airstrips; Amusement centres; Animal boarding or training establishments; Biosolids treatment facilities; Boat building and repair facilities; Boat launching ramps; Boat sheds; Camping grounds; Car parks; Caravan parks; Cemeteries; Charter and tourism boating facilities; Commercial premises; Correctional centres; Crematoria; Depots; Eco-tourist facilities; Electricity generating works; Emergency services facilities; Entertainment facilities; Environmental facilities; Exhibition homes; Exhibition villages; Extractive industries; Farm buildings; Forestry; Freight transport facilities; Function centres; Heavy industrial storage establishments; Helipads; Highway service centres; Home businesses; Home occupations (sex services); Industrial retail outlets; Industrial training facilities; Industries; Information and education facilities; Jetties; Marinas; Mooring pens; Moorings; Mortuaries; Open cut mining; Passenger transport facilities; Port facilities; Public administration buildings; Recreation facilities (indoor); Recreation facilities (major);

Recreation facilities (outdoor); Registered clubs; Research stations; Residential accommodation; Restricted premises; Rural industries; Service stations; Sewage treatment plants; Sex services premises; Storage premises; Tourist and visitor accommodation; Transport depots; Truck depots; Vehicle body repair workshops; Vehicle repair stations; Veterinary hospitals; Warehouse or distribution centres; Waste or resource management facilities; Water recreation structures; Water recycling facilities; Water supply systems; Wharf or boating facilities; Wholesale supplies

### **Zone SP1 Special Activities**

#### **1 Objectives of zone**

- To provide for special land uses that are not provided for in other zones.
- To provide for sites with special natural characteristics that are not provided for in other zones.
- To facilitate development that is in keeping with the special characteristics of the site or its existing or intended special use, and that minimises any adverse impacts on surrounding land.

#### **2 Permitted without consent**

Environmental protection works

#### **3 Permitted with consent**

The purpose shown on the Land Zoning Map, including any development that is ordinarily incidental or ancillary to development for that purpose

#### **4 Prohibited**

Any development not specified in item 2 or 3

### **Zone SP2 Infrastructure**

#### **1 Objectives of zone**

- To provide for infrastructure and related uses.
- To prevent development that is not compatible with or that may detract from the provision of infrastructure.

#### **2 Permitted without consent**

Environmental protection works

#### **3 Permitted with consent**

Roads; The purpose shown on the Land Zoning Map, including any development that is ordinarily incidental or ancillary to development for that purpose

#### **4 Prohibited**

Any development not specified in item 2 or 3

### **Zone RE1 Public Recreation**

#### **1 Objectives of zone**

- To enable land to be used for public open space or recreational purposes.
- To provide a range of recreational settings and activities and compatible land uses.
- To protect and enhance the natural environment for recreational purposes.

## **2 Permitted without consent**

Environmental protection works

## **3 Permitted with consent**

Child care centres; Community facilities; Emergency services facilities; Environmental facilities; Flood mitigation works; Information and education facilities; Jetties; Kiosks; Markets; Recreation areas; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Respite day care centres; Roads; Signage; Water storage facilities

## **4 Prohibited**

Any development not specified in item 2 or 3

### **A.2 Three Ports SEPP**

#### **Zone IN1 General Industrial**

##### **1 Objectives of zone**

- To provide a wide range of industrial and warehouse land uses.
- To encourage employment opportunities.
- To minimise any adverse effect of industry on other land uses.
- To facilitate and encourage port related industries that will contribute to the growth and diversification of trade through the port.
- To enable development for the purposes of business premises or office premises associated with, and ancillary to, port facilities or industries.
- To encourage ecologically sustainable development.

##### **2 Permitted without consent**

Environmental protection works.

##### **3 Permitted with consent**

Boat building and repair facilities; Business premises; Depots; Food and drink premises; Freight transport facilities; General industries; Jetties; Light industries; Neighbourhood shops; Office premises; Roads; Signage; Truck depots; Vehicle body repair workshops; Vehicle repair stations; Warehouse or distribution centres; Waste or resource management facilities.

##### **4 Prohibited**

Any development not specified in item 2 or 3.

---

## Council Meeting

12/10/2016

Item No	9.4
Subject	<b>Report on Submissions –Botany Bay Development Control Plan 2013 (Amendment No. 7) – Caretaker Dwellings</b>
Report by	Stephanie Lum, Senior Strategic Planner
File	S15/63-04

---

## Summary

Draft Amendment No. 7 to the *Botany Bay Development Control Plan (BBDCP) 2013* seeks to review controls regarding caretaker dwellings. The proposed controls are to ensure caretaker dwellings are ancillary to an approved industrial or business use; do not compromise the integrity of industrial or business areas by imposing unnecessarily restrictive constraints on the operation of industrial or business uses; and are appropriately designed to provide reasonable amenity for occupants.

The BBDCP 2013 (Draft Amendment No. 7) was on public exhibition from Wednesday 17 August 2016 to Friday 16 September 2016. No submissions were received. It is recommended that the proposed draft Amendment No. 7 to the *BBDCP 2013* (**Attachments 1 and 2**) which seeks to amend controls regarding caretaker dwellings be approved as publicly exhibited.

---

## Council Resolution

Minute 2016/025

Resolved by the Administrator:

1. That the amendment to the DCP in Attachments 1 and 2 of this report be adopted by Council in accordance with the *Environmental Planning & Assessment Act 1979* and Clause 21(1)(a) of the *Environmental Planning & Assessment Regulation 2000*; and
  2. That Council give public notice of its adoption of the DCP as amended within 28 days in accordance with the *Environmental Planning & Assessment Act 1979* and Clause 21 of the *Environmental Planning & Assessment Regulation 2000*.
- 

## Officer Recommendation

1. That the amendment to the DCP in Attachments 1 and 2 of this report be adopted by Council in accordance with the *Environmental Planning & Assessment Act 1979* and Clause 21(1)(a) of the *Environmental Planning & Assessment Regulation 2000*; and

2. That Council give public notice of its adoption of the DCP as amended within 28 days in accordance with the *Environmental Planning & Assessment Act 1979* and Clause 21 of the *Environmental Planning & Assessment Regulation 2000*.
- 

## Background

The former City of Botany Bay was receiving a number of development applications for large 'caretaker' dwellings in industrial and business park zones. Concerns were raised as to whether these were for a bona-fide caretaker purpose and whether the proposals were ancillary to the industrial or business use operating on the site. Permitting residential uses in the industrial and business park zones may undermine their intent as employment zones. In light of these issues, the controls for caretaker dwellings in the *BBDGP 2013* were reviewed.

At its meeting held 3 August 2016, the former Council resolved to place the BBDGP 2013 (Draft Amendment No. 7) on public exhibition. The proposed controls are in **Attachments 1 and 2**. The amendment was on public exhibition from Wednesday 17 August 2016 to Friday 16 September 2016.

---

## Financial Implications

If Council resolves to adopt the draft *BBDGP 2013* (Amendment No. 7), there will be minor costs for advertising in the local newspaper and printing of the adopted amendment to the *BBDGP 2013*.

---

## Conclusion

Draft Amendment No. 7 to the *Botany Bay Development Control Plan (BBDGP) 2013* seeks to review controls regarding caretaker dwellings. The proposed controls are to ensure caretaker dwellings are ancillary to an approved industrial or business use; do not compromise the integrity of industrial or business areas by imposing unnecessarily restrictive constraints on the operation of industrial or business uses; and are appropriately designed to provide reasonable amenity for occupants.

The *BBDGP 2013* (Draft Amendment No. 7) was on public exhibition from Wednesday 17 August 2016 to Friday 16 September 2016. No submissions were received.

It is recommended that the proposed draft Amendment No. 7 to the *BBDGP 2013* be approved as publicly exhibited for finalisation.

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## Attachments

Attachment 1 – Amended BBDGP 2013 – Part 6 – Employment Zones

Attachment 2 – Amended BBDGP 2013 – Part 9B – Botany South

The Former City of Botany Bay Council



# Part 6

## Employment Zones



## Development Control Plan



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## 6.1 Introduction

This Part of the DCP provides a framework to guide future development in the IN1 and IN2 industrial zones and the B5 and B7 business zones in the City. These zones generate a significant amount of employment opportunities and play an important role in the economy of the State. The purpose of this part is to provide more detailed objectives and controls for these employment zones, to support the provisions within the Botany Bay Local Environmental Plan 2013.

### 6.1.1 Land to which this Part Applies

This Part of the DCP applies to land zoned IN1 General Industrial, IN2 Light Industrial, B5 Business Development & B7 Business Park (**refer to Figure 1**), including the BATA Site at Lot 1 DP.1187426, at the corner of Heffron Road and Bunnerong Road, Eastgardens; but excludes land within the Botany South Industrial Precinct, which is detailed in **Part 9 - Key Sites**.

Industrial, business development and business park development within the Botany Bay LGA is located in the following Precincts (**refer to Figure 1**):

- Mascot West Business Park Precinct
- Mascot West Industrial Precinct
- Mascot Business Development Precinct
- Mascot Industrial Precinct
- Lord Street Business Park Precinct
- Botany (West) Industrial Precinct
- Banksmeadow Industrial Precinct

This Part of the DCP needs to be read in conjunction with:

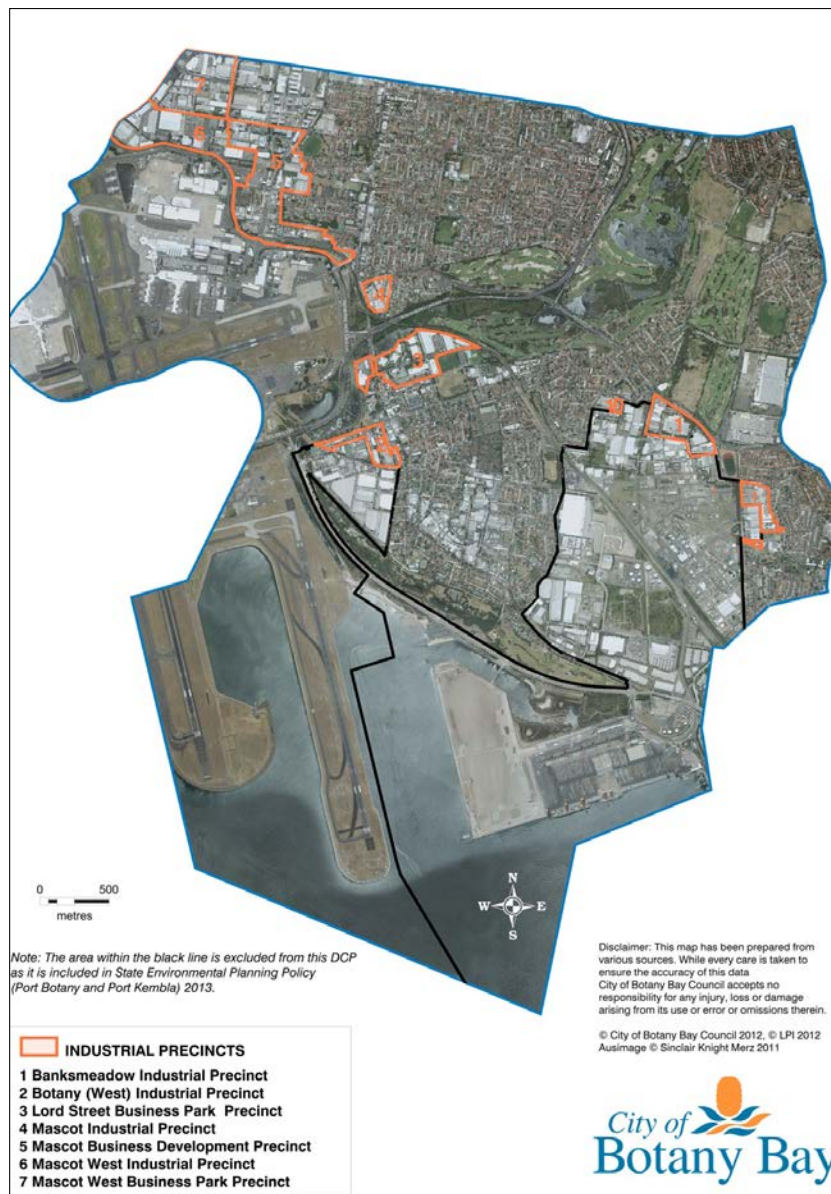
- Part 1 - Introduction
- Part 2 - Advertising and Notification
- Part 3 - General Controls
- Part 4 - Residential Development
- Part 5 - Business Centres
- Part 7 - Other Development and Land Uses
- Part 8 - Character Precincts
- Part 9 - Key Sites
- Part 10 – Technical Guidelines

Existing dwelling houses in the B7 zone and alterations and additions to such dwellings are to comply with the provisions of **Clause 6.12** of BBLEP 2013 and the provisions of **Part 4A - Dwelling Houses** of this DCP where relevant.





Figure 1 - Industrial and Business Park Precincts within the Botany Bay LGA





### 6.1.2 General Objectives

This Part aims to improve the quality of industrial and business park development within the City of Botany Bay. The general objectives of this Part are:

- O1 To implement the aims of Botany Bay LEP 2013;
- O2 To guide the nature, scale and quality of development in the industrial and business park areas;
- O3 To improve the environmental and aesthetic amenity of industrial and business park areas for those who visit and/or work in the areas;
- O4 To encourage the development of cleaner, well-landscaped industrial and business park zoned areas with well maintained industrial/commercial buildings and sites;
- O5 To ensure industrial and business park development has minimal impacts on adjacent sensitive land uses;
- O6 To ensure that development incorporates safe, effective and convenient provision for servicing, parking, pedestrian and vehicular access and movements;
- O7 To ensure that the effects of development upon drainage, water quality and stormwater management are considered; and
- O8 To encourage ecologically sustainable development.

### 6.1.3 Contamination

Due to the industrial history of the City of Botany Bay, the management of contaminated land remains an important issue for Council and strict controls are required to maintain and protect the health of residents and the environment.

**Part 3K - Contamination** creates the framework to ensure that while carrying out its planning functions, Council considers the possibility that a previous or adjacent land use caused contamination of the site, and that there may be a potential risk to health and the environment from that contamination.

In preparing your Development Application you are required to address the provisions of **Part 3K - Contamination**.

Any enquiries regarding the content of the Contamination Part should be directed to Council's Customer Service Centre on (02) 9366 - 3666.



### 6.1.4 Design Quality Principles

Botany Bay LEP 2013 aims “to create a highly liveable urban place, through promotion of design excellence in all elements of the built environment and public domain.” In recognition of this aim, Council has adopted design quality principles for industrial and business park development within the City of Botany Bay. Good design is linked to its site and locality, responding to the landscape, existing built form, culture and attitudes.

Good design also serves the public interest and includes appropriate innovation to respond to technical, social, aesthetic, economic and environmental challenges. The design quality principles do not generate design solutions, but provide a guide to achieving good design and the means of evaluating the merit of proposed solutions.

Developments covered by this Part are required to consider the following Design Quality Principles:

#### Design Quality Principles

**P1 The contribution of industrial and business land use activity at the Local, Regional and State levels**

- Development contributes to the economic viability of the State, and Region through the provision of services/infrastructure connected with the airport, seaport and service industry;
- Development contributes to the employment levels within the Region/Local area;
- Development promotes and strengthens the gateway role of the City;
- Development is located to promote the use of the passenger rail line, goods railway line and State / Regional road networks/links; and
- Development promotes a range of industrial and business activities.

**P2 The improvement to the built form/urban form and public domain of the industrial and business areas of the City**

- Development is of a building height, scale, design and layout that complements the adjoining / surrounding urban form;
- Building form is to provide interest – through an articulated façade and a variation in texture / finishes / materials;
- Built form / urban forms where strategically located, are of a high architectural standard to promote the Gateway function of the City;
- Buildings allow for a variation of uses over their life time; and
- Development activities through site layout and building design are to protect the visual and environmental amenity of adjoining non-industrial uses.



**P4 The efficient design, operation and function of industrial / business land uses.**

- All site operations and equipment associated with a development are to be contained wholly within the site;
- Building design and site layout shall allow for the efficient and safe system for manoeuvring, loading and unloading, and parking of vehicles;
- Development shall provide an adequate level of off street parking to address the parking demands generated by the subject use; and
- Developments are to be designed and managed to minimise the impacts on other industrial or business uses and to protect the amenity of surrounding residential areas.

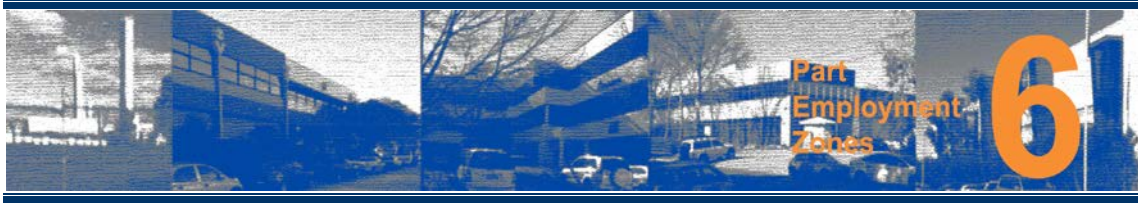
**P5 The need for a compatible and workable relationship between industrial/business and non-industrial/business uses.**

- Developments are to have a buffer zone where the site adjoins a residential land use in order to protect residential amenity;
- Noise generation and air quality levels generated from the functions and operations of a development including associated vehicles are not to adversely impact on the amenity of non-industrial/business uses and residential areas;
- Local road networks within the City are not to be adversely affected as a result of the operations of an industrial or business use; and
- Developments are to protect the visual and environmental amenity of adjoining residential land uses.

**P6 The promotion of developments that are sustainable and encourage the protection of the environment.**

- Developments are to demonstrate the principles of environmental sustainability throughout all phases of development, including stormwater design, waste disposal, energy efficiency and water conservation;
- Developments are to minimise risks to human health and the off-site environment;
- Development's design, construction and operations are energy efficient and assist in the reduction of green house gas emissions and in the conservation of non renewable resources; and
- Developments are to be a safe and comfortable environment for workers and residents of the City.





## 6.2 Precinct Controls

The character of the industrial & business park areas within the City varies greatly between the commercial and airport related uses located in Mascot; and the heavy industrial/port related uses situated in Banksmeadow in the vicinity of Port Botany.

The best way to describe the character of the industrial and business park related development is to divide the City into 7 Precincts. These Precincts are identified in **Figure 1**.

Each Precinct has a distinct character resulting from the physical characteristics, built form elements, land use activities, road network and allotment sizes. When considering these 7 Precincts, a broad strategy for industrial land use activity within the City of Botany Bay has emerged. This evolving strategy is briefly described as follows:

- Airport related commercial & warehousing uses are located in the Mascot West Business Park Precinct;
- Freight forwarding and related airport industrial activities are located in the Mascot West Industrial Precinct;
- Airport related commercial development as well as motels and serviced apartments are located in the Mascot Business Development Precinct;
- Light industrial uses in the Mascot Industrial Precinct;
- Light industrial & business park activities, and commercial uses that are relatively compatible with residential land uses in the Lord Street Business Park Precincts; and
- Heavy industry as well as warehousing and distribution related to Port Botany is concentrated in the Banksmeadow and Botany (west) Industrial Precincts.

### 6.2.1 Development Application Requirements

Developments within the identified Precincts are required to be consistent with the character statement, and the objectives and controls of the particular Precinct in which the site is located. These requirements should be addressed in:

- The design and layout of a proposed development; and
- The Statement of Environmental Effects submitted with any Development Application.



## 6.2.2 Mascot (West) Business Park Precinct

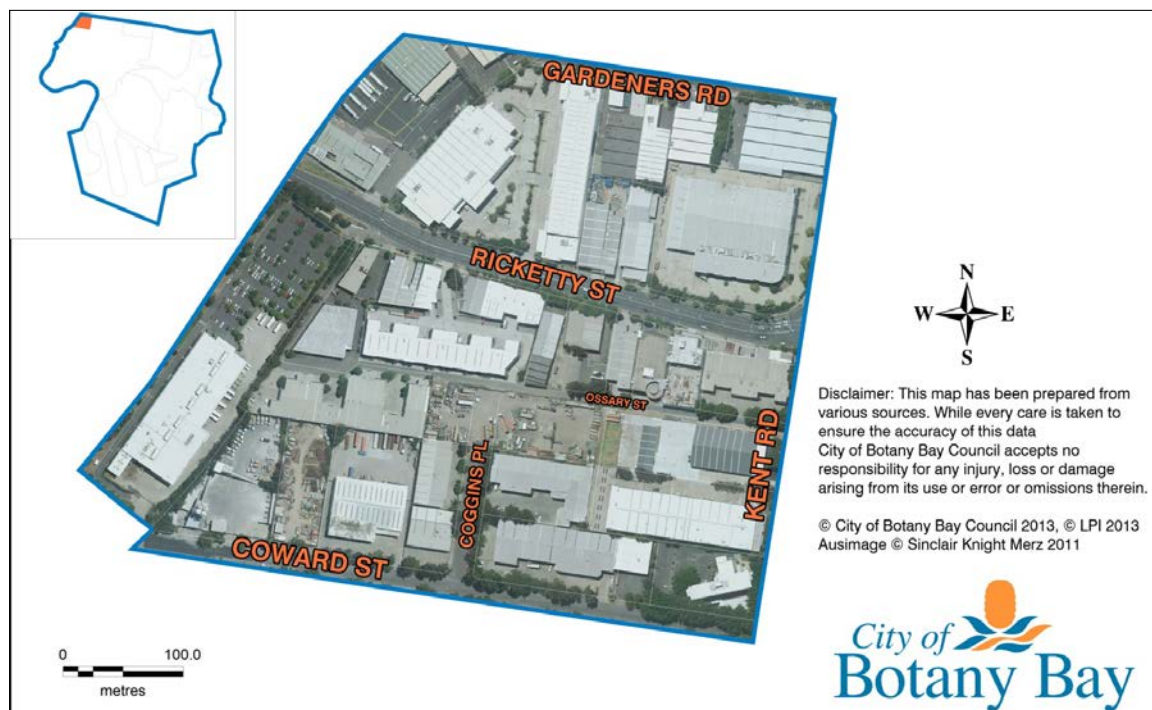
### Existing Character

Mascot (West) Business Park Precinct is bounded by Coward Street, Alexandra Canal to the west and the airport to the south. **Figure 2** indicates the boundaries of the Precinct.

The Precinct is comprised of warehouse and distribution developments (related to freight transportation); and industrial developments including smash repair stations and welding businesses. Newer buildings include commercial and office premises with active street frontages comprising coffee shops and retail outlets. Company headquarters occupy the commercial buildings in close proximity to their warehouse operations. One heavy industrial use remains in the Precinct on a time-limited consent being the concrete batching plant at No.294-296 Coward Street, Mascot.

The Precinct is affected by 20 to 25 and 25 to 30 ANEF Contours and significant road traffic noise.

**Figure 2 - Mascot (West) Business Park Precinct**





## Desired Future Character

### Objectives

- O1** To encourage and provide for business park development that has an affinity or locational need to be near to Sydney (Kingsford Smith) Airport;
- 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;
- O3** To allow for the provision and development of an open space and pedestrian corridor along the foreshore of Alexandra Canal;
- O4** To ensure that development adjacent to Alexandra Canal assists in achieving improved access visual amenity and quality of landscape in the area;
- O5** To ensure that development adjacent to Alexandra Canal minimises the quantity of stormwater runoff, its impact on the aquatic environment and the potential disturbance of contaminated sediments;
- O6** To ensure to that development supports an efficient and sustainable transport system with a high level of access to public transport; and
- O7** To ensure to that development can withstand the stresses of flooding and sea level rise and does not adversely impact flooding.

### Controls

- C1** Development is to encourage a higher public transport (including walking and cycling) use and include strategies to encourage and promote car sharing and car pooling strategies. In this respect a Workplace Travel Plan is to be lodged with the development application. The Workplace Travel Plan is to establish measurable targets to achieve the mode share targets stated in the Mascot Town Centre Precinct TMAP – maximum car mode share: 65% by 2021 and 57% by 2031.
- C2** Developments, including alterations and additions must:
  - (i) Improve the appearance of buildings, particularly along the roads which serve a gateway function to Sydney Airport and the Sydney CBD; and
  - (ii) Comply with Sydney Airport's regulations in regard to safety, lighting and height of buildings.
- C3** Developments within the precinct shall submit a detailed Flood Study/Assessment for 1 in 100 year average recurrence interval (ARI) design storm events and probable maximum flood (PMF). The Flood Study/Assessment is to be prepared by a suitably qualified and experienced civil engineer. The Flood Study/Assessment is required to:



- (i) Be in accordance with the current version of Australian Rainfall and Runoff (ARR) and the NSW Floodplain Development Manual; and
- (ii) Consider the impacts from Climate Change and Sea Level Rise.

**C4** Development shall:

- (i) Have finished floor levels of a minimum 500mm above the 1 in 100 year flood level habitable areas and 300mm for industrial areas and garages; and
- (ii) Not impede the passage of floodwater to cause a rise (afflux) in the flood level upstream and/or increase the downstream velocities of flow.

**C5** Development within the precinct shall require submission of a Risk Management Plan to address potential risks related to coastal sea levels (projected to increase above Australian Height Datum by 40cm by 2050 and by 90cm by 2100). The Risk Management Plan shall be prepared by a qualified consultant and in accordance with the following policies and documents:

- (i) Any current policy of Council relating to projected future sea level rises and related inundation mapping;
- (ii) NSW Coastal Planning Guidelines: Adapting to Sea Level Rise;
- (iii) Flood Risk Management Guide: Incorporation Sea Level Rise Benchmarks in Flood Risk Assessment; and
- (iv) NSW Flood Plain Development Manual.

In addition, the Risk Management Plan shall minimise the exposure of development to coastal risk and provide management responses and adaptation strategies to identify and manage risk and coastal hazards associated with the following:

- (i) The safety of future workers and occupants on-site;
- (ii) The safety of the public off-site;
- (iii) The safety of adjoining properties;
- (iv) The safe evacuation route during storm and flood events; and
- (v) The freeboard above the flood planning levels.

**C6** Development along Alexandra Canal must comply with the following:

- (i) No buildings, structures, car parking, storage or vehicle manoeuvring areas are permitted within a minimum 10 metre wide area adjoining the Canal and 6 metres along the tributaries;
- (ii) The maximum wall height at the edge of a building fronting the Canal at the line of the 10 metre setback is 9 metres. If the building is higher than 9 metres the additional height must be setback by 3 metres from the line of the 9 metres height;
- (iii) The setback is to be landscaped and planted with appropriate species, as detailed in the Alexandra Canal Masterplan, such landscaping not to include plants with invasive root systems and that have the potential to damage the canal wall or it surrounding infrastructure;





- (iv) The façade of buildings facing the setback should be enlivened by windows, staff amenities and provide passive surveillance of the setback area;
- (v) A right of carriageway shall be created along the Canal and at the end of Coward Street to provide public pedestrian access to Alexandra Canal foreshore for the purpose of permanent pedestrian or cycle access, stormwater easement requirements and/or access for essential maintenance; and
- (vi) Two access points are to be provided to Alexandra Canal - at Ricketty Street and at Coward Street.

**Note:** Sydney Water owns Alexandra Canal, which is located on Council's north western boundary. Ownership of this 19th Century canal was transferred to Sydney Water by the New South Wales Government in 1993. The Environment Protection Authority (EPA) has determined that the sediments in the canal are contaminated to the extent that they constitute a 'significant risk of harm' under the *Contaminated Land Management Act 1997*. Since re-mobilisation of the sediments could increase the extent of the contamination, the EPA has indicated that the sediments should not be disturbed.

Accordingly any future development should refrain from carrying out or causing to be carried out any works in the Canal that would result in the disturbance, or further disturbance, of bed sediment at the site except in accordance with a plan directed at minimising the disturbance of the sediments, being a plan approved in writing by Sydney Water and the EPA. Sydney Water has requested that Council forward any development proposals, which could directly impact on the Canal or its sediments to Sydney Water for review.

- C7** Development shall be designed and constructed in accordance with Australian Standard AS 2021 (Acoustic Aircraft Noise Intrusion-Building siting and Construction).

**Note:** Details to be included in the Development Application. For further details in relation to Aircraft Noise refer to **Part 3J - Development Affecting Operations at Sydney Airport**.

- C8** The introduction of noise abatement measure to achieve compliance with current AS 2021 must be done in a manner that does not compromise the architectural design of a building or impact on the character of an existing streetscape.
- C9** All development that is in, or immediately adjacent to, the rail corridor or a busy road must be designed in accordance with NSW Department of Planning '**Development Near Rail Corridors and Busy Roads - Interim Guidelines, December 2008**'.



### 6.2.3 Mascot (West) Industrial Precinct

#### Existing Character

This precinct is bounded by Coward Street, Alexandra Canal to the west and the airport to the south. **Figure 3** indicates the boundaries of the Precinct.

This Precinct contains a large consolidated industrial area immediately north of Sydney Airport and provides the main area for airfreight companies; warehousing and distribution uses; and other uses related to Sydney Airport. The area is characterised by warehouse and distribution centres, industrial uses, office premises, car parks for Qantas staff and ground floor cafes to provide convenience products to workers in the area.

The Precinct is affected by the 25 to 30 ANEF Contour and road and rail noise.

**Figure 3 - Mascot (West) Industrial Precinct**





## Desired Future Character

### Objectives

- O1** To encourage and provide for industrial development that has an affinity or locational need to be near to Sydney (Kingsford Smith) Airport;
- O2** To allow for the provision and development of an open space and pedestrian corridor along the foreshore of Alexandra Canal;
- O3** To ensure that development adjacent to Alexandra Canal assists in achieving improved access visual amenity and quality of landscape in the area;
- O4** To ensure that development adjacent to Alexandra Canal minimises the quantity of stormwater runoff, its impact on the aquatic environment and the potential disturbance of contaminated sediments;
- O5** To ensure to that development can withstand the stresses of flooding and sea level rise and does not adversely impact flooding in the area; and
- O6** To ensure the protection of the Sydenham-Botany Goods railway line.

### Controls

- C1** Development shall encourage a higher public transport (including walking and cycling) use and include strategies to encourage and promote car sharing and car pooling strategies. In this respect a Workplace Travel Plan is to be lodged with the development application. The Workplace Travel Plan shall establish measurable targets to achieve the mode share targets stated in the Mascot Town Centre Precinct TMAP - maximum car mode share: 65% by 2021 and 57% by 2031.
- C2** Development is to have a relationship with Sydney (Kingsford Smith) Airport.
- C3** Development shall not adversely affect the operation of duplication of the Sydenham-Botany Goods railway line.
- C4** Development within the precinct shall submit a detailed Flood Study/Assessment for 1 in 100 year average recurrence interval (ARI) design storm events and probable maximum flood (PMF). The Flood Study/Assessment shall be prepared by a suitably qualified and experienced civil engineer. The Flood Study/Assessment is required to:
  - (i) Be in accordance with the current version of Australian Rainfall and Runoff (ARR) and the NSW Floodplain Development Manual; and
  - (ii) Consider the impacts from Climate Change and Sea Level Rise.
- C5** Development shall:



- (i) Have finished floor levels of a minimum 500mm above the 1 in 100 year flood level for habitable areas shall be and 300mm for industrial areas and garages; and
- (ii) Not impede the passage of floodwater to cause a rise (afflux) in the flood level upstream and/or increase the downstream velocities of flow.

- C6** Development within the precinct shall require submission of a Risk Management Plan to address potential risks related to coastal sea levels (projected to increase above Australian Height Datum by 40cm by 2050 and by 90cm by 2100). The Risk Management Plan shall be prepared by a qualified consultant and in accordance with the following policies and documents:
- (i) Any current policy of Council relating to projected future sea level rises and related inundation mapping;
  - (ii) NSW Coastal Planning Guidelines: Adapting to Sea Level Rise;
  - (iii) Flood Risk Management Guide: Incorporation Sea Level Rise Benchmarks in Flood Risk Assessment; and
  - (iv) NSW Flood Plain Development Manual.

In addition, the Risk Management Plan shall minimise the exposure of development to coastal risk and provide management responses and adaptation strategies to identify and manage risk and coastal hazards associated with the following:

- (i) The safety of future workers and occupants on-site;
- (ii) The safety of the public off-site;
- (iii) The safety of adjoining properties;
- (iv) The safe evacuation route during storm and flood events; and
- (v) The freeboard above the flood planning levels.

- C7** Development along Alexandra Canal must comply with the following:

- (i) No buildings, structures, car parking, storage or vehicle manoeuvring areas are permitted within a minimum 10 metre wide area adjoining the Canal and 6 metres along the tributaries;
- (ii) The maximum wall height at the edge of a building fronting the Canal at the line of the 10 metre setback is 9 metres. If the building is higher than 9 metres the additional height must be setback by 3 metres from the line of the 9 metres height;
- (iii) The setback is to be landscaped and planted with appropriate species, as detailed in the Alexandra Canal Masterplan, such landscaping not to include plants with invasive root systems and that have the potential to damage the canal wall or it surrounding infrastructure;
- (iv) The façade of buildings facing the setback should be enlivened by windows, staff amenities and provide passive surveillance of the setback area; and
- (v) A right of carriageway shall be created along the Canal and at the end of Coward Street to provide public pedestrian access to Alexandra Canal foreshore for the purpose of permanent pedestrian or cycle access, stormwater easement requirements and/or access for essential maintenance.





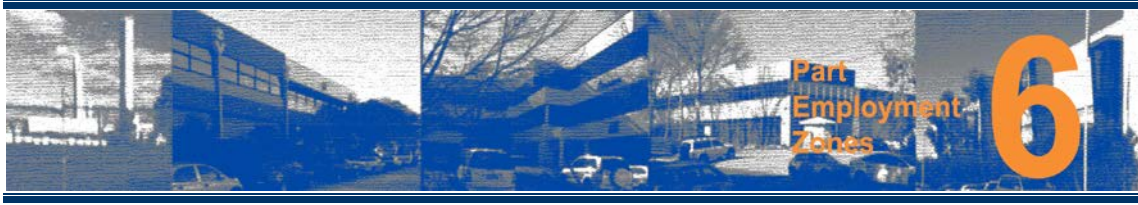
**Note:** Sydney Water owns Alexandra Canal, which is located on Council's north-western boundary. Ownership of this 19th Century canal was transferred to Sydney Water by the New South Wales Government in 1993. The Environment Protection Authority (EPA) has determined that the sediments in the Canal are contaminated to the extent that they constitute a 'significant risk of harm' under the Contaminated Land Management Act 1997. Since re-mobilisation of the sediments could increase the extent of the contamination, the EPA has indicated that the sediments should not be disturbed.

Accordingly any future development should refrain from carrying out or causing to be carried out any works in the Canal that would result in the disturbance, or further disturbance, of bed sediment at the site except in accordance with a plan directed at minimising the disturbance of the sediments being a plan approved in writing by Sydney Water and the EPA. Sydney Water has requested that Council forward any development proposals, which could directly impact on the Canal or its sediments to Sydney Water for review.

- C8** Development shall be designed and constructed in accordance with Australian Standard AS 2021 (Acoustic Aircraft Noise Intrusion-Building siting and Construction).

**Note:** Details to be included in the Development Application. For further details in relation to Aircraft Noise refer to **Part 3J - Development Affecting Operations at Sydney Airport**.

- C9** The introduction of noise abatement measure to achieve compliance with current AS 2021 must be done in a manner that does not compromise the architectural design of a building or impact on the character of an existing streetscape.
- C10** All development that is in, or immediately adjacent to, the rail corridor or a busy road must be designed in accordance with NSW Department of Planning '**Development Near Rail Corridors and Busy Roads - Interim Guidelines, December 2008**'.



## 6.2.4 Mascot Business Development Precinct

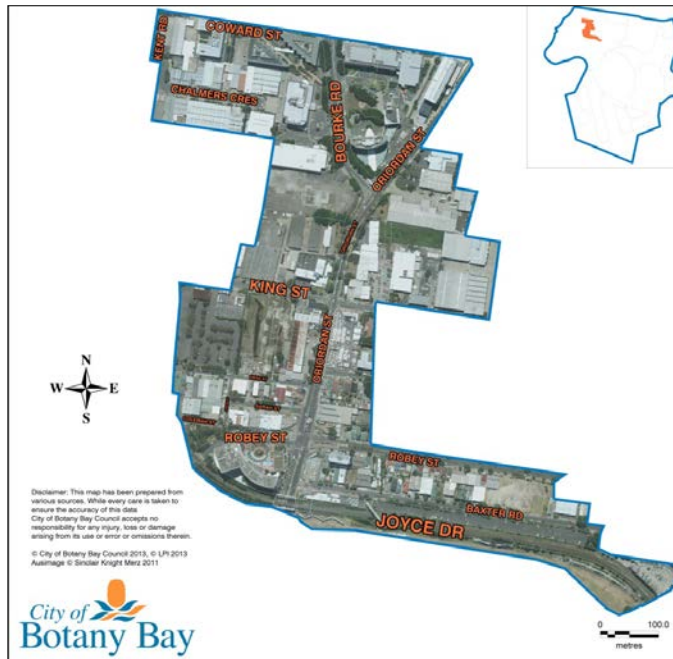
### Existing Character

This Precinct is bounded by Coward Street, Alexandra Canal to the west and the airport to the south. **Figure 4** indicates the boundaries of the Precinct. The Precinct is comprised of warehouse and distribution developments (related to freight transportation); and industrial developments including smash repair stations and welding businesses. Newer buildings include commercial and office premises with active street frontages comprising coffee shops and retail outlets. Company headquarters occupy the commercial buildings in close proximity to their warehouse operations.

The Precinct is affected by a number of Classified Road Widening which are identified on the Botany Bay Local Environmental Plan 2013 - Land Reservation Acquisition Map. The Precinct is affected by 20 to 25 and 25 to 30 ANEF Contours and significant road and rail noise.

Part of the suburb is within the zone of influence of the High Pressure Gas Pipeline that follows the ARTC Rail Corridor to the Qenos Site at the Botany Industrial Park, Denison Street, Banksmeadow. Development Applications, planning proposals and rezoning of land received by Council for land within the Zone of Influence will be referred to the APA Group for consideration and comment.

**Figure 4 - Mascot Business Development Precinct**



## Desired Future Character

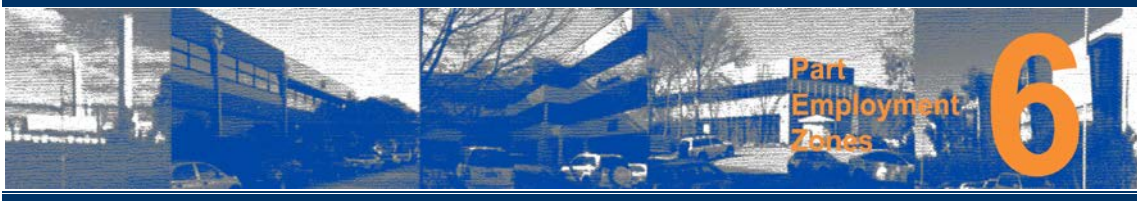
### Objectives

- O1** To encourage and provide for business development that has an affinity or locational need to be near to Sydney (Kingsford Smith) Airport;
- 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;
- O3** To ensure to that development supports an efficient and sustainable transport system with a high level of access to public transport;
- O4** To ensure the protection of the Sydenham-Botany Goods Railway Line; and
- O5** To ensure the protection of the Airport Line Tunnel which is generally located under Bourke Road and O'Riordan Street.



## Controls

- C1** Development is to encourage a higher public transport (including walking and cycling) use and include strategies to encourage and promote car sharing and car pooling strategies. In this respect a Workplace Travel Plan is to be lodged with the development application. The Workplace Travel Plan shall establish measurable targets to achieve the mode share targets stated in the Mascot Town Centre Precinct TMAP - maximum car mode share: 65% by 2021 and 57% by 2031.
- C2** Developments, including alterations and additions shall:
- (i) Improve the appearance of buildings, particularly along the roads which serve a gateway function to Sydney Airport and the Sydney CBD; and
  - (ii) Comply with Sydney Airport's regulations in regard to safety, lighting and height of buildings.
- C3** Development which seeks the maximum building height under the Botany Bay Local Environmental Plan 2013 and is within land bounded by Coward Street, O'Riordan Street and Bourke Road; development along eastern side of O'Riordan Street; and development within land bounded by Baxter Road, O'Riordan Street, Joyce Drive and Botany Road, will penetrate the Obstacle Limitation Surface (OLS) and would need to be assessed by CASA, Airservices Australia & the Airlines before an application could be submitted to the Department of Infrastructure & Transport for their determination.
- C4** Redevelopment of property must take into account any road widening affectation.
- C5** Development must not adversely affect the operation of duplication of the Sydenham-Botany Good Railway Line.
- C6** Development within 25 metres of either side of the centre line of the Airport Line Tunnel is to be referred to RailCorp.
- C7** Development shall be designed and constructed in accordance with Australian Standard AS 2021 (Acoustic Aircraft Noise Intrusion-Building siting and Construction).
- Note:** Details to be included in the Development Application. For further details in relation to Aircraft Noise refer to **Part 3J - Development Affecting Operations at Sydney Airport**.
- C8** The introduction of noise abatement measure to achieve compliance with current AS 2021 must be done in a manner that does not compromise the architectural design of a building or impact on the character of an existing streetscape.
- C9** All development that is in, or immediately adjacent to, the rail corridor or a busy road must be designed in accordance with NSW Department of Planning 'Development Near Rail Corridors and Busy Roads - Interim Guidelines, December 2008'.
- C10** Development of 4 storeys or more in height, adjacent to a school, are to consider the following:
- (i) Mitigation of overshadowing impacts on the school and its grounds through setbacks and



controlled bulking and scaling of buildings;

- (ii) Orientating internal spaces so that low occupancy rooms face school property; and
- (iii) Windows and balconies are to be designed to reduce opportunities for overlooking school grounds.

**C11** Any new development proposals (regardless of scale) which are located along O'Riordan Street or Robey Street (within the area defined within **Figure 4 – Mascot Business Development Precinct**) must be referred to Roads and Maritime for consultation at the Pre-DA stage.





### 6.2.5 Mascot Industrial Precinct

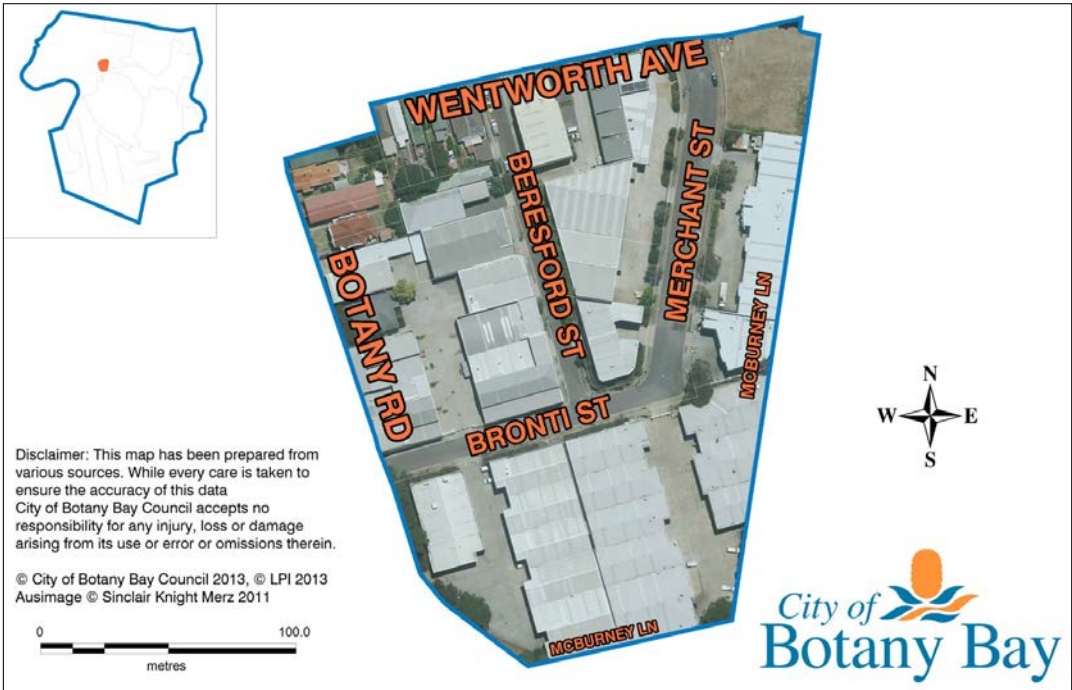
#### Existing Character

The Precinct is bounded by Botany Road to the west, Wentworth Ave to the north and McBurney Lane to the east and south. **Figure 5** indicates the borders of the Precinct. The Precinct is generally characterised by light industrial uses, warehousing and distribution and office premises. There are also a number of one storey dwellings and cottages and a church present within the Precinct. The dwellings have been acoustically treated for aircraft noise under the Sydney Aircraft Noise Insulation Project (SANIP) scheme as they are located within the 30-35 ANEF contour. The area is subject to heavy traffic along Botany Road and Wentworth Ave.

There is a small open space reserve located at the corner of Botany Road and Wentworth Ave which is owned by the RMS and under care, control & management of the Council. This Precinct is affect by 25 to 30 and 30 to 35 ANEF Contours and significant road and rail noise.

Part of the suburb is within the zone of influence of the High Pressure Gas Pipeline that follows the ARTC Rail Corridor to the Qenos Site at the Botany Industrial Park, Denison Street, Banksmeadow. Development Applications, planning proposals and rezoning of land received by Council for land within the Zone of Influence will be referred to the APA Group for consideration and comment.

Figure 5 - Mascot Industrial Precinct





Desired Future Character

Objectives

O1

To ensure that any development does not adversely affect the heritage significance of Heritage Items within the Precinct;

O2

To ensure that the industrial uses are compatible with the adjoining established residential area; and

O3

To ensure to the protection of the Sydenham-Botany Goods Railway Line.

Controls

C1

Development must not adversely affect the operation or duplication of the Sydenham-Botany Goods railway line.

C2

Development is not to impact adversely on the surrounding residential areas.

C3

Development which seeks the maximum building height under the Botany Bay Local Environmental Plan 2013 will penetrate the Obstacle Limitation Surface (OLS) and would need to be assessed by CASA, Airservices Australia & the Airlines before an application could be submitted to the Department of Infrastructure & Transport for their determination.

C4

Development shall be designed and constructed in accordance with Australian Standard AS 2021 (Acoustic Aircraft Noise Intrusion-Building siting and Construction).

Note:

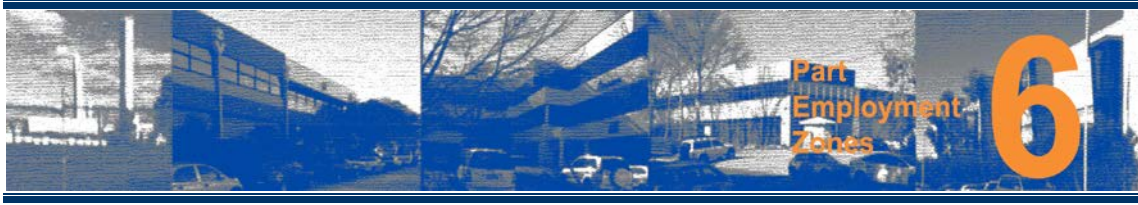
Details to be included in the Development Application. For further details in relation to Aircraft Noise refer to **Part 3J - Development Affecting Operations at Sydney Airport**.

C5

The introduction of noise abatement measure to achieve compliance with current AS 2021 must be done in a manner that does not compromise the architectural design of a building or impact on the character of an existing streetscape.

C6

All development that is in, or immediately adjacent to, the rail corridor or a busy road must be designed in accordance with NSW Department of Planning '**Development Near Rail Corridors and Busy Roads - Interim Guidelines, December 2008**'.



## 6.2.6 Lord Street Business Park Precinct (including 1024 Botany Road, Botany)

### Existing Character

The Lord Street Business Park Precinct is identified in **Figure 6**. It has a "Business Park / High Technology" appearance. A main feature of the Lord Street development is the Mill Ponds, which forms a visual gateway to Botany. The Mills Ponds are part of the State listed Heritage Item – Botany Water Reserves, which stretch from the northern part of The Lord Street Business Park, east of the goods railway line and up to Gardeners Road. Botany Water Reserves contain two threatened ecological communities. The wetlands are also identified as being of National significance within the Directory of Important Wetlands of Australia. The Lord Street Park Precinct is adjacent to the Botany Township Heritage Conservation Area and the St Matthew's Anglican Church at 1331 Botany Road, Botany which is a heritage item in the Botany Bay Local Environmental Plan 2013. The Church is also listed in the Register of the National Estate. The eastern side of the Lord Street Park Precinct which fronts Lord Street is zoned B7 Business Park. The western component of the Lord Street Park Precinct includes the site at No. 1024 Botany Road which consists of the following parcels:

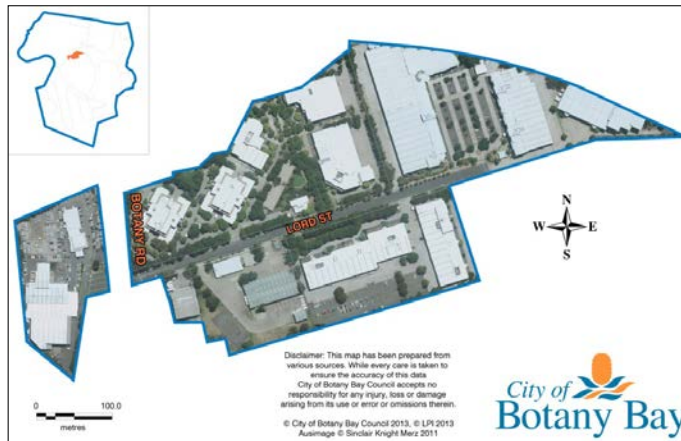
- Lot 1 DP.826172
- Lots 1 and 2 DP.7826
- Lot 1 DP.590790
- Lots 6, 7, 8, 9, and 10 DP.7826

This site is zoned B5 Business Development under the BBLEP 2013. The Precinct is affected by the 20 to 25, 25 to 30 and 30 to 35 ANEF Contours and significant road and rail noise. Applicants are also to refer to **Part 3M - Natural Resources** as the Precinct is adjacent to the Botany Wetlands.

Part of the suburb is within the zone of influence of the High Pressure Gas Pipeline that follows the ARTC Rail Corridor to the Qenos Site at the Botany Industrial Park, Denison Street, Banksmeadow. Development Applications, planning proposals and rezoning of land received by Council for land within the Zone of Influence will be referred to the APA Group for consideration and comment.

**Figure 6 - Lord Street Business Park Precinct**





### Desired Future Character

#### Objectives

- O1** To ensure that any new development enhances the environmental and visual amenity of the locality, especially the Mill Ponds (east and west of Botany Road);
- O2** To ensure that any development does not adversely affect the heritage significance of Heritage Items within the Precinct and the adjacent Botany Township Heritage Conservation Area;
- O3** To ensure that the business park and business development uses are compatible with the adjoining established residential area; and
- O4** To ensure to that development can withstand the stresses of flooding and sea level rise and does not adversely impact flooding.

#### Controls

- C1** Development, including alterations and additions, shall be of a high standard and shall maintain the Business Park/High technology appearance of the Precinct.
- C2** Any development fronting the Mill Ponds shall include a buffer zone or setback area between the waterbody and any buildings, structures or pavements to minimise environmental and visual impact on the wetlands and its environs and maintain existing environmental amenity. The extent of the buffer shall be assessed on the merit of each case and may be required to be embellished with landscaping using appropriate species.
- C3** Developments are to ensure a high level of on-site stormwater management, with stormwater



retention and treatment to maximise the passage of fauna around the wetlands and to minimise impact of runoff on the riparian system.

- C4** Development is not to impact adversely on the surrounding residential areas, in terms of height, scale and building bulk and heritage significance.
- C5** Development, including alterations and additions, is to comply with Sydney Airport's regulations in regard to safety, lighting and height of buildings.
- C6** Development north of Lord Street and west of Botany Road shall submit a detailed Flood Study/Assessment for 1 in 100 year average recurrence interval (ARI) design storm events and probable maximum flood (PMF). The Flood Study/Assessment is to be prepared by a suitably qualified and experienced civil engineer. The Flood Study/Assessment is required to:
  - (i) Be in accordance with the current version of Australian Rainfall and Runoff (ARR) and the NSW Floodplain Development Manual; and
  - (ii) Consider the impacts from Climate Change and Sea Level Rise.
- C7** Development shall be designed and constructed in accordance with Australian Standard AS 2021 (Acoustic Aircraft Noise Intrusion-Building siting and Construction).
 

**Note:** Details to be included in the Development Application. For further details in relation to Aircraft Noise refer to **Part 3J - Development Affecting Operations at Sydney Airport**.
- C8** The introduction of noise abatement measure to achieve compliance with current AS 2021 must be done in a manner that does not compromise the architectural design of a building or impact on the character of an existing streetscape.
- C9** All development that is in, or immediately adjacent to, the rail corridor or a busy road must be designed in accordance with NSW Department of Planning '**Development Near Rail Corridors and Busy Roads - Interim Guidelines, December 2008**'.
- C10** Development of 4 storeys or more in height, adjacent to a school, are to consider the following:
  - (i) Mitigation of overshadowing impacts on the school and its grounds through setbacks and controlled bulking and scaling of buildings;
  - (ii) Orientating internal spaces so that low occupancy rooms face school property; and
  - (iii) Windows and balconies are to be designed to reduce opportunities for overlooking school grounds.



### 6.2.7 Botany (West) Industrial Precinct

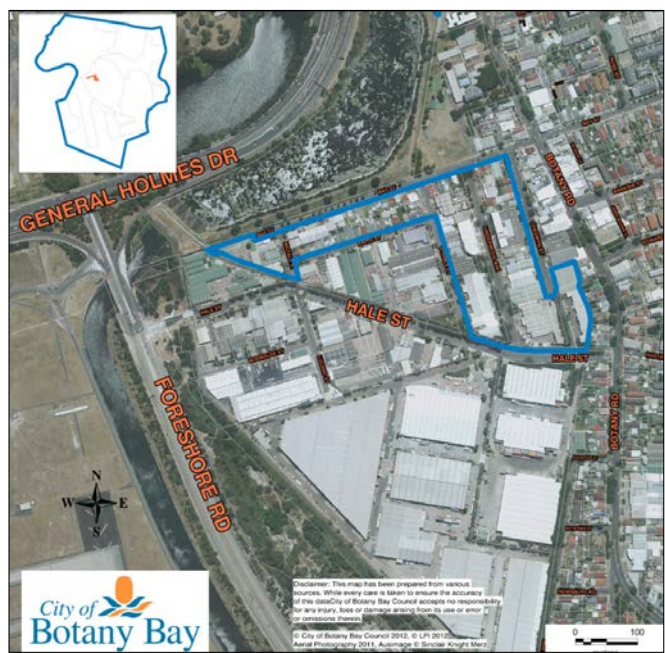
#### Existing Character

Figure 7 indicates the boundaries of the Precinct.

The remainder of the industrial area is zoned under the SEPP (Three Ports) 2013. Applicants are to note that Council is currently preparing a separate DCP for the land zoned under the SEPP (Three Ports) 2013.

The Precinct is affected by the 25 to 30 and 30 to 35 ANEF Contours and road noise.

Figure 7 - Botany (West) Industrial Precinct



This area is characterised by industrial uses on single and relatively small (residential size) allotments, interspersed with residential uses. The area generally to the north of Erith Street is zoned IN1 Industrial and B7 Business Park under the Botany Bay LEP 2013.

To the south of Erith Street it is zoned IN1-General Industrial under State Environmental Planning Policy (Three Ports) 2013.



The B7 zone allows light industry to continue thereby not reducing the floor space potential in the zone. The B7 zone however does allow other industries such as high technology industries and may accommodate more creative industries including film studios, art galleries and architect's offices.

Due to the allotment sizes in this area large scale industrial uses would not be economically viable hence the need to promote other employment generating uses which do not require large warehouse units. The small land sizes reflect the heritage items along Bay Street that represent the last known fishing village cottages in the area. This heritage listing means the sites could not be amalgamated for larger scale industrial units. Therefore small-scale start up business would be better located within these heritage items.

Furthermore Bay Street and Erith Street are narrow streets which limits the size of trucks able to access the area and manoeuvre within the street network. This access issue will also limit the type of industrial uses that would be able to function in this area.

Council is not seeking to reduce or remove the employment generating opportunities within this area but rather promote businesses which best fit within the constraints of the area. The location of this B7 Business Park zoning adjoining the Hale Street Industrial Precinct will allow service and support industries to be located in close proximity to the industrial area and the Botany Town Centre.

Residential uses are located mainly along Bay and Erith Streets. Industrial uses include manufacturing and warehousing in industrial complexes. The streets are also generally narrow in width.

There are a number of Heritage Items in this area of the Precinct. These include:

- 45-57 Bay Street (house group);
- 19 Bay Street (house);
- 18-20 Erith Street (house group);
- 23 Byrnes Street (Canary Island Date Palms);
- Electricity Substation in Byrnes Street; and
- The Sewage Pumping Station SP0060 at the corner of McFall and Erith Streets.

The streetscape of Bay Street in this Precinct is also listed as being of Heritage Significance. The Precinct is adjacent to the Botany Township Heritage Conservation Area.





## Desired Future Character

### Objectives

- O1** To protect the heritage integrity of the Heritage Items within the precinct and the integrity of the Botany Township Heritage Conservation Area;
- O2** To protect the northern precinct's amenity by limiting the size of delivery vehicles;
- O3** To ensure that business park and industrial uses within the precinct are compatible with adjoining residential areas;
- O4** To ensure that development does not have an adverse impact on the drainage within the Precinct;
- O5** To ensure that industrial uses concentrate in the southern part of the Precinct with access to Foreshore Drive through the Hale Street extension; and
- O6** To ensure to that development can withstand the stresses of flooding and sea level rise and does not adversely impact flooding.

### Controls

- C1** The design and function of development shall assist in protecting the heritage significance of the precinct and the integrity and significance of heritage items within the Precinct and of the adjacent Botany Township Heritage Conservation Area (refer to **Part 3B - Heritage**).
- C2** Development is not to adversely impact on the surrounding residential areas.
- C3** Developments are to be designed so that they do not have an adverse impact on any existing or proposed drainage facilities.
- C4** The maximum size of any vehicle accessing sites in the Precinct shall not exceed a Medium Rigid Vehicle (MRV) as defined by AS2890.2
- C5** Developments within the precinct shall submit a detailed Flood Study/Assessment for 1 in 100 year average recurrence interval (ARI) design storm events and probable maximum flood (PMF).  
  
The Flood Study/Assessment is to be prepared by a suitably qualified and experienced civil engineer. The Flood Study/Assessment is required to:
  - (i) Be in accordance with the current version of Australian Rainfall and Runoff (ARR) and the NSW Floodplain Development Manual; and
  - (ii) Consider the impacts from Climate Change and Sea Level Rise.



**C6** Development shall:

- (i) Have finished floor levels of a minimum 500mm above the 1 in 100 year flood level for habitable areas and 300mm for industrial areas and garages; and
- (ii) Not impede the passage of floodwater to cause a rise (afflux) in the flood level upstream and/or increase the downstream velocities of flow.

**C7** Development within the precinct shall require submission of a Risk Management Plan to address potential risks related to coastal sea levels (projected to increase above Australian Height Datum by 40cm by 2050 and by 90cm by 2100). The Risk Management Plan shall be prepared by a qualified consultant and in accordance with the following policies and documents:

- (i) Any current policy of Council relating to projected future sea level rises and related inundation mapping;
- (ii) NSW Coastal Planning Guidelines: Adapting to Sea Level Rise;
- (iii) Flood Risk Management Guide: Incorporation Sea Level Rise Benchmarks in Flood Risk Assessment and; and
- (iv) NSW Flood Plain Development Manual.

In addition, the Risk Management Plan shall minimise the exposure of development to coastal risk and provide management responses and adaptation strategies to identify and manage risk and coastal hazards associated with the following:

- (i) The safety of future workers and occupants on-site;
- (ii) The safety of the public off-site;
- (iii) The safety of adjoining properties;
- (iv) The safe evacuation route during storm and flood events; and
- (v) The freeboard above the flood planning levels.

**C8** Development shall be designed and constructed in accordance with Australian Standard AS 2021 (Acoustic Aircraft Noise Intrusion-Building siting and Construction).

**Note:** Details to be included in the Development Application. For further details in relation to Aircraft Noise refer to **Part 3J - Development Affecting Operations at Sydney Airport**.

**C9** The introduction of noise abatement measure to achieve compliance with current AS 2021 must be done in a manner that does not compromise the architectural design of a building or impact on the character of an existing streetscape.

**C10** All development that is in, or immediately adjacent to, the rail corridor or a busy road must be designed in accordance with NSW Department of Planning 'Development Near Rail Corridors and Busy Roads - Interim Guidelines, December 2008'.



**C11** Development of 4 storeys or more in height, adjacent to a school, are to consider the following:

- (i) Mitigation of overshadowing impacts on the school and its grounds through setbacks and controlled bulking and scaling of buildings;
- (ii) Orientating internal spaces so that low occupancy rooms face school property; and
- (iii) Windows and balconies are to be designed to reduce opportunities for overlooking school grounds.



### 6.2.8 Banksmeadow Industrial Precinct

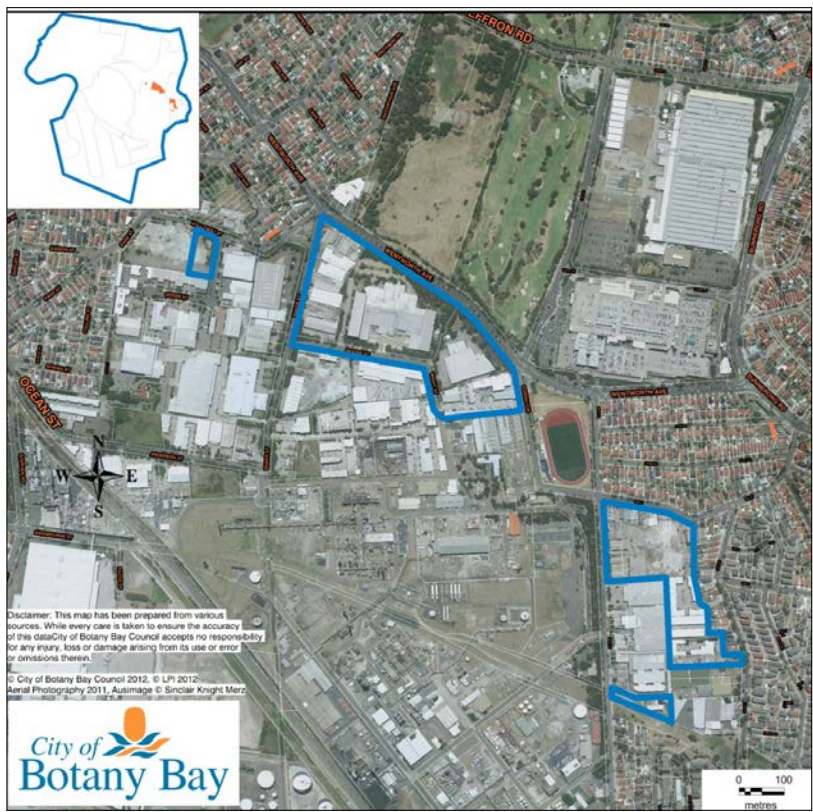
#### Existing Character

**Figure 8** indicates the boundaries of the Banksmeadow Industrial Precinct. As indicated in the Figure below, only the following areas are zoned under Botany Bay LEP 2013:

- Area zoned IN2 Light Industrial bounded by Wentworth Avenue, Baker Street, Moore Street, Wight Street, & Corish Circle;
- B7 Business Park area at 32 Page Street, Pagewood; and
- B5 Business Development and B7 Business Park along Denison, Smith and Rhodes Streets Hillsdale.

The remaining industrial area is zoned under State Environmental Planning Policy (Three Ports) 2013.

**Figure 8 - Banksmeadow Industrial Precinct**







The nature of uses, large allotment sizes and consolidated ownership of industrial landholdings in the Precinct are significant on a local government area and sub-regional basis. The main uses include manufacturing, warehousing and transport. The Precinct also contains a number of pipelines carrying hazardous substances such as natural gas and jet fuel.

This Precinct is largely bordered by residential uses, and apart from hazard, risk and environmental conflicts, the visual impact of any development is a major consideration. Conflicts between the industrial uses and residential uses (including industrial traffic in residential streets) is considered a major problem in the area.

There are no Heritage Items listed in the Botany Bay LEP 2013 within this Precinct.

Part of the suburb is within the zone of influence of the High Pressure Gas Pipeline that follows the ARTC Rail Corridor to the Qenos Site at the Botany Industrial Park, Denison Street, Banksmeadow. Development Applications, planning proposals and rezoning of land received by Council for land within the Zone of Influence will be referred to the APA Group for consideration and comment.

#### **Risk Assessment within the Banksmeadow Industrial Precinct**

The Botany / Randwick industrial area forms a significant industrial complex of State and National significance. The location of the Banksmeadow industrial area, within the vicinity of residential areas, has required that safety studies into the cumulative risk of industrial activity be undertaken to quantify and measure hazard risk associated with such activities.

The State Government has released three studies that investigate industrial operations and make land use planning recommendations. Studies released to date include:

1. 'Risk Assessment Study for the Botany / Randwick Industrial Complex and Port Botany' (1985),
2. 'Botany / Randwick Industrial Area Land Use Safety Study' (2001); and
3. 'Port Botany Land Use Safety Study' (1996).

The recommendations of the above studies are summarised below.

#### **A Risk Assessment Study for the Botany/Randwick Industrial Complex and Port Botany - 1985**

Analysis of hazard risk implications within the Botany / Randwick Industrial Area was first examined in 1985 by Planning NSW (formerly the Department of Environment and Planning) within a report titled 'A Risk Assessment Study for the Botany / Randwick Industrial Complex and Port Botany'. The risk assessment study was initiated by the Department in response to concerns expressed by community groups and local councils about the intensification of potentially hazardous installations and associated facilities in the area and their risk implications on nearby residential land uses.

#### **Port Botany Land Use Safety Study - 1996**

Port Botany is a major infrastructure facility that handles and accommodates activities involving hazardous materials including - loading / unloading, storage and distribution of dangerous goods and materials.

The Port Botany Land Use Safety Study was undertaken by the Department of Planning to update the 1985 Study, develop updated cumulative risk contours (to provide a framework for assessment and decision



making for future developments) and formulate a strategic land use safety framework.

The recommendations of the Study were:

1. Future developments in the Port should undergo early risk assessment and comprehensive environmental impact processes to demonstrate that the use will not contribute to any cumulative risk - as identified in the Port area.
2. Development controls are put in place to ensure there is no significant increase in the number of people exposed to risk - as identified in the residential risk contour.
3. Individual site studies are undertaken to develop programs that are then implemented to create risk reduction and safety management measures.
4. The Port and Port users prepare emergency plans / procedures and fire prevention / protection systems.
5. The Port and Port users adopt a program to ensure the community is adequately informed on Port activities, associated risks and safety management measures.

#### **Botany/Randwick Industrial Area Land Use Safety Study - 2001**

Planning NSW in 2001 published a review of the 1985 Cumulative risk study titled the 'Botany / Randwick Industrial Area Land Use Safety Study'. The purpose of this review was to update the research and findings of the 1985 Study. The review of the Study involved considering industrial rationalization and technological advances, which have seen the operations and associated risk levels of the Botany / Randwick industrial area change considerably.

The review investigated two cases based on two industrial scenarios. The cases were aimed at identifying the cumulative risk levels resulting from the industrial area under the current conditions (pre - 2001) and a predicted future case (2001). An explanation of the cases are as follows:-

The Existing Case (Pre-2001): The Orica mercury cell chlorine plant and chlorine liquefaction facilities and associated bulk chlorine storage. Risks associated with the chlorine plant include incidences such as a chlorine vapour cloud explosion, storage failure resulting in fire and heat radiation effects or the rupture of a chlorine road tanker.

The Future Case (2001): The Existing Orica chlorine plant being replaced with membrane production facilities and liquefaction. The bulk storage of chlorine has ceased. The removal of chlorine liquefaction and storage on site will reduce the likelihood of chlorine releases occurring.

#### **Key Findings**

The key findings of the Botany / Randwick Industrial Area Land Use Safety Study has been a significant improvement in the cumulative risk areas that result from the industrial operations located within the Botany / Randwick industrial area.



The recommendations with respect to industrial development within this Industrial Precinct are detailed below:

## Recommendations

***Future developments in the Botany/Randwick industrial area should be subject to early risk assessment and comprehensive environmental impact processes to conclusively demonstrate that they will not contribute to risk impacts outside the industrial area that are inappropriate for surrounding land uses.***

1. There should be no significant increase in the quantities of toxic compressed or liquefied gases stored or handled within the industrial area.
2. Proposals to expand industrial facilities in the area should be subjected to the seven-stage assessment process under the Environmental Planning and Assessment Act 1979 and demonstrate compliance with relevant risk criteria.
3. The Director-General's requirements for the preparation of an Environmental Impact Statement (EIS) should incorporate the above requirements to ensure appropriate assessment is carried out.
4. Should conditions in the Botany/Randwick industrial area change to a significant degree, through facility commissioning, decommissioning, expansion or production changes, this study should be updated to reflect potentially altered cumulative risk impacts on surrounding land uses.

***A process of regular reviews and updates for site safety management systems should be undertaken.***

1. All sites should review and strengthen their safety management system (SMS). The effectiveness of the SMS should be monitored by periodic independent compliance audits at intervals of not less than once every two years.
2. An overall review of incident/accident recording and reporting systems should be undertaken. A consistent best practice guideline should be developed and adopted by industry in the area.
3. All sites should review their training arrangements to ensure that personnel have an appropriate understanding of operational hazards and are fully trained in operating and emergency procedures.

***Emergency plans and procedures, and fire prevention and protection systems should be kept up to date.***

1. Emergency plans for all sites should be reviewed and updated. There should be emphasis placed on developing emergency plans that are consistent between facilities.
2. Industrial facilities should develop greater contact with regard to emergency planning. An integrated emergency plan for the industrial area needs to be developed, and mutual aid arrangements between facilities need to be investigated in more detail.



3. Consideration should be given to holding periodic coordinated surprise emergency field exercises to validate emergency procedures and practices.

***Industrial facilities should adopt community right-to-know principles to ensure the community is adequately informed about activities, associated risks and the safety management measures adopted within the Botany/Randwick industrial area.***

1. A formal mechanism should be established to implement a community right-to-know program through a consultative committee having representation from the industrial developments in Botany/Randwick, Councils, community groups and relevant government agencies.
2. Priority should be given to regular dissemination to the community of information relating to safety and environmental management and performance through regular annual reporting, newsletters and public forums.
3. Existing industrial developments should be encouraged to establish Community Consultative Committees to facilitate the dissemination of information to the public and to receive feedback from the community related to the industry's performance. Where practical, Community Consultative Committees established for similar types of industry or developments in the same general locality should be encouraged.
4. For new industrial developments, conditions of consent should require the formation of a Community Consultative Committee for the development, or its representation on an appropriate existing Committee.



## Desired Future Character

### Objectives

- O1** To encourage the office component of industrial development to front the road or any adjoining residential area;
- O2** To ensure that industrial uses are compatible with adjoining established residential areas;
- O3** To ensure that any risk to human health, property or the natural environment arising from the operation of the development is minimised and addressed;
- O4** To ensure that existing pipelines are identified and protected during the development process; and
- O5** To ensure to that development can withstand the stresses of flooding and sea level rise and does not adversely impact flooding.

### Controls

#### General

- C1** Business Park and industrial uses with access from Rhodes Street or Smith Street are to have low vehicular generation characteristics and exclude the use of container handling or semi-trailers.
- C2** Development on the B7 Business Park Zone at the corner of Holloway and Green Streets are to have their commercial offices (or other non-industrial activity) fronting Holloway Street and the school with a return (no less than 10m) to Green Street. All industrial activities are to be undertaken behind the commercial building buffer.
- C3** The transport of hazardous substances should be directed away from residential areas and a Traffic Route Study showing the proposed traffic route of such transport is required.
- C4** Development fronting Denison Street, Rhodes Street, and Smith Street are to have their commercial offices (or other non-industrial activity) fronting the road/street. All industrial activities are to be undertaken behind the commercial building buffer.
- C5** Development is not to adversely impact on the surrounding established residential areas through noise, traffic, pollution and risk.
- C6** A survey is required to identify any pipelines, easements etc affecting the development site. If the pipeline enters Council land an appropriate deed of agreement is to be executed.
- C7** Redevelopment of land at the corner of Denison Street & Beauchamp Road (the Orica site) is to take into account the road widening affectation proposed by RMS.





**C8** Developments within the vicinity of Floodvale Drain, Springvale Drain and Bunnerong Stormwater Channel No. 11 (SWC 11 – Sydney State Water) shall submit a detailed Flood Study/Assessment for 1 in 100 year average recurrence interval (ARI) design storm events and probable maximum flood (PMF). The Flood Study/Assessment is to be prepared by a suitably qualified and experienced civil engineer. The Flood Study/Assessment is required to:

- (i) Be in accordance with the current version of Australian Rainfall and Runoff (ARR) and the NSW Floodplain Development Manual; and
- (ii) Consider the impacts from Climate Change and Sea Level Rise.

**C9** Development shall:

- (i) Have finished floor levels of a minimum 500mm above the 1 in 100 year flood level for habitable areas and 300mm for industrial areas and garages; and
- (ii) Not impede the passage of floodwater to cause a rise (afflux) in the flood level upstream and/or increase the downstream velocities of flow.

**C10** Restricted Access Vehicles (RAV) classified by Roads and Maritime Services (RMS) (including B-Doubles) are not permitted to access:

- (i) Holloway Street;
- (ii) Green Street;
- (iii) Ocean Street;
- (iv) Swinbourne Street;
- (v) Stephen Road;
- (vi) Smith Street; and
- (vii) Rhodes Street.

**C11** The maximum size of vehicle accessing Smith Street and Rhodes Street is restricted to Medium Rigid Vehicles (MRV) as defined by AS2890.2.



## Risk Management:

**C12** In order to address the recommendations, a Risk Assessment Evaluation is required to accompany all applications for sites:

- (i) Within the study area of the Botany/Randwick Industrial Area Land Use Safety Study - 2001; and/or
- (ii) Affected by the recommendations of the Port Botany Land Use Safety Study Overview Report - 1996.

**Note:** Recommendation No. 2-2.2 of the Port Botany Safety Study states that proposals for the development or redevelopment of residential, commercial or high density developments outside the Port area, particularly inside the one in a million residential risk contour, identified in figure 2 of the Port Botany Land Use Safety Study Overview Report should not take place.

**C13** The Risk Assessment Evaluation to Council is to be completed by a qualified risk management professional and take into account the nature of the proposed business and the proximity of the site to surrounding hazardous facilities. The report is to recommend safety procedures to be followed.

The report needs to conclude whether or not the activities proposed for the premises constitute an escalation of existing hazards, and that the risk posed by neighbouring uses in the exposure of hazards to the site is acceptable.

Applicants are to refer to the applicable Hazardous Industry Planning Advisory Papers (HIPAPs) and other guidelines such as *Applying SEPP 33* and *Multi-level Risk Assessment found at <http://www.planning.nsw.gov.au/planning-guidelines-for-hazardous-development>*

**C14** If a site fronts Denison Street a Transport Risk Assessment Report is required to be lodged with Council. The assessment report to Council should be completed by a qualified risk management professional and address the hazard analysis methodology outlined within the Hazardous Industry Advisory Paper N° 6: Guidelines for Hazard Analysis. The areas of assessment should include:

- (i) Identification of potential release scenarios, including analysis of the hazards associated with transport of potentially hazardous materials;
- (ii) Estimation of release frequencies, using information available from such sources as Botany Bay City Council, the Bureau of Statistics and from the Roads and Traffic Authority, NSW;
- (iii) Assessment of consequences in terms of effect zones following the ignition or dispersion of a release, including the assessment of the evaporation and permeation of a spill and of the resulting heat radiation in case of ignition;
- (iv) Estimation of risk by combining release frequencies, consequences, and population distribution for the particular route under survey; and
- (v) Comparing the estimated risk with relevant tolerability criteria and guidelines.

Results from the traffic hazard analysis should be assessed on the basis of generally accepted land use safety guidelines provided in the 'Hazardous Industry Planning Advisory Paper N° 4:





Risk Criteria for Land Use Safety Planning' published by Planning NSW in 1992 and 'Hazardous

Industry Planning Advisory Paper No. 10 Landuse Safety Planning' published by the NSW Department of Planning in January 2011.

**Note:** Council in 2012 commissioned a traffic count for Denison Street (in both directions, north and south); which includes a separate count for dangerous goods traffic as Council wanted to compare the overall traffic to the dangerous goods traffic. Whilst this data is available to applicants who are required to prepare a Transport Risk Assessment Report, the data is over 12 months old and depending on the proposed development Council may require a new Transport Risk Survey to be conducted at the applicant's costs. Please contact Council for more information.

- C15** Where a site is considered by Council to be located partly adjacent to a dangerous goods route defined in this plan, any development on the site will be assessed and viewed as though it was located within the area or route with the more stringent risk-related development controls specified in this development control plan.

**Dangerous Goods Routes** means identified within the Botany/Randwick Industrial Area Land Use Safety Study.

The Botany / Randwick Industrial Area Land Use Safety Study does not include an assessment of the risk implications of dangerous goods transport, but does identify some routes as having a significant likelihood of carrying such goods. The routes identified within the Botany / Randwick Industrial Area Land Use Safety Study form a wider local and regional road network that may also carry traffic containing dangerous goods. The consideration of risk arising from the transportation of dangerous goods on this local and regional road network and the impacts this may have on residential and sensitive use development within the Study area needs to be considered as part of the assessment process for future development activity.

**Sensitive use intensification** means the establishment of a sensitive use or an increase in the gross operational floor space of an existing building that is occupied by a sensitive land use.

Sensitive land uses that are considered incompatible with fatality risk, injury or irritation risk (as defined in *Hazardous Industry Planning Advisory Paper No.4 – Risk Criteria for Land Use Safety Planning* - Planning NSW, 1992) resulting from operations within the Botany / Randwick industrial area under this plan include:- child care centres, nursing homes, educational establishments, hospitals and units for aged persons.

**Additional information:** A number of other Hazardous Industry Planning Advisory Papers (HIPAPs) and other guidelines have been issued by the Department of Planning & Environment to assist stakeholders in implementing an integrated risk assessment process and can be found at <http://www.planning.nsw.gov.au/planning-guidelines-for-hazardous-development>

Applicants are also to refer to **Part 6.3.15 - Risk**.



### 6.3 General Provisions

#### 6.3.1 Amalgamation and Subdivision

The size and shape of a land parcel influences the relationship of a new building to its neighbours. Subdivision patterns and site amalgamation can have significant implications for the streetscape of an area. Effective amalgamation patterns promote the efficient use of land, and allow design constraints and interface issues to be more easily resolved.

In particular, they help to produce a consistent urban form and built form rhythm which reflects the surrounding development pattern. It also attempts to balance the planning requirements relating to height, massing, underground car-parking, vehicular access, streetscape and amenity to achieve an appropriate building outcome.

Objectives

O1

To ensure site development is consistent with land ownership and to prevent disposal of part of any property that may be integral to the effective functioning of a development and the continued compliance with conditions of consent;

O2

To ensure sites for new industrial developments are of a sufficient size to provide a functional and efficient area for building(s), vehicle parking and movement, landscaping and the storage of raw materials, finished products, trade waste and recycling bins; and

O3

To ensure all loading and unloading, turning movements, queuing and parking of vehicles, including delivery vehicles associated with the new development are safe and efficient and occur wholly within the site.

Controls

C1

Development must comply with **Part 3E - Subdivision and Amalgamation**.

C2

Detailed site plans for development for any industrial development must demonstrate how the proposed industry, including parking, landscaping and other ancillary facilities, will be wholly accommodated within the site boundaries.

C3

Where development or use of a number of existing lots is proposed, the lots shall be consolidated into one parcel, and the plan of consolidation lodged with the Land and Property Information NSW Office prior to release of the Construction Certificate. Written notification as to the registration of the Consolidation Plan at the Land Titles Office is to be received by Council prior to the occupation of the premises or use of the site.

C4

No part of any site is to be separately leased from the remainder of the property for the purpose of a separate occupation or operation from an approved use, except where the prior Development



Consent of Council has been sought and received to any such lease, occupation or operation.

- C5** Where there is to be a strata plan of subdivision any space for parking or other purposes forming a part of a sole occupancy unit must be included in the same strata lot as the unit. All landscaped and access areas and directory board signs not forming part of an individual unit must be included in any strata plan of subdivision as common property.



### 6.3.2 Building and Site Layout

Good design provides a building layout that maximises the natural attributes of the site. Carefully considered building layout and design also creates a high level amenity for occupants through enhanced visual and acoustic privacy, passive heating and cooling, flexible and useable indoor and outdoor spaces that meet the needs of workers and/or occupants.

#### Objectives

- O1** To ensure signage is compatible with the existing and ‘Desired Future Character’ of the area in which it is proposed to be located;
- O2** To ensure signage integrates with the building design; and
- O3** To ensure the colour schemes that do not detract from its surrounds.

#### Controls

- C1** A site analysis plan is to be lodged with the Development Application in accordance with the Council’s **Development Application Guide**.
 

**Note:** The layout of the site shall:

  - (i) Take into account the site’s context and constraints and opportunities;
  - (ii) Provide for all the operations of a use wholly on the site;
  - (iii) Improve the aesthetic amenity of the site and streetscape through adequate landscaping in suitable locations;
  - (iv) Prevent emission of odour and noise to adjoining properties;
  - (v) Use energy efficiency principles;
  - (vi) Consider the open space/amenity requirements of the employees; and
  - (vii) Consider the width of the road reserve and scale and location of adjoining building forms.
- C2** Through careful site arrangements new building works must :
  - (i) Address the street and highlight any non-industrial aspects (ie office section) of the development;
  - (ii) Avoid long blank walls of warehouse units facing the street and long continuous roof lines; and
  - (iii) Provide regular modulation to the façade or division of massing.
- C3** Floor space is to be distributed on the site to ensure the scale of the building reinforces the role of



the street and buildings are arranged and aligned to create a pleasant working environment.

- C4** Setbacks are to be deep soil zones (refer to **Part 3L - Landscaping** for Definition). No part of the building or structure (including basement car parks, driveways, or OSD/infiltration system are to encroach into the setbacks).
  - C5** Setbacks are to maximise the retention of existing trees and their root systems and may need to be variable to achieve this (includes trees on adjoining properties).
  - C6** Internal spaces are to be designed to satisfy the operational requirements of the particular land use whilst proving a safe and convenient work environment.
  - C7** Each industrial building must provide for basic amenities including a designated staff room or area that is:
    - (i) Of a reasonable area depending on the size, nature and staffing level of the proposed industry;
    - (ii) Adequately furnished for staff; and
    - (iii) Provided with attached kitchen/kitchenette with a fridge, microwave, sink and tea/coffee making facilities.
  - C8** New buildings and the creation of new industrial units within close proximity to residential areas are to be designed to minimise any adverse effects on the amenity of residential areas by way of overshadowing, overlooking, lighting, dust, noise or fumes.
- Note:** If your site adjoins a residential premise please refer to **Part 6.3.11 - Industrial Development Adjoining a Residential Land Use** which requires loading and unloading facilities and car parking to be provided away from the residential boundary.
- C9** Adequate waste removal handling and minimisation facilities are to be provided on site for all development to ensure these facilities are not utilising car parking areas.
  - C10** For new development (excluding multi unit industrial development) all loading and unloading facilities and the majority of car parking required for the development is to be provided at the rear or at the side of any buildings. It is not to be provided at the front of buildings. Visitor car parking may be provided at the front of buildings behind the setback required in **Part 6.3.5 - Setbacks**.
  - C11** For Multi Unit Industrial Development car parking and loading/unloading facilities is not to be provided within the front setback to the street. Car parking and loading/unloading facilities can be provided from a central courtyard within the site.
  - C12** For sites with a road frontage to residential areas (ie Stephen Road, Denison Street, Rhodes, Erith, etc) new construction is to locate offices fronting the residential areas, with restricted access points. The warehouse/factory functions as well as car parking, manoeuvring areas, loading and unloading facilities are to be located away from the residential areas.

**C13** For sites in excess of 1,000m<sup>2</sup>, an outdoor staff recreation area is to be provided. This area:



- (i) Must be a minimum of 16m<sup>2</sup>. with a minimum dimension of 3 metres;
- (ii) May be located within the front building setback, within an upper floor balcony, in an enclosed courtyard or in any other landscaped setting on the site. If this area is provided within the landscaped area at the front of the site, then the landscaped setback required in **Part 6.3.5 - Setbacks** should be increased by an additional 1 metre;
- (iii) Should be designed to include a table and chairs;
- (iv) Enable at least 6m<sup>2</sup>, to receive direct sunlight for the four hours between 10am and 2pm during mid winter; and
- (v) Should provide shading in summer.

**C14** Where an industrial unit complex consists of more than 10 units:

- (i) The building layout must allow for visual connections through and beyond the site to assist in breaking down the visual scale of the development and provide more legible site access for visitors; and
- (ii) Consideration should be given to the use of varying architectural resolutions to further assist in breaking down visual scale and improving legibility for visitors.

**C15** Building entrances are to be clearly defined and located so that visitors can readily distinguish the public entrance to each building. Access to each entrance is to be provided by a safe direct route, avoiding potential conflict with vehicles manoeuvring on site.

**C16** Site planning is to allow for the retention of significant trees and vegetation, particularly near the street frontage.

**C17** Industrial buildings must have an adequate number of openings at each level to allow natural light and ventilation.

**C18** Each industrial unit within an industrial complex must have a reasonable size window at each level to allow natural light and ventilation.





6.3.3 Floor space

The gross floor area of a building as a ratio of the site is usually expressed as a floor space ratio (FSR). Council's floor space ratio (FSR) controls aims to facilitate an acceptable bulk and scale of development that is in relationship with the streetscape and adjoining development.

Objective

- O1 To facilitate an acceptable bulk and scale of development, that is consistent with the streetscape and minimises impacts on adjoining development.

Control

- C1 The maximum FSR is identified on the Floor Space Ratio Map within Botany Bay Local Environmental Plan 2013.

**Note:** Not all site developments may be able to achieve the maximum permissible FSR due to particular site characteristic, such as:

- (i) The size and shape of the land;
- (ii) The presence of existing buildings on site, required to be retained;
- (iii) The need to reduce adverse impacts on neighbouring sites; and
- (iv) Not being able to satisfy Council's traffic, parking and vehicular access requirements.





### 6.3.4 Building Design and Appearance

Council has strived to achieve buildings of superior architectural quality and innovation in its industrial zones and will continue to do so, favourably supporting buildings of contemporary design that utilise a variety of materials and decorative colours and finishes.

#### Objectives

- O1** To achieve a high standard of development both in terms of design and finish;
- O2** To achieve developments, which enhance the streetscape of the locality;
- O3** To ensure open storage areas are properly screened to minimise any adverse visual effects of the development;
- O4** To ensure building materials mitigate noise impacts to adjoining development, particularly residential development; and
- O5** To ensure developments do not adversely affect air safety of Sydney Airport.

#### Controls

##### Height

- C1** The maximum building height is indicated in the Building Height Map attached to the Botany Bay Local Environmental Plan 2013.
- C2** The maximum height of an industrial building must comply with other controls in this DCP relating to urban design, solar access, privacy and residential/industrial interface.
- C3** Compliance with the Civil Aviation Safety Authority requirements.

**Note:** Botany Bay Local Government Area lies within the prescribed airspace for Sydney (Kingsford Smith) Airport. The prescribed airspace for Sydney over Botany consists of Procedures for Air Navigation Systems Operations (PANS-OPS) and Obstacle Limitation Surfaces (OLS).

The critical component of the prescribed airspace over Botany Bay LGA is the Inner Horizontal Surface (51.0 metres AHD) of the OLS for Sydney (Kingsford Smith) Airport. Any intrusion into prescribed airspace would constitute a controlled activity<sup>1</sup> and as such, must be referred to Sydney Airports Corporation Limited (SACL) for an approval process (Airports Act 1996 Section

<sup>1</sup> Section 182 of the Airports Act 1996 defines "Controlled Activities" as: constructing a building, or other structure, that intrudes into the prescribed airspace; altering a building or other structure so as to cause the building or structure to intrude into the prescribed airspace; any other activity that causes a thing attached to, or in physical contact with the ground to intrude into the prescribed airspace.



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The approval process involves referral of the application to SACL for assessment relating to safety, efficiency and regularity of air traffic using Sydney (Kingsford Smith) Airport and then onto the Civil Aviation Safety Authority (CASA) and Airservices Australia (AsA) if required.

Consideration during the planning stages should be given to the operating heights of all construction cranes (short-term controlled activities) necessary for the proposed controlled activity. SACL advises that approval to operate construction equipment (ie cranes) should be obtained prior to any commitment to construct as the height of this equipment is generally significantly higher than the proposed structure, therefore approval may not be granted.

"Permanent controlled activities"<sup>2</sup> are not permitted to penetrate the Procedures for Air Navigation Services Operations surfaces (PAN-OPS) component of the prescribed airspace.

- C4** The maximum height of a building must be consistent with the height of other buildings in the immediate vicinity. Where the heights of a proposed development are higher than surrounding development, a submission is to be lodged with the Development Application giving reasons for supporting the height discrepancy. Unless proper planning reasons are presented, heights over above that approved in the locality will not be supported by Council.
- C5** Council may require a reduction in height shown for the land on the Height of Buildings Map where a building built to the height shown for the land on the Height of Buildings Map would have unacceptably adverse impacts in regards to:
  - (i) The overshadowing of a dwelling, private open space or public open space;
  - (ii) An inappropriate transition in built form and landuse intensity;
  - (iii) The design excellence of a building;
  - (iv) View loss; or
  - (v) The Obstacle Limitation Surface (Please refer to the Precinct Controls).
- C6** All rooftop or exposed structures including lift motor rooms, plant rooms, etc., together with air conditioning, ventilation and exhaust systems, are to be suitably screened and integrated with the building in order to ensure a properly integrated overall appearance. If your site adjoins a residential premise the facilities are to be located away from the residential boundary.

## Design

- C7** All development applications involving external building works must be accompanied by a schedule of finishes and a detailed colour scheme for all external walls.
- C8** External finishes must be robust and graffiti resistant. An anti-graffiti coating may be required where buildings adjoins a public place or accessible from an open area that is not secured by

<sup>2</sup> Permanent controlled activity: any structure erected for a period of more than 3 months.



fences. The business operator may be required to enter into a graffiti agreement with Council.

- C9** Where blank walls on street frontages are unavoidable in new construction they must be screened by landscaping or treated as sculptural elements incorporating murals reflecting modern architectural design. They must be finished to a high standard and minimise the potential for graffiti or other vandalism.
- C10** Walls of new development must make use of non reflective colours and materials to avoid glare. The maximum reflectivity of any glazing is not to exceed 20% to avoid nuisance in the form of glare to occupants of nearby buildings, pedestrians and motorists.
- C11** All elevations of a building fronting a public place, or visible from a rail line, public place or proposed road, must be constructed of face brickwork or other decorative facade treatment to Council's satisfaction. Consideration must be given to installing windows or false windows in the facade to enable surveillance of the adjoining area or to engender a feeling that it is being overlooked.
- C12** Buildings should be of a contemporary and innovative design. All public frontages should be specially articulated with the use of brick, stone, concrete, glass (non-reflective), and like materials, but not concrete render.
- C13** Open style or transparent materials are encouraged on doors and/or walls of lifts and stairwells, where fire safety requirements allow.
- C14** Building height, mass, and scale should complement and be in keeping with the character of surrounding and adjacent development.
- C15** New buildings must be designed to:
  - (i) Address the street and highlight any non-industrial aspects (such as the office section) of the development;
  - (ii) The administration office or showroom must be located at the front of the building;
  - (iii) The front door to a building is to face the street;
  - (iv) Building entrances should be clearly defined and well articulated through form, materials and colour and provide level or ramped access;
  - (v) Waiting areas and entries to lifts and stairwells are to be close to areas of active use and be visible from building entrances;
  - (vi) Windows on the upper floors of a building must, where possible, overlook the street;
  - (vii) Avoid long blank walls of warehouse units facing the street and long continuous roof lines;
  - (viii) New construction is to achieve both functional and visually attractive buildings;
  - (ix) Provide regular modulation to the facade or division of massing;
  - (x) Architecturally express the structure of the building by variation and minimal use of reflective glass;



- (xi) Visually reinforce entrances, office components and stair wells of units to create rhythm on long facades and reduce perceived scale;
- (xii) Introduce variation in unit design within building works;
- (xiii) Introduce solid surfaces, preferably masonry, and incorporate horizontal and vertical modulation including windows in appropriate proportions and configurations;
- (xiv) New development on corner sites must address both street frontages in terms of facade treatment and articulation of elevations; and
- (xv) Avoid bulky roof forms or extensive blank facades in a single material or colour.

**C16** The street number of a building must be visible from the street and made of a reflective material to allow visitors and emergency vehicles to easily identify the location of the building.

**C17** Where industrial development adjoins any land zoned for residential purposes or any premises used for residential purposes, the external walls abutting such development must be constructed in 230mm or 280mm cavity brickwork. Where such walls adjoin land zoned for residential purposes, construction must be in face brickwork.

**C18** New buildings and the creation of new industrial units within close proximity to residential areas are to be designed to minimise any adverse effects on the amenity of residential areas by way of overshadowing, overlooking, lighting, dust, noise or fumes.

**Note:** If a site adjoins residential uses loading and unloading facilities and car parking to be provided away from the residential boundary (refer to **Part 6.3.11 - Residential/Non-Residential Interface** and **Part 6.3.12 - Noise and Hours of Operation**).

**C19** All external walls, where located less than 900mm from a side boundary, must be of masonry construction.

**C20** No service plumbing pipes, other than downpipes for the conveyance of roof water, must be external to the building or visible to any public place.

**C21** Buildings should maximise energy efficiency, through measures such as the use of high efficiency lighting systems, insulation, natural ventilation, and low embodied energy materials.

**C22** For new development all loading and unloading facilities and the majority of car parking required for the development is to be provided at the rear or at the side of any buildings. It is not to be provided at the front of buildings. Visitor car parking may be provided at the front of buildings behind the setback.

**Note:** For Multi Unit Industrial Development car parking and loading/unloading facilities is not to be provided within the front setback to the street. Car parking and loading/unloading facilities can be provided from a central courtyard within the site

**C23** Driveways must provide adequate sight distance for the safety of pedestrians using the footpath area in accordance with AS2890.1 and AS2890.2.



- C24** Pathways should provide direct access and any edgework should be low in height or not reduce visibility of the pathway.
- C25** Entry to basement parking areas should be through security access via the main building. This access should be fitted with a one way door (allowing for fire safety provisions) and allow only authorised access from the foyer into the basement.
- C26** Internal spaces are to be designed to satisfy the operational requirements of the particular land use whilst proving a safe and convenient work environment.
- C27** Floor space is to be distributed on the site to ensure the scale of the building reinforces the role of the street and buildings are arranged and aligned to create a pleasant working environment.

#### Public Utilities

- C28** For new development and substantial alterations to existing premises provision must be made for connection to future underground distribution mains. In such developments the following must be installed:
  - (i) An underground service line to a suitable existing street pole; or
  - (ii) Sheathed underground consumer mains to a customer pole erected near the front property boundary (within 1 metre).
- C29** Council may require the bundling of cables in the area surrounding the development to reduce the visual impact of overhead street cables.

#### Lighting

- C30** Lighting must be provided to the external entry path, common lobby, driveway, and car park to a building using vandal resistant, high mounted light fixtures.
- C31** The lighting in a car park must conform to AS1158.1, AS1680, and AS2890.1.
- C32** External lighting to an industrial development must give consideration to the impact of glare on the amenity of adjoining residents.

#### Facilities

- C33** The siting of a telecommunication facility, aerial, satellite dish, plant room, lift motor room, mechanical ventilation stack, exhaust stack, and the like must integrate with the architectural features of the building to which it is attached; or be sufficiently screened when viewed from the





street and neighbouring residential zoned land.

#### Service Areas

- C34** Service areas including waste, recycling areas and external storage areas are to be located away from principal street frontages and screened from view.

#### Kerb, Gutter & Footpaths

- C35** The kerb and gutter, concrete footpath (or paved footpath) and any associated works along all street(s) frontage of a site shall be constructed and/or reconstructed of at the full cost of the developer.



### 6.3.5 Setbacks

Setbacks enable landscaping and buffers to be provided. Setbacks contribute to the streetscape and help to modulate a building's bulk and scale.

**Objectives**

- O1** To minimise the impact of development and buildings on the surrounding area;
- O2** To create a pleasant environment within and external to the site; and
- O3** To ensure setbacks to Alexandra Canal and the Mill Pond.

**Controls**

- C1** Setbacks are to be in accordance with the following **Table 1**.
 

**Note:** Greater setbacks will be required for bulky, hazardous and noise or odour generating activities.

**Note:**

  - Awnings and verandas along classified roads should be set back a minimum of 1.5 metres from the kerb;
  - Awnings and verandas along local roads that intersect with classified roads should be set back a minimum of 1.5 metres from the kerb for a distance of up to 100 metres from the intersection with the classified road; and
  - At any signalised intersections (on local roads or classified roads), awnings and verandas should be set back a minimum of 1.5 metres from the kerb for a distance of up to 100 metres from the signalised intersection.
- C2** Notwithstanding C1 above, no buildings, structures, car parking, storage or vehicle manoeuvring areas are permitted within a minimum 10 metre wide area adjoining Alexandra Canal and 6 metres along the tributaries of the Canal.
 

The setback is to be landscaped and planted with appropriate species, as detailed in the Alexandra Canal Masterplan, such landscaping not to include plants with invasive root systems and that have the potential to damage the canal wall or it surrounding infrastructure.
- C3** Setbacks on corner blocks must enable sufficient sightlines for traffic in accordance with the relevant Australian Standard (AS2890.1).
- C4** Setbacks are to be deep soil zones (refer to **Part 3L - Landscaping** for a definition of "deep soil zone"). No part of the building or structure (including basement car parks, driveways or OSD/infiltration) system are to encroach into the setbacks.





**C5** Setbacks are to maximise the retention of existing trees and their root systems, and may need to be variable to achieve this (includes trees on adjoining properties).

**Table 1 - Setbacks**

Boundary	Landscaping Setback (Refer to Note 4)	Building Setback (Refer to Note 1)
Front - to a non-classified road (Refer to Note 2)	3 metres	9 metres (Refer to Note 5) (Refer to Note 6 for corner sites)
Front - to a classified road (Refer to Note 2)	4 metres	9 metres (Refer to Note 5) (Refer to Note 6 for corner sites)
Side - adjoining a non-residential use/zone Including lanes	2 metres	2 metres (Refer to Note 6 for corner sites)
Side - adjoining a residential use/zone or in the Council's opinion the building impacts on the streetscape	3 metres	3 metres (Refer to Note 6 for corner sites)
Rear (Refer to Note 3)	Nil to 3 metres	Nil to 3 metres

**Notes:**

1. Building setback relates to new building works. Underground parking is to be situated underneath the building footprint. The building setback is inclusive of the landscape setback required under this Table.
2. Classified roads are defined by the *Roads Act 1993*.
3. The setback will depend on the character of the site and its surrounds. Please check with Development Assessment Officers. Rear boundary walls are to be treated aesthetically.
4.
  - i. Landscaping setbacks are to be free from overhangs, hard elements such as paths, ramps, substations; fire hydrant boosters; signs, parking (both above ground and underground) advertising structure (including pole signs); and
  - ii. May be used in calculation 10% landscaped area.
5. New buildings are to be setback a minimum of 9 metres (this includes the landscaped setback) from the street frontage unless the prevailing setback is closer than 9 metres, or unless stipulated differently in this DCP. For sites fronting designated roads the minimum building setback is to be 4 metres.
6. New development on sites that have a corner frontage is to provide a 9-metre minimum setback to the main street/road and a minimum 3- metre setback to the secondary road/street.
7. Where the setback of adjoining buildings is inconsistent, the building should be consistent with the dominant setback found along the street.



### 6.3.6 Parking and Vehicular Access

Industrial traffic has a great impact on residential areas within the City of Botany Bay. It is important that all servicing, loading/unloading and parking are provided on site for new development, and that with any change of use external impacts (such as traffic and car parking impact on the road networks) are minimised.

#### Objectives

- O1** To encourage the provision of parking, vehicular access and servicing areas that are:
  - (i) Integrated with the form and arrangement of buildings on site;
  - (ii) Suitably designed and landscaped to minimise large expanses of hard paving;
  - (iii) Pleasant, safe and provide shared working environment; and
- O2** To provide opportunities for large developments to integrate with public transport services where appropriate.

#### Controls

- C1** All vehicles (including deliveries) are to enter and leave the site in a forward direction with no vehicles permitted to reverse from or onto public road. A Swept Path Analysis may be required for the largest vehicle accessing the site.
- C2** A Traffic and Parking Impact Assessment Report shall be prepared. The Traffic and Parking Impact Assessment Report is required to be prepared by a suitably qualified and experienced civil engineer and in accordance with the current version of AUSROADS “Guide to Traffic Management, Part 12: Traffic Impacts of Development” and RMS “Guide to Traffic Generating Development”.
- C3** Car parking areas are to be suitably covered with canopy trees and are to be screened with landscaping and paved to reduce their impact (refer to **Part 3L - Landscaping**).
- C4** Parking provision should be in accordance with the **Part 3A - Car Parking**.
- C5** All internal circulation roads, turning areas, parking aisles, parking bays, service areas and service bays are required to be sealed with hard standing all weather materials. Any alternative materials require Council approval.
- C6** Separation of service areas (loading/unloading) and parking areas is required.
- C7** All loading and unloading operations shall only be carried out wholly within the dedicated service bays at all times and shall not be made direct from public places, public streets or any road related areas.



- C8** All loading/unloading facilities and service bays (including parking bays for commercial vehicles) are to be provided in accordance with the current RMS "Guide to Traffic Generating Developments" and Australian Standard 2890.2 - 2002 Off Street commercial vehicle facilities.
- C9** All loading docks, car parking spaces, internal circulation access and access driveways are to be kept clear of goods at all times and should not be used for storage purposes including garbage storage, good and machinery.
- C10** Access driveways/vehicular crossings are to be designed to accommodate the turning circle of the largest vehicle expected to use the service area without crossing the centreline of the road. Specific consideration is to be given to two-way simultaneous movements
- C11** The minimum width of the access driveways/vehicular crossing at the property boundary shall be in accordance with AS2890.2.
- C12** All servicing, including garbage collection, is to be carried out within the site with suitable collection points at convenient locations.
- C13** The following information is required:
  - (i) Details of all traffic generation and possible impacts;
  - (ii) The largest vehicle expected to access the site (including delivery);
  - (iii) The frequency of deliveries to the site; and
  - (iv) The maximum number of staff expected to be on-site at any one time.
- C14** Access routes for delivery vehicles are to be specified.
- C15** Development on sites south of Wentworth Avenue is required to access the site via the use of Foreshore Drive.
- C16** Where significant amounts of traffic are likely to be generated which could affect residential areas or residential zoned land, schedules of vehicle movements and their routes must be provided and may be regulated in conditions of consent.
- C17** Where significant amounts of traffic generation will affect the traffic flow efficiency and safety of the local and arterial road network, the proponent is required to provide, at full cost, a package of mitigative measures to support the development. Both the Council and the RMS will assess the mitigative measures.
- C18** Proposed parking areas, truck docks, driveways, vehicular ramps and turning areas are to be maintained clear of obstruction and used exclusively for purposes of car parking, loading or unloading and vehicular access respectively. Under no circumstances are such areas or any portion thereof to be used for the storage of goods and waste materials.
- C19** Provision must be made for all loading and unloading of goods and manoeuvring of vehicles to take place in an internal dock areas and adjoining goods handling area. These areas are to be physically line marked and are to be maintained free of obstruction, for the sole use of delivery



vehicles.

**C20** Where Council is asked to reduce the required numbers of car parking under **Part 3A - Car Parking** due to a private (company owned) bus link with the Mascot Railway Station. The Application is to provide details of the bus size, bus times and indicate the provision of on-site bus parking.

**Note:** If the private bus service ceases then additional car parking will need to be provided on-site by the applicant. Conditions will be included in any consent issued by Council addressing these issues.



### 6.3.7 Signage

It is important that a coordinated approach is adopted towards signage.

**Note:** This clause does not relate to third party advertising signage.

#### Objective

- O1** To ensure adequate identification of all industrial premises whilst preventing the proliferation of advertising signs or structures.

#### Controls

- C1** Signage shall comply with **Part 3D - Signage**.
- C2** Advertisements and associated structures are to be placed so that they enhance the architectural and landscape presentation of the locality, and be proportional to the scale of the building and surrounding open space within which they are placed.
- C3** A property identification number is to be displayed conspicuously at a prominent position on the property.
- C4** Free standing advertisements and associated structures shall relate (in their size and form) to the scale of the building(s) on site, visibility and other advertisements in the vicinity (to avoid clutter).
- C5** All large sites shall contain suitable directional signs within strategic vehicular and pedestrian locations within the development.
- C6** There shall be no lighting overspill from signage.



### 6.3.8 Site Facilities

Site facilities generally include mailboxes, waste storage and garbage collection areas, general storage areas, gatehouses, substations, staff recreational facilities, telecommunications, fire hydrants/booster valves, and water storage/recycling tanks. Site facilities need to be appropriately designed and well integrated within the development, as the facilities need to be accessible to occupiers of the development.

Consideration needs to be given to the impact of these facilities on the overall appearance and amenity of the development and the local streetscape.

#### Objectives

- O1** To ensure site facilities are designed as part of the overall development;
- O2** To achieve the safe and aesthetic provision of services; and
- O3** To ensure that open storage areas are properly screened to minimise any adverse visual effects of the development.

#### Controls

- C1** New site facilities such as mail boxes and electricity sub-stations shall be designed and/or sited so that they enhance the development.
- C2** New site facilities shall be situated so that there is satisfactory vehicular access by service personnel and vehicles.
- C3** The existing above ground electricity and telecommunication cables within the road reserve and within the site shall be replaced, at the applicant's expense, by underground cable and appropriate street light standards, in accordance with the Energy Providers guidelines. The applicant shall bear the cost of the new installation and the first 12 months of additional street light charges.
- C4** In some cases it may be necessary to provide an electricity substation at the front of the development adjacent to the street frontage. This will involve dedication of the area as a public road to allow access by the electricity provider. The front boundary treatment used elsewhere on the street frontage shall be used at the side and rear of the area
- C5** The name and address of the premises shall be displayed in a position that is clearly visible from the street and / or service lane to assist identification and deliveries.
- C6** The street number of a site must be visible from the street and made of a reflective material to allow visitors and emergency vehicles to easily identify the site.





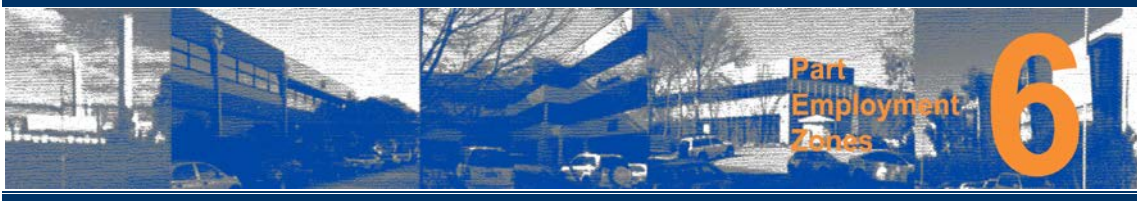
- C7** Development must not be carried out on the land until arrangements satisfactory to Sydney Water have been made for the provision to the land of water and sewerage services.

**Note:** Developers of proposed developments in the City of Botany Bay that will affect Sydney Water's water and wastewater systems are required to obtain a Section 73 Compliance Certificate from Sydney Water before development can proceed. This will be a condition of consent for these developments. Issuing of the Certificate will confirm that the proponent of the development has met Sydney Water's detailed requirements, which include but are not limited to correctly sized water and wastewater mains; adjustments, extensions or amplifications; payment of Sydney Water charges; landscaping; and the completion of any other requirements. Adjustments to existing Sydney Water systems resulting from developer activity will be charged to the particular developer.

Developers are encouraged to engage the services of a Water Servicing Coordinator (WSC) to obtain the Section 73 Certificate and manage the servicing aspects of their projects. Details are available from any Sydney Water Customer Centre on 13 20 92 or Sydney Water's website at [www.sydneywater.com.au](http://www.sydneywater.com.au).

- C8** New utility services associated with the development of the site, such as fire hydrant booster valves, substations, water storage tanks and so on are not to be incorporated into the landscaping to be established in the development of the land.
- C9** Any open storage areas shall be delineated in area, to be screened effectively and shall harmonise with existing or proposed landscaping and prevent the land being viewed from a public road, nearby public reserve or adjoining residential property. Specific details of the materials to be stored external to the building shall be lodged with the Application. The storage areas are not to be located within the landscaped area.
- C10** Letterboxes shall be located along the front boundary and be clearly visible and accessible from the street.
- C11** Owners are to provide their own waste management services. These facilities will vary depending on the needs of the site. Any waste management equipment must not be visible from the street. Waste bins must be provided in a designated area that is easily and safely accessible for workers.
- C12** Where a footpath, road shoulder or new or enlarged access driveway is required to be provided this shall be provided at no cost to Council.
- C13** Council must be notified of any works that may threaten Council assets. Council must give approval for any works involving Council infrastructure.
- C14** Any electrical kiosk or fire booster assembly required must be located in an unobtrusive location away from pedestrian and vehicle entrances to the property and not located within the main street setbacks. The utilities shall be screened using landscaping and/or a built screen so as not to reduce the visual amenity of the development, landscape treatment or the streetscape and public domain. The location of, and screening treatment surrounding the utility shall be approved by Council's Landscape Architect prior to their installation.





**C15** Fire booster assemblies shall be housed within the external face of the building structure where possible.



### 6.3.9 Landscape

Since the early 1980's Botany Bay City Council has set a precedent by upgrading the image of its industrial areas by extensive, well designed landscaping on development sites.

#### Objectives

- O1** To ensure that future development contributes to the creation of a high quality landscape environment in the Precinct, to improve the appearance of developments, the streetscape and the public domain;
- O2** To subdue the appearance of buildings by providing landscaping and planting that is of an appropriate scale for the building envelope;
- O3** To retain existing trees both inside and outside the site and provide suitably proportioned areas of well designed landscaping on each development site;
- O4** To improve the visual and environmental amenity of industrial and commercial areas;
- O5** To screen unsightly land uses and provide landscaped buffers between other properties and landuses, especially residential;
- O6** To provide pedestrian linkages and connections to surrounding public domain and community facilities on larger sites;
- O7** To provide recreation areas for workers in larger developments;
- O8** To design landscaping so that is integrated with the built form - the size, scale, building envelope and finishes, as well as parking, circulation and service facilities; and
- O9** To increase natural stormwater infiltration and decrease runoff through landscaping.

#### Controls

- C1** Landscaping is to be designed to ameliorate the bulk and scale of industrial and business park buildings, to shade and ameliorate large expanses of pavement and surfacing, to create a comfortably scaled environment for pedestrians in the public domain or from within the site and to screen utility areas and the like. Emphasis is to be placed on leafy internal spaces and landscaped setbacks designed for screening and visual amenity. In designing landscaping on a site, the requirements of **Part 3L - Landscaping** are to be complied with.
- C2** Existing trees, including Council street trees and trees on neighbouring properties, are to be retained and adequate provision allowed for the protection of their primary root zone and canopy when locating new buildings, driveways and parking areas (refer to **Part 3F - Tree Management**).



- C3** Planter beds at the base of the building façade are encouraged to soften and visually ground buildings.
- C4** Canopy trees are to be planted liberally throughout the development and with a contiguous, even distribution to reduce the scale and bulk of buildings, unify buildings with the landscape and open spaces, enhance the streetscape and provide shade and canopy cover over the site. Minimum tree size is 100 litre. Tree selection shall be in scale with building heights and shall be strategically located, for example, to soften the ends and corners of buildings. Canopy trees strongly influence the impacts of a development on the streetscape.
- C5** Energy efficient and sustainable landscaping practices are to be incorporated in the landscape design.
- C6** Vehicle manoeuvring, circulation, access and parking areas are to be located on the site in order to maximise the area available for landscaping. Excess hardstand areas are to be minimised. Contrasting pavement finishes shall be used to break up large sections of paving and to delineate different usages.
- C7** Stormwater absorption basins are to be planted with suitable trees and native grasses in preference to lawn. Species are to be tolerant of periodic inundation and water logging and shall not reduce the storage capacity of the basin. Species are not to have invasive root systems.
- C8** Landscaping in the public domain is to reinforce existing streetscape planting themes and patterns. Council may require the developer to provide street tree planting, landscaping, paving or street furniture in any development proposal.
- C9** Not less than 10% of the development site shall be landscaped. On sites over 2000m<sup>2</sup> the front landscaped setbacks are additional to the 10% requirement. The majority of landscaping shall front the street/s to which the development has frontage and include side and rear landscaped areas.
- C10** If an existing site is to be re-furbished, or with change of use applications, and if the landscaping forms less than 10% of the site area, then 10% will be sought if there is unused land available or excess parking. If there is less than a 3 metre wide landscaped frontage width this will also be sought.
- C11** If underground parking is included it must be located beneath the building footprint so that all landscaping and landscaped setback areas are deep soil natural ground zones (refer to **Part 3L-Landscaping** for a definition of a Deep Soil Zone).
- C12** Landscaped setbacks on side and rear boundaries should not contain access or fire egress paths. These should be positioned outside the landscaped setbacks or a wider setback provided.
- C13** Sub-surface on-site stormwater detention devices (OSD) are not to be located within any landscaped setback or underneath areas to be landscaped or planted. Alternative locations such as underneath driveways, car parks, pavements or within basements is required. Additionally, no stormwater inlet pits, piping or OSD structure are to be located within the canopy dripline or 3 metres outward of the dripline of existing trees to be retained. Above ground rainwater tanks shall not be visible from the public domain.



- C14** Landscaped setbacks shall be in accordance with **Part 6.3.5 - Setbacks** are to be landscaped to provide an effective, purposeful and site responsive planting design to enhance the visual amenity of the development, particularly at the interface with residential development and the public domain.
- C15** The rear and side setbacks shall contain tall screen planting that retains foliage near ground level using suitably selected trees and shrubs. A layered landscape approach is required using trees and shrubs of varying height, form and canopy dimensions to adequately ameliorate the development and provide screening and visual amenity where required.
- C16** Areas containing trees are to be of suitable dimensions to allow for lateral root growth as well as adequate water penetration and air exchange to the soil substrate.
- C17** A continuous landscaped planter bed shall also be provided between driveways and site boundaries of minimum dimensions 1 metre, 2 metres is preferred to screen driveways and buffer vehicular noise.
- C18** Any planter bed within a development (excluding setbacks) shall be a minimum of 1 metre wide.
- C19** All fence and masonry wall details shall be indicated in the landscape documentation and shall be in accordance with **Part 6.3.10 - Fences**. Retaining walls shall be masonry or concrete and to a Structural Engineer's design if over 500mm in height.
- C20** Landscaped areas shall be supplied with a fully automatic drip irrigation system with moisture sensors.
- C21** All planter beds shall be contained by a 150mm high concrete kerb or masonry edge and all car parking spaces shall contain concrete wheel stops. Car parks shall be landscaped in accordance with **Part 3L - Landscaping**.
- C22** Fire booster valve assemblies, water tanks, electrical kiosks and waste storage areas must not be located in landscaped areas nor in the street setback (refer to **Part 6.3.8 - Site Facilities**). They are to be appropriately screened by a built enclosure or landscaping so as not to impact the amenity of the public domain (refer **Part 3L - Landscaping**).
- C23** Electrical kiosks, fire booster assemblies or similar utilities shall be located in an unobstructive location away from vehicular and pedestrian entries and not within the landscape setback. The utilities must be screened by a built enclosure or landscaping so as not to reduce the amenity of the development, streetscape or public domain.
- C24** New footpaths shall be appropriately located within the street with consideration for obstruction cause by electrical pillar associated with the undergrounding of mains power.



### 6.3.10 Fences

Fences and walls along the main street frontage, and dividing fences in front of the building alignment, can dominate the streetscape so they should be well designed, compatible with others in the street and constructed of materials that are compatible with buildings on the site and fences on adjoining properties. By keeping front fences either low or semi-transparent the streetscape has a more open, landscaped quality.

Objective	
O1	To provide guidelines for fencing of developments affected.

Controls	
C1	Fences are to be located behind the street frontage landscaped area or incorporated within the landscapes setback. All fencing along the street frontage is required to be permeable metal palisade or picket powdercoated in a suitable colour, dark colours are preferable. Maximum height is 1.8 metres on street frontages.
C2	Chain wire is permitted only on the side and rear boundaries with commercial or industrial developments, commencing at the front building alignment - not the front boundary. All chain wire fencing is required to be black PVC coated.
C3	If the side or rear boundary faces a side or rear boundary of a residential premises, a timber paling/colourbond fence (commencing at the front building alignment) is allowed.
C4	Council may require that any fencing be replaced in any development if it is in a dilapidated condition.
C5	Masonry retaining walls along the frontage are restricted to 600mm in height.
C6	Solid metal panel fences of any height are not permitted along the street frontage or in front of the building alignment.
C7	Access gates shall be hung so that the direction of swing is inward.
C8	Fences adjacent to access driveway/vehicular crossings are to be designed and constructed to ensure adequate sight distances can be maintained in accordance with the requirements of AS2890.1 and AS2890.2.



### 6.3.11 Industrial Development Adjoining a Residential Land Use

The residential/non-residential interface is one of the major issues within the City of Botany Bay. Industrial and related developments have potential to cause a significant environmental impact in terms of odours, noise and discharges. Whilst some of these impacts are addressed by the Protection of the Environment Operations Act 2008 the design and operation of development in industrial and business park area can contribute to avoiding these issues. The impacts may be on more sensitive land uses in nearby residential areas or on other uses (including dwellings) within the industrial and business park areas. As the range of uses permitted in the industrial areas is quite significant it is necessary to consider these impacts on land uses within the industrial and business park zones.

In order to protect adjoining or neighbouring residential development, the following interface amenity controls have been crafted to ameliorate any potential adverse impacts from proposed industrial development.

#### Objectives

- O1** To reduce the land use conflict between residential and non-residential uses;
- O2** To ensure non residential development is sympathetic with the streetscape character and maintains the amenity of surrounding residential development; and
- O3** To ameliorate any potential adverse amenity, noise, privacy or overshadowing impacts upon any adjoining or neighbouring residential development from any proposed non-residential development.

#### Controls

##### General

- C1** Where a new building or alterations and additions to an industrial building is proposed abutting a residential property the front building line setback is to be the same as the front building line setback of the adjoining residence.
- C2** A minimum 3 metre side or rear building setback is required for any building abutting a residential property. This setback is to be increased by one metre for every additional metre in height for the proposed development, above 5 metres in building height.
- C3** The setback area adjoining a residential property is to be densely landscaped with evergreen trees and shrubs, which at maturity will screen the development from the residence. Details of the proposed planting are to be provided on a landscape plan to be submitted with the Development Application.
- C4** For any proposed development that adjoins a residential property, the hours of operation are to be restricted to between 7.00am and 6.00pm Mondays to Fridays, 7.00am to 1.00pm Saturday and no work on Sundays or public holidays.





**C5** Noise emissions are to comply with the following noise criteria:

- (i) Operation of all plant and equipment shall not give rise to an equivalent continuous (LAeq) sound pressure level at any point on any residential property greater than 5dB(A) above the existing background LA90 level (in the absence of the noise under consideration);
- (ii) The operation of all plant and equipment when assessed on any residential property shall not give rise to a sound pressure level that exceeds LAeq 50dB(A) day time and LAeq 40 dB(A) night time; and
- (iii) The operation of all plant and equipment when assessed on any neighbouring commercial/industrial premises shall not give rise to a sound pressure level that exceeds LAeq 65dB(A) day time/night time.

For assessment purposes, the above LAeq sound levels shall be assessed over a period of 10-15 minutes and adjusted in accordance with EPA guidelines for tonality, frequency weighting, impulsive characteristics, fluctuations and temporal content where necessary.

For some uses a noise impact assessment is required to be submitted with a development application for an industrial development adjoining a residential property, verifying that this noise criteria can be satisfied. The report should identify all possible noise sources/activities from the proposed development and is to be prepared by a suitably qualified consultant who is a member of the Australian Acoustical Society (AAS).

**C6** An industrial development should be designed to locate sources of noise such as garbage collection, loading/unloading areas, air conditioning plant/other machinery, and parking areas away from adjoining residential properties.

#### **Plan of Management:**

**C7** A Plan of Management (POM) will be required when an industrial or business park activity is proposed in proximity of a residential land use. The Plan of Management (POM) is a written report which describes how the ongoing operation of industrial premises will be managed to reduce its impact upon the amenity of surrounding properties.

The POM allows Council to exercise control over the ongoing operation of a premises by requiring, as a condition of consent, that the premises operate in accordance with the POM. A condition of consent may require that a POM be regularly revised and submitted to Council.

The POM must provide all details relevant to the operation of the premises. As a minimum the following must be included:





- (i) Title;
- (ii) Objectives;
- (iii) Operational details;
- (iv) Hours of operation;
- (v) Staffing details;
- (vi) Guidelines for staff for using the site facilities and equipments;
- (vii) Deliveries and loading/unloading;
- (viii) Managing customers or patrons;
- (ix) Security details;
- (x) Noise Impact Assessment;
- (xi) Shadow Analysis;
- (xii) Complaint recording and handling process; and
- (xiii) The review process to continuously improve the POM.

- C8** The traffic movements, hours of deliveries, use of parking areas and garbage collection must be managed through the POM where industrial and/or business park sites are close to residential premises. Where significant amounts of traffic are likely to be generated which could affect residential areas or residential zoned land, schedules of vehicle movements and their routes must be provided and may be regulated in conditions of consent.
- C9** Loading and unloading must not detract from the amenity of nearby residential areas or residentially zoned land. Where loading and unloading movements are likely to affect residential areas or residentially zoned land, schedules of vehicle movements and their routes must be provided in the POM and may be regulated through conditions of consent.
- C10** Where adjoining residential development, industrial and business park development is to provide appropriate buffer mechanisms to reduce the impact of their operations on the residential development.
- C11** Sources of noise such as garbage collection, deliveries, machinery, motors, parking areas and air conditioning plants are to be sited away from adjoining properties and where necessary, be screened by walls or other acoustical treatment.
- C12** New construction is to be located and designed to minimise any impact on adjoining residential properties by way of overshadowing, overlooking, glare, dust, fumes or noise generation.
- C13** New development is to be designed so that noise-producing activity is remote from the interface boundary. New manoeuvring areas and parking areas facing existing residential areas are not permitted due to noise resulting from such activities.
- C14** Site lighting for building security and staff safety must be directed so as to not cause annoyance to neighbours or glare to passing motorists.
- C15** Sites with a road frontage to residential areas (ie Stephen Road, Denison Street, Cranbrook Street, Tenterden Road etc) are to locate any new offices to the residential areas and are to have



restricted access points onto the residential fronted road. The warehouse/factory functions of a new development are to be located away from the residential areas.

- C16** Walls of buildings adjacent to residential areas are to make use of non-reflective colours and materials to avoid glare on residential areas (especially balconies). The walls are to be treated to aesthetically as well as acoustically. Window placement and/or tall trees should be considered as ways to protect privacy, reduce noise and light pollution.
- C17** Where a site adjoins a residential property, Council shall require the applicant to provide shadow diagrams prepared by a suitably qualified person. These shadow diagrams shall:
- (i) Show the shading effects of a proposal on adjoining residential properties or the public domain;
  - (ii) Be based on a survey of the site and adjoining development; and
  - (iii) Be prepared at 9.00a.m, 12.00noon and 3.00p.m. at 21st June (winter solstice).
- C18** Where the windows of habitable rooms and the private open space of adjoining dwellings already receive sunlight, they shall receive a minimum of 2 hours of sunlight between 9.00a.m. and 3.00 p.m. during 21st June.

**Note:** Council will refer a contentious Development Application or one that involves an extension to the trading hours of a licensed premises to a Resident Consultative Committee or where there have been a significant number of objections received as a result of exhibition and/or notification of the Application. Both the Applicant and the Objectors will be invited to attend. The purpose of the Committee is to address the issues raised by residents in an open forum.



### 6.3.12 Noise and Hours of Operation

Noise from the operations of industrial/business operations is one of the main issues, especially at the interface between residential and industrial/business operations.

#### Objectives

- O1** To ensure appropriate noise attenuation measures are incorporated into building design and site layout;
- O2** To ensure that any noise generated from the operation of the development is minimised and maintained at acceptable levels;
- O3** To ensure that hours of operation are appropriate for the site and the neighbourhood;
- O4** To reduce, if not eliminate, land use conflicts and anomalies on the interface between industrial/business park areas and residential areas; and
- O5** To minimise the impact of noise and vibration by proposed operations and on proposed developments of existing and projected future sources of noise and vibration.

#### Controls

- C1** Noise control measures are to take into account all noise generating sources.
- C2** Sources of noise such as garbage collection, deliveries, machinery, motors, parking areas and air conditioning plants are to be, where practicable, sited away from adjoining properties and where necessary, be screened by walls or other acoustical treatment.
- C3** Development is to be designed with noise control measures to minimise the possibility of noise transmission to the occupants of adjoining or neighbouring dwellings. New development must be designed so that noise producing activity is remote from the interface boundary.
- C4** All applications for noise generating uses are to be accompanied by documentation from a qualified acoustic engineer certifying that the acoustic standards can be met.

**Note:** Noise generating uses include: Air transport facilities; amusement centres, animal boarding or training establishments; boat building and repair facilities; bulky goods premises; commercial car parks; child care centres; depots; entertainment facility; food and drink premises; freight transport facilities; function centres; garden centres; general industries; hardware and building supplies; heavy industrial storage establishments; heavy industries; high technology institutes; industrial training facilities; landscaping materials supplies; passenger transport facilities; place of public worship; pubs; recreation facilities (indoor); registered clubs; resource recovery facilities; service stations; storage premises; timber yards; transport depots; truck depots; vehicle body repair workshops; vehicle repair stations; vehicles sales or hire premises; veterinary hospitals;



warehouse or distribution centres; waste or resource management facilities; and any other uses designated by Council.

- C5** Noise mitigation measures around machinery and property are to be submitted with the development application.

**Note:** Please refer to Council's Guidelines Minimum Acoustical Requirements for New Developments and to Council's **Development Application Guide**.

- C6** The emission of noise from any new development is to comply with the NSW EPA Industrial Noise Policy and Council's adopted Noise Criteria.
- C7** Any levels of noise generated from the operations or vehicles associated with the development is to be compatible with adjoining non industrial uses and the requirements of the NSW Environment Protection Authority "Environmental Criteria for Road Traffic Noise" and Council's adopted Noise Criteria.
- C8** The traffic movements, hours of deliveries, use of parking areas and garbage collection are to be restricted where sites are in close proximity to residential premises.
- C9** Hours of operation for the use of a site are to be restricted by Council if it is at all likely that the use will cause an impact on any adjoining or adjacent residential development. Uses that operate outside of normal hours of operation (ie Monday to Friday 8am to 5pm and Saturdays 8am to 4pm) are required to submit a Plan of Management (POM). The Plan of Management (POM) is a written report which describes how the ongoing operation of the use will be managed to reduce its impact upon the amenity of surrounding properties.

The POM allows Council to exercise control over the ongoing operation of a premises by requiring, as a condition of consent, that the premises operate in accordance with the POM. A condition of consent may require that a POM be regularly revised and submitted to Council.

The POM must provide all details relevant to the operation of the premises. As a minimum the following must be included:

- (i) Title;
- (ii) Objectives;
- (iii) Operational details;
- (iv) Hours of operation;
- (v) Staffing details;
- (vi) details of plant and equipment and hours of use
- (vii) Guidelines for staff for using the site facilities and equipment;
- (viii) Car parking provision and use by staff and visitors;
- (ix) Deliveries and loading/unloading;
- (x) Sorting of materials;
- (xi) Storage of materials;
- (xii) Managing customers;



- (xiii) Security details;
- (xiv) Complaint recording and handling process; and
- (xv) The review process to continuously improve the POM.

- C10** Loading and unloading times are not to detract from the amenity of nearby residential areas, or residentially zoned land. Where loading and unloading movements are likely to affect residential areas or residentially zoned land, schedules of vehicle movements and their routes must be provided and may be regulated in conditions of consent.
- C11** High-intensity noise generating industries are not be permitted in close proximity to residential uses.
- C12** Sites with a road frontage to residential areas should locate any new offices to the residential areas with restricted access points onto the residential fronted road. Similarly, the warehouse/factory functions of the new development must be located away from residential areas.
- C13** Where significant amounts of traffic are likely to be generated which could affect residential areas or residential zoned land, schedules of vehicle movements and their routes must be provided and may be regulated in any conditions of consent.



### 6.3.13 Waste

The consideration of waste issues when designing a development proposal will assist in the on going minimisation of waste through recycling and reuse of materials. Council encourages waste minimisation (source separation, re-use and recycling) and requires the efficient storage and collection of waste and quality designed of facilities. This section contains objectives and controls that must be complied with which apply specifically to industrial developments with both designated and communal waste storage areas.

#### Objectives

- O1** To assist in achieving Federal and State Government waste minimisation targets in accordance with regional waste plans;
- O2** To minimise the overall environmental impacts of waste;
- O3** To require the preparation of waste management plans detailing actions to minimise waste generation and disposal;
- O4** To require source separation and other design and location standards that complement waste collection and management services offered by private providers; and
- O5** To encourage building design and construction techniques that minimise future waste generation.

#### Controls

- C1** Development must comply with **Part 3N - Waste Management and Minimisation**.
- C2** The system for waste management is compatible with the chosen collection services.
- C3** Sufficient space shall be provided for on-site separation and storage of recyclables and garbage.
- C4** For multi-use and industrial units, a waste storage and recycling area shall be provided for each unit or in communal areas. This area shall be designed to accommodate a range of uses as well as a change of use of the units.
- C5** The area is easily accessible from each unit and from the collection point and clear access for collection vehicles is provided.
- C6** The waste collection area shall be covered, drained to sewer through a Sydney Water Trade Waste Agreement and may need bunding depending on the material to be stored within the area.





### 6.3.14 Environmental Protection

This control covers the potential for pollution (including odour) from development and to try and minimise any adverse environmental effects of development.

#### Objectives

- O1** To ensure that development takes account of and minimises any adverse effects upon the environment; and
- O2** To limit the potential for noise, air (including odour), ground water, soil and surface water pollution.

#### Controls

- C1** All development must comply with the provisions of the relevant air quality acts and regulations.
- C2** Detailed Stormwater Management Plans are required and all development must comply with **Part 3G - Stormwater Management**.
- C3** Industrial developments likely to emit air pollutants (including odour) shall demonstrate that best practicable means of control of air pollutants (and odour) will be applied to the proposed development. The applicant shall outline the type, quantity and quality air pollutants that are likely to be emitted, the collection and treatment proposed prior to discharge and methods to be employed to minimise fugitive emissions.  
  
**Note:** for Best Management Practices for odour control please refer to [www.environment.nsw.gov.au](http://www.environment.nsw.gov.au)
- C4** The discharge of any matter whether solid, liquid, or gaseous onto the site, neighbouring land, public place or into any road, drain, pipeline or water course or into the air during demolition, excavation, construction or subsequent occupation of the property is required to conform to the Protection of the *Environment Operations Act 1997*, or a pollution control approval issued by the Environmental Protection Authority for Scheduled Premises.
- C5** A Trade Waste Agreement shall be obtained from Sydney Water prior to commencement of works for any use where wastewater is likely to be generated (in addition to toilet facilities). A Permission to Discharge Trade Wastewater shall be obtained from Sydney Water and a copy provided to Council prior to issuing of the Construction Certificate.
- C6** Any proposed building, construction or demolition works requires a Soil and Water Management Plan on the methods to be employed to minimise soil disturbance and soil migration from the site. The Plan is to be lodged with Council as part of the Development Application information.
- C7** Liquid materials shall be stored in an appropriately roofed and bunded area in accordance with





the NSW EPA Bunding and Spill Management Guidelines.

- C8** No furnace, kiln, boiler, chemical plant or other equipment capable of discharging emissions into the atmosphere may be installed if it will result in unacceptable levels of air pollution.
- C9** Demolition materials shall not to be burnt on site.
- C10** No liquid waste may be discharged onto the site or neighbouring land, public place or into any road, drain, pipeline, or water course. (It needs to be treated and put to sewer or collected and disposed of in accordance with the EPA requirements).
- C11** Each loading dock shall be equipped with an airtight container for containment of any chemical contaminant which may be being transported and shall be manned, at all times, by a person trained in dangerous goods handling and decontamination. A store of absorbent material shall be kept on site at all times for use in the event of liquid spills. The equipment is to be installed prior to the issuing of the Occupation Certificate.
- C12** Developments that may handle significant quantities of any potential pollutants are to develop clean-up procedures in case the materials escape from the site. Occupiers are to train staff in clean-up procedures. Such training is to be on-going.
- C13** Any excavation adjacent to RMS infrastructure must comply with the requirements of the Technical Direction (GTD 2012/001) – Excavation Adjacent to RMS Infrastructure. A copy of this Technical Direction can be downloaded via the following link:  
<http://www.rms.nsw.gov.au/doingbusinesswithus/engineeringpolicies/technicaldirections.html>



### 6.3.15 Risk

#### Objective

- O1** To ensure that any risk to human health, property or the natural environment arising from the operation of the development is minimised and addressed.

#### Controls

- C1** Should the proposed use involve the storage and/or transport hazardous substances Council will require an assessment of the Development Application under **State Environmental Planning Policy No. 33 - Hazardous and Offensive Development**.

**Note:** All applications to carry out potentially hazardous or potentially offensive development will have to be advertised.

- C2** Development Applications to carry out potentially hazardous development will also have to be supported by a Preliminary Hazard Analysis (PHA). Applicants should refer to the provisions of State Environmental Planning Policy No. 33 - Hazardous and Offensive Development

**Note:** Applicants are to refer to the applicable Hazardous Industry Planning Advisory Papers (HIPAPs) and other guidelines such as *Applying SEPP 33* and *Multi-level Risk Assessment* found on the Department of Planning and Environment's website at <http://www.planning.nsw.gov.au/planning-guidelines-for-hazardous-development>

- C3** Development adjacent or adjoining sites/uses/pipelines that involve the storage and/or transport of hazardous substances are to prepare a risk assessment in accordance with the Hazardous Industry Planning Advisory Papers.

**Note:** Banksmeadow Industrial Precinct has specific risk related controls that have to be complied with. If your site is within the Banksmeadow Industrial Precinct you need to also refer to the Precinct controls in **Part 6.2.8 - Banksmeadow Industrial Precinct**.



### 6.3.16 Industrial & Business Park Unit Development

#### Objectives

- O1** To ensure that industrial & business park unit development has a consistent character and built form within the estate;
- O2** To introduce genuine architectural interest within the built form, which is responsive to the position and form of the buildings on adjoining sites and to the topography and position of the site within the estate and the locality; and
- O3** To ensure that the size and shape of the industrial unit is appropriate for the range of industrial uses permissible in the zoning of the site.

#### Controls

##### Building Form and Finishes

- C1** Each building within the estate whether it is positioned on its own site or within a multiunit development shall be provided with a clearly delineated entryway. This sends a clear message to anyone entering the property where the exact location of the entrance to each building is.
- C2** Each building within the estate shall be designed to address the public or private road to which it presents, with credible architectural elements.
- C3** Corner allotments shall contain buildings, which also address the corner of the site with an accentuated building form to help denote the entry to the estate etc.
- C4** Large expansive walls with no architectural interest or relief will not be permitted. Architectural elements, variations to colours, textures and or materials shall be utilised in these circumstances.
- C5** Large expansive buildings shall have their bulk visually broken down by the use of variations to the placement of the vertical walls of the buildings. Minor modulations to the height of the buildings may also be employed to achieve a reduction of its visual bulk.
- C6** Consideration shall be given to the proposed likely height and configuration of buildings on adjacent sites. Sensitivity to the resultant character of the street shall be addressed at the design stage of each development proposal.



#### Site Layout

- C7** The site layout and internal building design shall be arranged so as to ensure all car parking areas have the ability to undergo natural surveillance from the occupants of adjacent buildings.
- C8** The site layout shall also be arranged to facilitate natural surveillance of properties within the estate from both the public roads and internal roads.

#### Size of Industrial Units

- C9** Units are to be of a size to accommodate uses permissible within the zoning.
- C10** The applicant is to demonstrate that the use operations, including the storage of raw materials, finished products, trade wastes and recycling bins are contained wholly within the industrial unit.
- C11** The applicant is to demonstrate that all vehicle parking and movement can be contained within the site.

#### Setbacks

- C12** In addition to the setback requirements in **Part 6.3.5 - Setbacks**, individual site proposals shall be designed with regard to the actual or likely positioning of buildings on their rear and side boundaries in order to ensure that optimal utilization of manoeuvring and landscaping areas occurs within the estate. Examples of where this may occur include:
  - (i) To obtain access to a landscaped area located at the rear of the site it would be appropriate to have a reasonable side boundary setback on at least one side of the site; and
  - (ii) To share a proposed vehicular turning area, it may be appropriate to have a zero side setback between two industrial buildings within the estate.

#### Paving

- C13** Large expanses of bland concrete paving shall not be permitted. A contrast of paving materials are required to be provided throughout the development i.e. unit pavers and concrete.
- C14** The majority of car spaces are to be paved with interlocking unit pavers.
- C15** Use of asphalt is not permitted.



### 6.3.17 Change of Use of Existing Buildings

Changes to the use of existing buildings in industrial areas & business areas may require upgrades. It is necessary to ensure that the building will be suitable for the new use and that its use does not have an adverse impact on adjoining and nearby land uses.

#### Objectives

- O1** To ensure that the existing building is appropriate for the new use;
- O2** To ensure that any necessary upgrades including upgrades to landscaping, BCA compliance and car parking layout or changes to the development are made;
- O3** To ensure there are minimal adverse impacts on surrounding development; and
- O4** To ensure there are minimal adverse impacts on traffic and car parking on nearby streets.

#### Controls

- C1** A change of use is must not result in a significant impact on adjoining or nearby properties or on traffic movements within the locality.
- C2** All buildings on site are to be upgraded to comply with the Building Code of Australia relevant to the proposed use. Where this has an impact on the exterior of the building it is required to comply with the requirements in this DCP.
- C3** Where the new use requires more car parking than is currently provided; it shall where possible increase the car parking and loading provisions to meet the requirements of the DCP, subject to compliance with other provisions of the DCP. Existing landscaping areas however are not to be removed or reduced in size.
- C4** Where a new use results in additional traffic generation it may be necessary to adjust the access driveways to suit the traffic generation. Refer to **Part 6.36 - Parking and Vehicular Access** of the DCP for details on access provisions.
- C5** Where existing landscaping is below the standard identified in the DCP, the existing area of landscaping shall where possible be upgraded to the standard specified in the DCP (refer to **Part 3L - Landscaping**).
- C6** The new use shall not compromise the amenity of the locality in any greater, different or additional way than the existing use.
- C7** Any adjustments required to any Council infrastructure in conjunction with the change of use shall be at no cost to Council.



### 6.3.18 Non Industrial & Business Park/Developments

Botany Bay LEP 2013 permits a range of non industrial & business land uses within the industrial and business zones. These are those uses which are ancillary to industrial & business uses or which are compatible with an industrial and business environment.

These land uses may involve using an existing building or construction of a new building. The following provisions are additional provisions for particular land uses. These land uses shall also comply with the other provisions of the DCP.

Some of the non related industrial and business park land uses have some specific controls (refer to **Part 7 - Other Development Types and Land Uses**).

**Objectives**

- O1** To ensure that the non industrial & business land uses are compatible with the industrial environment;
- O2** To ensure that the non industrial & business land uses do not unnecessarily restrict the operation of industrial and business uses in the industrial & business zones; and
- O3** To ensure that non industrial & business land uses are designed to operate without adverse impact from industrial developments.

**Controls**

- C1** Site planning for non industrial & business land uses shall ensure that the use will not unduly impose restrictions on existing or future nearby industrial uses.
- C2** Car parking for the non industrial & business land use is to be able to operate separately from other land uses on the site.
- C3** Where the hours of operation are after sunset, the car parking areas and any other public areas shall be provided with lighting to provide a safe environment for users of the premises after hours.
- C4** A Noise Impact Assessment Statement prepared by a qualified Acoustics Engineer may be required to be submitted with the application depending on the scale and location of the proposed use to show that the use can operate satisfactorily in the industrial area.





### 6.3.19 Caretaker Dwellings

It is acknowledged that in some cases, businesses require full-time care of buildings, plant and equipment. The need for a caretakers dwelling may be recognised in circumstances where it can be shown that a caretaker needs to reside full-time on land containing those buildings, plant and equipment in order to effectively fulfil their duty of care.

A caretakers dwelling is “a dwelling on the same site as a building, operation, or plant, and occupied by a supervisor of that building, operation or plant”.

#### Objectives

- O1** To provide for caretaker dwellings where they do not compromise the integrity of industrial or business areas by imposing unnecessarily restrictive constraints on the operation of industrial or business uses; and
- O2** To ensure caretaker dwellings are appropriately designed to provide reasonable amenity for occupants.
- O1** To ensure that the caretakers dwelling is provided with an adequate living (indoor and outdoor) environment for the occupants.

**Comment [LS1]:** Covered by O2 above.

#### Controls

- C1** The caretaker's dwelling is to be ancillary to the approved industrial or business use on the site.

**Note: Ancillary use** means any use located on the same site as a primary use, where the ancillary use is small in scale and incidental to the primary use, and serves a supportive function to the primary use.

- C2** Only one caretakers dwelling is permitted on a lot.
- C3** A caravan will not be permitted to be used as a caretakers dwelling.
- C4** The caretakers dwelling shall be occupied by a person who must be employed as a caretaker an employee, owner of the business or occupant operator of the industrial and/or business park business at located on the same site. If consent is granted, a restriction on the use of land shall be registered on title that ensures that the caretaker dwelling is occupied by a person who must be employed as a caretaker, owner, or operator of the approved business on the site; and that the caretaker dwelling is not to be used as an independent flat or separate domicile or available for separate letting.
- C5** A caretakers dwelling is to have a maximum floor area of 75 square metres and is to contain a maximum of one kitchen, bathroom, toilet, laundry and living/dining area.
- C1** A separate pedestrian access shall be provided from the front of the building to the caretakers

**Comment [LS2]:** Council's minimum apartment size for a 1 bedroom apartment previously in the BBDCP 2013 (prior to the Apartment Design Guide).





~~dwelling.~~

- C6** ~~The caretakers dwelling shall be provided with a private open space area of:~~  
~~(a) 4 metres by 6 metres~~ 15 square metres with a minimum depth of 3 metres at ground level that is directly accessible from a living room; or  
~~(b) be located entirely above the ground floor on a balcony or roof area with a minimum area of 8 square metres and a minimum dimension of 2 metres, directly accessible from a living room.~~

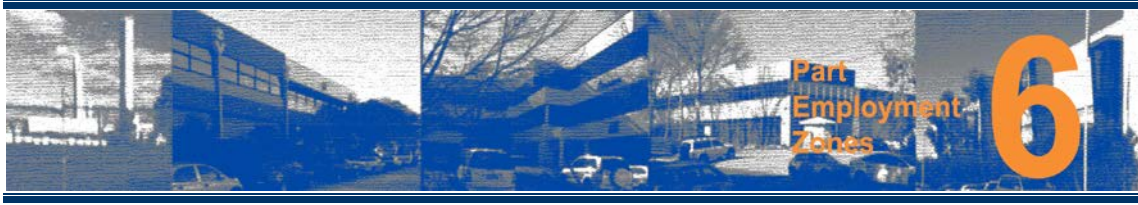
**Comment [LS3]:** Minimum private open space requirement for a 1 bedroom apartment in the ADG.

- C2** ~~A separate car parking space shall be provided for the caretakers dwelling.~~

- ~~C3~~**C7** The caretakers dwelling shall be located so that it does not suffer adverse impact from the operation of the business on site or reduce the operating capability or capacity of the adjacent businesses.

- ~~C4~~**C8** The impacts of industrial development are to be mitigated by providing protection for the caretakers dwelling from overshadowing and overlooking, noise, vibration, light, dust and odour nuisance. These impacts can be mitigated by provision of acoustic engineering, walls, screening, physical separation, site landscaping and maintaining appropriate hours of operation.

- C5** ~~Separate clothes drying facilities from the courtyard area is to be provided.~~



### 6.3.20 Creative Industries

Council is supportive of creative and high tech industries within the Botany Bay LGA as these uses have the potential to increase employment opportunities; and provide a transition between the traditional industrial areas and the adjacent residential areas.

As a majority of Council's industrial areas are now zoned under the Three Ports SEPP, the remaining reduced industrial areas need to cater for other non-port related industries that are being displaced - such as the high tech and creative industry sectors.

By encouraging creative industries, the decline in traditional industries can be rectified which will generate greater employment opportunities, as these industries tend to be high employment generators. The shift to these kinds of uses will also address the residential/industrial interface, by providing for a lower impact form of development. With these kinds of high tech uses there is an opportunity to enhance the streetscape of the industrial areas, which would be of benefit to adjacent residential and commercial zones.

Creative industries are businesses, which focus on individual creativity, skill and talent and include uses such as:

- Visual and performing arts;
- New media or multi media including film and television;
- Computer animation;
- Web design and music;
- Architecture;
- Urban design;
- Industrial design;
- Designer fashion;
- Writing; and
- Publishing.

The B7 Business Park Zone promotes uses in the creative industries and design sectors. The B7 zone will provide an interface between residential zones and the industrial zones. The following list indicates the types of uses which may be labeled "creative industries":

- Audiovisual, media and digital media;
- Advertising;
- Craft, visual arts and Indigenous arts;
- Design (including architecture, fashion, and graphic, urban, industrial and interior design);
- Film and television;
- Music;
- Publishing;
- Performing arts; or
- Cultural heritage institutions.



A creative industries local provision would be consistent with the Botany Bay Planning Strategy undertaken by SGS consultants. Section 5.6 of the Stage 3 (Employment) Final Report dated May 2008 prepared by SGS deals with the South Botany Sub-Precinct and states in part:

*“The precinct differs considerably from the Lord Street and Hale Street precincts in that it features generally smaller lots, narrow streets and significant interfaces with residential development. There may be the potential for intensification of employment activities however this is likely to require a shift away from industrial uses toward activities with higher employment densities. Given the proximity of the precinct to residential development a move away from ‘heavier’ employment use towards low impact economic activities, such as high tech and creative industries may be appropriate.”*

This report also recommended on page 38 that the Eastgardens/Hillsdale Industrial Precinct “*may be suitable as a host for local light industries and urban support displaced from other areas within the LGA given that projections are for a decline in jobs in the travel zone*”. Given that this Precinct is now zoned IN1 under the SEPP (Port Botany) 2013 local light industries and urban support services will be further displaced and opportunities for such industries need to be identified elsewhere within the LGA.

By locating these creative/high tech industries, adjacent to the residential interface areas, they can provide a lower impact transition zone between the traditional industrial areas and the residential zones.

## Objectives

- O1** To support creative industries in Botany Bay LGA;
- O2** To clarify the types of uses most suited to the business park areas;
- O3** To encourage the adaptive reuse of existing character buildings wherever possible;
- O4** To manage mixed use activities and their impacts so as to minimise land use conflicts;
- O5** To encourage active streetscapes by promoting ground floor employment generating uses and new public domain works; and
- O6** To provide a buffer between traditional industrial land uses and residential zones.

## Controls

- C1** In order to maintain active street frontages, vehicle access points must be either:
  - (i) Provided from rear lanes; or
  - (ii) Designed as narrow as possible on street frontages subject to compliance with AS2890.1 and AS2890.2
- C2** New development must improve pedestrian/streetscape amenity by incorporating awnings over the street for weather protection, street furniture or public art. An improved public domain is



encouraged particularly on sites where they adjoin residential areas.

- C3** To encourage activation of the street, the display of creative industry products along the street frontage is encouraged.
- C4** Hours of operation may be varied on occasion to accommodate forums or exhibition openings that may occur in the evening, provided the amenity of nearby residential properties is maintained.

**Note:** By integrating the private and public domain at the street interface creative industries will encourage a more vibrant and attractive streetscape.



### 6.3.21 Business Premises & Office Premises in the B5 Business Development & B7 Business Park Zones

Council has strived to achieve buildings of superior architectural quality and innovation in these zones and will continue to do so, favourably supporting buildings of contemporary design that utilise a variety of materials and finishes; and that provide for an improved public domain.

#### Objectives

- O1** To minimise the impact of stand alone office & business buildings on the surrounding area;
- O2** To enhance the visual quality of the B5 Business Development and B7 Business Park Zones and humanise the streetscapes surrounding them;
- O3** To provide visual relief and shade to the large amounts of ground and building surfacing; and
- O4** To create a pleasant “human” environment within and external to the site.

#### Controls

##### General

- C1** Building expression through façade modulation, roof silhouette and the use of a variety of contemporary materials and finishes is required to achieve buildings that are of architectural merit, innovation, variety and attractiveness. There is to be a balance between the solid walls and openings and between horizontal and vertical planes. A Schedule of Finishes is required for new buildings.
- C2** Buildings are to have a clearly delineated entranceway to address its main frontage. Buildings on corner allotments shall include an accentuated form on the corner. Minor modulation in the height of buildings is required to reduce visual bulk and scale.
- C3** Signage is to be kept to a minimum to reduce visual clutter and confusion. All proposed signage must be shown in the building elevations and plans (refer to **Part 3D - Signage**).
- C4** Vehicle manoeuvring, circulation, access and parking shall be arranged on site to maximise the area available for landscaping. Excess hardstand areas should be minimised whilst designing manoeuvring, circulation, access and parking in accordance with Australian and Council standards.
- C5** Stormwater absorption basins are to be planted with trees (where concrete storage tanks do not exist underneath), groundcovers and native grasses instead of lawn. Species are to be tolerant of periodic inundation and waterlogging and not reduce the storage capacity of the basin.
- C6** Hard paved areas shall be finished with unit pavers. Use contrasting finishes to break up large



sections of paving and to delineate pedestrian areas, entries, car parks, special use areas or at transition zones between different uses. Porous paving should be utilised wherever possible.

- C7** There should be a balance between building footprint, parking/circulation and landscaping/open space. The majority of landscaping shall front the street/s to which the development has frontage and returning along the side boundaries of the setback.
- C8** Underground parking shall be situated underneath the building footprint so that the majority of landscaping will be on natural ground to allow for deep root planting. As a minimum, landscaping along the frontage/s and abutting residential land uses shall be on natural ground. Deep root planting is planting that is not on a suspended concrete slab and not over an underground car park (refer to **Part 3L - Landscaping** and **Part 6.3.9 - Landscape**).
- C9** Underground OSD (stormwater) detention tanks are not to be located underneath areas to be landscaped or planted. An alternative location ie. underneath driveways, car parks or pavements is required. No stormwater inlet pits or piping are to be located within the drip line of existing trees.

## Landscaping

- C10** Landscaping must comply with **Part 3L - Landscaping**.
- C11** Landscaping is to be designed to reduce the bulk, scale and size of buildings, to shade and soften hard paved areas, to create a comfortably scaled environment for pedestrians in the public domain or from within the site and to screen unsightly areas. Emphasis is to be placed on leafy internal road corridors and a landscaped setback designed for softening of buildings.
- C12** Trees shall be used liberally throughout the design to reduce the scale and bulk of the built form and to reinstate canopy cover over the site.
- C13** Landscaping in the public domain is to reinforce existing streetscape planting themes and patterns. Council may require street tree planting, grassing, shrub and accent planting or any combination of these. Streetscape beautification may also include re-paving the public footway with pavers.  
  
**Note:** Council may require that all street trees be planted at the Site Establishment Phase or during Stage 1 of a staged development so that trees become established, have some growth and achieve some softening of the development by Practical Completion.
- C14** There shall be a minimum landscaped setback of 3 metres on all street frontages, and 4 metres on classified roads. The landscaped setback may be varied by Council to enable landscaping to be in proportion to the height of the building, on large development sites or to be consistent with setbacks in the street. For example, buildings greater than 4 storeys in height will usually require a larger landscaped setback.





**C15** Not less than 10% of the site area shall be landscaped. New commercial development shall allocate landscaping in accordance with the following ratios:

Site Area	Minimum Landscape Proportion
0- 2000m <sup>2</sup>	10%
2000 m <sup>2</sup> -5000m <sup>2</sup>	20%
>5000m <sup>2</sup>	30%





### 6.3.22 B-Double Vehicles

An applicant seeking B-Double access to a property in the City of Botany Bay, via a Council controlled road (all local and regional roads in the City), which is not gazetted as an approved B-Double route, shall submit a DA to Council to gain approval to access such a property. The applicants must follow Council's B-Double Route Application Guidelines in conjunction with the RTA's Route Assessment Guidelines for B-Doubles and Road Trains, when submitting the DA to Council.

#### Objective

- O1** To minimise the impact of large vehicles on the road network and the surrounding residential areas.

#### Controls

- C1** Development Applications must submit an application as per RTA's Route Assessment Guidelines for B-Doubles and Road Trains directly to Council for all roads controlled by Council. However, if the requested route includes a section of state road, which is not approved for B-Doubles, the applicant should submit a separate application to the Roads and Traffic Authority to gain approval for the state road section.
- C2** B-Double Route Development Application to Council must incorporate the following documents:
  - (i) A map showing the proposed B-Double route;
  - (ii) Copy of Council's Development Consent for B-Double usage for the applicant's site;
  - (iii) Details of heavy vehicle trips to the applicant's site over the last full known year (should not be greater than 2 years from the date of application);
  - (iv) Details of anticipated heavy vehicles per annum to the applicant's site (including B-Double and other heavy vehicles) if the application is approved; and
  - (v) Swept Path Diagrams showing the turning movements of B-Double at each intersection of local roads along the proposed B-Double route.
- C3** A Road Pavement Performance Analysis Report along the local roads of the proposed B-Double route to and from the site is required to ensure existing road pavement can perform adequately under the anticipated traffic loading generated from the heavy vehicle movements.

**Note:** Council may request the applicant to provide additional information, which is necessary to assess the application. Council may stop the processing of the application until the applicant provides such information.

Applicants may identify in their application any other matter, which they consider should be taken into account when assessing the route.

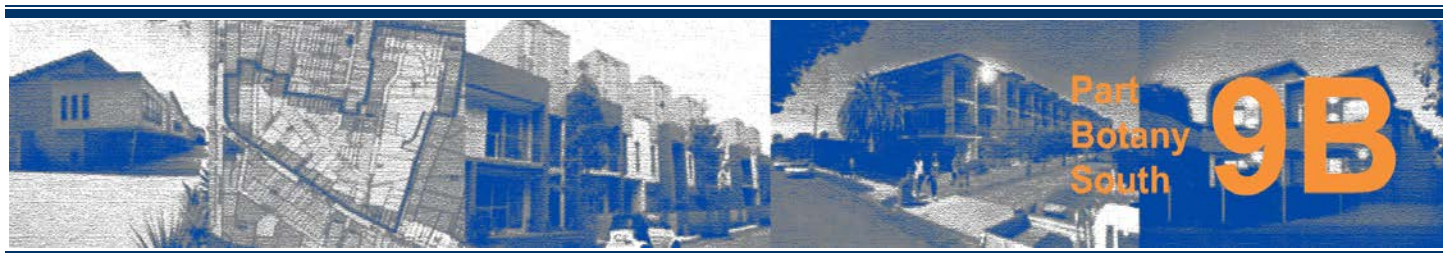
The Former City of Botany Bay Council

# Part 9B

## Botany South



# Development Control Plan



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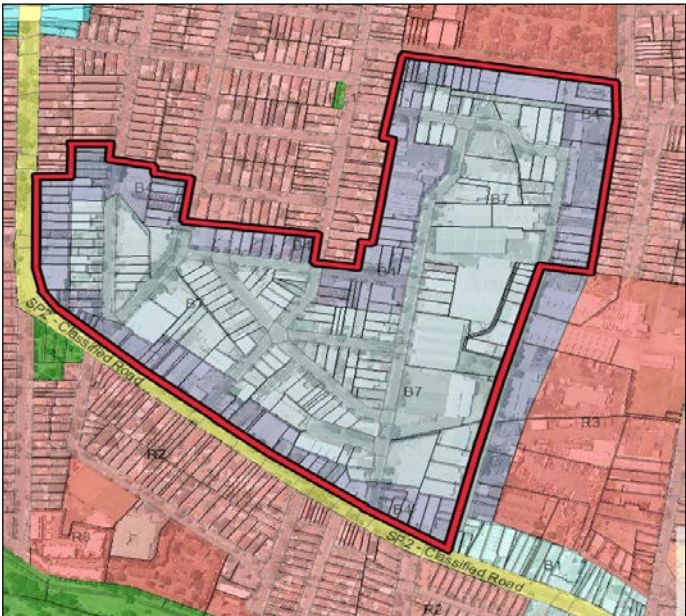




# 9B. 1 Introduction

The Botany South Precinct is bounded by Botany Road to the south and west, Pemberton Street to the east and parts of Rochester, Cranbrook, Tenterden and Aylesbury Streets to the north (refer to **Figure 1** ). The Precinct is zoned predominantly B7 Business Park, with a B4 Mixed Zoned around the periphery of the Precinct. The Precinct is surrounded by land zoned for residential purposes. The intention of the B4 zone within the Precinct is to act as a buffer between the B7 area and low density residential area and to enhance and protect the amenity of existing residential dwellings while encouraging the centre of the Precinct to be redeveloped with uses including creative industries, light industrial, warehouses and associated offices.

**Figure 1 - Botany South Precinct**



## 9B. 1.1 Land to which this Part Applies

This Part applies to land identified in **Figure 1** edged in green and must be read in conjunction with:

- Part 1 - Introduction
- Part 2 - Notification and Advertising
- Part 3 - General Provisions
- Part 4 - Residential Zones
- Part 6 - Employment Zones
- Part 7 - Other Development Types and Land Uses

**Note:** Development within the Precinct must comply with the all other applicable Parts of the DCP. If there is a discrepancy between Part 9B and other Parts the Desired Future Character and Controls of **Part 9B** will always prevail.



## 9B. 1.2 General Objectives

- O1** To encourage new light industrial, business park development, commercial development and associated offices which are compatible with the capacity of the road network in the Precinct;
- O2** To ensure that future development contributes to the creation of a high quality landscape environment in the Precinct;
- O3** To retain existing trees within the streetscape;
- O4** To encourage developments which do not require large transport vehicles;
- O5** To mitigate the visual and environmental impact of external activities;
- O6** To encourage low scale mixed use development with medium density housing and a range of compatible vibrant uses such as shops, professional offices, and studio/workshops which are not impacted by adjoining industrial and commercial uses and that do not impact on adjoining and adjacent residential amenity;
- O7** To ensure proposed development in the B4 Zones is designed to minimise the impact of noise and vibration from uses with the B7 zone;
- O8** To provide a buffer between residential and non-residential uses and zones in the form of landscaping and building design;
- O9** To protect existing public stormwater drainage assets; and
- O10** To minimise impact of flooding to the developments, nature environment and built up areas.



## 9B.2 Existing Local Character

### 9B 2.1 Existing Local Character <sup>1</sup>

The Botany South Precinct is generally bounded by residential uses and Botany Road to the west and south. The Precinct is characterised by a mixture of landholdings and subdivisions. The existing subdivision pattern varies from larger lots in the east (along Sir Joseph Banks and Pemberton Streets) to smaller fragmented industrial lots in the south and southwest (Botany Rd, Salisbury St, Rochester St, Margate St, Tenterden Rd, Hannon St, and Luff St). There is some housing interspersed with industrial uses through the precinct (predominately in the south west).

The precinct is currently affected by two major trunk drainage systems. One of them is the Council's stormwater open channel/culvert coming from the residential area between Tenterden Road and William Street, north of Aylesbury Street. This trunk drainage system runs south into the precinct onto the middle section of Aylesbury Street and Clevedon Street, then continues through the properties between Pemberton Street and Sir Joseph Banks Street and joins the existing Council's open stormwater channel from Pemberton Street, south of 21 Pemberton Street. After that, it turns south under Sir Joseph Banks Street onto Botany Road and into Botany Bay via Livingstone Avenue and Sir Joseph Banks Park.

The other major stormwater open channel/culverts in the precinct is Sydney Water's stormwater open channel/culverts (SWC No. 16), which begins from the existing Council's stormwater open channel at the intersection of Sir Joseph Banks Street and Hannon Street. It runs along the northern side of Hannon Street and then turns north-west onto Tenterden Road and Cranbrook Street. At the rear of 2A Salisbury Street, the open channel splits into two stormwater culverts, where one continues north-west to Rochester Street and exits the precinct at 1477 Botany Road onto Botany Road. The system finally combines with other stormwater drainage trunk systems at the open channel north of Bay Street. The other culvert, in contrast, runs along south of Cranbrook Street to the intersection of Cranbrook Street and Botany Road. This culvert then leaves the precinct in the south-westerly direction to Chelmsford Street, Sandgate Street, Folkestone Road to Botany Bay via Sir Joseph Banks Park.

Building types in the Precinct range from smaller unmodulated boxes of brick and corrugated sheeting to very large buildings designed for manufacturing. Many buildings address the street with only a blank wall and large roller door. Newer buildings relate better to the street with offices overlooking the public domain. Some of the largest lots have vast unbuilt areas, currently used for purposes such as container storage.

The larger landholdings tend to have more areas of landscaping in their private domain while the smaller lots generally use the front setback for the manoeuvring of vehicles and parking. There are some very large trees lining the streets in the B7 – Business Park zone. In many cases the trees are significantly larger than the buildings (which tend to be no higher than the equivalent of three residential storeys). Generally these large trees are located in the public domain.

Front setbacks vary in this area; some streets have consistent setbacks while others vary from a metre to over 15 metres in the same block. Where street planting is dense, this pattern is harder to read as the trees define the street edge rather than the buildings.

<sup>1</sup> Botany South Industrial Study – Final Report, December 2003, SGS Economics and Planning





Due to the long industrial history of this Precinct, a number of issues have evolved over time that have made the operation of some businesses poor and created ongoing issues with residents and other businesses. These issues include: irregular subdivision pattern, small lots sizes and fragmented landownership, conflicts in traffic and pedestrian access, inadequate off and on street parking facilities and servicing, inadequate space for vehicle manoeuvring, poor onsite storage, noise and odour from operations, inadequate road network (including width of roads) for manoeuvring of trucks, poor built form and public domain. Some sites do not appropriately cater for the required vehicular access (trucks) for their use. Hence, heavy vehicles that need to access the streets within the Botany South Precinct would have difficulty manoeuvring, as the road carriageway widths do not provide sufficient space to make a turn.

The large amount of heavy vehicles using these roads has a significant impact on many of the streets in the Precinct. There appears to be a relatively clear distinction between the industrial zoned area and residential areas located to the north. Residential areas are characterised by formal street tree planting, while the industrial area is much less formal and more scattered. The area does however maintain a “green” streetscape quality, though this is contributed to significantly by landscape provided within the frontage areas of individual properties.

Council has consistently restricted the size of delivery vehicles in all development consents issued to medium rigid vehicles.

The Precinct is within the 20 to 25 and 25 to 30 ANEF Countours.

The key differentiating features characterising the Botany South Precinct are:

- Excellent road access to the CBD but also to the south west;
- Smaller freehold sites favoured by many smaller manufacturers;
- Higher than usual level of local trading; and
- High level of business spirit.

Constraining factors include:

- The Precinct is surrounded by and contains scattered residential dwellings which have resulted in complaints from residents and constraints on operating times;
- Poor building quality with low clearance levels;
- Limited off-street parking;
- Limited public transport; and
- No room for expansion.



### 9B.2.2 Existing Allotment Sizes

The majority of allotments within the Precinct are less than 2,500m<sup>2</sup>, and a significant proportion of these below 1,000m<sup>2</sup>. The most common lot size within the area is between 250m<sup>2</sup> and 500m<sup>2</sup>. This creates particular issues with respect to development, access and operation, which are distinct from the perceived nature of industrial development in Botany. Smaller lots are occupied by a wide range of uses but automotive related, construction related, metal manufacturing and specialty manufacturing account for over half of the non-residential uses of lots under 500 m<sup>2</sup>. Lots between 500m<sup>2</sup> and 2,500m<sup>2</sup> are widely distributed across the Precinct. Again automotive related, construction related, metal manufacturing and specialty manufacturing are significant but not as dominant as on smaller lots.

Larger lots (over 2,500 m<sup>2</sup>) are used by the large textile manufacturers and associated uses and transport and storage uses. The latter in particular are heavy generators of traffic. Generally the larger lots are associated with wider streets and better access. Many of the large lots in this area have both front and rear access, providing opportunities for drive through circulation although this pattern of use is not widely evident.

### 9B.2.3 Existing Land Uses

The most common land uses in Precinct are motor vehicle retailing and services, with 17% of businesses in the area being motor vehicle retailing and service businesses occupying 10% of the land used for occupied industrial uses. There are 34 automotive panel beaters and vehicle service centres, ranging from truck servicing to luxury European car servicing.

Residential Dwellings within the Precinct are mostly clustered on the periphery rather than being mixed within the non-residential uses. Only a handful could be regarded as 'embedded' non-residential uses. Due to the conflicts between residential and non-residential use, implications have arisen on the operation of non-residential premises.

### 9B.2.4 Existing Vegetation

There appears to be a relatively clear distinction between the Precinct and residential areas located to the north. The residential areas are characterised by formal street tree planting, while the Precinct is much less formal and more scattered. The Precinct does however maintain a "green" streetscape quality, though this is contributed to significantly by landscape provided within the frontage areas of individual properties.

### 9B.2.5 Existing Setbacks

Significant setbacks are present within the Precinct with a clear distinction between traditional residential uses and non-residential uses. Residential Dwellings possess large front gardens, while in non-residential areas frontages are utilised as hardstand, generally as a result of the constraints imposed by site size and lot frontage.



## 9B.3 B7 - Business Park Zone

### 9B.3.1 Desired Future Character

The B7 zone within the Botany South Precinct is anticipated to develop into a high quality business area with a mix of light industrial, creative industries, commercial, business and warehouses. It is anticipated that larger sites will contain business parks with a mix of uses and associated offices. New works in the public domain will be required such as landscaping and pedestrian corridors to improve the amenity of the Precinct and encourage pedestrian movement.

The redevelopment of this area is to provide services and employment for the surrounding residential and maintain smaller lots which are characteristic of the Precinct and required for particular uses. While maintaining some small lots is integral in the future redevelopment of the area, site consolidation may be required to occur to enable improvement to the public domain, increased public car parking and traffic management and the creation of pedestrian links.

The Objectives and Controls for the Desired Future Character for Botany South Precinct - B7 Zone are as follows:

#### Objectives

- O1** To encourage new light industrial, business park development and commercial development and associated offices in the Precinct which are compatible with the capacity of the road network in the area;
- ~~**O2** To encourage live/work in the form of caretakers units as ancillary to permitted uses;~~
- ~~**O3**~~**O2** To retain an employment base in the area which provides flexibility and encourages initiatives to create a unique and innovative working environment;
- ~~**O4**~~**O3** To ensure that future development contributes to the creation of a high quality landscape environment in the Precinct;
- ~~**O5**~~**O4** To retain existing trees both inside and outside the site and provide suitably proportioned areas of well designed landscaping on each development site;
- ~~**O6**~~**O5** To encourage pedestrian access through the Precinct, through more permeable street block and promote through site links for pedestrian access at the time of redevelopment;
- ~~**O7**~~**O6** To encourage sustainable objectives through environmentally responsible architectural design and function;
- ~~**O8**~~**O7** To encourage developments which do not require large transport vehicles;
- ~~**O9**~~**O8** To mitigate the visual and environmental impact of external activities;





- 01009** To ensure energy efficiency through the design and siting of buildings;
- 011010** To ensure that developments are environmentally sustainable in terms of energy and water use and management of waste and discharge;
- 012011** To ensure the drainage of the Precinct is not detrimentally impacted and property is protected;
- 013012** To protect existing public stormwater drainage assets; and
- 014013** To minimise impact of flooding to the developments, nature environment and built up areas.

## Controls

- C1** No new residential dwellings houses are permitted within the B7 Zone though existing residential uses may be maintained and enhanced (refer to **Clause 6.12 - Part 6 of BBLEP 2013**).
- Note:** Caretaker Dwellings which are ancillary to ~~the an~~ approved business or industrial use ~~of on~~ the side site are permitted (refer to **Part 6.3.19 - Caretaker Dwellings**).
- C2** Residential alterations and additions relating to C1 must:
  - (i) Improve the appearance of buildings; and
  - (ii) Improve the interface and amenity with non-residential uses.
- C3** Development shall include significant vegetation planting within the allotments and existing significant vegetation is not permitted to be removed.
- C4** Developments within the precinct shall submit a detailed Flood Study/Assessment for 1 in 100 year average recurrence interval (ARI) design storm events and probable maximum flood (PMF). The Flood Study/Assessment is to be prepared by a suitably qualified and experienced civil engineer.
- C5** Development shall be designed and constructed in accordance with Australian Standard AS 2021 (Acoustic Aircraft Noise Intrusion-Building siting and Construction).
- Note:** Details to be included in the Development Application. For further details in relation to Aircraft Noise refer to **Part 3J - Development Affecting Operations at Sydney Airport**.
- C6** The introduction of noise abatement measure to achieve compliance with current AS 2021 must be done in a manner that does not compromise the architectural design of a building or impact on the character of an existing streetscape.
- C7** All development that is in, or immediately adjacent to a busy road must be designed in accordance with NSW Department of Planning 'Development Near Rail Corridors and Busy Roads - Interim Guidelines, December 2008'.



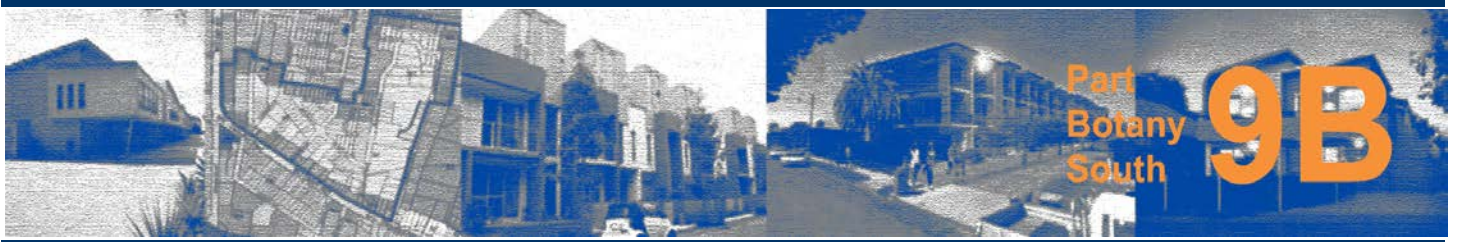
- C8** Hours of operation for the use of a site will be restricted by Council, if it is at all likely that the use will cause an impact on any adjoining or adjacent residential development.
- C9** All DAs for noise generating uses are to be accompanied by documentation from a qualified Acoustic Engineer certifying that the acoustic standards can be met. Noise mitigation measures around machinery and property are to be submitted with the DA. Refer to **Part 6.3.212 – Noise & Hours of Operation** & to the NSW Infrastructure SEPP noise requirements for more information.
- C10** New non-residential development is to be designed so that noise producing activities are remote from any residential boundary.
- C11** The emission of noise from any new development is to comply with the NSW EPA Industrial Noise Policy and Council's adopted noise criteria.
- C12** Any levels of noise generated from the operations or vehicles associated with the development is to be compatible with adjoining non residential uses and the requirements of the NSW EPA Environmental Criteria for Road Traffic Noise and Council's adopted noise criteria.

### Amalgamation and Subdivision

- C13** Development must retain some small lots and encourage amalgamation where appropriate.
- C14** Lot boundaries shall retain the existing linear pattern.

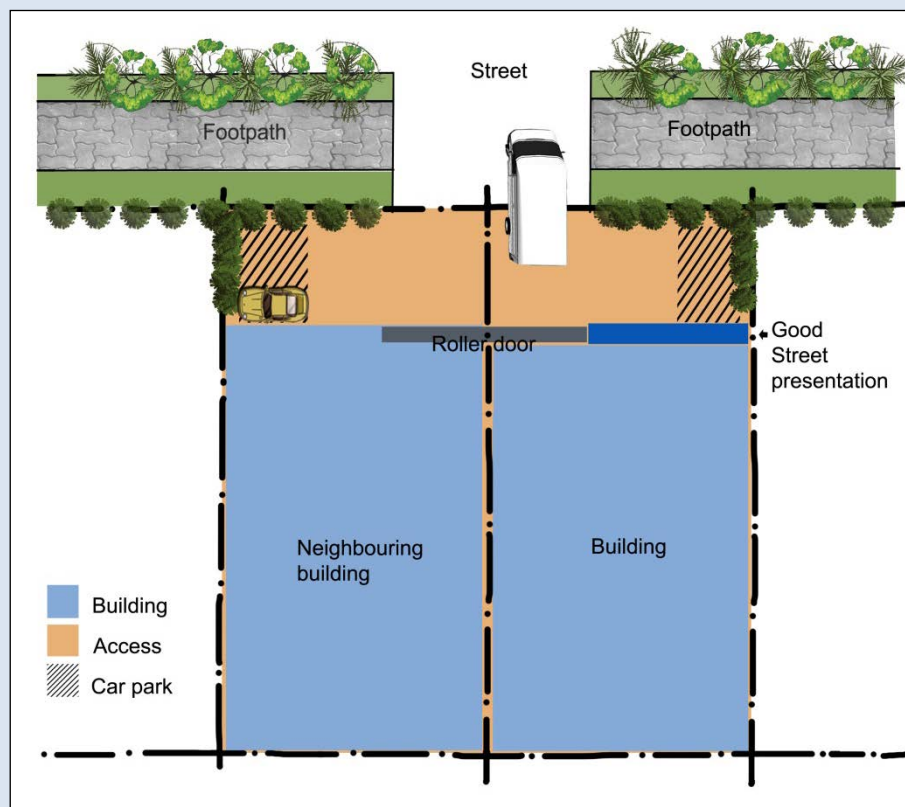
### Building and Site Layout

- C15** Front setbacks on narrow lots will be considered on their 'merits' with consideration of:
  - (i) Access and parking;
  - (ii) Appropriate landscaping;
  - (iii) Location of non-industrial uses (ie. Office sections); and
  - (iv) Presentation to the street.
- C16** On small frontage sites, buildings (including alterations and additions) may align to the side boundary in all locations except where a residential use is adjoining (refer to **Figure 2**).
- C17** Narrow frontage sites may locate driveways and loading areas along one boundary but only if the boundary does not adjoin a residential use (refer to **Figure 2**).
- C18** The layout and orientation of buildings on lots greater than 1,000m<sup>2</sup> shall be in a manner that minimises lengthy or deep areas of car parking along the street frontage (refer to **Figure 3**).
- C19** Development shall avoid long blank walls facing the street and when adjoining residential uses.



- C20** Offices are to be located to address the street and provide an active street presentation.
- C21** Floor space is to be distributed on the site to ensure the scale of the building reinforces the role of the street.
- C22** Buildings are to be arranged and aligned to create a pleasant working environment.
- C23** Internal spaces are to be designed to satisfy the operational requirements of the particular land use whilst providing a safe and convenient working environment.

**Figure 2 - Site Configuration**



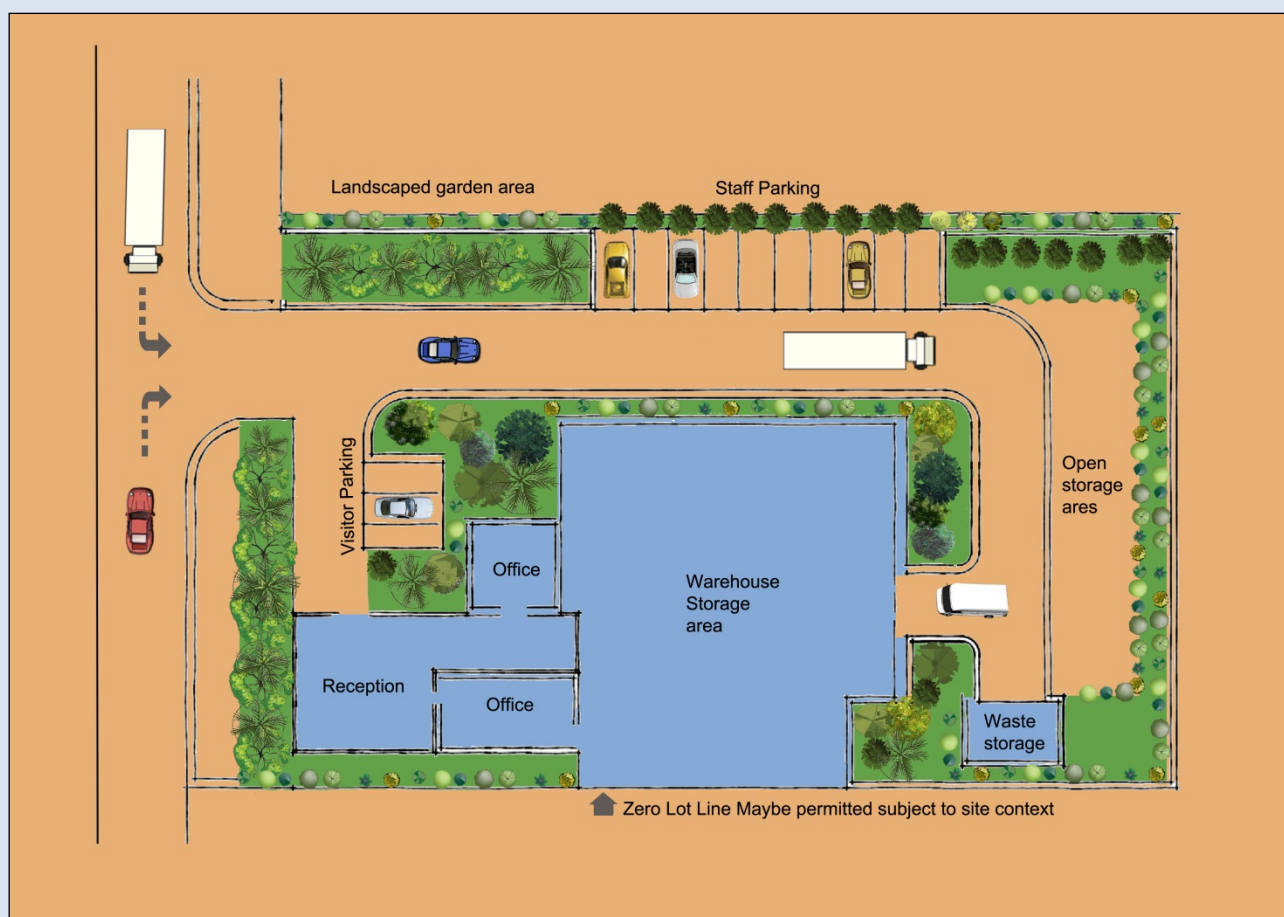
**Note:** If the site adjoins a residential use then the setback is required to be increased.

**Note:** Landscaping not depicted on the figure.





**Figure 3 - Site Configuration**



## Design

- C24** The design of buildings and alterations and additions are to be flexible to cater for different future uses of the building by providing high ceilings and adaptable open planning for the ground and first floor.
- C25** Where non-residential development adjoins any land zoned for residential purposes or any premises used for residential purposes, the external walls abutting such development must be constructed in 230mm or 280mm cavity brickwork. Where such walls adjoin land zoned for residential purposes, construction must be in face brickwork.
- C26** New buildings and alterations and additions, within close proximity to residential uses are to be designed to minimise any adverse effects on the amenity of residential areas by way of overshadowing, overlooking, lighting, dust, noise or fumes.





## Setbacks

**C27** Setbacks are to be in accordance with **Table 1**.

**Table 1 - Setbacks**

Boundary	Landscaping Setback	Building Setback
Front	3m	Merit (Min 6m and 9m for large lots)
Side	Nil to 3m	Nil to 3m
Side - adjoining a Residential Use	3m	3m
Rear	3m	3m
Rear - small narrow sites	Nil	Nil
Rear - adjoining a Residential Use	3 m	3m

## Vehicle Access

**C28** No vehicles larger than a Medium Rigid Vehicle are permitted to access the Precinct.

**C29** For narrow or small lots, car parking requirements will be based on a merit assessment and may require a traffic assessment. Sites which are proposed to be redeveloped are required to provide car parking on site in accordance with **Part 3A - Car Parking**.

**C30** Visitor parking shall be located convenient to administration and office areas.

**C31** For narrow and small lots an area for delivery vehicle access/manoeuvring may be provided within the front setback in order to allow such vehicles to enter and leave in a forward direction provided the minimum landscape requirements are met (refer to **Figure 4 and Table 1**).

**C32** Where there is a cluster of narrow lots, access driveways should be paired so that adjacent properties locate driveways side by side (refer to **Figure 5**).

**C33** Truck movements are to be limited along the proposed pedestrian routes (refer to **Figure 6**) to accommodate and encourage pedestrian movement.



Figure 4 - Vehicle Access and Manoeuvring

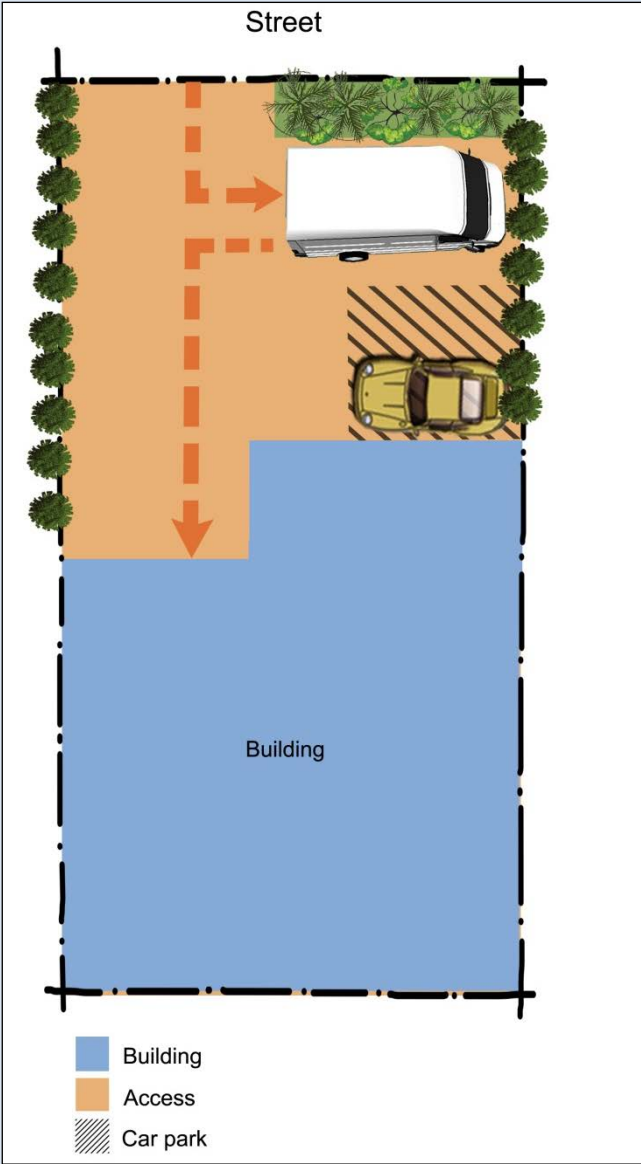




Figure 5 - Vehicle Access and Landscaping

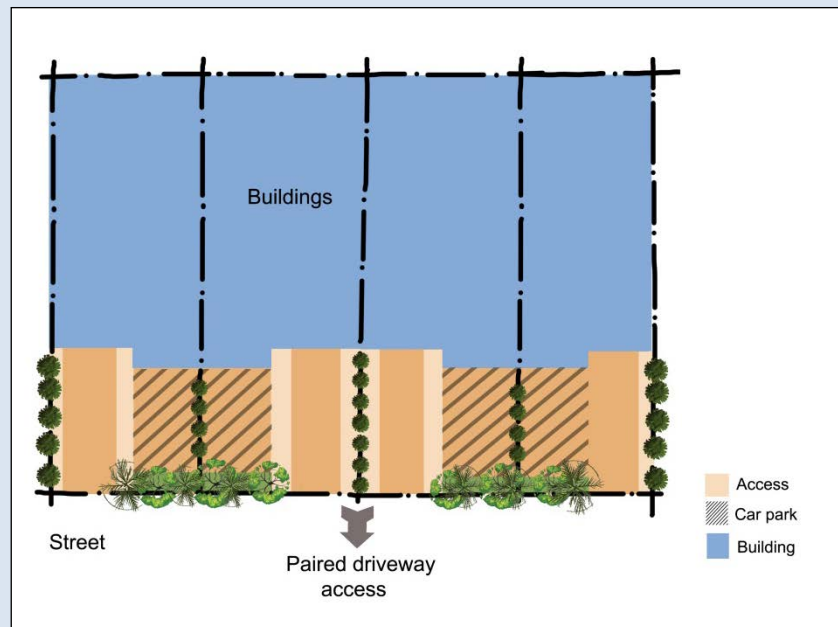
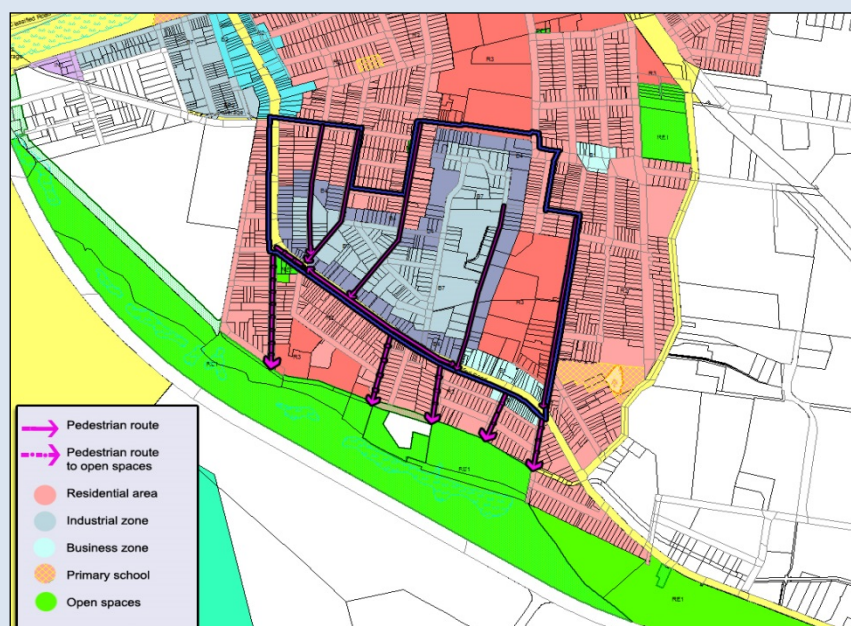
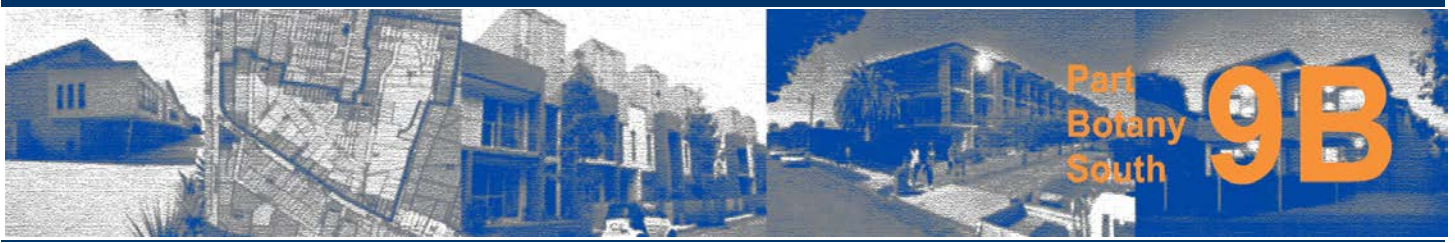


Figure 6 - Pedestrian Routes within the Precinct



Source: Botany South Industry Study, Architectus, 2003



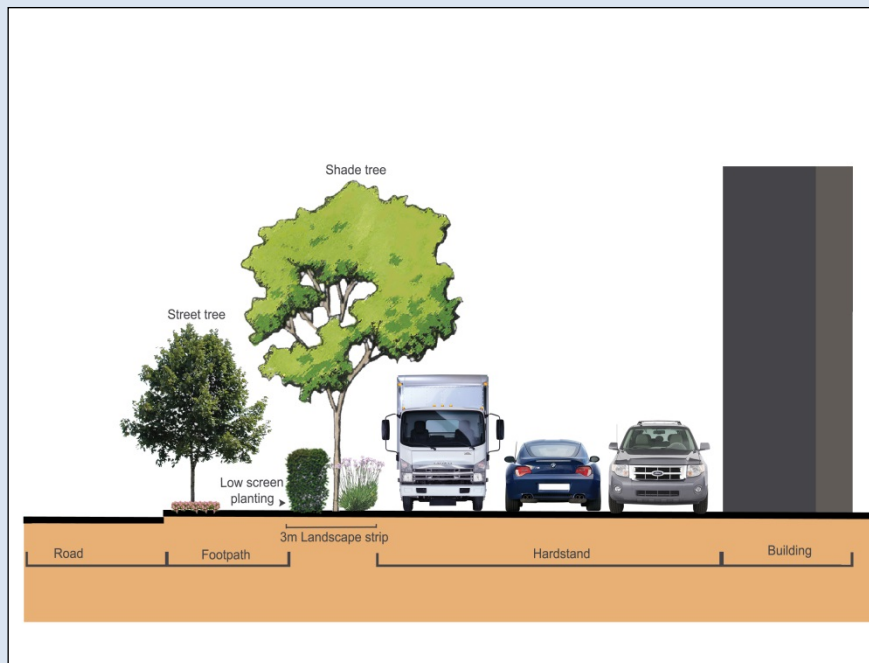


## Landscape

- C34** A Landscape Zone is to be provided adjacent to the front property boundary of no less than 3 metres in width (refer to Table 1). The zone is to accommodate canopy trees to screen and soften buildings and shade parking areas, underplanted with screen planting/hedging up to 1.2 metres in height (refer to Figure 7). These areas are to be mass planted areas of screen or buffer landscaping using a layered planting design (refer to **Part 3L - Landscaping and Councils Landscaping Technical Guidelines for Development Sites in Part 10 – Technical Guidelines**).
- C35** Existing trees, including Council street trees and trees on neighbouring properties, are to be retained and adequate provision allowed for protection of the primary root zone and canopy when locating new buildings, driveways and parking areas (refer to Part 3F - Tree Management).
- C36** The side boundary returns within the front setback and forward of the building alignment must be landscaped (refer to Table 1) to integrate the setback landscaping with the buildings on the site.
- C37** For existing and new buildings, Council may require landscape improvement or enhancement of existing landscaping or the public domain through provision of:
- (i) Street trees;
  - (ii) Planter tubs/pots;
  - (iii) New paving;
  - (iv) Street furniture;
  - (v) A specific streetscape planting scheme;
  - (vi) Maintenance of the existing streetscape, and
  - (vii) Reinstatement of landscaping on site in accordance with a previously approved landscape plan.



**Figure 7 - Treatment within the Landscape Zone**



## Flooding

- C38** No structures shall be built over Sydney Water or Council stormwater drainage system/easements.
- C39** Any structure foundations of the development shall extend to at least 1m below the invert of the existing public stormwater drainage assets.
- C40** Finished floor levels of the habitable buildings/structures and non-habitable buildings/structures (including garage, ramps to the basement car parking area etc.) shall be minimum 500mm and 300mm above the 1 in 100 year flood level respectively.
- C41** Structures/filling shall not be placed within the flood extent unless suitably and adequate mitigation measures have been proposed and implemented. These measures will require approval from Council.
- C42** No structures/filling shall be allowed to obstruct the 1 in 100 year flood level.
- C43** Flood storage within the site shall be maintained before and after the development.
- C44** The boundary fence in the flood extent shall be open type fencing to allow unimpeded passage of overland floodwater.



## Storage Areas

- C45** Storage areas are encouraged to be located within the primary building.
- C46** Open storage areas visible from the public domain are prohibited.
- C47** Where materials are to be stored outside the primary building, the storage area's are to be fully enclosed with solid fencing, surrounded by mature vegetation and location abutting the primary building.
- C48** Storage areas are not permitted adjacent or adjoining residential dwellings or zones (including the B4 Mixed Use Zone).
- C49** Open storage areas shall not compromise truck or vehicle manoeuvring and car park areas.
- C50** Ancillary buildings and storage shed are to be located behind setbacks and front buildings line and must be consistent with the design of the primary building to provide cohesion to the appearance of the development.
- C51** Details of proposed ancillary buildings, open storage, service areas, solid liquid waste storage and collection areas are to be provided with any Development Application.
- C52** All businesses are encouraged to include in their waste contracts provision for the collection and recycling of high grade and low grade office paper, batteries, equipment containing painted circuit boards, computers, florescent tubes, and other recyclable resources.
- C53** If more than 10m<sup>3</sup> of uncompacted waste and recycling is likely to be generated per day, the central waste and recycling room is to be separated from the good receiving dock, and waste is to be collected in a compaction unit.
- C54** The following information must be provided at Development Application stage for outdoor storage areas:
  - (i) Size of the outdoor storage area;
  - (ii) Maximum storage height;
  - (iii) Types of good, materials and equipment being stored outdoors; and
  - (iv) Details of landscaping and screening structures.





## Entrance Treatment

- C55** Entries to Business Parks and individual buildings shall be clearly visible and well signed posted for pedestrians and motorists (refer to Figure 8).
- C56** Architectural features are to be provided at ground level giving an entrance element to the building and addressing the primary street frontage.
- C57** All entrance treatments, such as directory boards must be located on private property, with appropriate positive covenants and restriction on the title to ensure the ongoing management and maintenance of such treatments.

**Figure 8 - Examples of Entrance Treatments**

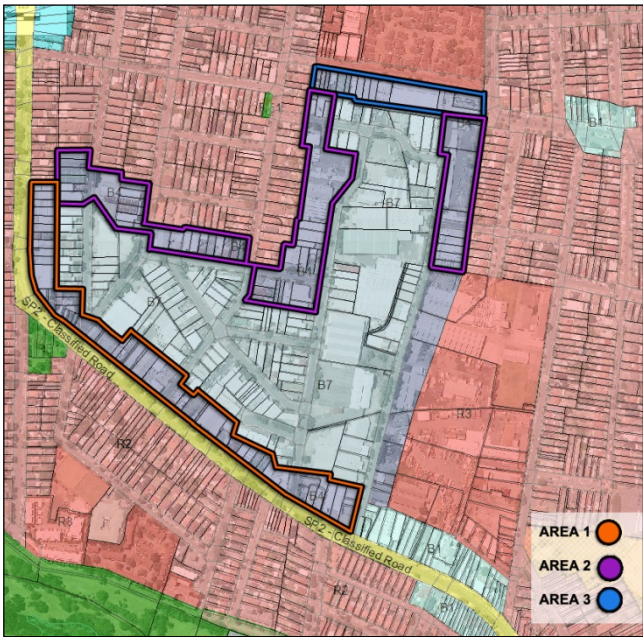






# 9B.4 B4 - Mixed Use Zone

Figure 9 - Areas within the B4 Zone



## 9B 4.1 Desired Future Character

The B4 zone within the Botany South Precinct is anticipated to develop into a high quality area of mixed uses featuring medium density housing, low impact commercial and business uses and creative industries. New works in the public domain will be required such as landscaping and pedestrian corridors to improve the amenity of the Precinct and encourage pedestrian movement and live/work opportunities.

The redevelopment of this area is to provide a transition from non-residential to surrounding residential uses with the intention of buffering any adverse amenity issues created within the B7 zone. New residential uses within the B4 - Mixed Use zone need to ensure that through site layout and building design any impacts from the B7 zone are adequately mitigated.

This Area is affected by 20 to 25 and 25 to 30 ANEF Contours and road traffic noise.

The Mixed Use Zone area has three distinct areas (**Areas 1, 2 and 3**) with varying interfaces and Desired Future Characters.



### 9B.4.1.1 Area 1 - Botany Road

**Area 1** fronts Botany Road to the south, adjoins land within the B7 zone to the north and low density residential dwellings to the south. In **Area 1** residential is not permitted at ground floor. The ground floor of development must contain a complementary non-residential use that is permissible within the B4 Zone. In this regard please refer to **Clause 6.15 of the Botany Bay Local Environmental Plan 2013** and its **Active Street Frontages Map**.

The compatibility of mixing certain uses together must be considered, in conjunction with the design of such development, to ensure acceptable amenity for different uses and to ensure that development provides a transition from the B7 zone to low scale residential uses.

The Objectives and Controls for the Desired Future Character for Botany South Precinct: B4 Zone - **Area 1** are as follows:

#### Objectives

- O1** To encourage live/work opportunities;
- O2** To encourage improvements to the Public Domain;
- O3** To ameliorate conflicts on the interface between the non-residential and residential uses;
- O4** To encourage low scale mixed use development with residential at first floor and a range of compatible vibrant uses such as shops, professional offices, and studio/workshops at ground floor, which are not impacted by adjoining industrial and commercial uses and that do not impact on adjoining and adjacent residential amenity;
- O5** To ensure that proposed development is designed to minimise the impact of noise and vibration from uses with the B7 zone;
- O6** To retain existing trees both inside and outside the site and provide suitably proportioned areas of well designed landscaping on each development site;
- O7** To provide a buffer between residential and non-residential uses and zones in the form of building design and through high quality landscaping;
- O8** To create a focus for a wide variety of businesses that offer employees and visitors a lively and attractive environment, becoming more than just a 'place of work' but one that compliments and connects business activities with each other;
- O9** To promote and encourage a high design quality of buildings;
- O10** To provide a high level of pedestrian amenity and create a vibrant and safe precinct;



- O11** To promote the amalgamation of small sites to deliver better quality development and adequate on-site parking;
- O12** To limit access points from Botany Road;
- O13** To encourage the provision of parking, vehicular access and servicing areas that provide a buffer between residential and non-residential uses and pleasant, safe and provide shared working environment;
- O14** To ensure the protection and viability of the Botany Local Centre and Banksmeadow Neighbourhood Centre;
- O15** To ensure the drainage of the Area is not detrimentally impacted and property is protected;
- O16** To ensure non residential development is sympathetic with the streetscape character and maintains the amenity of surrounding residential development;
- O17** To protect existing public stormwater drainage assets; and
- O18** To minimise impact of flooding to the developments, nature environment and built up areas.

## Controls

### General

- C1** The ground floor of development must contain complementary non-residential uses permissible in the B4 zone. Residential uses are only permitted at first floor and above. In this regard please refer to **Clause 6.15 of the Botany Bay Local Environmental Plan 2013** and its **Active Street Frontages Map**.
- C2** The amenity of residential development shall not be impacted upon by non-residential uses. The following will be considered by Council:
  - (i) Scale and size;
  - (ii) Floorspace ratio;
  - (iii) The size and number of vehicle movements;
  - (iv) Noise;
  - (v) Air and water pollution;
  - (vi) Hours of operation; and
  - (vii) Any other negative environmental impact.
- C3** Residential development must be designed so that it will not be detrimentally impacted by any non-residential uses in the vicinity.





**C4** Residential alterations and additions must:

- (i) Improve the appearance of buildings; and
- (ii) Improve the interface and amenity with non-residential uses.

**C5** Development shall be designed and constructed in accordance with Australian Standard AS 2021 (Acoustic Aircraft Noise Intrusion-Building Siting and Construction).

**Note:** Details to be included in the Development Application. For further details in relation to Aircraft Noise refer to **Part 3J - Development Affecting Operations at Sydney Airport**.

**C6** The introduction of noise abatement measure to achieve compliance with current AS 2021 must be done in a manner that does not compromise the architectural design of a building or impact on the character of an existing streetscape.

**C7** All development that is in, or immediately adjacent to Botany Road must be designed in accordance with NSW Department of Planning '**Development Near Rail Corridors and Busy Roads - Interim Guidelines, December 2008**'.

**C8** Internal habitable rooms of dwellings within the B4 Mixed Use Zone which are affected by high levels of external noise are to be designed to achieve internal noise levels of 50dBA maximum. Development Applications which contain residential accommodation are to be accompanied by a noise assessment prepared by a qualified acoustic consultant addressing the following:

- i. address the noise requirements of the NSW Infrastructure SEPP in terms of road traffic noise;
- ii. address the requirements of Part 4A, 4B or 4C (Acoustic Privacy controls), depending on the type of residential accommodation proposed;
- iii. conduct detailed site attended audits during the day, evening and night periods to identify and assess noise from activities associated with the B7 Zone;
- iv. assess noise from ground activities including aircraft take-off's and landing's at Sydney Airport referenced to each floor of the proposed building;
- v. Where the height of the proposed development is higher than the existing height of the localised building stock (and the proposed development has a direct line of sight to the seaport) the acoustical assessment is to take into account noise from the operations of Port Botany;
- vi. confirm noise exposure levels for each floor of the proposed residential building;
- vii. and confirm building noise controls for internal noise levels to satisfy the recommended noise criteria.

## Amalgamation and Subdivision

**C9** Amalgamation of sites is encouraged to reduce the number of access points from Botany Road.



## Change of Use

- C10** A change of use must not result in a significant impact on adjoining or nearby properties, in particular adjoining residential uses or on traffic movements within the locality.
- C11** A change of use must comply with the Desired Future Character of the area.
- C12** Where existing landscaping is below the standard identified in the DCP, the existing area of landscaping shall where possible be upgraded to the standard specified in the DCP (refer to **Part 3L - Landscaping**).

## Building and Site Layout

- C13** New residential buildings shall be designed to accommodate and minimise any adverse effects on the amenity of residential areas by way of overlooking, lighting, dust, noise or fumes from adjoining uses.
- C14** Car parking, landscaping and non-residential uses are to be located at the rear of the property to provide buffer between the B4 and B7 zones (refer to **Figure 10**).
- C15** On small frontage sites, buildings may align to the rear and side boundary in all locations except where a residential use or zone adjoins.

**Figure 10 - Buffer between B4 and B7 Zones**





## Setbacks

**C16** Setbacks are to be in accordance with the **Table 2**.

**Table 2 - Setback in Area 1**

Boundary	Landscaping Setback	Building Setback
Front	4m	7m
Side	Nil to 1.5m	Nil to 1.5m
Side – adjoining a Residential Use/zone	3m	3m
Rear	Nil to 3m	Nil to 3m
Rear - adjoining a Residential Use/zone	3m	6m

**C17** Building setbacks must form a continuous and consistent alignment.

### Note:

- Awnings and verandas along classified roads should be set back a minimum of 1.5 metres from the kerb;
- Awnings and verandas along local roads that intersect with classified roads should be set back a minimum of 1.5 metres from the kerb for a distance of up to 100 metres from the intersection with the classified road; and
- At any signalised intersections (on local roads or classified roads), awnings and verandas should be set back a minimum of 1.5 metres from the kerb for a distance of up to 100 metres from the signalised intersection.

## Parking and Vehicle Access

**C18** Access driveways should be paired so that adjacent properties locate driveways side by side to reduce the number of access points.

**C19** Any carparking spaces allocated for residential purposes are to be located at the rear of sites to provide a buffer from the B7 zone.

**C20** The provision of car parking must comply with **Part 3A - Car Parking**.





## Flooding

- C21** No structures shall be built over Sydney Water or Council stormwater drainage system/easements.
- C22** Foundations of development shall extend to at least 1m below the invert of the existing public stormwater drainage assets.
- C23** Finished floor levels of the habitable buildings/structures and non-habitable buildings/structures (including garage, ramps to the basement car parking area etc.) shall be minimum 500mm and 300mm above the 1 in 100 year flood level respectively.
- C24** Structures/filling shall not be placed within the floodways or overland flow paths unless suitable and adequate mitigation measures have been proposed and implemented. A flood study may be required to be lodged with the DA to support the mitigation measures.
- C25** No structures/filling shall be allowed to obstruct the 1 in 100 year flood level.
- C26** Flood storage within the site shall be maintained before and after the development.
- C27** The boundary fence in the flood extent shall be open type fencing to allow unimpeded passage of overland floodwater.

## Landscaping

- C28** A suitable area of dense landscape planting is required in the rear setback to provide a buffer between the B4 and B7 zones including landscaping of car park areas to achieve a high level of amenity which will screen the development from residential areas. Details of the proposed planting are to be provided on a landscape plan to be submitted with the Development Application.





## Fences

**C29** Fences are not encouraged within the Area as fencing is not a typical characteristic of the area.

**C30** If fences are required they shall be not higher than **Table 3**.

**Table 3 - Fence Height in Area 1**

Use	Fence Height
Residential	1 m
Non-Residential	1.5m (over 50% must be transparent)

## Residential Component

**C31** The residential component of development must comply with the relevant sections of **Part 4 - Residential Development**.

**Note:** **Part 4B.5.1 - Dwelling Mix, Room Size and Layout** for Multi Dwelling Housing and **Part 4C.5.1 - Dwelling Mix, Room Size and Layout** for Residential Flat Buildings.

## Mixed Use Development

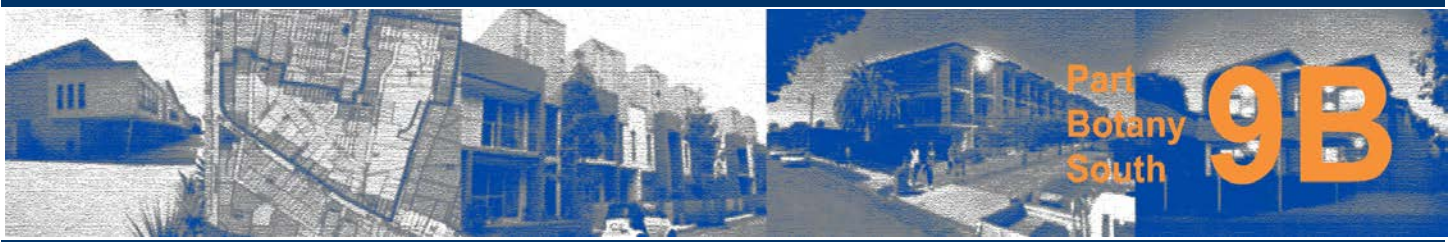
**C32** The ground floor level of a mixed use development that relates to the active street frontage must be predominantly used for commercial uses or other street activating uses.

**C33** A Plan of Management (POM) may be required where non-residential uses are proposed within a mixed used development or in proximity of a residential land use. The Plan of Management (POM) is a written report which describes how the ongoing operation of non-residential uses will be managed to reduce its impact upon the amenity of surrounding properties.

The POM allows Council to exercise control over the ongoing operation of a premises by requiring, as a condition of consent, that the premises operate in accordance with the POM. A condition of consent may require that a POM be regularly revised and submitted to Council.

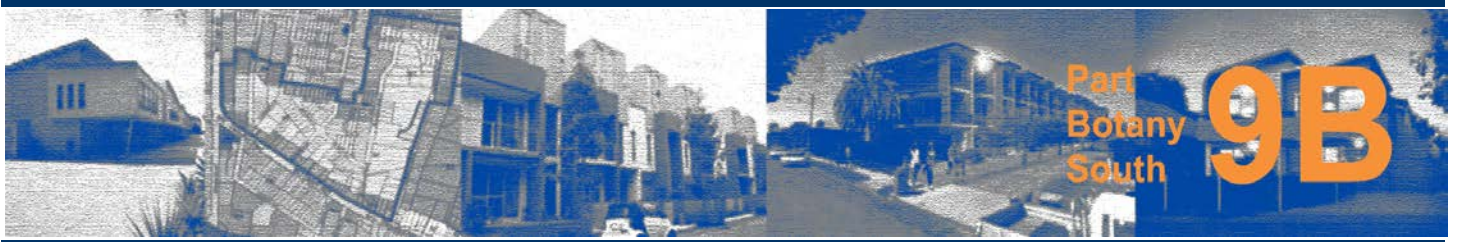
The POM must provide all details relevant to the operation of the premises. As a minimum the following must be included:

- (i) Title;
- (ii) Objectives;



- (iii) Operational details;
- (iv) Hours of operation;
- (v) Staffing details;
- (vi) Guidelines for staff for using the site facilities and equipments;
- (vii) Deliveries and loading/unloading;
- (viii) Managing customers or patrons;
- (ix) Security details;
- (x) Noise Impact Assessment;
- (xi) Shadow Analysis;
- (xii) Complaint recording and handling process; and
- (xiii) The review process to continuously improve the POM.

- C34** The traffic movements, hours of deliveries, use of parking areas and garbage collection must be managed through the POM where non-residential uses are close to residential premises. Where significant amounts of traffic are likely to be generated which could affect residential areas or residential zoned land, schedules of vehicle movements and their routes must be provided and may be regulated in conditions of consent.
- C35** Loading and unloading must not detract from the amenity of nearby residential uses. Where loading and unloading movements are likely to affect residential areas or residentially zoned land, schedules of vehicle movements and their routes must be provided in the POM and may be regulated through conditions of consent.
- C36** New development is to be designed so that noise-producing activity is remote from the interface boundary. New manoeuvring areas and parking areas facing existing residential areas are not permitted due to noise resulting from such activities.
- C37** Site lighting for building security and staff safety must be directed so as to not cause annoyance to neighbours, residents or glare to passing motorists.
- C38** Walls of buildings adjacent to residential uses are to make use of non-reflective colours and materials to avoid glare on residential areas (especially balconies). The walls are to be treated aesthetically as well as acoustically. Window placement and/or tall trees should be considered as ways to protect privacy, reduce noise and light pollution.
- C39** Where a site contains or adjoins a residential use or property, Council shall require the applicant to provide shadow diagrams prepared by a suitably qualified person. These shadow diagrams shall:
- (i) Show the shading effects of a proposal on adjoining residential properties or the public domain;
  - (ii) Be based on a survey of the site and adjoining development; and
  - (iii) Be prepared at 9.00 a.m, 12.00 noon and 3.00 p.m. at 21st June (winter solstice).
- C40** Where the windows of habitable rooms and the private open space of adjoining dwellings already receive sunlight, they shall receive a minimum of 2 hours of sunlight between 9.00 a.m. and 3.00 p.m. during 21st June.



**Note:** Council will refer a contentious Development Application or one that involves an extension to the trading hours of a licensed premises to a Resident Consultative Committee or where there have been a significant number of objections received as a result of exhibition and/or notification of the Application. Both the Applicant and the Objectors will be invited to attend. The purpose of the Committee is to address the issues raised by residents in an open forum.

**C41** Any commercial car parking must be conveniently located and identified.



### 9B.4.1.2 Area 2

**Area 2** contains land which adjoins both non-residential uses and low scale residential dwellings. It is anticipated that the Area will provide a transition between the uses. Any residential development within the Area must mitigate any potential impacts from the uses within the B7 zone and not detrimentally impact on any existing adjoining residential dwellings.

The Objectives and Controls for the Desired Future Character for Botany South Precinct: B4 Zone - **Area 2** are as follows:

Objectives	
O1	To encourage live/work opportunities;
O2	To ensure development encourages a mix of uses that co-exist and provide a transition from non-residential uses to residential uses through development which emits low levels of noise, provides high level of privacy for residential and minimises operating hours;
O3	To encourage improvements to the Public Domain;
O4	To ameliorate land use conflicts on the interface between the non-residential and residential uses;
O5	To ensure development is environmentally compatible and respects the non-residential and residential uses;
O6	To ensure proposed development is designed to minimise the impact of noise and vibration from uses with the B7 zone;
O7	To promote and encourage a high design quality of buildings;
O8	To manage the transition in building use and scale from low-scale residential, multi use areas and business park uses;
O9	To provide a high level of pedestrian amenity and create a vibrant and safe precinct;
O10	To ensure that future development contributes to the creation of a high quality landscape environment in the Precinct;
O11	To retain existing trees both inside and outside the site and provide suitably proportioned areas of well designed landscaping on each development site;
O12	To ensure the protection and viability of the Botany Local Centre and Banksmeadow Neighborhood Centre;
O13	To ensure the drainage of the Area is not detrimentally impacted and property is protected;
O14	To maintain the scale of streets as incremental change occurs; and



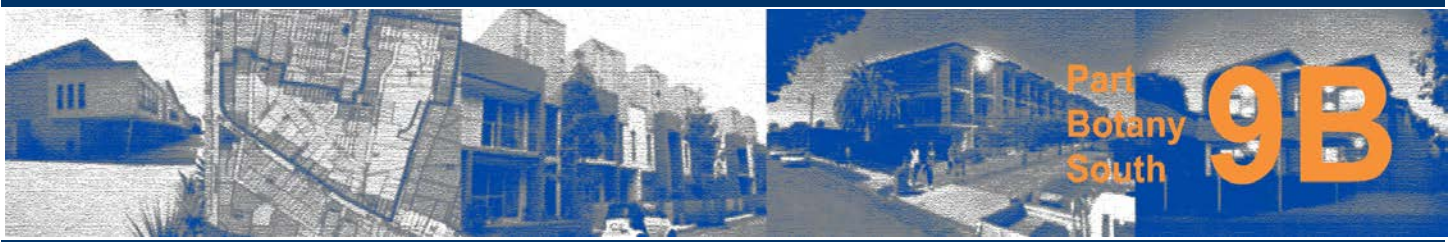


- O15** To ensure building setbacks achieve a comfortable street environment through the provision of sunlight, scale, sense of enclosure and landscaping.

## Controls

### General

- C1** The ground floor of development must contain complementary non-residential uses permissible in the B4 zone. Residential and live/work is encouraged at first floor and above.
- C2** Where development adjoins or is adjacent to residential uses the development must not detrimentally affect the amenity of residential uses by way of:
- (i) Scale and size;
  - (ii) Floorspace;
  - (iii) The size and number of vehicle movements;
  - (iv) Noise;
  - (v) Air and water pollution;
  - (vi) Hours of operation; and
  - (vii) Any other negative environmental impact.
- C3** Where residential development is proposed to adjoin the B7 zone, the proposed development must be designed and demonstrate that it will not be detrimentally impacted by any non-residential uses in the vicinity.
- C4** Residential alterations and additions must:
- (i) Improve the appearance of buildings; and
  - (ii) Improve the interface and amenity with non-residential uses.
- C5** Development shall be designed and constructed in accordance with Australian Standard AS 2021 (Acoustic Aircraft Noise Intrusion-Building siting and Construction).
- Note:** Details to be included in the Development Application. For further details in relation to Aircraft Noise refer to **Part 3J - Development Affecting Operations at Sydney Airport**.
- C6** The introduction of noise abatement measures to achieve compliance with current AS 2021 must be done in a manner that does not compromise the architectural design of a building or impact on the character of an existing streetscape.
- C7** All development that is in, or immediately adjacent to, the rail corridor or a busy road must be designed in accordance with NSW Department of Planning 'Development Near Rail Corridors and Busy Roads - Interim Guidelines, December 2008'.



- C8** Internal habitable rooms of dwellings within the B4 Mixed Use Zone which are affected by high levels of external noise are to be designed to achieve internal noise levels of 50dBA maximum. Development Applications which contain residential accommodation are to be accompanied by a noise assessment prepared by a qualified acoustic consultant addressing the following:
- i. address the noise requirements of the NSW Infrastructure SEPP in terms of road traffic noise;
  - ii. address the requirements of Part 4A, 4B or 4C (Acoustic Privacy controls), depending on the type of residential accommodation proposed;
  - iii. conduct detailed site attended audits during the day, evening and night periods to identify and assess noise from activities associated with the B7 Zone;
  - iv. assess noise from ground activities including aircraft take-off's and landing's at Sydney Airport referenced to each floor of the proposed building;
  - v. Where the height of the proposed development is higher than the existing height of the localised building stock (and the proposed development has a direct line of sight to the seaport) the acoustical assessment is to take into account noise from the operations of Port Botany;
  - vi. confirm noise exposure levels for each floor of the proposed residential building;
  - vii. and confirm building noise controls for internal noise levels to satisfy the recommended noise criteria.

### Building and Site Layout

- C9** New residential buildings which adjoin the B7 zone should be designed to accommodate and minimise any adverse effects on the amenity of residential areas by way of overlooking, lighting, dust, noise or fumes.
- C10** On small frontage sites, buildings may align to the rear and side boundary in all locations except where a residential use or zone adjoins.
- C11** Development shall avoid long blank walls facing the street and adjoining residential uses.
- C12** Floor space is to be distributed on the site to ensure the scale of the building reinforces the role of the street and buildings are arranged and aligned to create a pleasant working environment.
- C13** Site planning is to allow for the retention of significant trees and vegetation, particularly near the street frontage.



## Setbacks

**C14** Setbacks are to be in accordance with the **Table 4**.

**Table 4 - Setbacks in Area 2**

Boundary	Landscaping Setback	Building Setback
Front	3m	Merit (Min 6m and 9m for large lots)
Side	1m to 1.5m	1m to 1.5m
Side – adjoining a Residential Use	3m	3m
Rear	Nil to 3m	Nil to 3m
Rear * - adjoining a Residential Use	3 m	3m

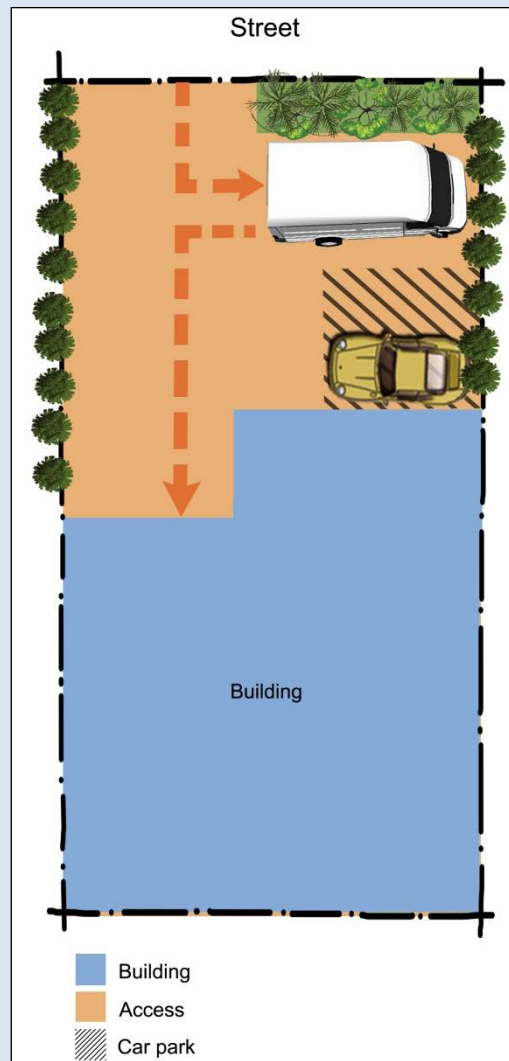
## Parking and Vehicular Access

**C15** For delivery vehicle access/manoeuvring on narrow and small lots in the area, car parking may be provided within the front setback in order to allow such vehicles to enter and leave in a forward direction (refer to **Figure 11**) provided minimum landscape requirements are met (refer to **Table 4**).



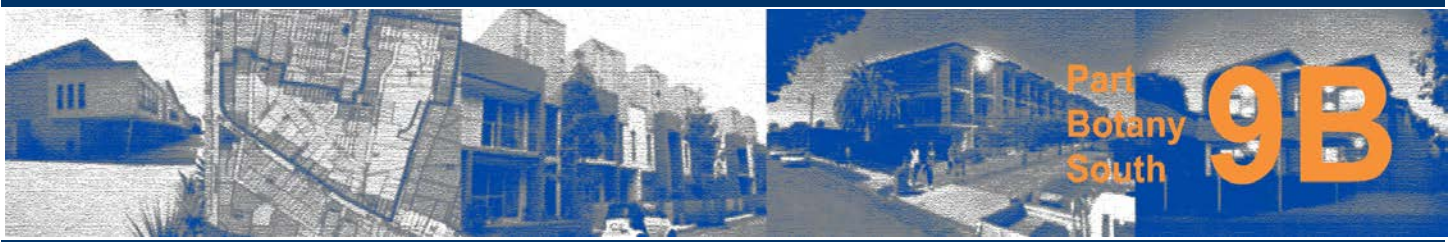


**Figure 11 - Vehicle Access and Manoeuvring within Area 2**



### Storage Areas

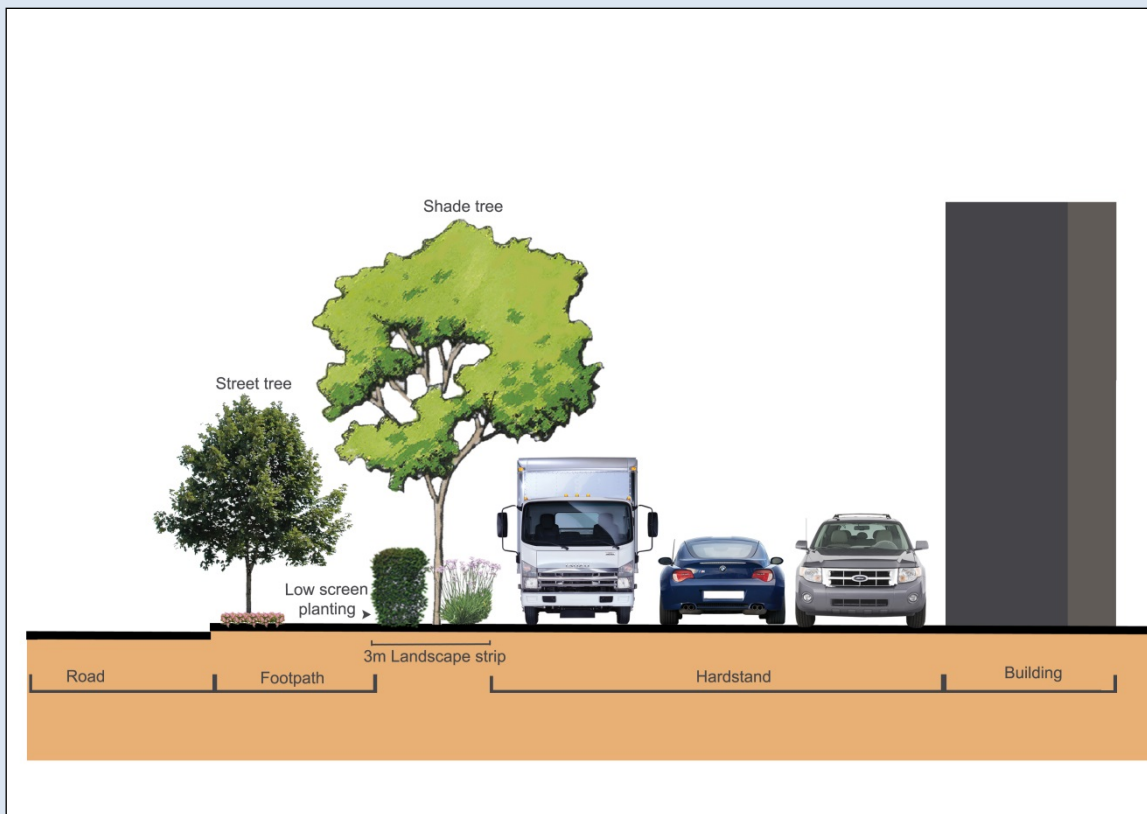
- C16** Any open storage areas shall be effectively screened and shall harmonise with existing or proposed landscaping to prevent the storage area being viewed from a public road, nearby public reserve or adjoining residential property. Specific details of the materials to be stored external to the building shall be lodged with the Application.
- C17** Storage areas are not permitted to be located within the landscaped setbacks or areas.



## Landscaping

- C18** A Landscape Zone is to be provided adjacent to the front property boundary of no less than 3 metres in width (refer to **Table 4**). The zone is to accommodate canopy trees to screen and soften buildings and to shade parking areas, underplanted with screen planting/hedging up to 1.2 metres in height (refer to **Figure 12**). These areas are to be mass planted areas of screen or buffer landscaping using a layered planting design (refer to **Part 3L - Landscaping** and Council's **Landscaping Technical Guidelines for Development Sites**).
- C19** Existing trees, including Council street trees and trees on neighbouring properties, are to be retained and adequate provision allowed for protection of the primary root zone and canopy when locating new buildings, driveways and parking areas (refer to **Part 3F - Tree Management**).
- C20** The side boundary returns within the front setback and forward of the building alignment must be landscaped (refer to **Table 4**) to integrate the setback landscaping with the buildings on the site.
- C21** For existing and new buildings, Council may require landscape improvement or enhancement of existing landscaping or the public domain through provision of:
- (i) Street trees;
  - (ii) Planter tubs/pots;
  - (iii) New paving;
  - (iv) Street furniture;
  - (v) A specific streetscape planting scheme;
  - (vi) Maintenance of the existing streetscape, and
  - (vii) Reinstatement of landscaping on site in accordance with a previously approved landscape plan.
- C22** For development adjoining the residential uses at the rear or side of a property, landscaping and car parking are to provide a buffer to achieve a high level of amenity.

Figure 12 - Treatment within the Landscape Zone



Source: Botany South Industry Study, Architectus, 2003

## Fences

**C23** If fences are required they shall be not higher than **Table 5**.

**Table 5 - Fence Height in Area 2**

Use	Fence Height
Residential	1 m
Non-Residential	1.5m (over 50% must be transparent)



## Dwelling Component

- C24** The residential component of development must comply with the relevant sections of **Part 4 - Residential Development**.

**Note: Part 4B.5.1 - Dwelling Mix, Room Size and Layout** for Multi Dwelling Housing and **Part 4C.5.1 - Dwelling Mix, Room Size and Layout** for Residential Flat Buildings.

## Mixed Use Development

- C25** The ground floor level of a mixed use development that relates to the active street frontage must be predominantly used for commercial uses or other street activating uses.
- C26** A Plan of Management (POM) may be required when an non-residential uses proposed within a mixed used development or in proximity of a residential land use. The Plan of Management (POM) is a written report which describes how the ongoing operation of industrial premises will be managed to reduce its impact upon the amenity of surrounding properties.

The POM allows Council to exercise control over the ongoing operation of a premises by requiring, as a condition of consent, that the premises operate in accordance with the POM. A condition of consent may require that a POM be regularly revised and submitted to Council.

The POM must provide all details relevant to the operation of the premises. As a minimum the following must be included:

- (i) Title;
- (ii) Objectives;
- (iii) Operational details;
- (iv) Hours of operation;
- (v) Staffing details;
- (vi) Guidelines for staff for using the site facilities and equipments;
- (vii) Deliveries and loading/unloading;
- (viii) Managing customers or patrons;
- (ix) Security details;
- (x) Noise Impact Assessment;
- (xi) Shadow Analysis;
- (xii) Complaint recording and handling process; and
- (xiii) The review process to continuously improve the POM.

- C27** The traffic movements, hours of deliveries, use of parking areas and garbage collection must be managed through the POM where non-residential uses are close to residential premises. Where significant amounts of traffic are likely to be generated which could affect residential areas or residential zoned land, schedules of vehicle movements and their routes must be provided and may be regulated in conditions of consent.





- C28** Loading and unloading must not detract from the amenity of nearby residential uses. Where loading and unloading movements are likely to affect residential areas or residentially zoned land, schedules of vehicle movements and their routes must be provided in the POM and may be regulated through conditions of consent.
- C29** New development is to be designed so that noise-producing activity is remote from the interface boundary. New manoeuvring areas and parking areas facing existing residential areas are not permitted due to noise resulting from such activities.
- C30** Site lighting for building security and staff safety must be directed so as to not cause annoyance to neighbours, residents or glare to passing motorists.
- C31** Walls of buildings adjacent to residential uses are to make use of non-reflective colours and materials to avoid glare on residential areas (especially balconies). The walls are to be treated to aesthetically as well as acoustically. Window placement and/or tall trees should be considered as ways to protect privacy, reduce noise and light pollution.
- C32** Where a site contains or adjoins a residential use or property, Council shall require the applicant to provide shadow diagrams prepared by a suitably qualified person. These shadow diagrams shall:
- (i) Show the shading effects of a proposal on adjoining residential properties or the public domain;
  - (ii) Be based on a survey of the site and adjoining development; and
  - (iii) Be prepared at 9.00 a.m, 12.00 noon and 3.00 p.m. at 21st June (winter solstice).
- C33** Where the windows of habitable rooms and the private open space of adjoining dwellings already receive sunlight, they shall receive a minimum of 2 hours of sunlight between 9.00 a.m. and 3.00 p.m. during 21st June.
- Note:** Council will refer a contentious Development Application or one that involves an extension to the trading hours of a licensed premises to a Resident Consultative Committee or where there have been a significant number of objections received as a result of exhibition and/or notification of the Application. Both the Applicant and the Objectors will be invited to attend. The purpose of the Committee is to address the issues raised by residents in an open forum.
- C34** Any commercial car parking must be conveniently located and identified.



### 9B.4.1.3 Area 3 - Aylesbury Street

**Area 3** - Aylesbury Street is at the northern tip of the Botany South Precinct. **Area 3** will be encouraged to develop into a residential area which will include low scale live/work opportunities.

The Objectives and Controls for the Desired Future Character for Botany South Precinct: B4 Zone - **Area 3** are as follows:

Objectives

01

To encourage residential development that co-exists and provides a transition from non-residential uses to low scale residential and provides a safe and livable environment;

02

To encourage live/work opportunities which will emit low level of noise and minimises operating hours;

03

To encourage improvements to the Public Domain;

04

To ensure there is no land use conflicts on the interface between the non-residential and residential uses;

05

To ensure that future development contributes to the creation of a high quality landscape environment in the Precinct;

06

To retain existing trees both inside and outside the site and provide suitably proportioned areas of well designed landscaping on each development site;

07

To ensure proposed development is designed to minimise the impact of noise and vibration from uses with the B7 zone;

08

To promote and encourage a high design quality of buildings; and

09

To ensure the drainage of the Precinct is not detrimentally impacted and property is protected.

Controls

C1

Development in this area is to be for residential purposes. Live/work opportunities are encouraged that can co-exist with residential uses.

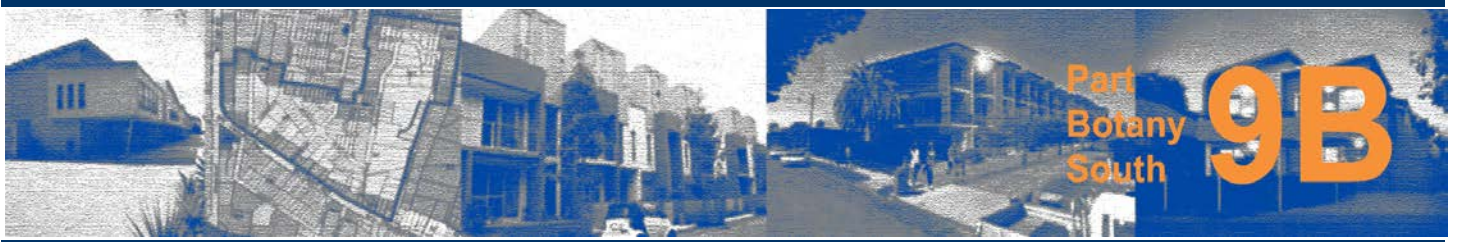
C2

Development must comply with **Part 4 - Residential Development**.



- C3** Where development adjoins or is adjacent to residential uses the development must not detrimentally affect the amenity of residential uses by way of:
- (i) Scale and size;
  - (ii) Floorspace ratio;
  - (iii) The size and number of vehicle movements;
  - (iv) Noise;
  - (v) Air and water pollution; and
  - (vi) Any other negative environmental impact.
- C4** Residential development shall be designed and demonstrate that it will not be detrimentally impacted by any non-residential uses in the adjoining B7 Zone.
- C5** Development shall be designed and constructed in accordance with Australian Standard AS 2021 (Acoustic Aircraft Noise Intrusion-Building siting and Construction).
- Note:** Details to be included in the Development Application. For further details in relation to Aircraft Noise refer to **Part 3J - Development Affecting Operations at Sydney Airport**.
- C6** The introduction of noise abatement measure to achieve compliance with current AS 2021 must be done in a manner that does not compromise the architectural design of a building or impact on the character of an existing streetscape.
- C7** All development that is in, or immediately adjacent to, the rail corridor or a busy road must be designed in accordance with NSW Department of Planning 'Development Near Rail Corridors and Busy Roads - Interim Guidelines, December 2008'.
- C8** Internal habitable rooms of dwellings within the B4 Mixed Use Zone which are affected by high levels of external noise are to be designed to achieve internal noise levels of 50dBA maximum. Development Applications which contain residential accommodation are to be accompanied by a noise assessment prepared by a qualified acoustic consultant addressing the following:
- i. address the noise requirements of the NSW Infrastructure SEPP in terms of road traffic noise;
  - ii. address the requirements of Part 4A, 4B or 4C (Acoustic Privacy controls), depending on the type of residential accommodation proposed;
  - iii. conduct detailed site attended audits during the day, evening and night periods to identify and assess noise from activities associated with the B7 Zone;
  - iv. assess noise from ground activities including aircraft take-off's and landing's at Sydney Airport referenced to each floor of the proposed building;
  - v. Where the height of the proposed development is higher than the existing height of the localised building stock (and the proposed development has a direct line of sight to the seaport) the acoustical assessment is to take into account noise from the operations of Port Botany;
  - vi. confirm noise exposure levels for each floor of the proposed residential building;
  - vii. and confirm building noise controls for internal noise levels to satisfy the recommended noise criteria.





- C9** A Plan of Management (POM) may be required when a non-residential use is proposed within a mixed use development or in proximity of a residential land use. The Plan of Management (POM) is a written report which describes how the ongoing operation of industrial premises will be managed to reduce its impact upon the amenity of surrounding properties.

The POM allows Council to exercise control over the ongoing operation of a premises by requiring, as a condition of consent, that the premises operate in accordance with the POM. A condition of consent may require that a POM be regularly revised and submitted to Council.

The POM must provide all details relevant to the operation of the premises. As a minimum the following must be included:

- (i) Title;
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- (vi) Guidelines for staff for using the site facilities and equipments;
- (vii) Deliveries and loading/unloading;
- (viii) Managing customers or patrons;
- (ix) Security details;
- (x) Noise Impact Assessment
- (xi) Shadow Analysis
- (xii) Complaint recording and handling process; and
- (xiii) The review process to continuously improve the POM.

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## Council Meeting

**12/10/2016**

Item No	9.5
Subject	Report on Submissions – Planning Proposal – Reclassification of Council Owned Land at Henry Kendall Crescent, Mascot (Lot 126A, DP 21810)
Report by	Stephanie Lum, Senior Strategic Planner
File	S15/135

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## Summary

This report reviews submissions received in response to the public exhibition and hearing of the Planning Proposal to reclassify a Council owned land being part of a nature strip, at Henry Kendall Crescent, Mascot (Lot 126A, DP 21810) from Community Land to Operational Land.

The Planning Proposal arose as the owner of the two adjoining lots approached the former City of Botany Bay to purchase the land with a view to incorporate it into their residential allotments. However, no agreement was reached as to the value of the land. It will still be open to Council to negotiate the sale of the land if desired in the future, but notwithstanding, it is proposed to still proceed with the land reclassification.

The Planning Proposal was placed on public exhibition from 11 November 2015 to 8 December 2015. A total of two submissions were received and are addressed in this report.

In accordance with the *Local Government Act 1993*, a public hearing was independently chaired by Walsh Consulting on 31 March 2016. Six members of the public attended the public hearing and made oral submissions which are addressed in the consultant's report and discussed in this report.

It is recommended that the attached Planning Proposal be adopted by Council and forwarded to the Department of Planning & Environment (DP&E) for finalisation.

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## Council Resolution

Resolved by the Administrator:

- 1 That Council resolve to reclassify Council owned land at Henry Kendall Crescent, Mascot (Lot 126A, DP 21810) from Community Land to Operational Land.
  - 2 That the Planning Proposal dated October 2016 be forwarded to the Department of Planning & Environment for gazettal.
  - 3 That Council officers continue negotiations for the sale of the site with the owner of the adjoining land.
-

## Officer Recommendation

- 1 That Council resolve to reclassify Council owned land at Henry Kendall Crescent, Mascot (Lot 126A, DP 21810) from Community Land to Operational Land;
  - 2 That the Planning Proposal dated October 2016 be forwarded to the Department of Planning & Environment for gazettal; and
  - 3 That Council officers continue negotiations for the sale of the site with the owner of the adjoining land.
- 

## Background

Council owns a land that adjoins the road reserve in Henry Kendall Crescent, Mascot (Lot 126A, DP 21810) as indicated in **Figure 1**. The site covers an area of 183sqm and is zoned R2 – Low Density Residential.



Figure 1 – Aerial view of the property affected by the Planning Proposal.

The former City of Botany Bay was approached by the property owners of Nos. 10 and 12 Henry Kendall Crescent, Mascot to purchase the subject property. The site is classified as Community Land. To sell the land, Council is required to reclassify it to Operational Land which requires an amendment to the *Botany Bay Local Environmental Plan (BBLEP) 2013*.

At the Policies and Priorities Meeting held on 26 August 2015, the former Council considered a report relating to a request to purchase land that adjoins the road reserve in Henry Kendall Crescent, Mascot (i.e. the subject property).

The former Council resolved that:

1. *The report be received and noted;*
2. *Council resolve to sell to the owner of 10 and 12 Henry Kendall Crescent, Mascot Lot 126A in DP 21810 at its assessed market valuation;*
3. *Council undertake the process required to change the land classification of Lot 126A from Community Land to Operational Land; and*
4. *The General Manager be authorised to sell Lot 126A on behalf of the Council.*

The report was then adopted by the full Council at the meeting on 26 August 2015.

On 12 October 2015, the Planning Proposal was forwarded to the DP&E for Gateway Determination. A Gateway Determination was issued by the DP&E on 27 October 2015, providing consent for the Planning Proposal to proceed to community consultation and a public hearing.

In accordance with the Gateway Determination, the Planning Proposal was placed on community consultation from 11 November 2015 to 8 December 2015. At the conclusion of the public exhibition period, the former Botany Bay Council held a public hearing on 31 March 2016 in accordance with the provisions of the *Local Government Act 1993*. Accordingly, the former Botany Bay Council engaged Walsh Consulting to conduct an independent public hearing.

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## Discussion

### Planning Proposal

The Planning Proposal (**Attachment 1**) seeks to reclassify Council owned land at Henry Kendall Crescent, Mascot (Lot 126A, DP 21810) from Community Land to Operational Land.

The intended outcome of the Planning Proposal is to enable the land classification to be consistent with the current zoning and enable Council the opportunity to sell the site for its integration within the adjoining properties at Nos. 10 and 12 Henry Kendall Crescent, Mascot. As noted in the report to the then Council on 26 August 2015, given the size and location of the site, the land has no material benefit to Council.

The Planning Proposal does not propose any changes to the zoning or development standards of the subject site.



## Exhibition and Review of Submissions

The Planning Proposal was exhibited from 11 November 2015 to 8 December 2015. Advertisements were placed in the local newspaper and on the former Botany Bay website. Letters were sent to affected property owners. The Planning Proposal was also displayed at the Mascot Administration Centre.

Two submissions were received from surrounding residents with one submission objecting to the proposed reclassification and sale of the land. The submissions raised the following issues:

1. **Issue 1** – The existing building line of Nos. 10 and 12 Henry Kendall Crescent, including of the garages should remain and not be extended out to the new property boundary.

**Officer Response** – Developments on Nos. 10 and 12 Henry Kendall Crescent must comply with the setback requirements contained in the *Botany Bay Development Control Plan (BBDCP) 2013*. The setback will be taken from the new property boundary. In accordance with the *BBDCP*, ground floor alterations and additions presenting to a secondary street frontage may have a continuous building setback of 1 metre for a maximum length of 6 metres. The remaining building, including secondary storey additions, must be set back 3 metres from the secondary street frontage.

2. **Issue 2** – Any new fences erected along the new property boundary of Nos. 10 and 12 Henry Kendall Crescent should not exceed a height of 85cm (or thereabouts).

**Officer Response** – Part 4A – Dwelling Houses of the *BBDCP 2013* discourages fences along residential frontages that are higher than 1 metre but may allow fences to be constructed to a maximum of 1.2 metres provided the top 600mm of the fence is 50% transparent or open style to allow for passive surveillance.

3. **Issue 3** – The Planning Proposal does not mention that Nos. 10 and 12 Henry Kendall Crescent are owned by one person who has expressed an interest in purchasing the subject site. The lots could be sold to a developer for the construction of townhouses or multi-dwelling structures which would be unsuitable on a congested and narrow street.

**Officer Response** – The subject properties are located in the R2 zone. Dwelling houses, attached dwellings and semi-detached dwellings would be permissible but only one dwelling is permitted per lot (other than a secondary dwelling). If another form of development was proposed and subdivision was required, the application would need to satisfy the requirements of the *BBDCP 2013*. The proposed subdivision would need to be consistent with the prevailing subdivision pattern. Any development application on the site will be subject to a merit assessment.

It must be noted that multi dwelling housing is only permissible in the R2 zone if it satisfies the provisions of Clause 6.11 (Residential flat buildings and multi dwelling housing in Zone R2) of the *BBLEP 2013*. Residential flat buildings and multi dwelling housing are only permitted in the R2 zone if the site was previously used for a non-residential purpose. Accordingly, residential flat buildings and multi dwelling housing are not permitted on the subject site.

## Public Hearing Report

In accordance with Section 29 of the *Local Government Act 1993*, a public hearing in relation to the reclassification of the former Botany Bay Council owned land was held at Coronation Hall, Mascot on 31 March 2016. The public hearing was independently chaired by Walsh Consulting. Six community members and two Council staff attended the public hearing.

The verbal submissions received at the hearing raised the following issues:

- The loss of greenspace in the street which should be retained by limiting future building works to the current property boundary;
- Concern regarding the type of fencing permitted;
- Transparency of the process, including a request to publish the sale price of the land should the sale proceed; and
- Whether there are any underground services or utilities on the subject site.

Following the public hearing, Walsh Consulting provided a report on the public hearing (**Attachment 2**). All attendees and submitters were offered a copy of the public hearing report and notified that it was available on the former Council's website and at the Mascot Council Administration Building.

The report supports the reclassification and recommends that:

*Overall I am satisfied with the current planning position when considering the merits of the land reclassification. That is, existing planning controls do seem to bring reasonable prospects for balancing future development and amenity impacts with development involving the subject area. At the same time, I believe that the subject area, as residentially-zoned land, should be considered as having the potential to release quite significant relative value back to the community, given its strongly positive locational attributes.*

The report also recommends that consideration be given to whether any underground utilities or services affect the land and any implications should the land be sold. Accordingly, Council obtained a copy of the Dial a Dig report which does not indicate the presence of any underground services.

In accordance with the above recommendations and responses, Council may progress the proposed reclassification amendment.

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## Statutory Considerations

Part 3 of the *Environmental Planning & Assessment Act 1979* provides for the making of certain Local Environmental Plans. An authorisation is issued as part of the Gateway Determination that gives local councils responsibility for the making of LEPs of local significance. Delegation for the making of the LEP to reclassify Henry Kendall Crescent, Mascot (Lot 126A, DP 21810) was not provided to the former City of Botany Bay as the proposal involves the discharge of all interests in the public land under Section 30 of the *Local Government Act 1993*.

Should Council resolve to adopt the Planning Proposal, the Planning Proposal will be forwarded to the DP&E for gazettal.

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## **Conclusion**

The Planning Proposal to reclassify Council owned land at Henry Kendall Crescent, Mascot (Lot 126A, DP 21810) from Community Land to Operational Land was exhibited from 11 November 2015 to 8 December 2015. A total of two submissions were received from private property owners and a number of oral submissions were also made at the public hearing that was attended by six members of the public.

The reclassification will enable the land classification to be consistent with the current zoning and enable Council the opportunity to in the future, to potentially sell the site for possible integration within the adjoining properties at Nos. 10 and 12 Henry Kendall Crescent, Mascot. Given the size and location of the site, it has low value to Council. A footpath and reduced verge would still be retained.

Accordingly, it is recommended that the Planning Proposal be supported and submitted to the DP&E for gazettal. The former Council had already resolved to sell to the owner of Nos. 10 and 12 Henry Kendall Crescent, Mascot Lot 126A in DP 21810 at its assessed market valuation. In the meantime, Council officers can continue negotiations with prospective purchasers, and any future agreement will be reported to Council. If there is no eventual sale of land, there is no negative side to having the land rezoned as operational.

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## **Attachments**

Planning Proposal

Public Hearing Report



Ms Heather Warton  
Director City Planning & Environment  
Bayside Council – Mascot  
141 Coward Street  
Mascot NSW 2020  
Ph: (02) 9366 3666  
[council@bayside.nsw.gov.au](mailto:council@bayside.nsw.gov.au)

# Bayside Council

Serving Our Community

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## **PLANNING PROPOSAL**

The Planning Proposal seeks to reclassify Council owned land at Henry Kendall Crescent, Mascot (Lot 126A, DP 21810) from Community Land to Operational Land.

October 2016

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## ATTACHMENTS

1. Deposited Plan and Certificate of Title
2. Former Botany Bay Council Report and Resolution – Policies and Priorities Meeting dated 26 August 2015
3. Former Botany Bay Council Resolution – Ordinary Council Meeting dated 26 August 2015
4. Gateway Determination dated 27 October 2015
5. Public Hearing Report
6. Council Report and Resolution dated 12 October 2016
7. LEP Practice Note PN 09-003 – Written Statement
8. List of State Environmental Planning Policies

## INTRODUCTION

The Planning Proposal relates to a Council owned property that adjoins the road reserve in Henry Kendall Crescent, Mascot (Lot 126A, DP 21810) which covers an area of 183sqm. As identified in the figures below and **Attachment 1** – Deposited Plan and Certificate of Title, the subject precinct is located at the top end of Henry Kendall Crescent between the road reserve and the northern side boundary of Nos. 10 and 12 Henry Kendall Crescent, Mascot. The property is currently zoned R2 – Low Density Residential and is classified as Community Land.

The former Botany Bay Council was approached by the property owners of Nos. 10 and 12 Henry Kendall Crescent, Mascot to purchase the subject property. To sell the land, Council is required to reclassify it to Operational Land.

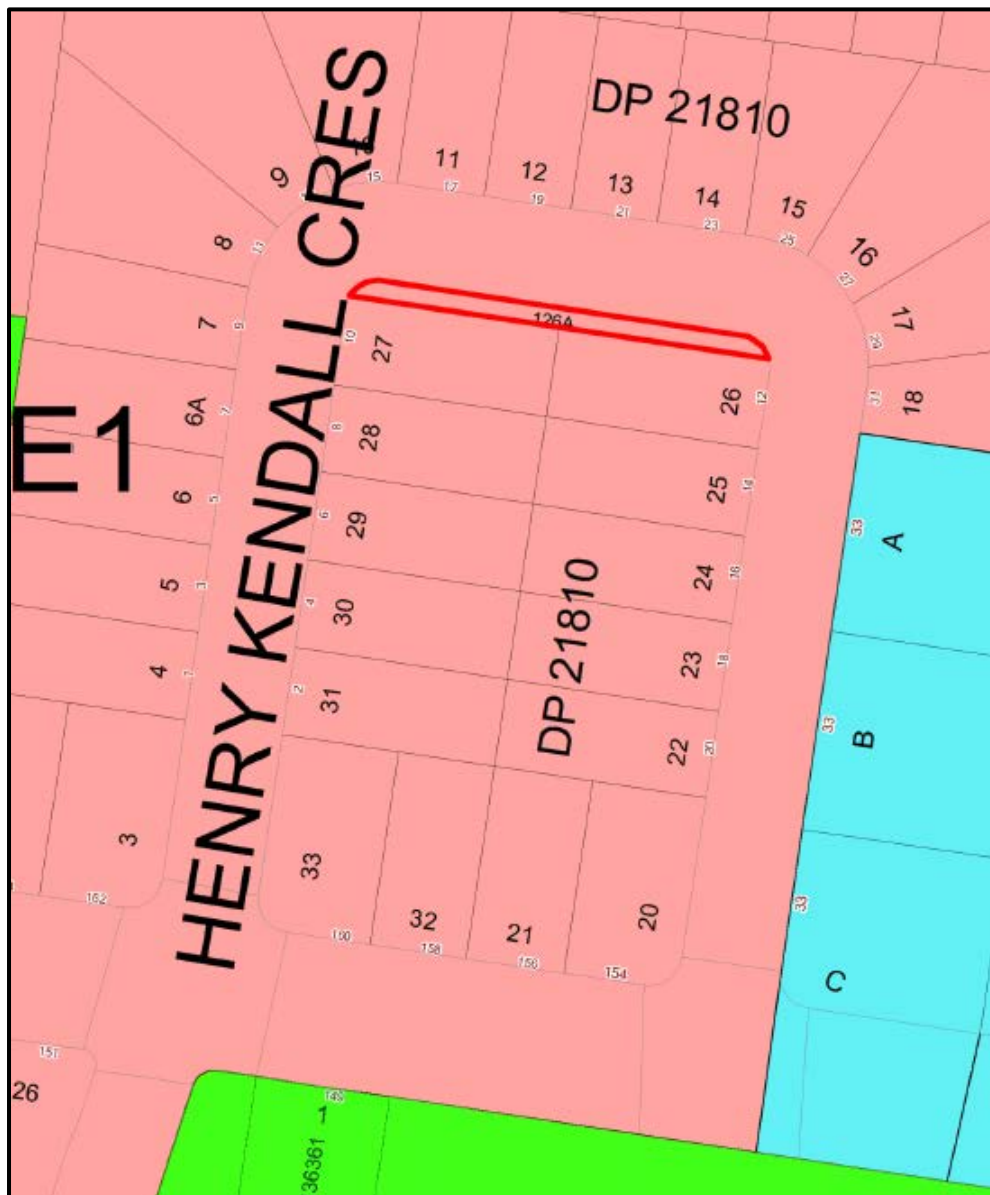


Figure 1 – Zoning map of the property affected by the Planning Proposal



**Figure 2 – Aerial view of the property affected by the Planning Proposal**

### ***Relevant Planning Controls***

The subject property is zoned R2 – Low Density Residential under the *Botany Bay Local Environmental Plan (BBLEP) 2013*.

The objectives of the R2 zone are as follows:

- To provide for the housing needs of the community within a low density residential environment.

- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To encourage development that promotes walking and cycling.

The R2 zone permits the following uses with development consent:

*Attached dwellings; Bed and breakfast accommodation; Boarding houses; Building identification signs; Business identification signs; Child care centres; Community facilities; Dwelling houses; Environmental protection works; Flood mitigation works; Group homes; Health consulting rooms; Hospitals; Multi dwelling housing; Neighbourhood shops; Office premises; Places of public worship; Recreation areas; Residential flat buildings; Respite day care centres; Roads; Semi-detached dwellings.*

### **Council Resolutions**

At the Policies and Priorities Meeting held on 26 August 2015, the former Botany Bay Council considered a report relating to a request to purchase land that adjoins the road reserve in Henry Kendall Crescent, Mascot (i.e. the subject property).

The former Botany Bay Council resolved that:

1. The report be received and noted;
2. Council resolve to sell to the owner of 10 and 12 Henry Kendall Crescent, Mascot Lot 126A in DP 21810 at its assessed market valuation;
3. Council undertake the process required to change the land classification of Lot 126A from Community Land to Operational Land; and
4. The General Manager be authorised to sell Lot 126A on behalf of the Council.

A copy of the report and resolution is contained in **Attachment 2**.

The report was then referred to the former Botany Bay Council who considered it at its meeting held on 26 August 2015. Council resolved that the Minutes of the Policies and Priorities Committee held on 26 August 2015 be received and the recommendations contained therein be approved and adopted.

A copy of the former Botany Bay Council's resolution can be found in **Attachment 3**.

### **Gateway Determination**

On 12 October 2015, the former Botany Bay Council referred the Planning Proposal to the Department of Planning & Environment for Gateway Determination.

On 27 October 2015, a Gateway Determination was issued by the Department of Planning & Environment providing consent for the Planning Proposal to proceed to community consultation and a public hearing.

A copy of the Gateway Determination can be found in **Attachment 4**.



## **Public Exhibition**

In accordance with the Gateway Determination, the Planning Proposal was on community consultation from 11 November 2015 to 8 December 2015. Two submissions were received from surrounding residents with one submission objecting to the proposed reclassification and sale of the land. The submissions raise the following issues:

1. **Issue 1** – The existing building line of Nos. 10 and 12 Henry Kendall Crescent, including of the garages should remain and not be extended out to the new property boundary.

**Officer Response** – Developments on Nos. 10 and 12 Henry Kendall Crescent must comply with the setback requirements contained in the *Botany Bay Development Control Plan (BBDCP) 2013*. The setback will be taken from the new property boundary.

2. **Issue 2** – Any new fences erected along the new property boundary of Nos. 10 and 12 Henry Kendall Crescent should not exceed a height of 85cm (or thereabouts).

**Officer Response** – Part 4A – Dwelling Houses of the *BBDCP 2013* discourages fences along residential frontages that are higher than 1 metre but may allow fences to be constructed to a maximum of 1.2 metres provided the top 600mm of the fence is 50% transparent or open style to allow for passive surveillance.

3. **Issue 3** – The Planning Proposal does not mention that Nos. 10 and 12 Henry Kendall Crescent are owned by one person who has expressed an interest in purchasing the subject site. The lots could be sold to a developer for the construction of townhouses or multi-dwelling structures which would be unsuitable on a congested and narrow street.

**Officer Response** – The subject properties are located in the R2 zone. Dwelling houses, attached dwellings and semi-detached dwellings would be permissible but only one dwelling is permitted per lot. The land would need to be subdivided and satisfy the requirements of the *BBDCP 2013*. The proposed subdivision must be consistent with the prevailing subdivision pattern. Any development application on the site will be subject to assessment.

It must be noted that multi dwelling housing is only permissible in the R2 zone if it satisfies the provisions of Clause 6.11 (Residential flat buildings and multi dwelling housing in Zone R2) of the *BBLEP 2013*. Residential flat buildings and multi dwelling housing are only permitted in the R2 zone if the site was previously used for a non-residential purpose. Accordingly, residential flat buildings and multi dwelling housing are not permitted on the subject site.

## **Public Hearing**

At the conclusion of the public exhibition period, the former Botany Bay Council was required to hold a public hearing for the reclassification of land from Community Land to Operational Land pursuant to the provisions of the *Local Government Act 1993*.



The public hearing was independently chaired by Walsh Consulting. Six community members and two Council staff attended the public hearing.

The verbal submissions received at the hearing raised the following issues:

- The loss of greenspace in the street which should be retained by limiting future building works to the current property boundary;
- The type of fencing permitted;
- Transparency of the process, including publication of the sale price of the land should the sale proceed; and
- Whether there are any underground services or utilities on the subject site.

Following the public hearing, Walsh Consulting provided a report on the public hearing. All attendees and submitters were offered a copy of the attached public hearing report (**Attachment 5**) and notified that it was available on the former Botany Bay Council's website and at the Mascot Administration Building.

The report supports the reclassification and recommends that:

*“Overall I am satisfied with the current planning position when considering the merits of the land reclassification. That is, existing planning controls do seem to bring reasonable prospects for balancing future development and amenity impacts with development involving the subject area. At the same time, I believe that the subject area, as residentially-zoned land, should be considered as having the potential to release quite significant relative value back to the community, given its strongly positive locational attributes.”*

The report also recommends that consideration be given to whether any underground utilities or services affect the land and any implications should the land be sold. Accordingly, Council obtained a copy of the dial a dig report which does not indicate the presence of any underground services.

In accordance with the above recommendations and responses, Council may progress the proposed reclassification amendment.

### **Review of Submissions**

At its meeting on 12 October 2016, Council considered a report presenting submissions received on the exhibition of the Planning Proposal and the public hearing report (**Attachment 6**). Council resolved to:

1. Reclassify Council owned land at Henry Kendall Crescent, Mascot (Lot 126A, DP 21810) from Community Land to Operational Land;
2. Adopt and forward the Planning Proposal dated October 2016 to the Department of Planning & Environment for gazettal; and
3. Continue negotiations for the sale of the site with the owner of the adjoining land.

## PART 1 - OBJECTIVE OR INTENDED OUTCOME

### **Objective**

The Planning Proposal seeks to reclassify Council owned land at Henry Kendall Crescent, Mascot (Lot 126A, DP 21810) from Community Land to Operational Land.

### **Intended Outcome**

The intended outcome of the Planning Proposal is to enable the land classification to be consistent with the current zoning and enable Council the opportunity to sell the site for its integration within the adjoining properties at Nos. 10 and 12 Henry Kendall Crescent, Mascot. As noted in the report to the former Botany Bay Council on 26 August 2015, given the size and location of the site, the land has no material benefit to Council.

The Planning Proposal does not propose any changes to the zoning or development standards of the subject site.

In accordance with the NSW Department of Planning's LEP Practice Note PN09-003 '*Classification and reclassification of public land through a local environmental plan*', Council has provided a written statement in **Attachment 7** which specifies the changes resulting from the reclassification.

## PART 2 - EXPLANATION OF PROVISIONS

The Planning Proposal seeks to reclassify land owned by Council from Community Land to Operational Land and discharge any trusts, estates, interests, dedications, conditions, restrictions and covenants affecting the land or any part of the land.

### **Proposed Amendment**

The Planning Proposal seeks the following amendments to the *BBLEP 2013*:

1. Insert into Part 2 (Land classified, or reclassified, as operational land – interests changed) of Schedule 4 (Classification and reclassification of public land) the site to be reclassified from community to operational.

Column 1	Column 2	Column 3
Locality	Description	Any trusts etc not discharged
Bayside Council	Lot 126A, DP 21810, Henry Kendall Crescent, Mascot	Nil

## PART 3 - JUSTIFICATION

### **Section A – Need for the planning proposal.**

#### **1 Is the planning proposal a result of any strategic study or report?**

The Planning Proposal is not the result of any strategic study or report.

The former Botany Bay Council received a request from the owners of Nos. 10 and 12 Henry Kendall Crescent, Mascot to purchase Council owned land that adjoins the road reserve in Henry Kendall Crescent, Mascot for the purpose of its subdivision and incorporation into those two allotments held in private ownership. The subject site is currently classified as Community Land and it is proposed that the land be reclassified to Operational Land to enable it to be sold.

If Council agrees to sell the site to the adjoining property owners, any fees associated with the sale, such as legal, survey and the like would be accepted by the purchaser as a condition of sale. The obligation to effect a subdivision of the lot would also reside with the purchaser.

The subject property has no material benefit to Council and is a relatively small and 'low value' open space site which appears as a nature strip with no recreational value. The site is also located near existing parks of value, including Mascot Memorial Park Reserve, Mascot Oval Reserve and Lauriston Park.

The reclassification provides Council with the opportunity to sell underutilised land for its improved efficiency and highest and best use for residential development as part of Nos. 10 and 12 Henry Kendall Crescent. The sale of the site will rescind Council's maintenance costs of the site.

The excising of the subject site from what appears as a nature strip will leave a road reserve width of 15.24m which is consistent with the remainder of Henry Kendall Crescent.

The Planning Proposal makes provision to the effect that on commencement of the LEP, the subject site will be discharged from any trusts, estates, interests, dedications, conditions, restrictions and covenants affecting the land or any part of the land. The extinguishment of such interest from the land is necessary to provide Council with the opportunity to dispose of the surplus property and to remove restrictions from the site to facilitate its consolidation and redevelopment with the adjoining properties at Nos. 10 and 12 Henry Kendall Crescent, Mascot.

#### **2 Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?**

The Planning Proposal is the only means of achieving the objectives and intended outcomes as it involves a statutory amendment to the *BBLEP 2013*. Other possible options (i.e. community education and new administrative processes) are unable to achieve the outcomes sought by Council. The site is currently classified as Community Land which prohibits Council from developing, selling, exchanging or disposing of the land under the provisions of the *Local Government Act 1993*.

## **Section B – Relationship to strategic planning framework.**

- 3 Is the planning proposal consistent with the objectives and actions of the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

### **A Plan for Growing Sydney**

*A Plan for Growing Sydney* establishes a long-term planning framework to manage Sydney's growth in a sustainable manner and strengthen its economic development whilst enhancing the unique lifestyle, heritage and environment of Sydney.

The following goals and directions apply to the Planning Proposal:

- **Goal 2** – A city of housing choice, with homes that meet our needs and lifestyles.
  - **Direction 2.1** – Accelerate housing supply across Sydney.
    - **Action 2.1.3** – Deliver more housing by developing surplus or under-used Government land.

### **Draft East Subregional Strategy**

The draft *East Subregional Strategy* is an intermediate step in translating the Metropolitan Plan at a local level and acts as a broad framework for the long-term development of the area, guiding government investment and linking local and state planning issues.

The following directions and actions apply to the subject precinct:

- **B2** – Increase densities in centres whilst improving liveability.
- **B2.1** – Plan for housing in centres consistent with their employment role.
- **C1** – Ensure adequate supply of land and sites for residential development.
- **C2.1** – Focus residential development around centres, town centres, villages and neighbourhood centres.

The Planning Proposal proposes the reclassification of underutilised Council owned land near the Mascot Local Centre from Community Land to Operational Land. The reclassification will provide Council with the opportunity to sell the parcel of land to the adjoining owners to incorporate on their sites for residential development. Accordingly, the Planning Proposal is consistent with *A Plan for Growing Sydney* and the draft *East Subregional Strategy*.

4. Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?

### **Botany Bay Planning Strategy 2031**

The *Botany Bay Planning Strategy 2031* (the Strategy) establishes a framework for growth and development for the former Botany Bay LGA and addresses the draft *East Subregional Strategy* dwelling and employment targets. The Strategy also provides the foundation for the development of the *BBLEP 2013*.

The following direction, objectives and actions apply to the subject precinct:

- **Strategic Direction 2** – Revitalising Botany Road & Traditional Centres

- **Objective 2.2.2** – Increase residential density potential at Rosebery on either side of Botany Road and behind Gardeners Road to Harris Street.

The Planning Proposal is consistent with the Strategy as it may result in underutilised land near Botany Road being developed for residential purposes.

5. Is the planning proposal consistent with applicable State Environmental Planning Policies?

**Attachment 8** summarises the Planning Proposal's consistency with State Environmental Planning Policies (SEPPs) and relevant deemed SEPPs.

6. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

Ministerial Directions (s.117 directions) directly applicable to the Planning Proposal are addressed below.

### 3.1 Residential Zones

The intent of this direction is to encourage a variety and choice of housing types to provide for existing and future housing needs; to make efficient use of existing infrastructure and services to ensure that new housing has appropriate access to infrastructure and services; and to minimise the impact of residential development on the environment and resource lands.

The subject site is located within an established residential area with existing infrastructure and services.

The Planning Proposal is consistent with the direction for the following reasons:

- The Planning Proposal will retain the existing residential zone and will not impact upon the supply of residential land or housing supply; and
- The Planning Proposal will make more efficient use of existing infrastructure and services.

### 3.5 Development Near Licensed Aerodromes

The intent of this direction is to ensure the effective and safe operation of aerodromes; their operation is not compromised by development that constitutes an obstruction, hazard or potential hazard to aircraft flying in the vicinity; and development for residential purposes or human occupation incorporates appropriate mitigation measures so that the development is not adversely affected by aircraft noise.

The property is situated between 20 and 25 ANEF contours.

The Planning Proposal will not impact on the effective and safe operation of Sydney Airport as the land use zone (i.e. R2 – Low Density Residential) and maximum permissible height of buildings (i.e. 9m) will remain unchanged in the *BBLEP 2013*.

Furthermore, model local provisions (i.e. *Clause 6.8 – Airspace Operations and Clause 6.9 – Development in areas subject to aircraft noise*) have already been incorporated into the *BBLEP 2013*.

Future developments that penetrate the Limitation or Operations Surface will be referred to the “relevant Commonwealth body” (i.e. Sydney Airport Corporation Limited) for comment. Any impacts on the effective and safe operation of aerodromes can be addressed during the development application stage. Hence, the Planning Proposal is consistent with the direction.

#### **4.1 Acid Sulfate Soils**

The intent of this direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils. The direction requires an acid sulfate soils study to be prepared if the planning proposal requires an intensification of land uses.

A model local provision (i.e. Clause 6.1 – Acid Sulfate Soils) and an Acid Sulfate Soils Map have been incorporated into the *BBLEP 2013*.

The subject property is identified as Class 4 Acid Sulfate Soils.

Future developments (i.e. any works below the natural ground surface or are likely to lower the watertable) are subject to Council’s consent and lodgement of an acid sulfate soils management plan. No works are proposed as part of the Planning Proposal. Any significant adverse environmental impacts resulting from future developments can be addressed during the development application stage. Hence, the Planning Proposal is consistent with the direction.

#### **6.1 Approval and Referral Requirements**

The intent of this direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development.

The Planning Proposal does not introduce any LEP provisions that result in any additional requirements for concurrence, consultation or referral to a Minister or public authority.

#### **6.2 Reserving Land for Public Purposes**

The intent of this direction is to facilitate the provision of public services and facilities by reserving land for public purposes; and to facilitate the removal of reservations of land for public purposes where the land is no longer required for acquisition.

The Planning Proposal seeks to reclassify Council owned land at Henry Kendall Crescent, Mascot (Lot 126A, DP 21810) from Community Land to Operational Land.

The Proposal is seeking the approval of the Director General to revoke the Community Land status of the site. It is considered that the Director General grant concurrence on the basis that the property serves a limited purpose as community land, such as a public reserve due to its small size. The site is currently of limited value to the public.

The site is currently zoned R2 – Low Density Residential and permits dwelling houses. The Planning Proposal does not involve a change to the zoning of the site.

In the Gateway Determination dated 27 October 2015, the Department of Planning & Environment agreed the proposal’s inconsistency with the s.117 direction is a matter of minor significance and stated that no further approval is required in relation to this direction.

### 6.3 Site Specific Provisions

The objective of this direction is to discourage unnecessarily restrictive site specific planning controls.

The Planning Proposal seeks to reclassify Council owned land at Henry Kendall Crescent, Mascot (Lot 126A, DP 21810) from Community Land to Operational Land.

**Note:** *The zoning and development standards will remain unchanged.*

The Planning Proposal is not inconsistent with the objective of the direction as it will not introduce restrictive site specific planning controls or impose any additional development standards/requirements to those already contained in the R2 zone.

### 7.1 Implementation of A Plan for Growing Sydney

The intent of this direction is to give legal effect to the planning principles; directions; and priorities for subregions, strategic centres and transport gateways contained in *A Plan for Growing Sydney*.

As discussed above, the Planning Proposal is consistent with the Strategic Directions and Actions of *A Plan for Growing Sydney*.

### Section C – Environmental, social and economic impact.

7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

The proposal will not impact upon any critical habitat, threatened species, populations or ecological communities or their habitats as the site does not contain any of the above communities.

8. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

There are no likely environmental effects as a result of the Planning Proposal as the subject site will remain as residential zoned land. However, it is noted that the property is located within the ANEF 20-25 contour as identified by the *Australian Noise Exposure Forecast 2033 (ANEF) Chart*. Accordingly, any development on this property will be subject to compliance with the *Australian Standard 2021 (AS 2021)*.

Furthermore, model local provisions (i.e. *Clause 6.8 – Airspace Operations and Clause 6.9 – Development in areas subject to aircraft noise*) have already been incorporated into the *BBLEP 2013*.

9. How has the planning proposal adequately addressed any social and economic effects?

**Social effects:** The Planning Proposal is unlikely to impact on items or places of European or Aboriginal cultural heritage; existing social infrastructure; and existing retail centres.

The Planning Proposal will not rezone the site or alter the land use table contained in the *BBLEP 2013*. The proposal is also unlikely to generate additional permanent population in



the LGA. Hence, it is unlikely the Planning Proposal will place additional pressure on existing social infrastructure (including schools and hospitals).

The subject site is zoned residential. The social impact is considered to be low as the current space is underutilised and surplus to Council's and the public's needs. The site does not contain any recreational facilities and is too small to fulfil any recreational needs.

**Economic effects:** By reclassifying the subject site from Community Land to Operational Land, the Planning Proposal will provide Council with the opportunity to dispose of surplus land. Since the property owners of Nos. 10 and 12 Henry Kendall Crescent, Mascot have approached the former Botany Bay Council to purchase the site, the Planning Proposal will likely result in the sale of the property. Disposal of the land would also enable Council to rationalise its current maintenance cost and redirect resources toward more functional reserves.

## **Section D – State and Commonwealth interests**

### 10. Is there adequate public infrastructure for the planning proposal?

The subject site and adjoining properties at Nos. 10 and 12 Henry Kendall Crescent, Mascot are serviced by existing public transport infrastructure, utility services, roads and essential services.

The Planning Proposal is unlikely to place additional demands or pressures on existing public infrastructure.

As discussed above, the dial a dig report indicates that there are no underground utilities or services affecting the land or implications should the land be sold.

### 11. What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

The Gateway Determination does not identify any State and Commonwealth public authorities that are required to be consulted. However, as an adjoining property owner, the NSW Land and Housing Corporation was consulted as part of the community consultation process but did not lodge a submission.

## **PART 4 - MAPPING**

The Planning Proposal does not require amendments to any of the maps contained in the *BBLEP 2013*.

## **PART 5 - COMMUNITY CONSULTATION**

In accordance with the Gateway Determination issued on 27 October 2015, the Planning Proposal was exhibited for a minimum of 28 days and in accordance with sections 56 and 57 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)*. The Planning Proposal was notified in the local newspaper, on the former Botany Bay Council's website and in writing to affected and adjoining landowners.

At the conclusion of the public exhibition period, the former Botany Bay Council held a public hearing for the reclassification of land from Community Land to Operational Land pursuant to the provisions of the *Local Government Act 1993*.

## PART 6 - PROJECT TIMELINE

The project timeline for the Planning Proposal is as follow:

	<i>Timeframe*</i>
<i>Anticipated commencement date</i>	November 2015
<i>Anticipated timeframe for the completion of required technical information</i>	N/A
<i>Timeframe for government agency consultation (pre and post exhibition as required by Gateway Determination)</i>	N/A
<i>Commencement date for public exhibition period</i>	November 2015
<i>Date of public hearing</i>	March 2016
<i>Timeframe for consideration of submissions</i>	April-May 2016
<i>Timeframe for the consideration of a proposal post exhibition</i>	June-July 2016
<i>Date of submission to the Department to finalise the LEP</i>	October 2016
<i>Anticipated date RPA will make the plan (if delegated)</i>	N/A
<i>Anticipated date RPA will forward to the Department for notification</i>	October 2016

**Table 1 – Proposed Timeframe**

\* Subject to NSW Department of Planning & Environment approval and timeframe

## PART 7 - CONCLUSION

In summary, the Planning Proposal seeks to reclassify Council owned land at Henry Kendall Crescent, Mascot (Lot 126A, DP 21810) from Community Land to Operational Land. The reclassification will enable Council the opportunity to sell an underutilised asset with no material benefit to the adjoining property owners of Nos. 10 and 12 Henry Kendall Crescent, Mascot who have approached Council to purchase the subject property.

The Planning Proposal does not propose any changes to the zoning or development standards of the subject site.

The Planning Proposal is generally consistent with relevant State and local legislation, directions, policies and strategic documents and will have a minimal environmental, social and economic impact.

## ATTACHMENTS

1. Deposited Plan and Certificate of Title
2. Former Botany Bay Council Report and Resolution – Policies and Priorities Meeting dated 26 August 2015
3. Former Botany Bay Council Resolution – Ordinary Council Meeting dated 26 August 2015
4. Gateway Determination dated 27 October 2015
5. Public Hearing Report
6. Council Report and Resolution dated 12 October 2016
7. LEP Practice Note PN 09-003 – Written Statement
8. List of State Environmental Planning Policies

**Attachment 1 – Deposited Plan and Certificate of Title**

Municipality of Mascot  
D939212 14. 12. 48.

D. P. 21810

The Common Seal of the Council of the Municipality of Mascot was hereto affixed on the Eleventh day of August, 1948, in pursuance of a Resolution passed on the Tenth day of August, 1948.

Finlayson  
MAYOR

Harbo  
TOWN CLERK

## PLAN

of subdivision of part of land in C<sup>st</sup>.  
Vo. 4957 Fo. 33, 34 & 35 & Vo. 5358 Fo. 249.  
PARISH OF BOTANY COUNTY OF CUMBERLAND

Scale: 60 feet to an inch

(X)-D693611 LAND EXCLUDES MINERALS  
BY 5141 PUBLIC WORKS ACT 1912

(M) - RESERVATIONS &amp; CONDITIONS

(Z) BENEFITED BY  
EASEMENT FOR  
DRAINAGE - C949528

*D p 18795*

14 1948  
Harber

Henry 35.9° 56' 20" Kendall

84  
P.M.  
Comm. 814  
Henry Kendall 179\* 56' 20" Crescent

Rot.32v

Dead

Coward

Subscribed and declared before me at Sydney  
this 23<sup>rd</sup> day of August A.D. 1948

P.M.s are 1'6" rectangularly from alignments  
Datum Line of Azimuth AB  
It is intended to dedicate Henry Kendall Crescent a strip 10' wide  
as a public road.

I hereby certify that the additions & amendments to the plan  
are accurate & in accordance with the Survey Practice Regulations, 1933.

*Geo. A. Martin*  
Registered Surveyor. 5th May, 1949

1. Cyril Percy Johns, of Sydney, a Surveyor registered under the Surveyors Act 1929, do hereby solemnly and sincerely declare (a) that all boundaries and measurements shown on this plan are correct (b) that all survey marks found and relevant physical objects on or adjacent to the boundaries are correctly represented (c) that all physical objects indicated actually exist in the positions shown (d) that the whole of the material facts in relation to the land are correctly represented (e) that the survey represented in this plan has been made in accordance with the Survey Practice Regulations 1933 under my supervision the character and extent of which were as required by the said Regulations and was completed on 23<sup>rd</sup> August 1936 and the Reference Marks have been placed as shown hereon.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act 1900.

Surveyor registered under the Surveyors Act 1929  
Survey 1948.

PLAN AMENDED AT L.T.O. 16-2-89; 37-89; 22-11-1989



CONVERSION TABLE ADDED IN  
REGISTRAR GENERAL'S DEPARTMENT

DP 21810		
FEET	INCHES	METRES
-	0 1/2	0.013
-	0 5/8	0.016
-	1	0.025
-	1 3/4	0.044
-	3	0.076
-	3 1/4	0.083
-	3 1/2	0.089
-	3 3/4	0.095
-	4 1/2	0.114
-	5 1/4	0.133
-	6	0.152
-	6 1/2	0.165
-	7	0.178
-	7 1/2	0.191
-	9	0.229
-	9 1/2	0.241
-	10	0.254
-	10 3/4	0.273
1	6	0.457
2	-	0.610
3	-	0.914
4	-	1.219
6	-	1.829
7	1	2.159
7	1 1/4	2.165
7	2	2.184
7	2 1/2	2.197
7	6 1/4	2.292
9	4	2.845
10	-	3.048
10	1	3.073
10	1 5/8	3.089
10	1 3/4	3.092
11	-	3.353
11	8 3/4	3.575
12	-	3.658
12	0 1/2	3.670
13	1 3/4	4.007
13	3 1/2	4.051
13	6 1/4	4.121
13	6 1/2	4.128
13	10	4.216
14	1 3/4	4.312
17	-	5.182
18	4 1/4	5.594
19	6	5.944
20	-	6.096
23	8 1/4	7.220
24	0 3/8	7.325
24	0 1/2	7.328
25	0 1/2	7.633
25	0 3/4	7.639
26	8 1/2	8.141
27	1	8.255
27	6	8.382
27	8 5/8	8.449
27	11 3/4	8.528
33	-	10.058
33	4	10.160
33	4 3/4	10.179
33	8 1/2	10.274
33	8 5/8	10.277
33	9	10.287
34	2	10.414
38	-	11.582
40	-	12.192
42	-	12.802
43	-	13.106
45	-	13.716
46	7	14.199
46	8 3/4	14.243
47	6	14.478
50	-	15.240
50	1 3/4	15.284
54	1 5/8	16.500
54	2 1/4	16.516
60	-	18.288



CONVERSION TABLE ADDED IN  
REGISTRAR GENERAL'S DEPARTMENT

DP 21810 CONTINUED		
FEET	INCHES	METRES
65	1 1/2	19.850
70	-	21.336
75	3 1/2	22.949
77	-	23.470
77	5 1/2	23.609
83	-	25.298
83	4 1/2	25.413
84	-	25.603
84	11	25.883
86	-	26.213
87	3 1/4	26.600
94	9 1/2	28.893
98	6 3/4	30.042
98	11	30.150
99	4	30.277
99	8 1/2	30.391
100	-	30.480
100	1	30.505
103	3 1/2	31.483
108	5 3/4	33.064
110	-	33.528
110	1 3/4	33.572
110	2 1/2	33.592
110	3 1/4	33.611
110	4	33.630
110	4 3/4	33.649
111	3 1/2	33.922
112	8 3/4	34.360
113	6	34.595
115	1	35.077
115	11 3/4	35.350
123	1 3/4	37.535
143	9 1/4	43.821
158	1	48.184
178	2 3/4	54.324
183	4 1/2	55.893
212	5	64.745
277	5 1/2	84.569
287	3 1/4	87.560
293	10	89.560
319	10 3/4	97.504
707	9	215.722
AC RD P		SQ M
-	- 16 1/4	411
-	- 16 1/2	417.3
-	- 18	455.3
-	- 18 1/4	461.6
-	- 20 1/4	512.2
-	- 21 3/4	550.1
-	- 23 1/4	588.1
-	- 27 1/4	689.2
-	- 29 3/4	752.5
-	- 36 3/4	929.5
-	1 -	1012
1	1 29	5792
1	3 34 3/4	7961



**Land & Property  
Information**

A division of the Department of **Finance & Services**

LAND AND PROPERTY INFORMATION NEW SOUTH WALES - TITLE SEARCH

FOLIO: 126A/21810

SEARCH DATE	TIME	EDITION NO	DATE
27/7/2015	10:26 AM	-	-

VOL 15296 FOL 109 IS THE CURRENT CERTIFICATE OF TITLE

LAND

LOT 126A IN DEPOSITED PLAN 21810  
AT MASCOT  
LOCAL GOVERNMENT AREA BOTANY BAY  
PARISH OF BOTANY COUNTY OF CUMBERLAND  
TITLE DIAGRAM DP21810

FIRST SCHEDULE

THE COUNCIL OF THE MUNICIPALITY OF BOTANY

SECOND SCHEDULE (1 NOTIFICATION)

1 RESERVATIONS AND CONDITIONS IN THE CROWN GRANT(S)

NOTATIONS

UNREGISTERED DEALINGS: NIL

\*\*\* END OF SEARCH \*\*\*



**Attachment 2 – Former Botany Bay Council Report and Resolution – Policies and Priorities Meeting dated 26 August 2015**

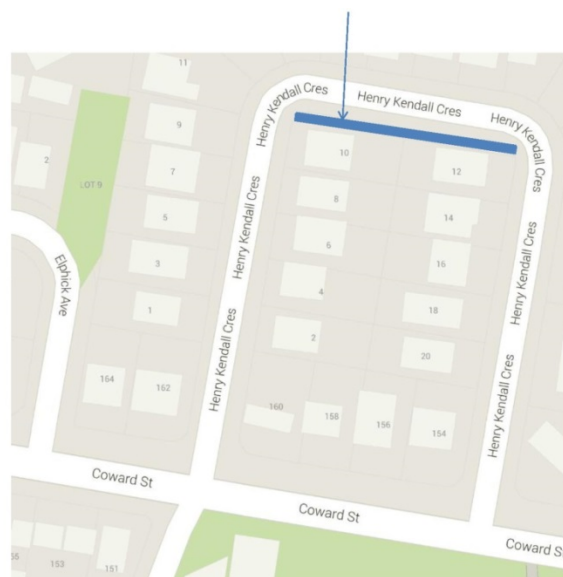
**CONFIDENTIAL****6.1 PROPOSED SALE OF LAND ADJACENT TO HENRY KENDALL ROAD RESERVE, MASCOT****File No:** ROAD-139**Report Author:** Rodger Dowsett - Manager of Executive Projects**Responsible Director:** Ms Lara Kirchner - General Manager**Date of Preparation:** 20 August 2015**EXECUTIVE SUMMARY**

This report relates to a request to purchase land that adjoins the road reserve in Henry Kendall Crescent, Mascot. It is recommended that the request be agreed to.

**REPORT**

Council is in receipt of a request from the owner of 10 and 12 Henry Kendall Crescent, Mascot to purchase land that adjoins the road reserve in Henry Kendall Crescent, Mascot. This would allow the land's incorporation into those two allotments held in private ownership.

The road configuration of Henry Kendall Crescent is depicted below with the two open ends connecting directly with Coward Street. At the top end of Henry Kendall Crescent, that part that is parallel with Coward Street, the nature strip part of the road reserve on its southern aspect has a width of 8 metres (approx.).



The southern part of the nature strip contains as an adjunct to the road reserve an elongated allotment of land irregular in shape of the following dimensions:

Northern Boundary	-	56.7m
Southern Boundary	-	65.8m
Western Boundary	-	5.2m (at curve)
Eastern Boundary	-	5.2m (at curve)
Land Area	-	183m <sup>2</sup>

The two adjoining lots, 10 and 12 Henry Kendall Crescent to the elongated allotment each back onto one another and are owned by the one person.

A search of records has revealed that the elongated strip of land between the road reserve of Henry Kendall Crescent and the northern side boundary line of 10 and 12 Henry Kendall Crescent is owned by the Council.

The strip of land identified in the Attachment is owned by Council and is known as Lot 126A in DP 21810. Although it appears to be part of the road reserve, it is not and stands as a separate lot. Therefore subject to process of reclassification from community land to operational land, the land of Lot 126A is capable of subdivision into two approximately equal lots and their sale to the owner of 10 and 12 Henry Kendall Crescent, Mascot for their separate incorporation into the allotments of 10 and 12. The excising of Lot 126A from what is now seen as nature strip will leave a road reserve width of 15.24m which is consistent with the remainder of Henry Kendall Crescent.

The land of Lot 126A has no material benefit to Council.

If Council agrees to selling these parcels of land at highest and best use market value to the adjoining owner, any fees associated with the sale eg. legal, survey and the like would be accepted by the purchaser as a condition of sale. The obligation to effect a subdivision of the lot would also reside with the purchaser.

## **Conclusion**

There is an opportunity to dispose of redundant land owned by the Council to the owner of private land that adjoins this land.

## **RECOMMENDATION**

THAT:

1. The report be received and noted.
2. Council resolve to sell to the owner of 10 and 12 Henry Kendall Crescent, Mascot Lot 126A in DP 21810 at its assessed market valuation;
3. Council undertake the process required to change the land classification of Lot 126A from Community Land to Operational Land; and

4. The General Manager be authorised to sell Lot 126A on behalf of the Council.

## **1 MEMBERS ONLY REPORTS**

### **CONFIDENTIAL**

#### **1.1 PROPOSED SALE OF LAND ADJACENT TO HENRY KENDALL ROAD RESERVE, MASCOT**

**File No:** ROAD-139

On the motion of Councillor Castle, seconded Councillor Glinatsis

THAT:

1. The report be received and noted.
2. Council resolve to sell to the owner of 10 and 12 Henry Kendall Crescent, Mascot Lot 126A in DP 21810 at its assessed market valuation;
3. Council undertake the process required to change the land classification of Lot 126A from Community Land to Operational Land; and
4. The General Manager be authorised to sell Lot 126A on behalf of the Council.

**Attachment 3 – Former Botany Bay Council Resolution – Ordinary Council Meeting dated 26 August 2015**

**10.4 MINUTES OF THE POLICIES AND PRIORITIES COMMITTEE MEETING  
HELD ON 26 AUGUST 2015**

**RECOMMENDATION**

THAT: The Minutes of the Policies and Priorities Committee held on 26 August 2015 be received and the recommendations contained therein be approved and adopted.



**Attachment 4 – Gateway Determination dated 27 October 2015**



## Planning & Environment

Ms Lara Kirchner  
General Manager  
City of Botany Bay Council  
PO Box 331  
MASCOT NSW 1460

15/15352

Dear Ms Kirchner

I am writing in response to your Council's letter requesting a Gateway determination under section 56 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) in respect of the planning proposal to reclassify land at Lot 126A DP 21810, Henry Kendall Crescent, Mascot.

As delegate of the Minister for Planning, I have now determined the planning proposal should proceed subject to the conditions in the attached Gateway determination.

I have also agreed to the proposal's inconsistency with S117 Direction 6.2 Reserving Land for Public Purposes as a matter of minor significance. No further approval is required in relation to this Direction.

The amending Local Environmental Plan (LEP) is to be finalised within 12 months of the week following the date of the Gateway determination. Council should aim to commence the exhibition of the planning proposal as soon as possible. Council's request for the Department of Planning and Environment to draft and finalise the LEP should be made at least 8 weeks prior to the projected publication date.

The State Government is committed to reducing the time taken to complete LEPs by tailoring the steps in the process to the complexity of the proposal, and by providing clear and publicly available justification for each plan at an early stage. In order to meet these commitments, the Minister may take action under section 54(2)(d) of the EP&A Act if the time frames outlined in this determination are not met.

Should you have any queries in regard to this matter, I have arranged for Mr Michael Kokot of the Department's Metropolitan (CBD) team to assist you. Mr Kokot can be contacted on (02) 9228 6564.

Yours sincerely,

  
**Lee Mulvey**  
**Director, Metropolitan (CBD)**  
**Planning Services**

27/10/15

Encl:  
Gateway Determination



## Gateway Determination

**Planning proposal (Agency Ref: PP\_2015\_BOTAN\_006\_00):** to reclassify land at Lot 126A, DP 21810, Henry Kendall Crescent, Mascot.

I, the Director, Metropolitan (CBD) at the Department Planning and Environment, as delegate of the Minister for Planning, have determined under section 56(2) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) that an amendment to the Botany Bay Local Environmental Plan (LEP) 2013 to reclassify land at Lot 126A, DP 21810, Henry Kendall Crescent, Mascot, from community to operational land, should proceed subject to the following conditions:

1. Community consultation is required under sections 56(2)(c) and 57 of the *Environmental Planning and Assessment Act 1979* as follows:
  - (a) the planning proposal must be made publicly available for a minimum of **28 days**; and
  - (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of *A Guide to Preparing LEPs (Planning & Infrastructure 2013)*.
2. A public hearing is required to be held on the reclassification of the subject land, in accordance with section 29 of the *Local Government Act 1993* and section 57 of the *Environmental Planning and Assessment Act 1979*, after completion of the public exhibition period.
3. The timeframe for completing the LEP is to be **12 months** from the week following the date of the Gateway determination.

Dated 27 day of October 2015.

  
**Lee Mulvey**  
Director, Metropolitan (CBD)  
Planning Services

**Delegate of the Minister for Planning**

**Attachment 5 – Public Hearing Report**

# **Report to City of Botany Bay**

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## **Proposed Reclassification of Public Land**

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### **Henry Kendall Crescent Mascot (Lot 126A, DP 21810)**

#### **Report on a Public Hearing**

Prepared by:

Peter Walsh FPIA  
Chairperson of Public Hearing  
PO Box 793  
Newport NSW

**April 2016**

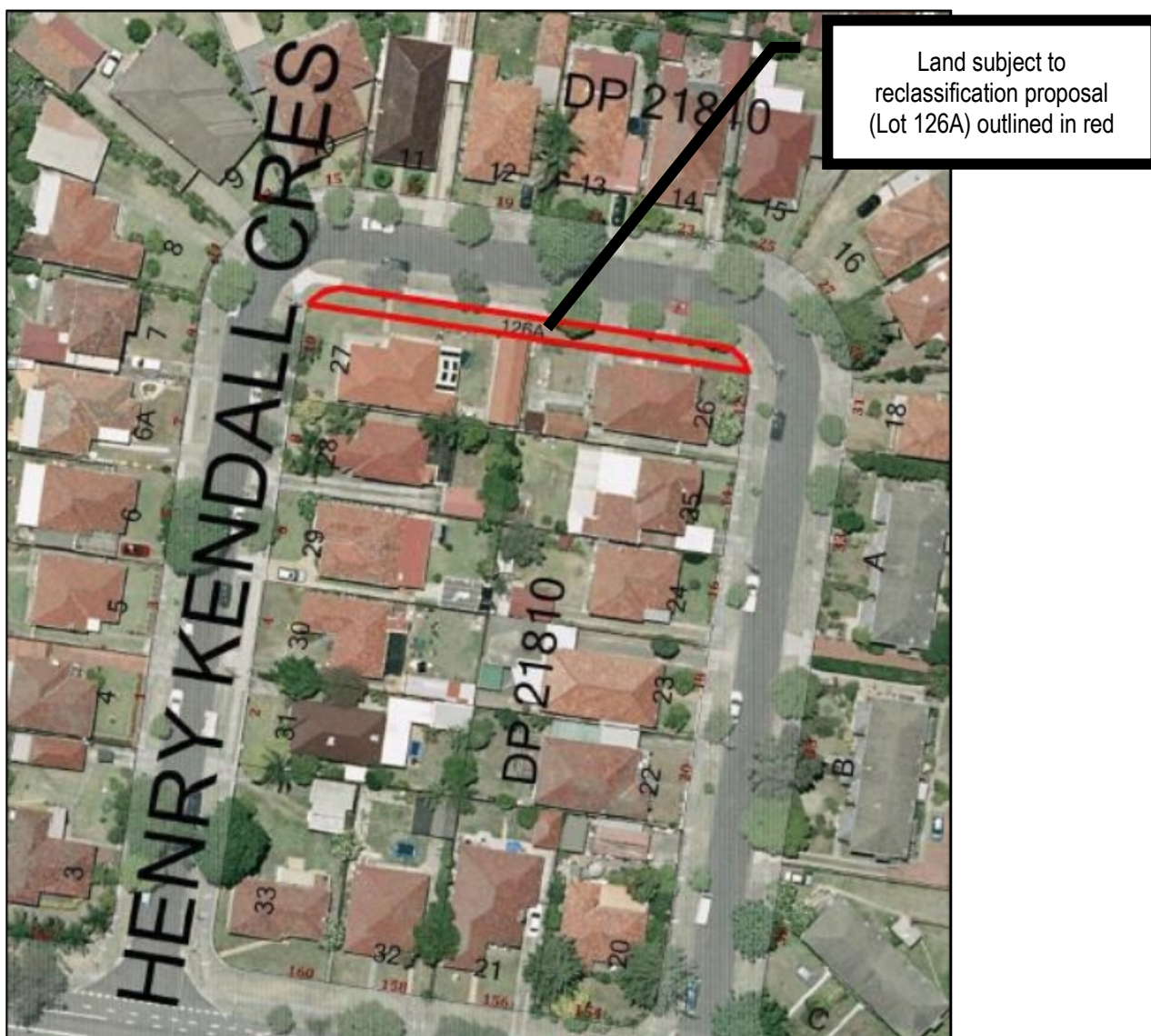
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## 1. INTRODUCTION

There is a proposal before City of Botany Bay (Council) to reclassify certain land from *community* to *operational* land classification. This would occur through an amendment to Botany Bay Local Environmental Plan 2013 (BBLEP 2013).

The subject land is known as Lot 126A, DP 21810. It is located at Henry Kendall Crescent Mascot, and lies between the southern boundary of the road reserve and private land at Nos 10 and 12 Henry Kendall Crescent. According to Council documents the site has an area of 183m<sup>2</sup><sup>1</sup>, and is approximately 3m wide<sup>2</sup>.

Figure 1 provides an aerial photo showing the subject land in its context.



**Figure 1 – Location**

Source of Figure 1: City of Botany Bay, Planning Proposal to NSW Department of Planning November 2015, Figure 2<sup>3</sup>.

<sup>1</sup> Source: City of Botany Bay powerpoint presentation to public hearing held 31 March 2016.

<sup>2</sup> Advice from Council officers at the hearing.

<sup>3</sup> See Department of Planning and Environment website: <http://leptracking.planning.nsw.gov.au/PublicDetails.aspx?Id=2263>. Accessed 2 April 2016.

Under the regime for *classification* of public land introduced with the Local Government Act 1993 (LG Act), all public land must be classified as either community or operational land. Public land comprises all land “vested in or under the control of the council”<sup>4</sup>. As such, both land which a council may have under its control for use by the community, and land which a council may hold, say, for investment purposes or for storage of plant and equipment, are all designated as public land. The principal effect of the classification of public land is to “restrict the alienation and use of the land”<sup>5</sup>.

*Operational land has no special restrictions other than those that may apply to any piece of land.*

*Community land is different. Classification as community land reflects the importance of the land to the community because of its use or special features. Generally it is land intended for public access and use.... This gives rise to the restrictions in (the LG Act), intended to preserve the qualities of the land. Community land:*

- *Cannot be sold*
- *Cannot be leased, licensed or any other estate granted over the land for more than (30 years)*<sup>6</sup>
- *Must have a plan of management prepared for it.*

(Department of Local Government)<sup>7</sup>

## **2. PUBLIC HEARINGS**

Where there is a proposal to reclassify community land to operational land, Section (s) 29 of the LG Act provides that Council must arrange a public hearing under s57 of the Environmental Planning and Assessment Act 1979 (EPA Act), in respect of the proposal.

Among other things, s57(7) of the EPA Act provides that at the conclusion of a public hearing:

*... (a) report of any public hearing is to be furnished to the (council) and may be made publicly available by that (council).*

Relevant to this matter, s47G(2) of the LG Act provides as follows:

*The person presiding at a public hearing must not be:*

- a) a councillor or employee of the council holding the public hearing, or*
- b) a person who has been a councillor or employee of that council at any time during the 5 years before the date of his or her appointment.*

It is a requirement of s57(8) of the EPA Act that Council consider the report of any public hearing in its deliberations on the proposed reclassification.

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<sup>4</sup> There are some exceptions noted in the Dictionary to the LG Act (eg public roads, and lands subject to Crown Lands Act).

<sup>5</sup> Department of Local Government, *Public Land Management – Practice Note 1 Revised May 2000*, ISSN 1320-6788.

<sup>6</sup> Note the maximum lease period has been extended from 25 years to 30 years since the source publication.

<sup>7</sup> Department of Local Government (2000), *op cit*.



### 3. THIS PUBLIC HEARING

#### Introduction and Hearing Process

In accordance with the above provisions I was appointed to preside over the hearing and prepare a report. This document is intended to comprise the report of the public hearing. Council requested that the report also consider written submissions to the proposed reclassification.

The general administration of the public hearing was undertaken by Council officers. I understand that appropriate notice of the public hearing was given in a local newspaper.

In accordance with this notice, the hearing was held at Coronation Hall, Mascot on the evening of Thursday 31 March 2016.

The hearing commenced at about 6pm in accordance with the foreshadowed arrangements. Those in attendance at the hearing were:

Mr A Roth	Community member
Mrs E Roth	Community member
Mr L Mahony	Community member
Ms P Hodges	Community member
Mr D Topouzakis	Community member
Mr J Papaharalambous	Community member
Ms S Lum	Council administration member
Ms H Wharton	Council administration member.

The hearing proceedings commenced with an overall introduction by the chairperson. Then Ms Lum of Council's administration introduced the proposal to the hearing and outlined arguments in support of the proposal. After this a number of public submissions were made and questions put. The hearing closed with the chairperson outlining the next steps including the preparation of this report and the requirement that it be made available for public scrutiny.

#### Council Administration Submission

The submission from Council staff indicated that:

- In this northern alignment of Henry Kendall Crescent the standard road reservation width was available *without* the subject land (ie road reserve width of 15.24 similar to the rest of Henry Kendall Crescent would remain).
- This matter had been initiated as a consequence of an approach by the owner of Nos 10 and 12 Henry Kendall Crescent, the adjacent residential land, who indicated an interest in purchasing the subject land (it was indicated that a single party was in ownership of both 10 and 12 Henry Kendall Crescent).
- The land was zoned R2 – Low Density Residential and would stay under this zoning with the subject reclassification.
- The subject land was not seen to have any recreational benefit to the community and the reclassification would provide the opportunity to sell this underutilised area and allow the benefits to be directed to other community purposes.

#### Public submissions

Mr and Mrs Roth have lived at 29 Kendall Crescent for many years. 29 Kendall Crescent is at the

northern eastern bend of Kendall Crescent, such that the western outlook from the property is towards the subject land. Mrs Roth contested the suggestion that the subject land had no public value. She said that all the residents of Kendall Crescent enjoyed the greenspace in the street. Mrs Roth said that in previous years the area was used more actively by local children. Now it had more aesthetic value, but this was still a significant community value. At a personal level, both Mr and Mrs Roth indicated that they enjoyed looking out over this greenspace from their own property. The submission was not against the sale of the land to the adjacent owners *per se*, but that future building works on the subject land be restricted. The preference was that any future development which included the subject land be such that the subject land form something like a “front yard” area. In effect the submission was that future building works be limited to the current boundary line, and that the land subject the reclassification “remain green”. The photos below give a sense of the effect of the additional 3m of greenspace in the local street.



**Photo 1 - View from the east (similar orientation to Roth property)**



**Photo 2 - View from the west**

At this point the hearing shifted more to a discussion and questions of interpretation. For example there was considerable discussion about what type of fencing might be allowed, and the idea of a 2m hedge seemed to be suggested. Some other opinions were expressed which I think appropriate to note. Mr Mahony indicated that as a ratepayer he had no problems with the reclassification, and had attended this hearing in particular in regard to his concern about processes. He was interested transparency of process and, for example, was interested in whether Council would make known the sale price of the land should the sale proceed. Mr Mahony also raised the question whether it had been checked whether there were any underground services or utilities in the land intended to be reclassified. Another attendee, Ms Hodge indicated that she saw the land as “no benefit to anyone except the owners of 10 and 12 (Henry Kendall Crescent)”, but also acknowledged the arguments of the Roths.

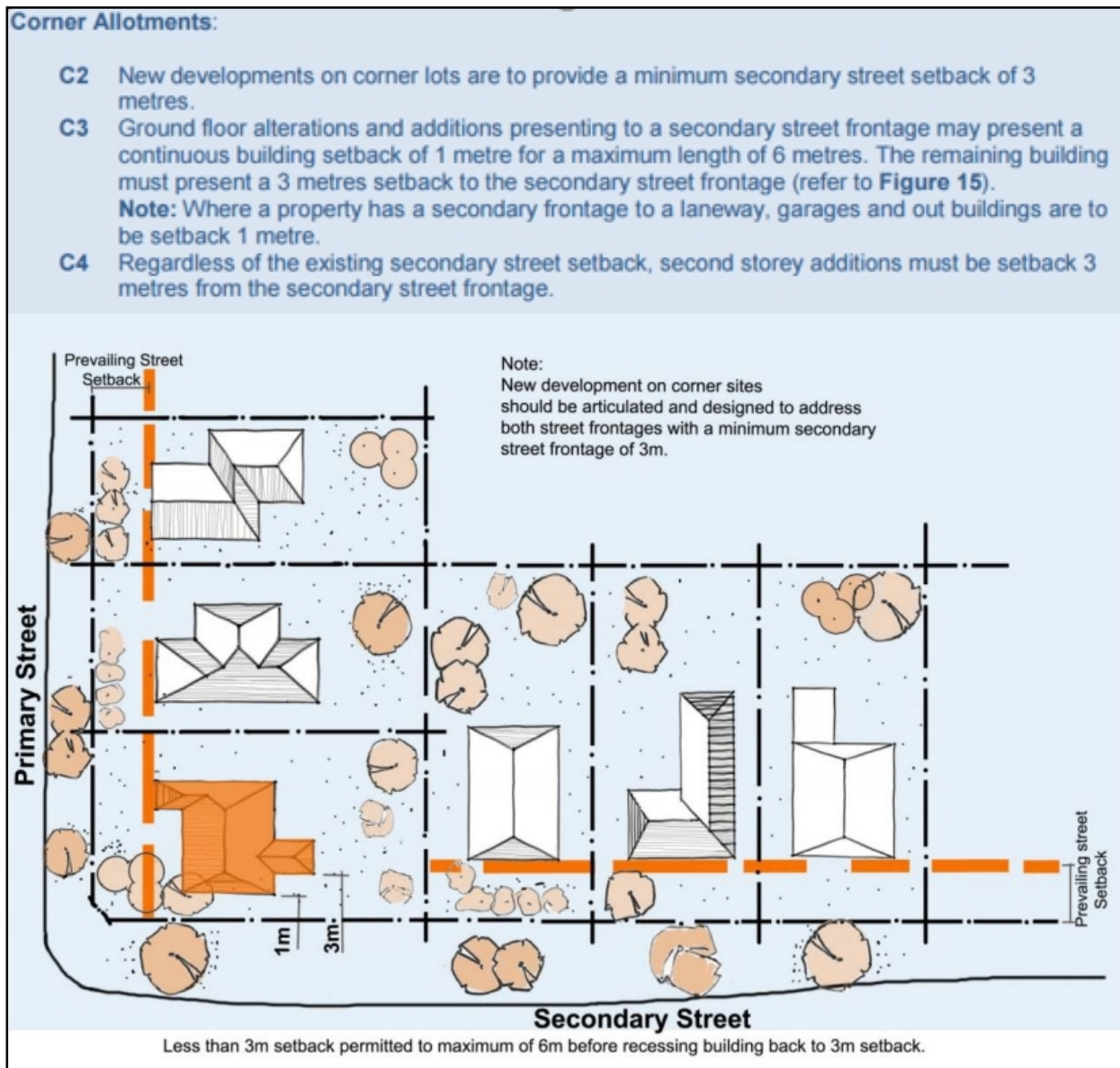
There were two written submissions when the proposal was placed on public exhibition from 11 November 2015 to 8 December 2015. One submission was from Michael Mariotti and Jennifer Woodbury (owners of 27 Henry Kendall Crescent, Mascot). This submission objected to the proposed reclassification. They were concerned about the potential for the subject land to be combined with Nos 10 and 12 Henry Kendall Crescent to make a large block suitable for multi dwelling residential development. The concern was that the area was already congested and the street too narrow to accommodate this form of development. The second written submission was from Mr and Mrs Roth. This submission raised similar concerns to those mentioned in the oral submission, and added a concern that new fencing along the boundary “not exceed 85 cm (or thereabouts)”.

#### **4. ASSESSMENT**

The arguments in support of the reclassification are substantial. The reclassification presents as an opportunity to realise some financial benefit for the community with little in the way of adverse effects. It presents as something of a small windfall in that the uncovering of the subject land, as an area in excess of that required for public road reservation, has occurred at time when the public (especially children as indicated in submissions) are less inclined to actively enjoy the public street.

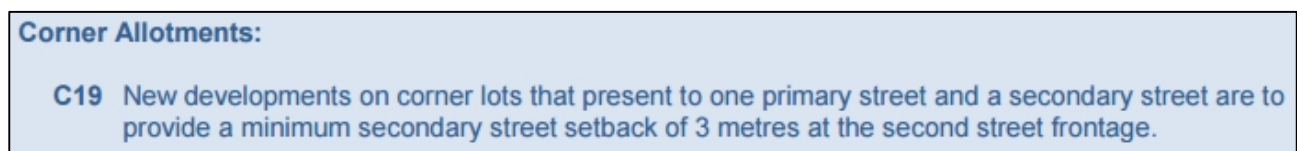
The submission from Mrs Roth, however, does shift attention beyond the practical (recreational) use and towards the aesthetic value of the subject land as a piece of greenspace in the street. The essence of the submission is that it would be a substantial adverse impact on local amenity if as a consequence of the reclassification and sale of the land if future urban development was to build up to the new boundary.

Setting aside the merits of this argument momentarily, it is reasonable to test what controls might apply to future development on the land. There was some discussion on this in the hearing and I have reviewed Council’s Development Control Plan 2013 which applies building line controls to corner allotments such as Nos 10 and 12 Henry Kendall Crescent (see Figure 2 which applies to Dwelling Houses). The DCP indicates (at C2) that if there were a new development of Nos 10 and 12, then a 3m setback (ie to the vicinity of the existing property boundary) would be required for new building works, and for any second storey development. There is more flexibility for alterations and additions where a ground level setback of 1m is allowed for a maximum length of 6m. Under these controls, the rest of the building would be setback 3m.



**Figure 2 – Corner allotment building setbacks – dwelling houses - under BBDCP 2013 Part 4A**

I note that some multi dwelling housing is permissible in Council’s Residential R2 zone. The DCP also applies a 3m setback to corner allotment development for multi dwelling housing (see Figure 3).



**Figure 3 - Corner allotment building setback - multi dwelling development - under BBDCP 2013 Part 4B**

These DCP controls suggest that there is some of the protection sought by the Roth submission in current Council planning provisions.

I do note that the kinds of DCP provisions which are indicated above do not provide full security for the retention of the subject land as “green space” or low profile fencing, which is the aspiration behind Mrs Roth’s submission, or the exclusion of multi dwelling housing as is the wish of Mr Mariotti and

Ms Woodbury. Significant future development applications would be expected to be subject to an appropriate merits test by the consent authority before any determination was made.

But I also observe the extent of change that is occurring elsewhere in the surrounding suburbs. The Henry Kendall Crescent precinct presents as a kind of low density oasis in the midst of really major change in the intensity of development nearby. This change seems to be in response to the pressures faced in accommodating growth in the wider metropolitan area. The relatively good proximity of the area to public transport, overall connectivity to major employment precincts, and in this case open space, see these areas as desirable places to live for many people. While I acknowledge the written and oral submissions concerned about intensification, in well located areas like this, there is some wider public benefit in trying to maximise the utility of well-located land in order to accommodate growth. That is, it seems to me that there is a reasonableness to this, given Sydney's growth pressures. It needs to be acknowledged that this has and likely will continue to bring risks of some loss of amenity for those who would prefer no change. There is an important continuing role for councils in these settings to attempt to cushion the effects of this change on established settings through the merits assessment of future development applications. In this case the existing Development Control Plan seems to provide some assistance in this regard.

## **5. CONCLUSIONS AND RECOMMENDATIONS**

Overall I am satisfied with the current planning position when considering the merits of the land reclassification. That is, existing planning controls do seem to bring reasonable prospects for balancing future development and amenity impacts with development involving the subject area. At the same time, I believe that the subject area, as residentially-zoned land, should be considered as having the potential to release quite significant relative value back to the community, given its strongly positive locational attributes.

### Recommendation:

1. Council note the submissions to the proposed reclassification as outlined in this report.
2. The reclassification of Lot 126A DP 21810 in Henry Kendall Crescent Mascot from community to operational land be supported.
3. Consideration be given to whether any underground utilities or services affect the land and any implications should the land be sold.

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13 April 2016

**Peter Walsh**

**Appointed Chairperson**

**Attachment 6 – Council Report and Resolution dated 12 October 2016**

To be inserted



## **Attachment 7 - LEP Practice Note PN 09-003 – Written Statement**

In accordance with the NSW Department of Planning's LEP Practice Note PN09-003 '*Classification and reclassification of public land through a local environmental plan*', Council must provide a written statement which addresses the specific requirements for the reclassification of public land.

Council intends to reclassify Council owned land at Henry Kendall Crescent, Mascot (Lot 126A, DP 21810) from Community Land to Operational Land via the Planning Proposal process. The Planning Proposal does not propose any changes to the zoning of the subject site.

The changes resulting from the reclassification are addressed in the table below.

<b>LEP Practice Note: PN 09-003</b>	
Classification and reclassification of public land through a local environmental plan	
<b>Requirement</b>	<b>Response</b>
Reason why the Planning Proposal is being prepared	The Planning Proposal is being prepared to reclassify the land to Operational Land to allow Council the option of selling the subject site.
Current and proposed classification	The land is currently classified as Community Land and it is proposed that the land be reclassified to Operation Land.
Reason for the classification	The reclassification would enable the land classification to be consistent with the current zoning and enable opportunities for the integration of the site within the adjoining properties at Nos. 10 and 12 Henry Kendall Crescent, Mascot.
Council's ownership of the land	The subject site is owned by Council.
Nature of Council's interest in the land	The subject site is owned by Council.
How and when the interest was first acquired	The former Botany Bay Council acquired the land in 1948.
The reasons Council acquired an interest in the land	The former Botany Bay Council acquired the land as a reserve. However, it has not been used as a public reserve.
Any agreements over the land	There are no agreements over the land.
An indication of any financial loss or gain from the reclassification	<p>The value of the land is expected to increase if the land is reclassified as it will enable Council to sell the land.</p> <p>Before Council sells the site, Council will commission an independent valuation of the site.</p>
The asset management objectives being pursued	Council would like to have a greater number of options available for the management of the site, including having the option to sell the site. If the site was sold, Council would not be responsible for ongoing maintenance costs and could reinvest the proceeds into



	<p>purchasing new open space or upgrading existing assets which are of greater benefit to the public.</p>
<p>Whether there has been an agreement for the sale or lease of the land</p>	<p>The former Botany Bay Council was approached by the owners of Nos. 10 and 12 Henry Kendall Crescent, Mascot to purchase the site. At its meeting on 26 August 2015, the former Botany Bay Council resolved to sell the site to the adjoining property owners at its assessed market value.</p> <p>If Council agrees to sell the parcel of land to the adjoining owners, any fees associated with the sale eg. legal, survey and the like would be accepted by the purchaser as a condition of sale. The obligation to effect a subdivision of the lot would also reside with the purchaser.</p>
<p>Relevant matters required in plan making under the <i>Environmental Planning and Assessment Act</i></p>	<p>The reclassification is proposed to be carried out in accordance with:</p> <p>Section 55 Relevant authority to prepare a planning proposal</p> <p>Section 56 Gateway Determination</p> <p>Section 57 Community Consultation</p>
<p>A copy of the practice note</p>	<p>The NSW Department of Planning's LEP Practice Note PN09-003 '<i>Classification and reclassification of public land through a local environmental plan</i>' forms part of the public exhibition and is attached.</p> <p>Council is seeking to reclassify land via the process in Column 2 of Attachment 1 of PN09-003 entitled "<i>Requirements after commencement of the 2008 Part 3 Amendment to the EP&amp;A Act when it applies to a proposal</i>".</p>



Note	PN 09–003
Date	12 June 2009
Related	Supersedes (re)classification advice in Best Practice Guideline (1997)

# Classification and reclassification of public land through a local environmental plan

The purpose of this practice note is to update (and supersede) previous guidance on the process to classify or reclassify public land through a local environmental plan including a principal plan in accordance with the Standard Instrument.

## Introduction

‘Public land’ is any land (including a public reserve) vested in, or under the control of, council. Exceptions include roads, land to which the *Crown Lands Act 1989* applies, a common, or land to which the *Trustees of Schools of Arts Enabling Act 1902* applies.

‘Community’ land is generally open to the public, for example, parks, reserves or sports grounds.

‘Operational’ land may be used for other purposes, for example, as works depots or garages, or held by council as a temporary asset.

‘Classification’ of public land refers to the process when this land is first acquired and first classified as either ‘operational’ land or ‘community’ land.

‘Reclassification’ of public land refers to the process of changing the classification of ‘operational’ land to ‘community’ land or from ‘community’ land to ‘operational’ land.

## How is public land classified or reclassified?

Depending on circumstances, this is undertaken by either:

- resolution of council under section 31, 32 or 33 of the *Local Government Act 1993* (LG Act) [through section 27(2)], or
- a local environmental plan (LEP) under the *Environmental Planning and Assessment Act 1979* (EP&A Act) [through section 27(1) of the LG Act].

In both cases, it is not possible for councils to delegate their decision to classify or reclassify public land [section 377(1) of the LG Act]. Councils are encouraged to classify or reclassify land through the LG Act wherever circumstances conform to sections 31, 32 or 33 of the LG Act.

The remaining parts of this practice note identify the key areas councils must consider when proposing to classify or reclassify public land by means of a local environmental plan (LEP) under the second option.

This practice note supersedes the sections relating to classification and reclassification in *LEPs and council land*, Best Practice Guideline (Department of Urban Affairs and Planning 1997).

## Procedure under the EP&A Act

Where classification or reclassification is proposed through an LEP, council is advised to include the proposal as early as possible in the draft LEP or planning proposal. If the public land to be classified or reclassified is not owned by council, landowner’s consent is required prior to either section 54 or section 56 of the EP&A Act (when the Part 3 amendment to the EP&A Act applies).<sup>1</sup>

The proposal would then form part of the material presented through either section 54 or section 56 of the EP&A Act (when the Part 3 amendment to the EP&A Act applies).

<sup>1</sup> In relation to the Part 3 amendment, council should also check the changes to the EP&A Act and Regulation once these commence.

To assist councils, the steps in preparing material either as a draft LEP or planning proposal are summarised in Attachment 1. Column 1 of Attachment 1 sets out the requirements in accordance with the EP&A Act **prior to** the Part 3 amendment commencing. Column 2 of the attachment sets out the requirements **after** the Part 3 amendment commences. In relation to the Part 3 amendment, council should also check the savings and transitional arrangements under the EP&A Act, once these commence.

Where land is proposed to be reserved for a public purpose such as provision of public services and facilities, section 117 Direction 6.2—Reserving Land for Public Purposes applies. The Direction also sets out requirements when a reservation of public land for such purposes is no longer required.

A summary of relevant matters that need to be available at the time the planning proposal is first forwarded are listed in Attachment 2 under 'Exhibition'. Other matters for exhibition and later stages are listed separately in that attachment.

## Provisions in the Standard Instrument

The following Standard Instrument provisions are relevant to the classification and reclassification of public land.

### Clause 5.2—Classification and reclassification of public land

The purpose of this clause is to enable councils to classify or reclassify public land identified in Schedule 4 of the Standard Instrument. Only public land to be classified or reclassified by publication on the NSW legislation website of that principal LEP is to be identified in the schedule. Schedule 4 must not contain a reference to any land already classified or reclassified.

#### Part 1 Schedule 4—change to 'operational' land, no interest changes

Land is identified in Part 1 of Schedule 4 where the trusts, estates, interests, dedications, conditions, restrictions or covenants over the land are to remain after reclassification to 'operational land', i.e. where **no** interests will change.

#### Part 2 Schedule 4—change to 'operational' land and an interest will change

Land is identified in Part 2 of Schedule 4 where the land is to be classified or reclassified as 'operational land' and some of the trusts, estates, interests, dedications, conditions, restrictions, or covenants over the land remain. The interests to remain are identified in column 3 of this part of the schedule.

#### Part 3 Schedule 4—change to 'community' land

Land proposed to be classified or reclassified as 'community land' through the LEP is identified in Part 3 of the schedule.

Where there is no land to be classified or reclassified through the LEP, the clause remains with the schedule empty.

## General requirements for exhibition

Public exhibition of the LEP occurs after certification of the LEP (in accordance with section 66 of the EP&A Act). Public exhibition of a planning proposal may occur in accordance with section 57(2) (when the Part 3 amendment to the EP&A Act commences). To assist the public in understanding an exhibited draft LEP or planning proposal to classify or reclassify land, requirements are summarised in Attachment 2.

A copy of council's response to these requirements together with a copy of this practice note is to be part of material displayed during public exhibition of an LEP or planning proposal to reclassify or classify public land.

## Public hearing

A public hearing must be held when 'community land' is proposed to be reclassified as 'operational land'.

To ensure council and the community have sufficient time to consider relevant matters associated with the proposed change, the public hearing is held **after** the close of the exhibition period under section 68 of the EP&A Act (section 29 of the LG Act) for an LEP and in accordance with section 57(6) (when the Part 3 amendment to the EP&A Act commences).

Public hearing provisions are set out in the EP&A Regulation (clause 14) and public notice of a hearing must be sent or published **at least 21 days** before the start of the public hearing.

The independence of the person chairing the public hearing and requirements relating to the preparation and inspection of reports from the hearing are specified in section 47G of the LG Act.

## Further information

A copy of this practice note, Standard Instrument, and other specific practice notes and planning circulars on using the Standard Instrument, can be accessed on the Department's website <http://www.planning.nsw.gov.au/lep/index.asp>

### Authorised by:

Sam Haddad, Director-General

### List of attachments:

1. Main steps (in sequence) for classifying and reclassifying public land under the *Environmental Planning and Assessment Act 1979*
2. General requirements for classification or reclassification of land through local environmental plans and planning proposals

## Attachment 1. Main steps (in sequence) for classifying and reclassifying public land under the *Environmental Planning and Assessment Act 1979*

Requirements prior to commencement of the 2008 Part 3 amendment to the EP&A Act	Requirements after commencement of the 2008 Part 3 amendment to the EP&A Act when it applies to a proposal
<p>Council notifies the Department of a decision to prepare a draft LEP including a proposal to classify or reclassify public land (section 54 of the EP&amp;A Act).</p> <p>This notification is accompanied by an appropriate level of information including for the following:</p> <ul style="list-style-type: none"> <li>- a justification for the proposal</li> <li>- reasons why council acquired an interest</li> <li>- details that would also accompany a plan at exhibition stage (see <b>Attachment 2</b>)</li> <li>- any proposal to extinguish or retain other interests in the land through the reclassification</li> <li>- a justification /explanation as to why such interests are being extinguished</li> <li>- any rezoning associated with the classification/ reclassification</li> <li>- any preliminary comments by a relevant government agency, including agency's consent where land is vested or held by an agency other than council</li> <li>- consideration of any relevant directions e.g. section 117 Direction 6.2—Reserving Land for Public Purposes, where appropriate.</li> </ul>	<p>A planning proposal is forwarded by council to the Minister (new section 56 of the EP&amp;A Act), including a proposal to classify or reclassify public land.</p> <p>This proposal contains an appropriate level of information including for the following:</p> <ul style="list-style-type: none"> <li>- a justification for the planning proposal</li> <li>- reasons why council acquired an interest</li> <li>- details that would also accompany a plan at exhibition stage (see <b>Attachment 2</b>)</li> <li>- any proposal to extinguish or retain other interests in the land through the reclassification</li> <li>- a justification /explanation as to why such interests are being extinguished</li> <li>- any rezoning associated with the classification/ reclassification</li> <li>- any preliminary comments by a relevant government agency, including an agency in which the land is vested or held</li> <li>- consideration of any relevant directions, e.g. section 117 Direction 6.2—Reserving Land for Public Purposes, where appropriate.</li> </ul>
Consultation with relevant public agencies and other stakeholders (section 62 of the EP&A Act).	See below.
After consultation, council submits a draft LEP to the Department and, subject to the issue of a section 65 certificate, the draft LEP is exhibited for a minimum of 28 days and the public invited to provide written submissions to the exhibited LEP within the exhibition period.	Following review, at the gateway, if the planning proposal is to proceed, requirements for the various stages of the proposal, including consultation requirements, will be provided to council (new section 56(1), 56(2) of the EP&A Act).
Where a draft LEP includes reclassification of 'community' land to 'operational' land, council holds a public hearing into the proposal in accordance with section 68 of the EP&A Act (section 29 of the Local Government Act). *	Where a planning proposal includes reclassification of 'community' land to 'operational' land, council holds a public hearing into the proposal in accordance with new section 57(6) of the EP&A Act. *
Such a hearing follows the requirements of clause 14 of the EP&A Regulation including that a notice of the details for the hearing must be published in a local newspaper and sent to any person requesting a hearing a minimum of 21 days prior to the hearing.	Such a hearing follows the requirements of clause 14 of the EP&A Regulation including that a notice of the details for the hearing must be published in a local newspaper and sent to any person requesting a hearing a minimum of 21 days prior to the hearing.
Where it is considered appropriate, the draft LEP is submitted to the Director-General together with details of all submissions and the report of the public hearing, together with a statement of other matters set out in section 68 of the EP&A Act.	<p>Consultation for a planning proposal under new section 57 of the EP&amp;A Act is completed when council has considered any submissions made concerning the proposed instrument and the report of any public hearing.</p> <p>Where the planning proposal is to proceed, the Director-General makes arrangements for the drafting of the LEP to give effect to the final proposal (new section 59 of the EP&amp;A Act).</p>
The Director-General furnishes a report to the Minister if the Director-General is satisfied that the draft LEP has been prepared in accordance with any applicable standard instrument under section 33A (section 69 of the EP&A Act).	
The Minister determines whether to make the LEP under section 70 of the EP&A Act. **	The Minister (or Minister's delegate) determines whether to make the LEP under new section 59 of the EP&A Act. **

### Notes:

\* Where a proposal includes a classification of 'operational' land to 'community' land, a public hearing is not generally required.

\*\* Where a reclassification proposes to extinguish other interests in the land, the approval of the Governor is required in accordance with section 30 of the LG Act.

## Attachment 2. General requirements for classification or reclassification of land through local environmental plans and planning proposals

### Exhibition

When exhibiting a planning proposal or draft LEP to classify or reclassify public land, council must provide a written statement including the following:

- the reasons why the draft LEP or planning proposal is being prepared including the planning merits of the proposal, e.g. the findings of a centres' strategy, council's intention to dispose of the land, provision of open space in a town centre
- the current and proposed classification of the land
- the reasons for the reclassification including how this relates to council's strategic framework, council's proposed future use of the land, proposed zones, site specific requirements, e.g. heritage controls, anticipated physical or operational changes resulting from the reclassification
- council's ownership of the land, if this applies
- the nature of council's interest in the land, e.g. council has a 50 year lease over the site
- how and when the interest was first acquired, e.g. the land was purchased in 20XX through section 94
- the reasons council acquired an interest in the land, e.g. for the extension of an existing park; council was given responsibility for the land by a State agency
- any agreements over the land together with their duration, terms, controls, agreement to dispose of the land, e.g. whether any aspect of the draft LEP or planning proposal formed part of the agreement to dispose of the land and any terms of any such agreement
- an indication, as a minimum, of the magnitude of any financial gain or loss from the reclassification and of the type(s) of benefit that could arise e.g. council could indicate the magnitude of value added to the land based on comparable sites such as the land is currently valued at \$1500 per square metre, nearby land zoned for business development is valued at between \$2000 and \$5000 per square metre
- the asset management objectives being pursued, the manner in which they will be achieved and the type of benefits the council wants, i.e. without necessarily providing details of any possible financial arrangements, how the council may or will benefit financially
- whether there has been an agreement for the sale or lease of the land; the basic details of any such agreement and, if relevant, when council intends to realise its asset, either

immediately after rezoning/reclassification or at a later time

- Relevant matters required in plan making under the EP&A Act
- A copy of this practice note must be included in the exhibition material to assist the community in identifying information requirements. Council staff may wish to identify the column in Attachment 1 that applies.

### Post-exhibition

Once a decision has been made regarding whether the draft LEP or planning proposal proceeds, everyone who made a written submission must be notified in writing of the decision.

Written notification must occur within 14 days of the decision and needs to clearly identify the reasons for council's decision. An explanation must be included of how issues raised in submissions were addressed including the reasons for council's decision.

The final report after exhibition to either the Director-General or the Minister should include:

- a brief summary of council's interest in the land
- issues raised in any relevant submissions
- the dates of the exhibition and the hearing
- an explanation of how issues raised were addressed or resolved.

### Additional matters to be addressed when the Governor's approval is required

The Governor's approval is required for the extinguishment of public reserve status and other interests in land which a council proposes to reclassify from 'community' to 'operational' status under the LG Act.

Council must provide sufficient information in accordance with this practice note to inform the Minister of any public reserve and/or other third party property interests (e.g. trust, covenant, easement) that are proposed to be extinguished upon the making of such a draft LEP or planning proposal.

#### Important note

This note does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this note.

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DOP 09\_004

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## **Attachment 8 - List of State Environmental Planning Policies**

<b>State Environmental Planning Policy (SEPP)</b>	<b>Consistent with applicable State Environmental Planning Policies</b>
<i>No.1 – Development Standards</i>	Not applicable
<i>No.14 – Coastal Wetlands</i>	Not applicable
<i>No.15 – Rural Landsharing Communities</i>	Not applicable
<i>No.19 – Bushland in Urban Areas</i>	Not applicable
<i>No.21 – Caravan Parks</i>	Not applicable
<i>No.26 – Littoral Rainforests</i>	Not applicable
<i>No.29 – Western Sydney Recreation Area</i>	Not applicable
<i>No.30 – Intensive Agriculture</i>	Not applicable
<i>No.32 – Urban Consolidation (Redevelopment of Urban Land)</i>	Consistent  The Planning Proposal will reclassify underutilised Council owned Community Land to Operational Land which will permit the sale of the site to the adjoining property owners for residential development. The Proposal promotes the orderly and economic use and development of this surplus land.
<i>No.33 – Hazardous and Offensive Development</i>	Not applicable
<i>No.36 – Manufactured Home Estates</i>	Not applicable
<i>No.39 – Spit Island Bird Habitat</i>	Not applicable
<i>No.44 – Koala Habitat Protection</i>	Not applicable
<i>No.47 – Moore Park Showground</i>	Not applicable
<i>No.50 – Canal Estate Development</i>	Not applicable
<i>No.52 – Farm Dams and Other Works in Land and Water Management Plan Areas</i>	Not applicable
<i>No.55 – Remediation</i>	Not applicable
<i>No.59 – Central Western Sydney Regional Open Space and Residential</i>	Not applicable
<i>No.62 – Sustainable Aquaculture</i>	Not applicable
<i>No.64 – Advertising and Signage</i>	Not applicable
<i>No.65 – Design Quality of Residential Apartment Development</i>	Not applicable
<i>No.70 – Affordable Housing (Revised Schemes)</i>	Not applicable
<i>No.71 – Coastal Protection</i>	Not applicable
<i>Affordable Rental Housing (2009)</i>	Not applicable
<i>Building Sustainability Index: BASIX (2004)</i>	Consistent  The Planning Proposal does not contain provisions that contradict or would hinder application of this SEPP.
<i>Exempt and Complying Development Codes (2008)</i>	Consistent  The Planning Proposal does not contain provisions that contradict or would hinder application of this SEPP.
<i>Housing for Seniors or People with a Disability (2004)</i>	Not applicable

<i>Infrastructure (2007)</i>	Consistent  The Planning Proposal does not contain provisions that contradict or would hinder application of this SEPP.
<i>Kosciuszko National Park – Alpine Resorts (2007)</i>	Not applicable
<i>Kurnell Peninsula (1989)</i>	Not applicable
<i>Major Development (2005)</i>	Not applicable
<i>Mining, Petroleum Production and Extractive Industries (2007)</i>	Not applicable
<i>Miscellaneous Consent Provisions (2007)</i>	Not applicable
<i>Penrith Lakes Scheme (1989)</i>	Not applicable
<i>Rural Lands (2008)</i>	Not applicable
<i>SEPP 53 Transitional Provisions (2011)</i>	Not applicable
<i>State and Regional Development (2011)</i>	Not applicable
<i>Sydney Drinking Water Catchment (2011)</i>	Not applicable
<i>Sydney Region Growth Centres (2006)</i>	Not applicable
<i>Three Ports (2013)</i>	Not applicable
<i>Urban Renewal (2010)</i>	Not applicable
<i>Western Sydney Employment Area (2009)</i>	Not applicable
<i>Western Sydney Parklands (2009)</i>	Not applicable
<i>Sydney Regional Environmental Plan No.8 - Central Coast Plateau Areas</i>	Not applicable
<i>Sydney Regional Environmental Plan No. 9 – Extractive Industry (No. 2 – 1995)</i>	Not applicable
<i>Sydney Regional Environmental Plan No. 16 – Walsh Bay</i>	Not applicable
<i>Sydney Regional Environmental Plan No. 18 – Public Transport Corridors</i>	Not applicable
<i>Sydney Regional Environmental Plan No. 19 – Rouse Hill Development Area</i>	Not applicable
<i>Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No. 2 – 1997)</i>	Not applicable
<i>Sydney Regional Environmental Plan No. 24 – Homebush Bay Area</i>	Not applicable
<i>Sydney Regional Environmental Plan No. 26 – City West</i>	Not applicable
<i>Sydney Regional Environmental Plan No. 30 – St Marys</i>	Not applicable
<i>Sydney Regional Environmental Plan No. 33 – Cooks Cove</i>	Not applicable
<i>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</i>	Not applicable



# **Report to City of Botany Bay**

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## **Proposed Reclassification of Public Land**

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### **Henry Kendall Crescent Mascot (Lot 126A, DP 21810)**

#### **Report on a Public Hearing**

Prepared by:

Peter Walsh FPIA  
Chairperson of Public Hearing  
PO Box 793  
Newport NSW

**April 2016**

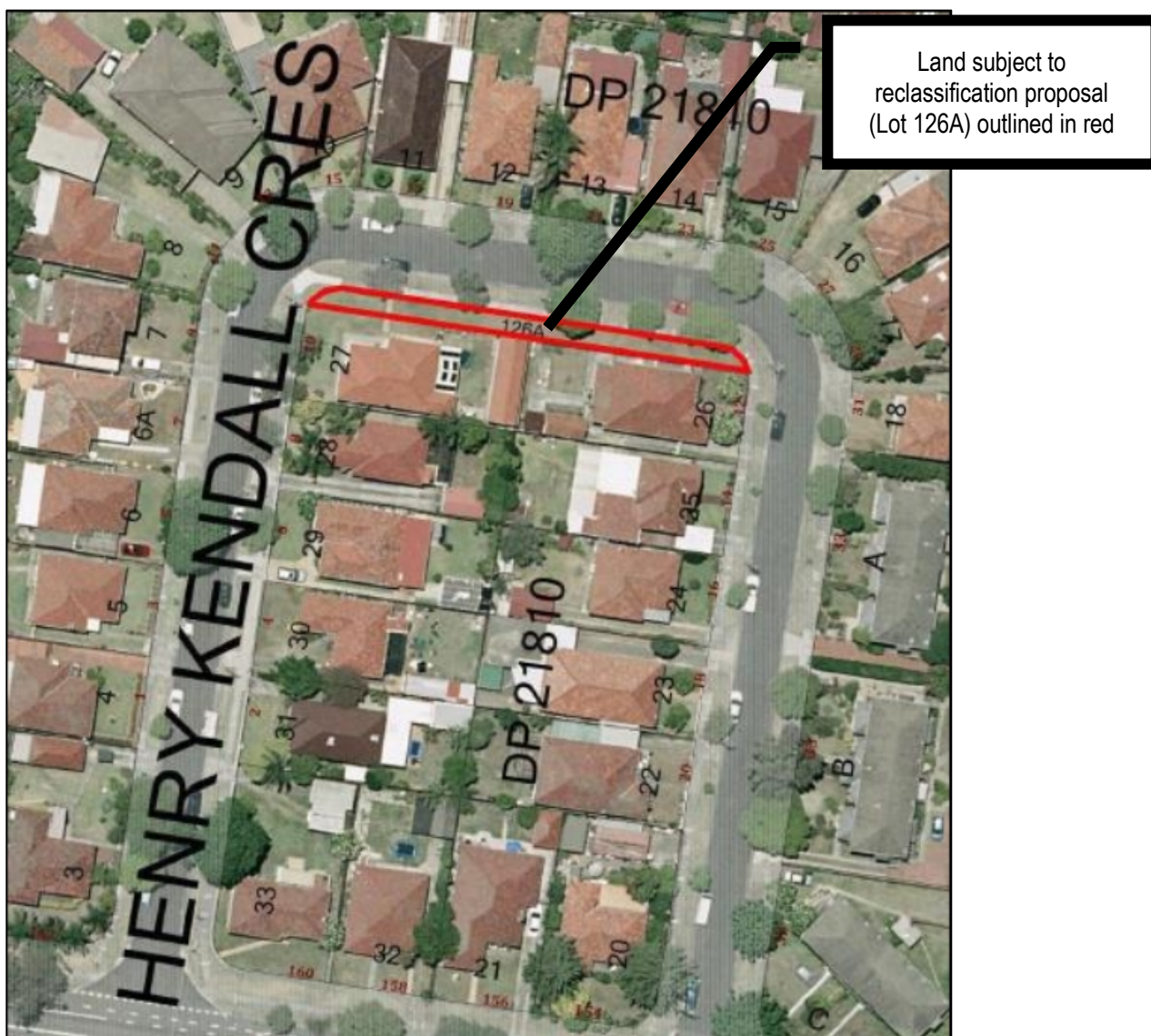
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## 1. INTRODUCTION

There is a proposal before City of Botany Bay (Council) to reclassify certain land from *community* to *operational* land classification. This would occur through an amendment to Botany Bay Local Environmental Plan 2013 (BBLEP 2013).

The subject land is known as Lot 126A, DP 21810. It is located at Henry Kendall Crescent Mascot, and lies between the southern boundary of the road reserve and private land at Nos 10 and 12 Henry Kendall Crescent. According to Council documents the site has an area of 183m<sup>2</sup><sup>1</sup>, and is approximately 3m wide<sup>2</sup>.

Figure 1 provides an aerial photo showing the subject land in its context.



**Figure 1 – Location**

Source of Figure 1: City of Botany Bay, Planning Proposal to NSW Department of Planning November 2015, Figure 2<sup>3</sup>.

<sup>1</sup> Source: City of Botany Bay powerpoint presentation to public hearing held 31 March 2016.

<sup>2</sup> Advice from Council officers at the hearing.

<sup>3</sup> See Department of Planning and Environment website: <http://leptracking.planning.nsw.gov.au/PublicDetails.aspx?Id=2263>. Accessed 2 April 2016.

Under the regime for *classification* of public land introduced with the Local Government Act 1993 (LG Act), all public land must be classified as either community or operational land. Public land comprises all land “vested in or under the control of the council”<sup>4</sup>. As such, both land which a council may have under its control for use by the community, and land which a council may hold, say, for investment purposes or for storage of plant and equipment, are all designated as public land. The principal effect of the classification of public land is to “restrict the alienation and use of the land”<sup>5</sup>.

*Operational land has no special restrictions other than those that may apply to any piece of land.*

*Community land is different. Classification as community land reflects the importance of the land to the community because of its use or special features. Generally it is land intended for public access and use.... This gives rise to the restrictions in (the LG Act), intended to preserve the qualities of the land. Community land:*

- *Cannot be sold*
- *Cannot be leased, licensed or any other estate granted over the land for more than (30 years)*<sup>6</sup>
- *Must have a plan of management prepared for it.*

(Department of Local Government)<sup>7</sup>

## **2. PUBLIC HEARINGS**

Where there is a proposal to reclassify community land to operational land, Section (s) 29 of the LG Act provides that Council must arrange a public hearing under s57 of the Environmental Planning and Assessment Act 1979 (EPA Act), in respect of the proposal.

Among other things, s57(7) of the EPA Act provides that at the conclusion of a public hearing:

*... (a) report of any public hearing is to be furnished to the (council) and may be made publicly available by that (council).*

Relevant to this matter, s47G(2) of the LG Act provides as follows:

*The person presiding at a public hearing must not be:*

- a) a councillor or employee of the council holding the public hearing, or*
- b) a person who has been a councillor or employee of that council at any time during the 5 years before the date of his or her appointment.*

It is a requirement of s57(8) of the EPA Act that Council consider the report of any public hearing in its deliberations on the proposed reclassification.

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<sup>4</sup> There are some exceptions noted in the Dictionary to the LG Act (eg public roads, and lands subject to Crown Lands Act).

<sup>5</sup> Department of Local Government, *Public Land Management – Practice Note 1 Revised May 2000*, ISSN 1320-6788.

<sup>6</sup> Note the maximum lease period has been extended from 25 years to 30 years since the source publication.

<sup>7</sup> Department of Local Government (2000), *op cit*.

### 3. THIS PUBLIC HEARING

#### Introduction and Hearing Process

In accordance with the above provisions I was appointed to preside over the hearing and prepare a report. This document is intended to comprise the report of the public hearing. Council requested that the report also consider written submissions to the proposed reclassification.

The general administration of the public hearing was undertaken by Council officers. I understand that appropriate notice of the public hearing was given in a local newspaper.

In accordance with this notice, the hearing was held at Coronation Hall, Mascot on the evening of Thursday 31 March 2016.

The hearing commenced at about 6pm in accordance with the foreshadowed arrangements. Those in attendance at the hearing were:

Mr A Roth	Community member
Mrs E Roth	Community member
Mr L Mahony	Community member
Ms P Hodges	Community member
Mr D Topouzakis	Community member
Mr J Papaharalambous	Community member
Ms S Lum	Council administration member
Ms H Wharton	Council administration member.

The hearing proceedings commenced with an overall introduction by the chairperson. Then Ms Lum of Council's administration introduced the proposal to the hearing and outlined arguments in support of the proposal. After this a number of public submissions were made and questions put. The hearing closed with the chairperson outlining the next steps including the preparation of this report and the requirement that it be made available for public scrutiny.

#### Council Administration Submission

The submission from Council staff indicated that:

- In this northern alignment of Henry Kendall Crescent the standard road reservation width was available *without* the subject land (ie road reserve width of 15.24 similar to the rest of Henry Kendall Crescent would remain).
- This matter had been initiated as a consequence of an approach by the owner of Nos 10 and 12 Henry Kendall Crescent, the adjacent residential land, who indicated an interest in purchasing the subject land (it was indicated that a single party was in ownership of both 10 and 12 Henry Kendall Crescent).
- The land was zoned R2 – Low Density Residential and would stay under this zoning with the subject reclassification.
- The subject land was not seen to have any recreational benefit to the community and the reclassification would provide the opportunity to sell this underutilised area and allow the benefits to be directed to other community purposes.

#### Public submissions

Mr and Mrs Roth have lived at 29 Kendall Crescent for many years. 29 Kendall Crescent is at the



northern eastern bend of Kendall Crescent, such that the western outlook from the property is towards the subject land. Mrs Roth contested the suggestion that the subject land had no public value. She said that all the residents of Kendall Crescent enjoyed the greenspace in the street. Mrs Roth said that in previous years the area was used more actively by local children. Now it had more aesthetic value, but this was still a significant community value. At a personal level, both Mr and Mrs Roth indicated that they enjoyed looking out over this greenspace from their own property. The submission was not against the sale of the land to the adjacent owners *per se*, but that future building works on the subject land be restricted. The preference was that any future development which included the subject land be such that the subject land form something like a “front yard” area. In effect the submission was that future building works be limited to the current boundary line, and that the land subject the reclassification “remain green”. The photos below give a sense of the effect of the additional 3m of greenspace in the local street.



**Photo 1 - View from the east (similar orientation to Roth property)**



**Photo 2 - View from the west**

At this point the hearing shifted more to a discussion and questions of interpretation. For example there was considerable discussion about what type of fencing might be allowed, and the idea of a 2m hedge seemed to be suggested. Some other opinions were expressed which I think appropriate to note. Mr Mahony indicated that as a ratepayer he had no problems with the reclassification, and had attended this hearing in particular in regard to his concern about processes. He was interested transparency of process and, for example, was interested in whether Council would make known the sale price of the land should the sale proceed. Mr Mahony also raised the question whether it had been checked whether there were any underground services or utilities in the land intended to be reclassified. Another attendee, Ms Hodge indicated that she saw the land as “no benefit to anyone except the owners of 10 and 12 (Henry Kendall Crescent)”, but also acknowledged the arguments of the Roths.

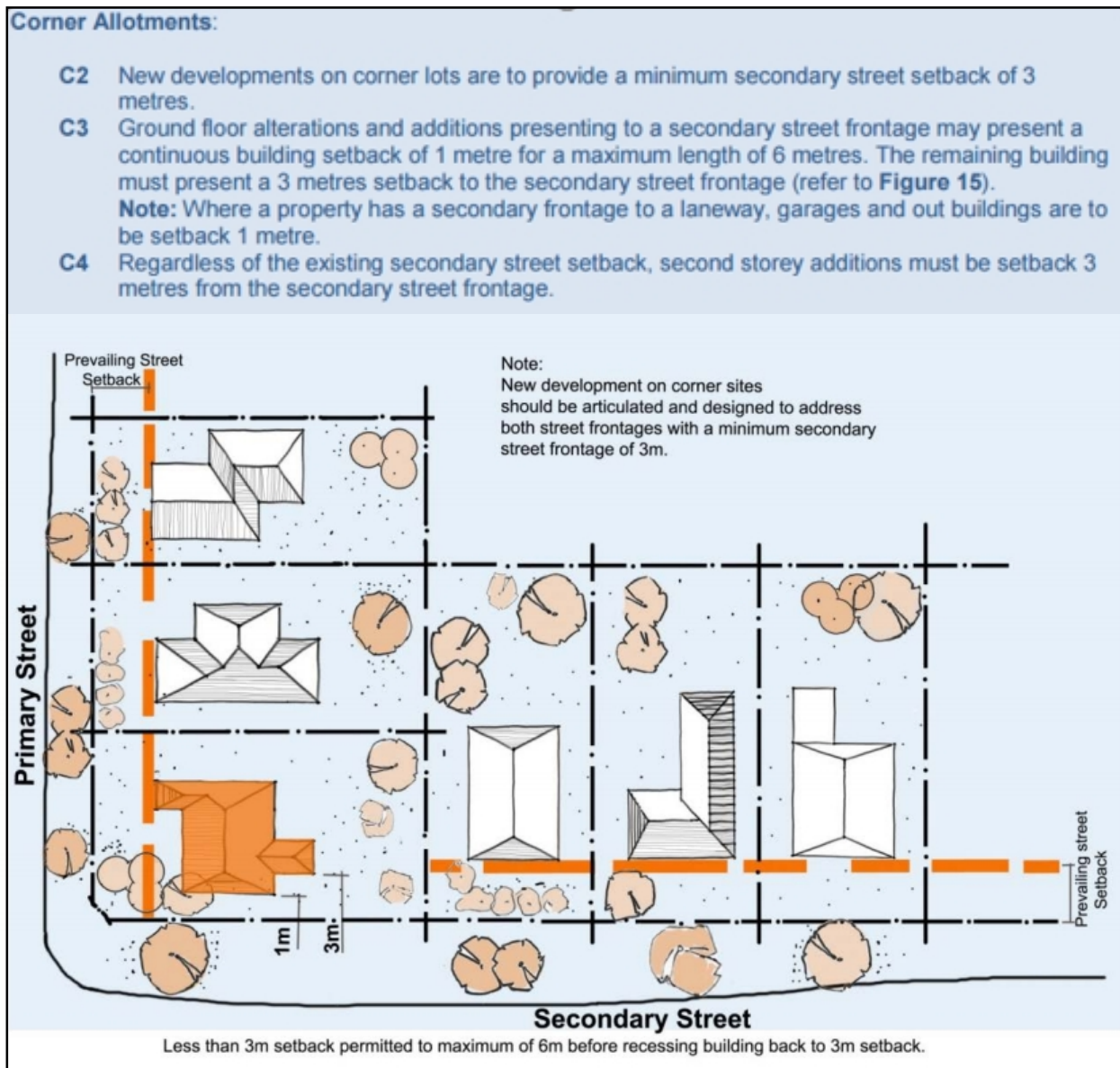
There were two written submissions when the proposal was placed on public exhibition from 11 November 2015 to 8 December 2015. One submission was from Michael Mariotti and Jennifer Woodbury (owners of 27 Henry Kendall Crescent, Mascot). This submission objected to the proposed reclassification. They were concerned about the potential for the subject land to be combined with Nos 10 and 12 Henry Kendall Crescent to make a large block suitable for multi dwelling residential development. The concern was that the area was already congested and the street too narrow to accommodate this form of development. The second written submission was from Mr and Mrs Roth. This submission raised similar concerns to those mentioned in the oral submission, and added a concern that new fencing along the boundary “not exceed 85 cm (or thereabouts)”.

#### **4. ASSESSMENT**

The arguments in support of the reclassification are substantial. The reclassification presents as an opportunity to realise some financial benefit for the community with little in the way of adverse effects. It presents as something of a small windfall in that the uncovering of the subject land, as an area in excess of that required for public road reservation, has occurred at time when the public (especially children as indicated in submissions) are less inclined to actively enjoy the public street.

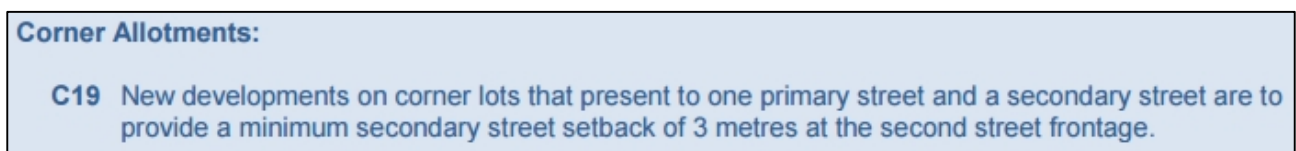
The submission from Mrs Roth, however, does shift attention beyond the practical (recreational) use and towards the aesthetic value of the subject land as a piece of greenspace in the street. The essence of the submission is that it would be a substantial adverse impact on local amenity if as a consequence of the reclassification and sale of the land if future urban development was to build up to the new boundary.

Setting aside the merits of this argument momentarily, it is reasonable to test what controls might apply to future development on the land. There was some discussion on this in the hearing and I have reviewed Council’s Development Control Plan 2013 which applies building line controls to corner allotments such as Nos 10 and 12 Henry Kendall Crescent (see Figure 2 which applies to Dwelling Houses). The DCP indicates (at C2) that if there were a new development of Nos 10 and 12, then a 3m setback (ie to the vicinity of the existing property boundary) would be required for new building works, and for any second storey development. There is more flexibility for alterations and additions where a ground level setback of 1m is allowed for a maximum length of 6m. Under these controls, the rest of the building would be setback 3m.



**Figure 2 – Corner allotment building setbacks – dwelling houses - under BBDCP 2013 Part 4A**

I note that some multi dwelling housing is permissible in Council’s Residential R2 zone. The DCP also applies a 3m setback to corner allotment development for multi dwelling housing (see Figure 3).



**Figure 3 - Corner allotment building setback - multi dwelling development - under BBDCP 2013 Part 4B**

These DCP controls suggest that there is some of the protection sought by the Roth submission in current Council planning provisions.

I do note that the kinds of DCP provisions which are indicated above do not provide full security for the retention of the subject land as “green space” or low profile fencing, which is the aspiration behind Mrs Roth’s submission, or the exclusion of multi dwelling housing as is the wish of Mr Mariotti and



Ms Woodbury. Significant future development applications would be expected to be subject to an appropriate merits test by the consent authority before any determination was made.

But I also observe the extent of change that is occurring elsewhere in the surrounding suburbs. The Henry Kendall Crescent precinct presents as a kind of low density oasis in the midst of really major change in the intensity of development nearby. This change seems to be in response to the pressures faced in accommodating growth in the wider metropolitan area. The relatively good proximity of the area to public transport, overall connectivity to major employment precincts, and in this case open space, see these areas as desirable places to live for many people. While I acknowledge the written and oral submissions concerned about intensification, in well located areas like this, there is some wider public benefit in trying to maximise the utility of well-located land in order to accommodate growth. That is, it seems to me that there is a reasonableness to this, given Sydney's growth pressures. It needs to be acknowledged that this has and likely will continue to bring risks of some loss of amenity for those who would prefer no change. There is an important continuing role for councils in these settings to attempt to cushion the effects of this change on established settings through the merits assessment of future development applications. In this case the existing Development Control Plan seems to provide some assistance in this regard.

## **5. CONCLUSIONS AND RECOMMENDATIONS**

Overall I am satisfied with the current planning position when considering the merits of the land reclassification. That is, existing planning controls do seem to bring reasonable prospects for balancing future development and amenity impacts with development involving the subject area. At the same time, I believe that the subject area, as residentially-zoned land, should be considered as having the potential to release quite significant relative value back to the community, given its strongly positive locational attributes.

### Recommendation:

1. Council note the submissions to the proposed reclassification as outlined in this report.
2. The reclassification of Lot 126A DP 21810 in Henry Kendall Crescent Mascot from community to operational land be supported.
3. Consideration be given to whether any underground utilities or services affect the land and any implications should the land be sold.

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13 April 2016

**Peter Walsh**

**Appointed Chairperson**

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## Council Meeting

12/10/2016

Item No	9.6
Subject	<b>Update on New Road and Parks in Wilson/Pemberton Street Precinct</b>
Report by	Catherine McMahon, Manager Strategic Planning
File	09/141

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## Summary

The former City of Botany Bay recently placed on public exhibition road names for new roads and public walkways within the high density Wilson/Pemberton Street redevelopment Precinct in Botany. This report provides an update on that process and recommends that Council refers the names to the Geographical Names Board for gazettal.

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## Council Resolution

Resolved by the Administrator:

- 1 That Council note the approval from the Geographical Names Board of the three new park names for the Wilson/Pemberton Street Precinct – being Hillier Park, Mahroot Reserve and Tannery Park; and
  - 2 That Council refer the names – Mahroot Street, Saxby Close and Bagnall Path to the Geographic Names Board for gazettal.
- 

## Officer Recommendation

- 1 That Council note the approval from the Geographical Names Board of the three new park names for the Wilson/Pemberton Street Precinct – being Hillier Park, Mahroot Reserve and Tannery Park; and
  - 2 That Council refer the names – Mahroot Street, Saxby Close and Bagnall Path to the Geographic Names Board for gazettal.
- 

## Background

In March 2015, the Geographical Names Board (GNB) of New South Wales formally endorsed the final versions of the NSW Address Policy, the NSW Retrospective Address Policy and the NSW Addressing User Manual.

The NSW Address Policy, NSW Retrospective Address Policy and the NSW Addressing User Manual contain the principles by which street numbers and road names are to be allocated. Council is required to follow the NSW Addressing User Manual.

The former City of Botany Bay's Botany Historical Trust Executive Committee on 18 April 2016 in conjunction with the Council's Local History Team have provided proposed road and park names for a number of precincts subject to redevelopment. The Minutes of the Trust were received and noted by the Community Engagement Committee on 18 May 2016. This is in accordance with Section 6.7 (Principles of Road naming) under the NSW Addressing Principles.

The names were lodged with the GNB for approval. It should be noted that some of the names were initially rejected by the GNB as per *Section 6.7.4 – Uniqueness, Duplication* of the NSW Addressing Principles which requires that road names shall not be duplicated within the same locality; within an adjoining locality; within a Local Government Area; and within a radius of 10km.

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## Issue

The proposed road names that were presented to the GNB are:

- **Mahroot Street:** Running west to east, with a vehicular connection to Pemberton Street and a pedestrian connection to Wilson Street.

Mahroot is the name of an Aboriginal elder from the Botany Bay area who was born in 1796. Mahroot left Australia for periods of time on whaling vessels but always lived in and around the Botany area and the mouth of the Cooks River. In 1845, Mahroot told a parliamentary enquiry about the Aboriginal people living at Botany Bay. He died in 1850 and was buried at the Sir Joseph Banks Hotel site.

- **Saxby Close:** Running North to South from Mahroot Street, ending in a cul-de-sac. Note: the new street has not been surveyed yet; therefore the exact coordinates of the beginning and end of the roads are not available.

The Saxby family settled in Botany during the 1840s, having emigrated from England. Brothers Joseph and Henry Saxby both purchased land from Thomas Kellett in the 1850s and established market gardens in the Botany/Banksmeadow district. They won many prizes for their vegetables and flowers. Children's author, Maurice Saxby was born in Botany in 1924 and died in 2014.

- **Platypus Walk:** Running north from Mahroot Street, Botany. Runs from North to South. Approximately 108 metres long. Note: the new street has not been surveyed yet; therefore the exact coordinates of the beginning and end of the roads are not available.

Historically the Botany area has been home to a number of important industries. Since the 1970s and 1980s this heritage has slowly been lost as these industries have closed and been turned into business parks or residential areas. Platypus Leather was the last tannery in Sydney, closing in 2006 after 65 years of business.

- **Bagnall Path:** From Pemberton Street to Kurnell Street. The road runs from west to east. Approx. 108 metres in length. Note: the new street has not been surveyed yet; therefore the exact coordinates of the beginning and end of the road are not available.

Mr Bagnall was an owner of one of the first subdivisions of Botany.

- **Drew Path:** Runs East to West from Wilson Street, approx. 100 metres in length, intersecting with Platypus Walk.

The area that is occupied by Park Grove was once owned by Thomas Kellet (who built the Sir Joseph Banks Hotel), James Drew and James C Phelps.

The proposed roads and pathways are outlined in **Figure 1** below.

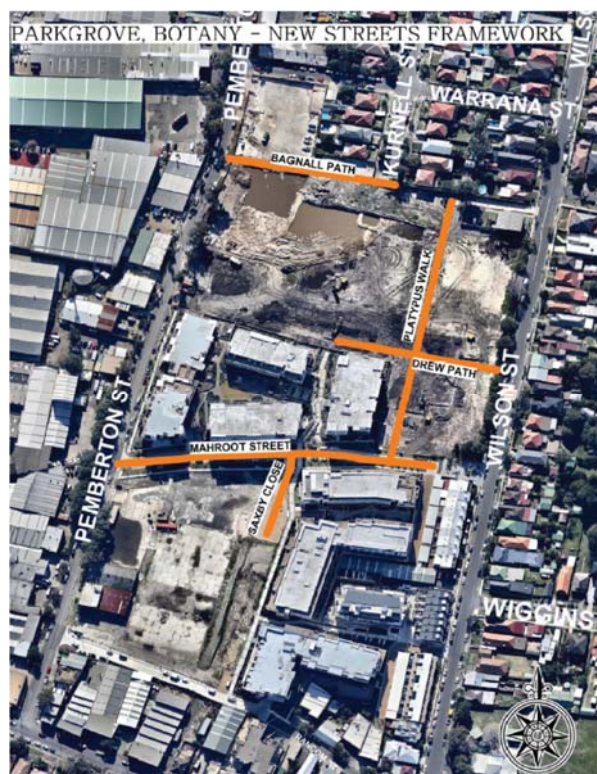


Figure 1 – Advertised proposed roads and pathways

The former Botany Historical Trust Executive Committee on 18 April 2016 also proposed park names for the new parks in the Wilson/Pemberton Street Precinct. The Minutes of the Trust were received and noted by the Community Engagement Committee on 18 May 2016. The proposed names were referred to the GNB and were approved by the GNB at its board meeting on 20 September 2016.

The new parks, the indicative locations of which are illustrated in **Figure 2**, are:

- **Hillier Park:** In memory of Nancy Hillier OAM (1924-2013). For over 40 years Nancy Hillier has been known throughout Botany and much further afield, for her tireless activism. Recently the University of NSW has decided to honour her with a memorial lecture series.
- **Mahroot Reserve:** The Botany Historical Society has proposed the name 'Mahroot'- an Aboriginal elder from the Botany Bay area who was born in 1796. . He died in 1850 and was buried at the Sir Joseph Banks Hotel site. In recommending this name, the Botany Historical Society consulted with the La Perouse Local Aboriginal Land Council.
- **Tannery Park:** Historically the Botany area has been home to a number of important industries. Since the 1970s and 1980s this heritage has slowly been lost as these industries have closed and been turned into business parks or residential areas.



Figure 2 - Proposed Parks, new named streets and proposed streets

## Financial Implications

The costs of consultation will be only officer's time and minimal postage costs, and can be accommodated within the 2016/17 Budget.

## Community Engagement

As per the Roads Regulation 2008, Council is required to advertise in the local paper a proposal to name a road. In accordance with that Regulation a Notice was placed in the New Southern Courier on Tuesday 9 August 2016 for the proposed road names of Mahroot Street, Saxby Close, Platypus Walk, Bagnall Path, and Drew Path for new streets/laneways within the Wilson/Pemberton Street Precinct.

Submissions were invited until 31 August 2016. Council also notified all residents within and surrounding the Precinct of the Road Naming Proposal.

Council received one submission in response to the community consultation on the proposed naming from Frasers Group who is developing 52-54 Pemberton Street Botany. In summary the submission raised the issue that Drew Path and Platypus Walk are private accesses within the development and are not open to the public and therefore should not be named.

Council officers took advice from the GNB, which advised that if the paths are intended to be used for public pedestrian purposes the pathway should be named. In this case Drew Path and Platypus Walk are private accesses which have been confirmed by development consent issued for the redevelopment of the site. Therefore Drew Path and Platypus Walk will now be deleted from the naming proposal.

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### **Next Steps**

Residents in the Wilson/Pemberton Street will now be notified of new street numbers and names in accordance with the NSW Address Policy.

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### **Conclusion**

Council officers will now refer the names – Mahroot Street, Saxby Close and Bagnall Path to the GNB for gazettal.

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### **Attachments**

Nil



## **Council Meeting**

**12/10/2016**

Item No	9.7
Property:	<b>1 Bowood Avenue, Bexley</b>
Proposal:	Demolition of existing structures, construction of a two (2) storey dual occupancy, front boundary fence, boundary adjustment and Torrens Title subdivision
Report by	Thomas Kulchar, Coordinator Development and Certification
Application No:	(R) DA-2016/310

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## **Council Resolution**

Resolved by the Administrator:

- 1 That Development Application DA-2016/310 for the construction of a two-storey dual occupancy, a front boundary fence, Torrens Title subdivision, boundary adjustment and demolition of existing structures at 1 Bowood Avenue, Bexley be APPROVED pursuant to Section 80(1)(a) of the Act and subject to the conditions of consent attached to this report.
  - 2 That the objectors be advised of Council's decision.
- 

## **Officer Recommendation**

- 1 That Development Application DA-2016/310 for the construction of a two-storey dual occupancy, a front boundary fence, Torrens Title subdivision, boundary adjustment and demolition of existing structures at 1 Bowood Avenue, Bexley be APPROVED pursuant to Section 80(1)(a) of the Act and subject to the conditions of consent attached to this report.
  - 2 That the objectors be advised of Council's decision.
-



## Attachment

- Planning Assessment Report
- Compliance table
- Draft conditions of consent
- Site Plan
- Elevation Plans

## Location Plan



# Bayside Council

## PLANNING ASSESSMENT REPORT

### 1. APPLICATION DETAILS

Property:	1 Bowood Avenue, Bexley NSW 2207
Proposal:	Construction of a two (2) storey dual occupancy, front boundary fence, Torrens Title subdivision, boundary adjustment and demolition of existing structures
Date Lodged:	7 March 2016
File Number:	DA-2016/310
Owner:	Mr. Danny Salevski and Mrs. Christina Salevski
Author:	Creative Planning Solutions Pty Limited
Coordinator:	Thomas Kulchar – Coordinator Development and Certification

### 2. REPORT SUMMARY

This report considers a development application (DA) for the demolition of existing structures, construction of a semi-detached style dual occupancy, erection of a front boundary fence, boundary adjustment, and Torrens Title subdivision at 1 Bowood Ave, Bexley NSW 2207.

The proposed development complies with the applicable development standards of the *Rockdale Local Environmental Plan 2011* (RLEP 2011). A number of variations however, are proposed to the *Rockdale Development Control Plan 2011* (RDCP 2011), as detailed as follows:

*Non-compliances – justifiable:*

- **Streetscape:** The proposal is for a two-storey dual occupancy development. When assessing against the qualitative streetscape controls of the RDCP 2011 the development does provide for a visually distinct development. An additional information request was sent to the applicant requesting the development have regard to the neighbourhood character as prescribed by Section 4.2 of the RDCP 2011. The received amended plans identified that the development better relates to the existing development on Bowood Avenue, and subsequently now considered to satisfy Council's streetscape development controls.
- **Building line garage setback:** A minor variation to Control 15 in Part 5.1 of the RDCP 2011 has been sought by the applicant. The intent of this control is to ensure that garages

are not the dominant aspect of any street façade. In assessing the proposal, it has been considered that the development provides for sufficient architectural merit to ensure that the garage doors are not the dominant feature of the development. The proposed variation has therefore been supported.

- **Minimum lot width:** The proposed development seeks a Torrens Title subdivision of the proposed dual occupancy development. In order to subdivide, the RDCP 2011 requires that a minimum lot width of 9m is provided. The proposed Lot 2 will exhibit a lot width of 7.85m. However, when the development is assessed against the objectives of the development control, the proposal has demonstrated that appropriate residential development can be accommodated on the allotment without any additional resulting impacts. As such, the variation to the minimum lot width is supported in this instance.

The development application was notified and eight (8) submissions objecting to the development were received. The objections were considered and have been addressed within this report.

Having regard to the heads of consideration in Section 79C of the *Environmental Planning and Assessment Act 1979* (the Act), the following has been determined:

- When assessed against the relevant environmental planning instruments pertaining to the subject site, including RLEP 2011, the proposal satisfactorily complies with the applicable objectives and development standards;
- When assessed against the relevant provisions of the RDCP 2011, the proposal, in its current form, satisfactorily complies with the prescribed development controls. Where non-compliances with development controls have been identified, these are considered to be satisfactorily justifiable when having regards to the provisions of Section 79C(3A)(b) of the Act.;
- The likely impacts of the proposed development on the natural and built environment has been considered, and determined to be satisfactory;
- When considering the submissions received during the notification period, as well as the level of compliance with the applicable planning controls,

Therefore, the proposed development, on balance, is considered to be in the public interest and worthy of development consent.

### **3. RECOMMENDATION**

1. That Development Application DA-2016/310 for the construction of a two-storey dual occupancy, a front boundary fence, Torrens Title subdivision, boundary adjustment and demolition of existing structures at 1 Bowood Avenue, Bexley NSW 2207 be APPROVED pursuant to Section 80(1)(a) of the Act and subject to the conditions of consent attached to this report.
2. That the objectors be advised of Council's decision.

#### **4. BACKGROUND**

- A Pre-DA meeting was held at Council's offices on 25 September 2015 to seek advice for boundary adjustment between 13 Salisbury Avenue and 1 Bowood Avenue, Bexley to facilitate a dual occupancy development that would subsequently be subdivided. The pre-DA concluded that the proposal (as submitted in the Pre-DA) appears possible subject to satisfying the comments contained within the formal advice sent to the applicant.

The formal Pre-DA advice stated that a development application for the proposal would need to comply with the following:

- Clause 6.3 – Development in areas subject to aircraft noise,
- Clause 4.1 – Minimum subdivision size,
- Clause 4.4 – Floor space ratio,

Further to the above, it would need to be demonstrated that the reduced allotment fronting Salisbury Avenue satisfactorily complies with the standards and controls for floor space ratio, setbacks, landscaping, private open space, and car parking contained within the RLEP 2011 and RDCP 2011.

- The subject DA was lodged with Council on 7 March 2016. The development was notified for a period of two weeks commencing on 18 March 2016. Eight (8) submissions have been received during the notification period.
- A review of subject site's development history using Council's online development application search returned with no results. It is noted that the online development application portal applies to development applications submitted after 1 July 2004.
- An additional information request was sent to the applicant on 21 June 2016, seeking the following:
  - Amendment to the stormwater layout in order to avoid the critical root structure of the existing Eucalyptus street tree on Bowood Ave fronting the development,
  - Confirmation that the existing dwelling on 13 Salisbury Ave would continue to comply with Council's standards and controls as a result of the lot size reduction,
  - Details on how the proposal addresses Council's streetscape and site context controls including any amendments to satisfy those controls, and
  - Justification to vary the minimum lot width control for semi-detached dwellings.

The applicant provided a response to the additional information request on 29 June 2016 including amended architectural plans and justification. The assessment herein is based on the amended plans received 29 June 2016.

## **5. PROPOSAL**

Council is in receipt of development application DA-2016/310 at 1 Bowood Avenue, Bexley which seeks consent for the construction of a new dual occupancy, with associated works.

In detail the development application seeks consent for the following works:

### *Demolition of existing structures:*

- Demolition of the existing single storey brick walled and tiled roof dwelling, and associated detached fibro garage, and removal of existing vegetation.

### *Construction of a two storey dual occupancy development:*

- Ground floor comprising of a double car garage, living room, laundry, bathroom, kitchen with pantry, dining area, and patio.
- First floor comprising of four (4) bedrooms including a master bedroom with access to a balcony, walk-in-robe and en-suite.
- Externally the dual occupancy development incorporates a hip roof of metal sheeting, and front brick façade incorporating front facing balconies.

### *Construction of a front fence:*

- 1.2m high masonry front fence with the vehicle and pedestrian entrance gates constructed of horizontal separated aluminium slats.

### *Boundary adjustment:*

- Existing boundary between 1 Bowood Ave and 13 Salisbury Ave shall be moved 7.7m westward to provide the subject site with a larger total site area.

### *Torrens Title subdivision:*

- Subdivision of the dual occupancy development, resulting in two (2) semi-detached dwellings with site areas of 382.7m<sup>2</sup> for proposed Lot 1 and 353.6m<sup>2</sup> for proposed Lot 2.

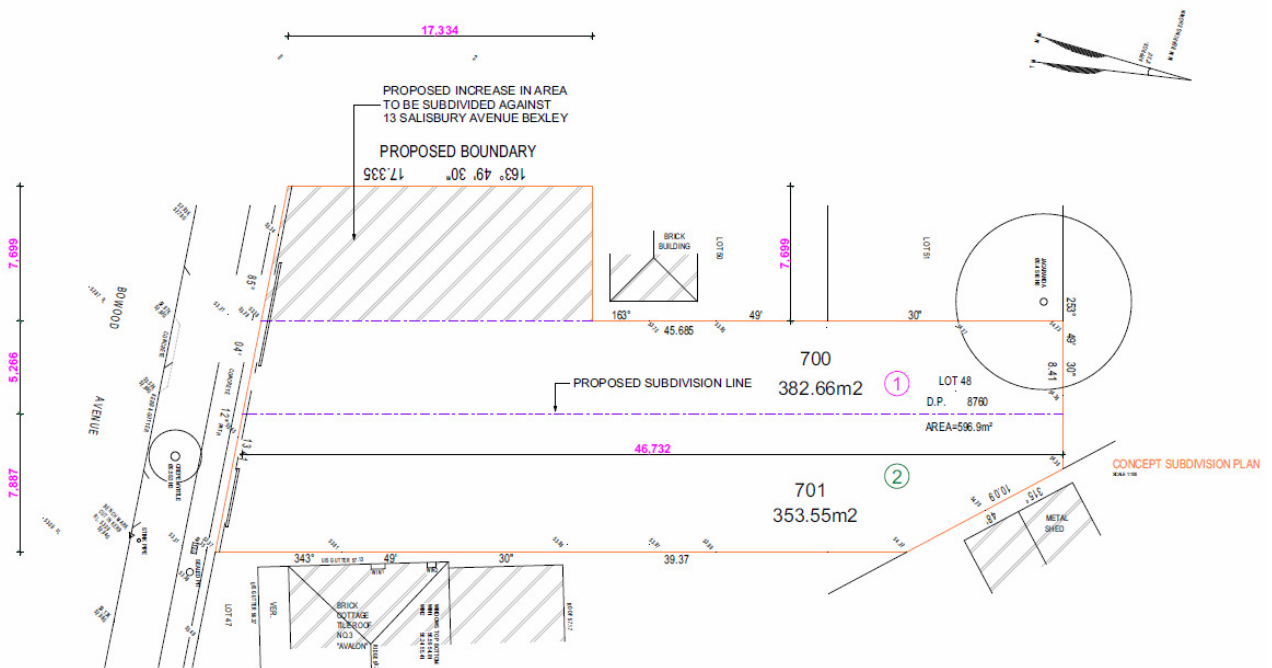
## **6. EXISTING AND SURROUNDING USES**

The subject site is known as Lot 48 in Deposited Plan 8760 and is located at 1 Bowood Avenue, Bexley NSW 2207 and a portion of Lot 49 in DP 8760, being 13 Salisbury Avenue. The subject site is located on the southern side of Bowood Ave with a north/south orientation.

The subject site exhibits a slight north descending slope, with a gradient of about 0.02 falling toward Bowood Ave. Subject to the proposed boundary adjustment, the development site will have a lot width of 21.26m to Bowood Ave, which steps in from the western boundary to a width of 13.2m at a depth of 19m from the street.

After the boundary adjustment, the subject development site will have a total site area of 736.3m<sup>2</sup>. Subsequently, the adjoining site at 13 Salisbury Avenue (Lot 49 in DP 8760) will have a reduced site area of 458.2m<sup>2</sup>.

Refer to **Figure 1**.



**Figure 1:** Extract of the concept subdivision plan, prepared by MCAD Design.

Source: Concept Subdivision Plan submitted with DA-2016/310

The existing site contains a weathered single storey bungalow style dwelling with a tiled roof. No significant views are identified from the subject site or adjoining properties.

Located adjoining the subject site to the west at No. 3 Bowood Avenue, is a single storey bungalow style brick dwelling with an attached garage under a tile roof and a low white picket front fence.

The adjoining property to the east at 13 Salisbury Avenue, is a single California bungalow style dwelling with a tile roof which appears to have recently undergone external renovation, as suggested by the fresh rendering of the dwelling façade and front fence.

Adjoining the subject site to the rear are the rear yards of 18 Highworth Avenue and 7 Salisbury Avenue.

The residential block in which the subject site is situated is triangular in shape and bound by Highworth Avenue to the west, Bowood Avenue to the north, Salisbury Avenue to the east and by a short portion of Forest Road to the south as the block narrows to the south. Due to the block shape the subject site is adjoined by only one other allotment (3 Bowood Avenue) which addresses Bowood Ave from the south. The remaining lots that adjoin the subject site are orientated to address Highworth Avenue or Salisbury Ave. Refer to **Figure 2** as follows.





**Figure 2:** View from the east side of Bowood Ave looking west.

Source: [googlemaps.com.au](http://googlemaps.com.au)

The subject local area is an established low density residential neighbourhood that is characteristic of single storey detached dwellings in the form of bungalow and federation style dwellings on 500-600m<sup>2</sup> allotments. There is however, a presence of more modern two storey dwellings including a number of semi-detached developments within the local area.

Bexley Park is located approximately 150m east of the subject site, Bexley shopping area is located 500m east of the subject site, and Stony Creek Road is located approximately 190m north of the subject site along the local street network. Stony Creek Road is a road of regional significance, and is well serviced by buses.

## 7. REFERRALS

### 7.1. EXTERNAL

The development application was referred to the following external departments:

#### 7.1.1 Department of Infrastructure and Regional Development

The proposed development, exhibiting a maximum height of 62.1m AHD, penetrates the inner horizontal surface layer height of 51m AHD of the prescribed airspace of the Sydney Airport as determined by the Obstacle Limitation Surface (OLS) map.

As a result of the penetration, the proposed development requires a 'controlled activity' approval under Section 182 of the *Airports Act 1996*. Accordingly, the development application was referred to the Department of Infrastructure and Regional Development (DIRD).

A response received from DIRD dated 27 May 2016, identified that the 'controlled activity' for the construction of the multi-storey building at 1 Bowood Ave, Bexley into prescribed airspace



for Sydney Airport to a maximum height of 62.10m AHD is approved, subject to the imposition of the following conditions:

- 1. The building must not exceed a maximum height of 62.10m AHD, inclusive of all lift over-runs, vents, chimneys, aerials, antennas, lightning rods, any roof top garden planting, exhaust flues etc.*
- 2. Separate approval must be sought under the Airports (Protection of Airspace Regulation 1996 for any cranes required to construct the buildings, Construction cranes ,au ne required to operate at a height significantly higher than that of the proposed controlled activity and consequently, may not be approved under the Airports (Protection of Airspace) Regulations, therefore Sydney Airport advises that approval to operate construction equipment (i.e. cranes) should be obtained prior to any commitment to construct.*
- 3. At the completion of the construction of the building, a certified surveyor is to notify (in writing) the airfield design manager of the finished height of the building.*

The attached recommended conditions of consent incorporates the above conditions.

## **7.2. INTERNAL**

The development application was referred to the following Council Officers:

### *7.2.1 Tree Management Officer*

Council's tree management officer raised concerns regarding the proposed excavations for the stormwater outlet proposed for the subject development. The officer identified that the excavations are likely to damage the critical root structure of the existing mature Eucalyptus street tree that is located adjacent to driveway of proposed Lot 1.

Accordingly, subject to discussions with Council's tree management officer, the following conditions of consent will be imposed to ensure that the critical root structure of the existing mature Eucalyptus tree is not adversely impacted. Council's tree management officer raised no objection to the recommended conditions.

- 1. An amended stormwater plan prepared by a suitably qualified hydraulic engineer must be submitted to the PCA prior to the issue of a Construction Certificate. The amended stormwater plan must include the following offset from the existing Eucalyptus tree in the street reserve in front of proposed Lot 1:*
  - (a) An AQF Level 5 qualified Arboriculturist shall determine appropriate offset from the existing Eucalyptus. Note. This offset shall determine the minimum distance any stormwater pipes can be located from the Eucalyptus tree.*
- 2. An Arboriculturist is to supervise any excavations that may occur within the tree protection zone of the Eucalyptus tree located on the street reserve in front of proposed Lot*

3. *Any utility services to be located underground within the TPZ of the Eucalyptus tree located on the street reserve in front of proposed Lot 1, are to be undertaken utilising excavation techniques that prevent or minimise damage to structural roots (roots greater than 20 mm diameter). Further, in order to prevent soil compaction and root damage these works should be conducted with non-motorised hand tools, air knife or directional drilling.*

## **8. PLANNING CONSIDERATIONS - SECTION 79C OF THE EP&A ACT 1979**

The following is an assessment of the proposed development under the provisions of Section 79C(1) of the *Environmental and Planning Assessment Act 1979* (the Act).

### **8.1 PROVISIONS OF ENVIRONMENTAL PLANNING INSTRUMENTS (S.79C(1)(a)(i))**

#### **8.1.1 State Environmental Planning Policy – Building Sustainable Index (BASIX)**

The applicant has submitted a BASIX Certificate for the proposed development. The Certificate number is 707384M, dated 29 February 2016.

In accordance with the submitted BASIX the development is required to install 3 star rated shower heads and 4 star rated fixtures for toilet flushing systems, kitchen and bathroom taps. Furthermore, a 2400L rainwater tanks is required for all dwellings to collect water run-off from the roof.

A condition shall be imposed within any consent to ensure that the requirements of the BASIX certificate are adhered to.

It is noted that although revised plans were submitted to Council as part of the assessment of the DA, the amendments did not significantly modify the nature of the development. As such, pursuant to the provisions of the Environmental Planning and Assessment Regulation 2000, a new BASIX Certificate was not required.

#### **8.1.2 Rockdale Local Environmental Plan 2011**

The following are relevant matters from Council's LEP 2011 that need to be taken into consideration.

##### **Clause 2.1 – Land Use Zones**

The subject site is zoned R2 – Low Density Residential. Within this zone development for the purpose of 'dual occupancies' and 'semi-detached dwellings' are permitted with consent. Pursuant to the dictionary of the RLEP 2011, these terms are defined as follows:

***dual occupancy*** means a dual occupancy (attached) or a dual occupancy (detached).

*Note. Dual occupancies are a type of residential accommodation—see the definition of that term in this Dictionary.*

***dual occupancy (attached)*** means 2 dwellings on one lot of land that are attached to each other, but does not include a secondary dwelling.

*Note. Dual occupancies (attached) are a type of dual occupancy—see the definition of that term in this Dictionary*

***semi-detached*** dwelling means a dwelling that is on its own lot of land and is attached to only one other dwelling.

*Note. Semi-detached dwellings are a type of residential accommodation—see the definition of that term in this Dictionary.*

The proposed development is defined as a 'dual occupancy' development. Subject to the Torrens Title subdivision of the dual occupancy development, the proposal would be best described as two (2) 'semi-detached dwellings', each being attached to each other and located on their own lot of land.

Accordingly, the proposal to construct a dual occupancy development and subsequent use of the development as two (2) semi-detached dwellings subject to the Torrens Title subdivision is permissible with consent in the R2 zone.

#### Clause 2.3 – Zone objectives

The objectives of the R2 – Low Density Residential zone are as follows:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that land uses are carried out in a context and setting that minimises any impact on the character and amenity of the area.*

The proposed development seeks to provide the community with housing opportunities within the low density residential environment as permitted by the land uses of the low density zone.

Subject to compliance with Rockdale's development controls for low density residential development, the proposal would be capable of being carried out in a context and setting that minimises any impact on the character and amenity of the area.

#### Clause 4.1 – Minimum subdivision lot size

The minimum subdivision lot size for the subject site is 450m<sup>2</sup>. The development, proposes a boundary adjustment between the subject site at 1 Bowood Avenue (Lot 48 DP 8760) and eastern adjoining property at 13 Salisbury Avenue (Lot 49 DP 8760). Subject to the boundary adjustment the site area of the subject site will be increased to 736.3m<sup>2</sup> and the site area of 13 Salisbury Ave will be reduced to 458.2m<sup>2</sup>. Both the resulting allotments comply with the minimum lot size of 450m<sup>2</sup> as required by this clause. Refer to **Figure 3** for diagrammatic representation.





(a) to ensure that subdivision reflects and reinforces the predominant subdivision pattern of the area,

The predominant subdivision pattern of the locality primarily provides for rectangular residential blocks with dimensions of 120m wide by 250m long, comprising of individual residential allotments that generally are 14m wide and 40m deep. However, resulting from the convergence of Highworth Avenue and Salisbury Avenue, the subject subdivision block is irregular in shape. As a result, the subdivision blocks include several irregular shaped allotments. Refer to **Figure 4** for a visual representation of the subject subdivision block.



**Figure 4:** Aerial image of existing subdivision pattern surrounding Bowood Avenue. Blue shading indicates existing irregular shaped lots and red shading indicates 1 Bowood Avenue  
source: maps.six.nsw.gov.au, as adapted by CPS

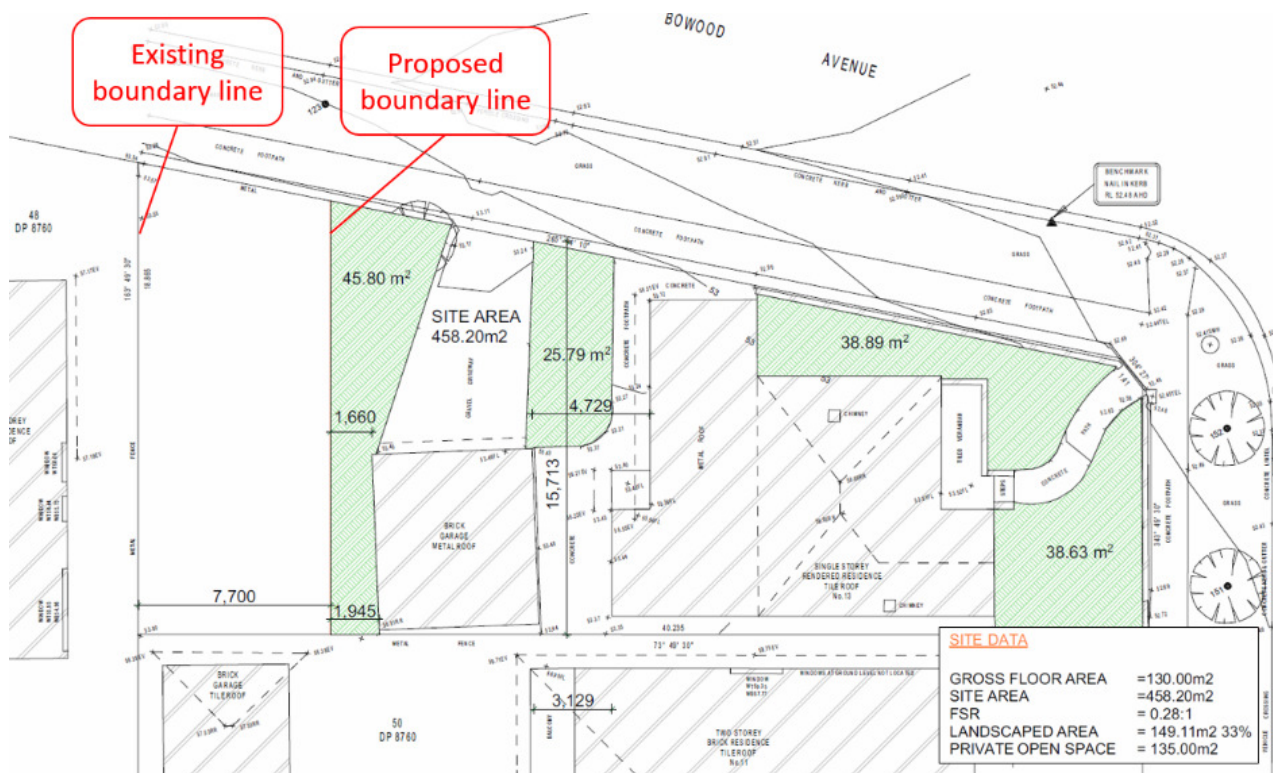
Accordingly, the proposed lot resulting from the boundary adjustment, although irregular in shape, is not considered to be incongruous with the subdivision pattern of the area.

(b) to minimise any likely impact of subdivision, and development on subdivided land, on the amenity of neighbouring properties,

The proposed subdivision will result in a decrease in site area of the adjoining lot fronting 13 Salisbury Avenue from 604m<sup>2</sup> to 458.2m<sup>2</sup>. The reduction of the site area will subsequently impact on the existing setbacks, landscaped, and private open space areas.

Despite the reduced site area of the resulting lot fronting Salisbury Avenue, the site continues to be capable of providing for a complying rear and side setback, landscaped area, and adequate private open space as is required by the RDCP 2011, and illustrated in **Figure 5**. Please refer to demonstrated in the attached compliance check for full RDCP 2011 compliance check.

Furthermore, the submitted architectural plans for the proposed dual occupancy development identifies that an acceptable level of amenity is provided to neighbouring properties as the development is demonstrated to comply with applicable setback, overshadowing and sunlight access controls contained within the RDCP 2011.



**Figure 5: Extract of resulting allotment of 13 Salisbury Avenue.**

source: Site Data calculations for 13 Salisbury Avenue Bexley Plan, submitted in response to an additional request with DA-2016/310, as adapted by CPS

(c) to ensure that lot sizes and dimensions are able to accommodate development consistent with relevant development controls.



As indicated earlier, the submitted architectural plans for the proposed dual occupancy development illustrate that the dimension of the proposed allotment can adequately accommodate development that is consistent with the RLEP 2011 and RDCP 2011.

The resulting lot size of 13 Salisbury has also been demonstrated to be capable of accommodating development consistent with the RLEP 2011 and RDCP 2011, as illustrated by the submitted Site Data Calculations plan prepared by MCAD Design (refer to **Figure 5**).

Accordingly, the lot shape and functionally for 1 Bowood Avenue and 13 Salisbury Avenue resulting from the boundary adjustment is considered to be capable of achieving the objects of Clause 4.1 and is therefore supported.

#### Clause 4.2A – Minimum lot size for attached and semi-detached dwellings in Zone R2

This clause identifies that development consent must not be granted to the erection of an attached dwelling or semi-detached dwelling on a lot comprising land in Zone R2 Low Density Residential unless the area of the lot is at least 350m<sup>2</sup>.

The proposal seeks consent for a Torrens Title subdivision of a dual occupancy in an R2 zone, which subject to approval would result in a semi-detached development. Proposed Lot 1 provides for a site area of 382.66m<sup>2</sup>, and proposed Lot 2 provides for a site area of 353.55m<sup>2</sup>.

Accordingly, the proposed development satisfies clause 4.2A and consequently subdivision of the proposed dual occupancy can be supported.

#### Clause 4.3 – Height of Buildings

The subject site is restricted to a maximum building height of 8.5m, pursuant to the RLEP 2011 Height of Buildings Map – Sheet HOB\_002.

The proposed two storey development provides for a ridge height of 62.10 at a natural ground level of 53.63, which results in a maximum for a height of 8.47m. Accordingly, the proposed development complies with this development standard.

#### Clause 4.4 – Floor Space Ratio

The subject site is restricted to a maximum floor space ratio (FSR) of 0.5:1, pursuant to the RLEP 2011 Floor Space Ratio Map – Sheet FSR\_002.

The proposed dual occupancy development provides for a total gross floor area (GFA) of 358.5m<sup>2</sup> on the proposed subject site of 736.3m<sup>2</sup> which equates to an FSR of 0.49:1.

Subject to the boundary adjustment, the existing single storey dwelling on the reduced lot at 13 Salisbury Avenue is identified as having a FSR of 0.28:1.

Subject to the subsequent subdivision of the dual occupancy the resulting GFAs and FSRs of the proposed lots are as follows:



- Proposed lot 1: GFA of 186.1m<sup>2</sup> and a FSR of 0.49:1
- Proposed lot 2: GFA of 172.4m<sup>2</sup> and a FSR of 0.49:1

Accordingly, the proposal development complies with the floor space ratio development standard.

#### Clause 5.9 – Preservation of trees or vegetation

Clause 5.9 of LEP2011 prescribes that a person must not ringbark, cut down, top, lop, remove, injure or wilfully destroy any tree or other vegetation to which any such development control plan applies without the authority conferred by development consent, or a permit granted by the Council.

The proposal seeks to remove an existing tree that is currently located in the rear setback of 13 Salisbury Avenue, however subject to the boundary adjustment the tree shall be located within the proposed building footprint of lot 2 of the development. It is considered that the retention of this tree would result in the preclusion of orderly and reasonable development of this portion of land. The proposed development is accompanied by a Landscape Plan prepared by Tru Landscaping, which provides for replacement tree and vegetation plantings.

The development has been reviewed by Council's tree management officer. The officer expressed concerns in reference to the existing Eucalyptus tree that is located in the street reserve of Bowood Street in front of proposed Lot 1. Conditions of consent shall be imposed to ensure that the existing Eucalyptus tree is not damaged as a result of any construction works from the proposed development. Please see *Section 7 (Referrals)* for proposed conditions.

Accordingly, the proposed development is considered to have satisfied the intent of Clause 5.9.

#### Clause 5.10 Heritage Conservation

The subject site has not been identified as being heritage listed. The nearest heritage items to the subject site include the St Gabriel's Church (item I159) located 100m east, and a Californian bungalow dwelling (item I115) located 200m west.

The proposed development is not considered be located within the visual catchment of the nearest heritage items. As such, the proposed development is not considered to have an adverse impact on any items of heritage.

Accordingly, the objectives of Clause 5.10 have been considered to be satisfied.

#### Clause 6.1 – Acid Sulfate Soils

Pursuant to the Acid Sulfate Map – sheet ASS\_002, the subject site has been identified as being affected by Acid Sulfate Soils (ASS) – Class 5. Development consent pursuant to this clause is not required as the works proposed are not within 500 meters of adjacent Class 1,

2, 3 or 4 land which are likely to lower the water table below 1 metre AHD on adjacent Class 1, 2,3 or 4 land.

Accordingly, the proposal is considered consistent with the objectives and requirements of Clause 6.1 of the RLEP 2011.

Clause 6.3 – Development in areas subject to aircraft noise

Clause 6.3(3) requires that before determining a development application for development to which this clause applies, the consent authority:

*(a) must consider whether the development will result in an increase in the number of dwellings or people affected by aircraft noise, and*

The development will result in the redevelopment of a single dwelling to a dual occupancy development. As such, the number of dwellings affected by aircraft noise would be increased by one.

The strategic land-use planning of the RLEP 2011 would have considered whether the R2 zoning of the subject site is appropriate with consideration to the proximity to Kingsford-Smith Airport. Accordingly, by the fact the local area is zoned R2 (which permits dual occupancy developments) the development must be considered suitable for the subject site.

*(b) must consider the location of the development in relation to the criteria set out in Table 2.1 (Building Site Acceptability Based on ANEF Zones) in AS 2021—2000, and*

The proposed development is noted to be located in an existing residential subdivision. In accordance with Table 2.1 of AS2021-2000, development for a house or home unit can be 'conditionally acceptable'. Therefore, it is considered that the proposed development can be supported subject to appropriate acoustic treatments being included.

To ensure that appropriate acoustic treatments are included in the proposed development, the following condition of consent will be imposed:

- 1. The residential dwellings are to be designed and constructed to achieve interior noise levels which comply with Australian Standard 2021- 2000 Acoustic - Aircraft Noise Intrusion. An appropriately qualified Noise Consultant is to advise on appropriate measures to be incorporated in the design of the building so that it will meet this standard. The information shall be submitted to Council prior to issue of the Construction Certificate.*

The attached draft conditions of consent includes the above recommended condition.

*(c) must be satisfied the development will meet the indoor design sound levels shown in Table 3.3 (Indoor Design Sound Levels for Determination of Aircraft Noise Reduction) in AS 2021—2000.*

As recommended in subclause 3(b) above, a condition of consent ensuring that the development is designed and constructed to achieve noise levels which comply with AS 2021-

2000 is recommended to be imposed in the draft conditions of consent (see attached for draft conditions of consent).

#### Clause 6.4 – Airspace Operations

This clause requires Council to consult with the relevant Commonwealth body when a proposed development results in the penetration of the Limitation or Operations Surface (associated to airport facilities).

Pursuant to the Prescribed Airspace for Sydney Airport Obstacle Limitation Surfaces (OLS) Map, as declared by the Commonwealth Department of Infrastructure and Regional Development on 20 March 2015, the subject site is restricted to the Inner Horizontal Surface of the OLS which corresponds to a height of 51m AHD. The proposed development seeks consent for a maximum height of 62.1m AHD.

Accordingly, a referral was sent to Department of Infrastructure and Regional Development (DIRD) for comment. A response letter was received from DIRD dated 27 May 2016 which provided their approval subject to conditions of consent. The required conditions are detailed under *Section 7 (Referrals)* of this report.

#### Clause 6.6 – Flood planning

Pursuant to the Flood Planning Map – sheet FLD\_002, the subject site is not identified as being located in a flood planning area, and nor are any adjoining properties.

In this regard, Clause 6.6 is not applicable to the proposed development.

#### Clause 6.7 – Stormwater

Stormwater plans were submitted with the subject development application. The subject site is not identified as being flood affected or being constrained by any other restrictions that would prevent the realisation of the submitted hydraulic plans. Accordingly, it is appropriate to impose a condition of consent requiring that detailed drainage design plans with design certification prepared by a qualified hydraulic engineer for the management of stormwater are to be submitted to Principal Certifying Authority for assessment and approval.

#### 6.12 – Essential services

The services that are essential for the proposed development including supply of water and electricity, disposal and management of sewage, stormwater drainage and suitable road access. The proposed development has access to all these services. Appropriate conditions of consent will be imposed to ensure that Sydney Water and the local energy provider are contacted prior to subdivision to ensure that sufficient service capacity is available to the subject site.

As such, the proposed development is considered to satisfy the relevant requirements of Clause 6.12.

## 8.2 PROVISIONS OF ANY PROPOSED INSTRUMENT THAT IS OR HAS BEEN THE SUBJECT OF PUBLIC CONSULTATION UNDER THIS ACT AND THAT HAS BEEN NOTIFIED TO THE CONSENT AUTHORITY (S.79C(1)(a)(iii))

No draft environmental planning instruments that would impact on the proposed development on the subject site have been identified for the purposes of this assessment.

## 8.3 PROVISIONS OF DEVELOPMENT CONTROL PLANS (S.79C(1)(a)(iii))

### 8.3.1 Rockdale Development Control Plan 2011

The proposed development has been assessed against the *Rockdale Development Control Plan 2011* (RDCP 2011). For full reference of the RDCP 2011 assessment please refer to the detailed compliance check document attached to this report.

A summary compliance table for the proposed development is provided below:

Section	DCP	Proposed	Complies	Objectives
<b>General principles for development</b>				
4.1 – Site Planning	Views/Vistas	The subject site does not contain any views/ vistas of significance, nor are there any view available across the development site.  Furthermore, there are no items of heritage within the visual catchment of the subject site.	Yes	Satisfied
	Stormwater Management - Technical Spec	Specifications are subject to conditions of consent.	Yes	Satisfied
	Ground water	Development site is not located in the Botany Sands Aquifer. Proposed development is for residential purposes and not considered to present a risk to groundwater.	Yes	Satisfied
	Trees	Refer to clause 5.9 assessment earlier within this report.  A suitable landscape plan has been submitted.	Yes	Satisfied
	Lot size	The proposed development provides for sufficient lot sizes in reference to the intended dual occupancy and residential uses (see assessment against clause 4.1).  The result of the proposed boundary adjustment and subsequent subdivision will not result in the isolating of any sites.	Yes	Satisfied

4.2 – Streetscape and site context	Setbacks consistent with existing.	The proposed development corresponds with the existing street alignments, landscaping and provides for an acceptable building height relationship with existing structures in the visual catchment of the subject site.	Yes	Satisfied
	Pedestrian environment.	The proposed development adequately addresses Bowood Ave.	Yes	Satisfied
	Streetscape perspective	Subject to the amendments to the façade received by council on 29 June 2016 that included the redesign of the front façade to respond to adjoining federation style dwellings, the proposed development is considered to support the intent of creating a cohesive streetscape whilst reflecting the development trend for larger two storey dwellings.  Assessment against with reference to the 'compatibility with context' planning principle is performed <i>Section 8.5</i> of this report.	Yes  <i>See detailed discussion under subsection 8.5 of this report.</i>	Satisfied
4.3 – Landscaping planning and design	Landscaped area – min. 25%	Proposed Lot 1 will be comprised of 48% landscaped area.  Proposed Lot 2 will be comprise of 44% landscaped area.  The reduced allotment at 13 Salisbury will be comprised of 33% landscaped area.	Yes	Satisfied
	Significant trees and natural features incorporated into design	One (1) tree approx..3m in height is proposed to be removed to make room for the building footprint. A landscape plan has been submitted providing for replacement landscaping. Subject to amendments the exiting street tree in front of the subject site shall be retained.	Yes	Satisfied
4.4 – Sustainable building design	Energy Efficiency	BASIX certificate number 707384M, which satisfies SEPP (BASIX), has been submitted with the development application.	Yes	Satisfied
	Solar Access	The private open space of the proposed lots and of adjoining development will not be overshadowed by the proposed development for more than 3 hours on the winter solstice.  The north facing development provides for deep rear yards, and front facing balconies to maximise solar access for the future residents of the development.	Yes	Satisfied

	Ceiling Heights	Ground floor provides for ceiling heights of 3m, and first floor provides for ceiling heights of 2.7m.	Yes	Satisfied
	Visual and Acoustic Privacy	<p>The proposed development has been designed to ensure that there are no windows to habitable rooms with direct sightlines to the windows of adjacent dwellings.</p> <p>To avoid further overlooking into adjoining neighbouring properties, windows on Bedroom 2 of dwelling and Dwelling 2 shall be conditioned to have windows sill heights or obscure glazing to minimum height of 1.6m above fixed floor level.</p> <p>The proposed development is located within an area impacted by the 20-25 ANEF contour. Accordingly, the development will be conditions to ensure compliance with AS2021-2000 (acoustic – aircraft noise).</p>	Yes, subject to conditions	Satisfied
4.5 – Equitable Access	<p>Access is to meet the requirements of:</p> <ul style="list-style-type: none"> <li>- Disability Discrimination Act (DDA)</li> <li>- Relevant Australian Standards</li> <li>- BCA</li> </ul>	<p>The subject site represents as relative level land, and the proposed development, being for a dual occupancy development and subsequently two semi-detached dwellings, is not considered to be unable to comply with the required accessibility standards.</p> <p>Accordingly, conditions of consent will include compliance with relevant standards.</p>	Yes, subject to conditions of consent	Satisfied
4.6 – Car Parking Access & Movement	Proposed development requires 2 car spaces for dwelling.	The proposed development provides a garage with room for two cars for each dual occupancy dwelling.	Yes	Satisfied
5.1 – Storey Height & Side Setback	<p>Setbacks</p> <p>Building Design</p> <p>Garage and carports are to be recessed</p>	<p>Proposed development complies with the required setbacks.</p> <p>The building design respond to the character of the street through the provision of gable roofing, brick façade and sympathetic front facing first floor balconies that are incorporated into the roof design.</p> <p>Front facing Juliet style balconies are located above and in-line with the proposed garage doors.</p>	<p>Yes</p> <p>No <i>See discussion</i></p>	<p>Satisfied</p> <p>Satisfied</p>

	by 300mm behind the building line.		<i>following this table.</i>	
	Roof must provide continuity and character of streetscape.	<p>Proposed roof is of a cross hipped roof with front facing gables associated to the balconies. The roof is proposed to be constructed of metal roof sheeting with a 20 degree pitch.</p> <p>The southern portion of Bowood Ave is addressed by the subject site and adjoining property to the east only (3 Bowood Ave). Other lots are orientated to address alternative streets.</p> <p>3 Bowood Ave includes a tiled cross gable roof.</p> <p>Dwellings on the northern side of Bowood Ave are predominantly comprised of dwellings with cross gable tiled roofs.</p> <p>Accordingly, the proposed roof is considered to be coherent with existing roof forms in the street.</p>	Yes	Satisfied
	<p>Minimum Lot Width:</p> <p>Dual occ= 15m</p> <p>Semi-detached = 9m</p>	<p>The proposed development provides for a total frontage of 21.26m to Bowood Ave.</p> <p>Proposed Lot 1 will exhibit a frontage of 13.38m and proposed Lot 2 will exhibit a frontage of 7.89m.</p>	No <i>See discussion following this table.</i>	Satisfied

As covered by Section 79C(3A)(b) of the Act, if a development control plan contains provisions that relate to the development that is the subject of a development application, the consent authority is to be flexible in applying those provisions and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development.

With the above in mind, the following outlines those aspects of the proposal which have been assessed as non-compliant with the applicable development controls under DCP2011, but nonetheless have been determined acceptable as they are able to achieve the objects of those standards.

### **Summary of Issues/Non compliances:**

#### **1. Garage setback of the building line**

Development Control 15 of Part 5.1 (Low and Medium Density Residential) requires that garage and carports to be located a minimum distance of 300mm behind the front of the building line. The proposed development provides seeks to construct the garage along the same vertical plane as the proposed building line.



Although not complying with this development control, the proposed development is able to satisfy the objectives of the control as demonstrated by the following reasons:

- A high standard of architectural merit and design is presented by the development as represented by: the integration of federation style front facing balconies, articulated front porches, coherent cross-hipped roof with gabled frontages, and through the use of face brick and federation stylised front columns (refer to **Figure 7**).
- The proposed development is considered to adequately respond to the existing neighbourhood character; as characterised by federation and bungalow style single detached dwellings, whilst supporting the development trend towards larger and more modern two-storey dwelling; as is expected of the future neighbourhood character.
- The front façade includes sufficient articulation, and material/ detailing/ colour variation to ensure that the garage is not the dominant feature of the building façade (refer to **Figure 6**).



**Figure 6:** Extract of the streetscape representation resulting from the proposed development  
source: Elevations & Section AA (revision A), prepared by MCAD Design, submitted in support of DA-2016/310

Given the above, the proposed non-compliance with the garage building line setback control contained within the RDCP 2011 is considered justifiable in this instance.

## 2. Minimum lot width

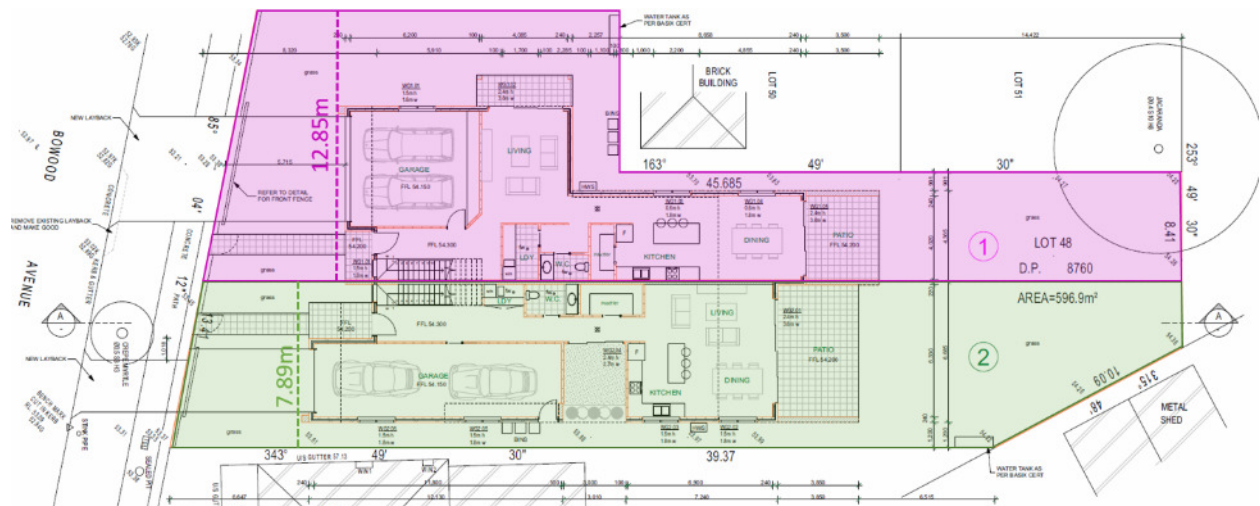
Development Control 26 of Part 5.1 (Low and Medium Density Residential) requires development for the purpose of a semi-detached dwelling to have a minimum lot width of 9m at the front alignment of the building, and a minimum depth of 25m. The proposed development seeks consent for the Torrens Title subdivision of a dual occupancy (once constructed) which will result in proposed Lot 2 having a building line lot width of 7.885m, which is a variation of 12.4%.

Although not complying with this development control, the proposed development is able to satisfy the objectives of the control, as demonstrated by the following reasons:

- Despite the non-compliance, the development will not result in an adverse impact on any views present in the local area, and will not result in any privacy or sunlight impacts on neighbouring dwellings. Proposed Lot 2 (non-complying lot) has been designed to ensure there is no direct overlooking from any habitable windows, and primarily as a response to

the north / south orientation, there will be no unacceptable overshadowing to adjoining property at 3 Bowood Ave.

- The proposed allotment size and dimensions has been demonstrated as being capable of accommodating residential development of an appropriate design and amenity, as demonstrated by the submitted architectural and landscaping plans (refer to **Figure 7**).
- The proposed development is representative of good economic use of an irregular allotment shape which has demonstrated that no additional impacts will result from the development beyond that of development on a regular shaped allotment.



**Figure 7:** Extract of the floor plan, illustrating proposed Lot 1 in pink and proposed Lot 2 in green with associated building line widths, 12.85m and 7.89m, respectively.

Source: Floor/ Site Plan (revision A), prepared by MCAD Design, submitted in support of DA-2016/310, as adapted by CPS for diagrammatic purposes.

Given the above, the proposed non-compliance with the minimum building line lot width control contained within the RDCP 2011 is considered justifiable in this instance.

## 8.4 PROVISIONS OF REGULATIONS (S.79C(1)(a)(iv))

The provisions of the regulations have been considered in the assessment of this development proposal where relevant.

## 8.5 IMPACT OF DEVELOPMENT (S.79C(1)(b))

### 8.5.1 Density and Scale

The proposed development satisfies Council's development standards for minimum lot sizes for dual occupancies developments and subsequently for semi-detached dwellings. The minimum lot size standard essentially controls for the maximum permitted density of the applicable area.

The density impact of the proposed development is considered to be minimal as the proposed development will result in only one (1) additional dwelling entitlement being created in-line with Council's minimum lot size standard. Any impact of the additional dwelling is further minimised

by the provision of two (2) on-site car spaces that are located behind the building line of each dwelling, and through the provision of adequate living areas and private open space.

As assessed earlier in this report, the proposed development is distinct to the predominant single storey detached dwellings apparent within the streetscape of Bowood Avenue. However, the proposed development has been designed within the bounds of the permitted building envelope provided by Council's FSR, height, and setbacks controls and as such the development is consistent with the developmental scale envisaged by Council's planning standards and controls. Furthermore, the proposed development provides for a coherent street setback of 6m with appropriate landscaping and low front fence to soften the appearance of the development.

Finally, it is noted that the proposed development is considered to conform to the future likely scale, as is evident by the development trend for larger two-storey dwellings (see **Figure 8** further in the report).

As such, the density and scale impacts of the proposed development is considered to be acceptable.

#### **8.5.2 Visual and Acoustic Privacy**

The proposed dual occupancy and subsequent semi-detached dwelling development has been designed to ensure that there are no direct sightlines from any habitable room windows to the windows of adjoining developments. Where any windows may provide for overlooking into adjoining neighbouring properties, windows sill heights of 1.7m are to be provided.

The subject site is located 3.7km west of Kingsford-Smith Airport, and within the 20-25 ANEF (Annual Noise Exposure Forecast) contour. Accordingly, the development will need to comply with the AS -2021-2000 (Acoustic-Aircraft noise intrusion). The recommended conditions of consent include the requirement to comply with AS 2021-2000.

#### **8.5.3 Overshadowing**

The proposed development is conventionally designed in terms of south facing semi-detached dwellings. As demonstrated by the submitted shadows diagrams the shadow cast from the proposal will:

- At 9:00am, shadow will primarily be cast to the west over the rear setback of the western adjoining property,
- At 12 noon, shadow will cast to the south and will cast over the about a third of the subject developments private open space area,
- At 3.00pm, shadow will primarily be cast over the rear yard of eastern adjoining neighbour.

Accordingly, the POS of the proposed lots and of adjoining development will not be overshadowed by the proposed development for more than 3h on the winter solstice.

In accordance with Council's development controls and objectives, the overshadowing impact resulting from the proposed development is acceptable.

#### **8.5.4 Views and Vistas**

The subject site is not located on a ridge or a high point within the existing residential subdivision, nor are any view corridors applicable through the subject site. As such, the only applicable view to, from or across the site is that of the Bowood Ave.

Views associated to the existing streetscape have been considered and after the receipt of amended plans that better reflect the existing streetscape, the proposal is considered to be satisfactory.

#### **8.5.5 Character / Streetscape**

The streetscape of Bowood Avenue is dominated by the south facing dwellings that adjoin to the north of Bowood Avenue. The subject site and 3 Bowood Avenue are the only dwellings that address Bowood Avenue from the south. The remaining dwellings located on the southern side of Bowood Avenue have primary frontages to Salisbury Avenue or Highworth Avenue. Accordingly, there is no established visual scale or visual roofline in respect to development on the southern side of Bowood Ave.

The existing dwellings on Bowood Ave provide for a consistent 6m landscaped front setback with low (1.2m high) front fences. The street reserve of Bowood Ave includes landscaped pedestrian pathways with an irregular presence of mature Eucalyptus trees. In respect to existing setbacks and landscaping, the proposed development seeks to provide for a coherent 6m landscaped front setback. The development does not seek to remove any street reserve trees. Refer to **Figure 2** earlier within this report for a streetscape image.

The dwellings on Bowood Ave are characteristic of detached single-storey Californian bungalow and Federation style dwellings with most including tiled gabled roofs. However, larger two-storey contemporary dwelling are apparent at No. 14 Bowood Ave, and No. 11 Salisbury Avenue, and No. 20 Highworth Ave.

The proposed development exhibits a contemporary building design with front facing balconies, built-in garages, and external building materials consisting of brick rendering, stone cladding detail and roof sheeting. Subject to a request for additional information to the applicant by Council, the façade of the dual occupancy dwelling was amended to include a front facing gabled roof above the balconies, replaced front cement wall of the balcony with a transparent post style wall, and reduced heavy use of glazed windows on the front façade. The result of this is that the development provides for an architectural style that better interprets and responds to the character of Bowood Ave.

It is noted that the recent developments in the local area follow a trend for larger two-storey dwellings including development of semi-detached dwellings, see **Figure 8**. As such, the proposed development is considered to be reflective of the development pattern apparent in the local area, and subsequently coherent with the likely future character of the locality.



6 Donnan Street



14 Bowood Avenue



26 Preddys Road & 24 Preddys Road.



11 Salisbury Avenue



49A Preddys Road



14 Highworth Avenue

**Figure 8:** Street-view images of larger two-storey and dual occupancy developments in present in local area of Bowood Avenue.

source: [googlemaps.com.au](http://googlemaps.com.au)

The assessment of streetscape and design development controls is contingent on a qualitative assessment which is acknowledged to involve much greater subjectivity. Therefore, guidance is sought from the Land and Environment Court planning principle ‘compatible with context’ as established in ‘Project Venture Developments v Pittwater Council [2005] NSWLEC 191’, to help minimise the subjectivity in the assessment for streetscape compatibility.

The court case in which the planning principle is established firstly details that compatibility with context (in this case the context is adjoining development and the streetscape) should be considered as ‘capable of existing in harmony’ and not ‘sameness’ in respect to adjoining developments.



Secondly, where compatibility between a building and its surroundings is desirable, to test whether the proposal is compatible with its context the following two questions should be asked:

- (1) Are the proposal's physical impacts on surrounding development acceptable?
- (2) Is the proposal's appearance in harmony with the buildings around it and the character of the street?

In reference to the first question, the physical impacts on the surrounding development is acceptable as determined by the proposed developments compliance with Council's noise, overlooking and overshadowing development controls of the RDCP 2011, subject to conditions of consent. Additionally, the development potential of adjoining development will not be constrained by the proposed development.

In reference to question 2, the planning principle identifies that for a new development to be visually compatible with its context, it should contain, or at least respond to, the essential elements that make up the character of the surrounding urban environment. The most important contributor to urban character is the relationship of built form to surrounding space, a relationship that is created by building height, setbacks and landscaping. In special areas, such as conservation areas, architectural style and materials are also contributors to character.

In this regard, the following is noted:

- The proposed development, although being two-storeys, is not considered to result in a significant height difference between the proposal and adjoining developments, particularly noting the presence of other two-storey dwellings in the vicinity. The principle further advises that buildings do not have to be the same height to be compatible, only that abrupt height changes should be avoided through the use of gradual height changes. The proposed development is not considered to result in an abrupt height level change as the development is limited to two-storeys, which is equivalent to the heights of existing developments within the visual catchment of the subject site (e.g. No. 14 Bowood Ave, and No. 11 Salisbury Avenue, and No. 20 Highworth Ave).
- The proposed development provides for a consistent street setback averaging 6m. A side setback of 1.2m is provided to the western side boundary and a setback of 4.5m is provided on the eastern boundary, which satisfies the controls of the RDCP 2011. Due to the fact that only two lots address Bowood Ave from the south, it is considered that there is a lack of an established building and void rhythm (normally controlled by consistent side setbacks between dwellings). However, the proposed development is considered to reflect the general rhythm of local area as determined by the compliance with the RDCP 2011 minimum setbacks.
- The proposed development will provides for coherent landscaping in-line with existing landscaping on Bowood Avenue, as illustrated by the submitted landscape plan prepared by Tru Landscaping. The existing canopy tree fronting the development on Bowood Avenue is not sought to be removed as a result of the development.
- The subject site is not located in a 'special area', such as a conservation area.

Conservation areas are usually selected because they exhibit consistency of scale, style or material. In conservation areas, a higher level of similarity between the proposed and the existing is expected than elsewhere. The similarity may extend to architectural style expressed through roof form, fenestration and materials. The subject site, although not located in a conservation area, responds appropriately to the streetscape development controls of RDCP 2011, and has been amended to better interpret and respond to the existing style and material of the area.

In this regard, the development has had regard to the surrounding buildings to ensure for a cohesive streetscape and has responded adequately to the character of the locality.

#### **8.5.6 Site Design and Internal Design**

The proposed development seeks to perform a boundary adjustment to increase the site area in order to satisfy the minimum lot size for dual occupancy and subsequent Torrens Title subdivision. The proposal is suitably designed in respect to the proposed site dimensions, as demonstrated by the level of compliance achieved by the proposed development with the development standards of the RLEP 2011 and development controls of the RDCP 2011.

The internal design of the proposed dwellings achieve suitable solar access and provide for adequate opportunities of internal cross-flow ventilation.

#### **8.5.7 Access, Traffic and Parking**

The proposal, which seeks consent for a dual occupancy development, provides for a garage with space for two cars in each dwelling. Driveway construction standards will be required to comply with the appropriate Australian Standards.

#### **8.5.8 Water**

The proposal has been submitted with a concept Stormwater Plan. A review of the concept stormwater plans identifies that the plan is not constrained by flooding or other site constraints. Accordingly, it is appropriate to impose a condition of consent requiring that detailed drainage design plans complying with stormwater Council's design certification prepared by a qualified hydraulic engineer for the management of stormwater are to be submitted to Principal Certifying Authority for assessment and approval.

A BASIX certificate was further submitted with the proposal. The certificate identifies that the development achieves the water the BASIX water target of 40, through the inclusion of 4 star water fixtures and a minimum rainwater tank size of 2,400L per dwelling.

#### **8.5.9 Natural Hazards**

The submitted Survey Plan, prepared by W. Buxton Pty Ltd, illustrates that the subject site is relatively flat with a maximum gradient of 0.02. Accordingly, there is no evidence to suggest the subject site is affected by land slip or subsidence.



As identified earlier in this report, pursuant to the Acid Sulfate Map – sheet ASS\_002, the subject site has been identified as being affected by Acid Sulfate Soils (ASS) – Class 5. However, development consent pursuant to this clause is not required as the works proposed are not within 500 meters of adjacent Class 1, 2, 3 or 4 land and no excavation is proposed, other than what is required for site preparation of slab construction.

#### **8.5.10 Soils**

The Soil and Water Management Plan / Sediment Plan prepared by MCAD Design has been submitted with the development application is considered to ensure that any soil impacts are minimised or mitigated. Conditions of consent shall require that the development complies with the Soil and Water Management Plan / Sediment Plan.

#### **8.5.11 Utilities**

The subject site is located within an established residential subdivision and the existing dwelling is connected to the required utilities. Appropriate conditions of consent will be imposed to ensure that Sydney Water and the local energy provider are contacted prior to subdivision to ensure that sufficient service capacity is available to the subject site.

#### **8.5.12 Construction**

Construction conditions pertaining to hours of work and delivery, traffic management approvals, and impact on public footpath will be included in the consent.

#### **8.5.13 Safer by Design**

Principles of Crime Prevention Through Environmental Design (CPTED) have been satisfactorily considered given the scale of the proposal, and are expressed in the largely compliant design of the proposal. Sufficient opportunities for casual surveillance are provided by the front facing balconies.

### **8.6 SUITABILITY OF THE SITE (S.79C(1)(c))**

The relevant matters pertaining to the suitability of the site for the proposed development have been considered in the assessment of the proposal. Conditions of consent, including compliance with soil and erosion measures, and stormwater management are proposed to further minimise any impacts on the subject land or neighbouring land as a result of the proposal.

The subject site is zoned R2 - Low Density Residential under the RLEP 2011, and was previously zoned 2(a1) – Low Density (Restricted) Residential under the Rockdale Local Environmental Plan 2000. As such, the subject site has been zoned for residential use for at least the past 16 years. There is no evidence to suggest that the site has been used for any other use, specifically in respect to any contaminated land uses identified in Tables 1 of the NSW Contaminated Land Guidelines. In this regard, the subject site is considered to be suitable for residential use.

There are no other major physical constraints or exceptional circumstances that would hinder the suitability of the site for the proposed development have been identified.

## **8.7 PUBLIC SUBMISSIONS (S.79C(1)(d))**

The development application was notified for a two week period commencing on 18 March 2016. Eight (8) submissions have been received during the notification period.

The submissions raised the following concerns:

- 1. *Permissibility of dual occupancy development.*** *Objections were raised against the permissibility of dual occupancy development in the low density residential zone.*

**Comment:** Under the RLEP 2011, dual occupancy developments are permitted within the R2 – Low Density Residential zone. The subject site is zoned R2. Accordingly, Council cannot refuse the proposed development on the basis that it seeks consent for a dual occupancy development.

Please refer *Section 8.1.2* of this report for detailed assessment against the RLEP 2011 zone permissibility and objectives.

- 2. *Boundary adjustment.*** *General objections are raised against the proposed boundary adjustment.*

**Comment:** The proposed boundary adjustment satisfies the minimum lot size standard requirement of the RLEP's 2011, and lot dimensions objectives of the RDCP 2011. It is noted that while the minimum lot dimension subdivision requirements are not met in all aspects, the variation of this control has been satisfactorily justified – refer to the RDCP 2011 assessment earlier in this report for full details.

The resulting lots continue to exhibit complying lot sizes being greater than 450m<sup>2</sup>, as permitted by the RLEP 2011. In this regard, Council cannot refuse the proposed boundary adjustment based on the resulting lot sizes that comply with Council's minimum lot size standard.

*Note. Based on the content of a number of submission, it should be made known that Council has no authority regarding the sale or purchase of private land between neighbours.*

It is acknowledged that the proposed lot shape for the subject development site is irregular. A review of the subdivision pattern of the subject subdivision block identifies that irregular shaped sites are already present within Bowood Avenue as a result of the convergence of Highworth Avenue and Salisbury Avenue (see **Figure 4** earlier within this report). Accordingly, the existing subdivision pattern does not preclude irregular shaped lots.

Despite the irregular shape of the resulting subject lot, the proposed development has been demonstrated as being capable of accommodating residential development which complies with the development controls of RDCP 2011, including providing for complying

setbacks, landscaping, private open space and solar access. The proposed development provides for an acceptable level of amenity to adjoining properties as determined by the compliance with overshadowing and privacy controls, subject to conditions of consent requiring the window of Bedroom 2 of both Dwelling 1 and 2 to have windows sill heights or be obscured up to a minimum height of 1.7m above fixed floor level.

Therefore, considering that the proposed boundary adjustment complies with the applicable controls pertaining to lot sizes and dimensions and subsequent dwelling development controls, the boundary adjustment is supported in this instance.

Please see *Section 8.3.1* for a summarised assessment against Council's controls, and Attachment 2 for full RDCP 2011 compliance check.

**3. *Impact on Streetscape and Character.*** *Objections are raised against the impact the two-storey dual occupancy development will have on the streetscape and character of Bowood Avenue.*

**Comment:** As noted identified earlier, the proposed development for a dual occupancy development is permitted under the land-use permissibility of the R2 – Low Density Residential zone of the RLEP 2011. Council cannot refuse the application based on the proposed land-use being for a dual occupancy development.

As discussed in detail under *Section 8.5* of this report, the streetscape of Bowood Avenue is characterised by:

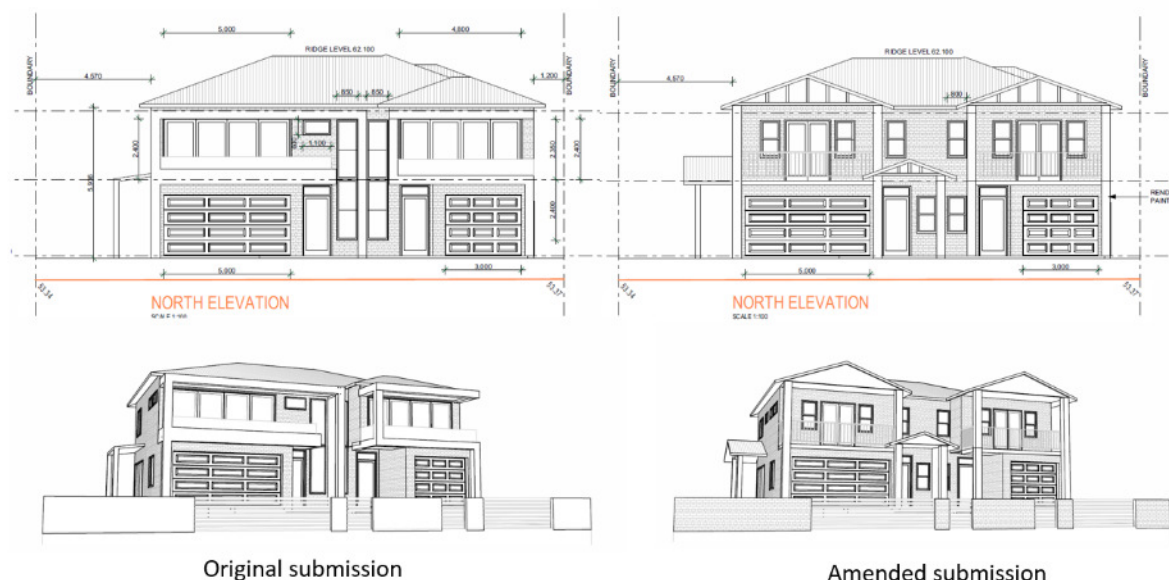
- A consistent 6m front setback that is landscaped,
- Presence of low front fences,
- Landscaped pedestrian pathway with the intermittent presence of Eucalyptus trees in the road reserve of Bowood Avenue,
- Predominance of south facing dwellings,

The dominant architectural design of the dwellings on Bowood Avenue characteristic of renovated Californian style bungalows and Federation style dwellings with tiled gabled roofs. However, larger two-storey contemporary dwellings are apparent in the immediate vicinity at No. 14 Bowood Ave, and 11 Salisbury Avenue, and 20 Highworth Ave.

The proposed development exhibits a contemporary dwelling building design with front floor front facing balconies; built-in garages; and materials consisting of brick rendering, stone cladding detail and roof sheeting. Subject to a request for additional information by Council regarding the proposals interpretation of Part 4.2 and Part 5.1 of the RDCP 2011 (regarding streetscape and the character of the locality), the following amendments were made to the design of the proposed development:

- Roof form has been amended to include front facing gable above the balconies,
- The front cement wall of the balcony has been replaced with a see-through post style wall,

- The use heavy use of glazed windows on the front façade has been reduced and substituted with a sympathetic brick face façade,
- Main entry porch for western dwelling is framed by a portico with sympathetic roof,
- Cement rendering has been removed from the front fence and now presents as brick detailed façade,
- Rendered façade framing columns have been simplified to vertical columns bordering the front balconies.



**Figure 9:** Comparison of north Elevation and street-view image between the originally submitted proposal on the left, and the amended proposal on the right.

Source: submitted Elevations Plan prepared by MCAD Design

The result of façade amendments is that the development provides for an architectural style that better interprets and responds to the character of Bowood Ave as represented by the California bungalow and federation style developments. In addition to the façade changes, the proposed development supports the streetscape of Bowood through the provision of a uniform 6m front setback that will be landscaped, a low front fence, and does not seek to amend the landscaping of the fronting street reserve..

The subject site is one of only two (2) north facing lots present on Bowood Avenue, and as such the subject site is not considered to be framed or anchored by adjoining developments. Furthermore, recent developments in the local area follow a trend for larger two-storey dwellings including a number of semi-detached dwellings, see **Figure 8** earlier within this report for examples.

Accordingly, the proposed development, is considered to satisfy the RDCP 2011 development controls for streetscape and dwelling design.

The assessment of streetscape and design development controls is contingent on a qualitative assessment, which is acknowledge to involve much greater subjectivity. Therefore, guidance was sought from the Land and Environment Court planning principle

'compatible with context' as established in 'Project Venture Developments v Pittwater Council [2005] NSWLEC 191', to help minimise the subjectivity in the assessment for streetscape compatibility. The full assessment against this planning principle is detailed in *Section 8.5.5* of this report.

Subject to the use of the planning principle, the development was assessed to be coherent with the streetscape of Bowood Avenue in terms of: setbacks, height consistency, and landscaping. The planning principle further identified that architectural style expressed through roof form, fenestration and materials are an important consideration in special areas such as conservation areas.

Therefore, considering that the subject site is not located in a conservation area, it is unreasonable for Council to require architectural style design changes beyond what is required by the RDCP 2011.

In this regard, the development is considered to have had sufficient regard to the surrounding buildings to ensure for a cohesive streetscape and is considered to have responded adequately to the character of the locality.

*Note. As a majority of submissions expressed concerns regarding protecting the architectural character of the dwellings of Bowood Avenue and adjoining streets, concerned residents should consider initiating a process to assess and consider the area for conservation purposes with Council.*

**4. Overshadowing.** *A number of objections raised concerns regarding overshadowing.*

**Comment:** The proposed development is two-storeys as permitted by the RLEP 2011. The submitted shadow diagrams illustrate that no adjoining development will be overshadowed by more than three (3) hours as a result of the proposed development during 9am to 3pm in the winter solstice. This satisfies the overshadowing development controls of the RDCP 2011.

In this regard, to require that the development to be redesigned to further minimise overshadowing impacts beyond what is acceptable as determined by the development controls of the RDCP 2011 is considered to be unreasonable.

**5. Impact on Privacy.** *Numerous objections raised concerns regarding the impact of the development on visual and acoustic privacy on adjoining properties.*

**Comment:** In terms of visual privacy and potential for overlooking, the windows of the rooms on the first floor are provided with window sill heights of 1.7m except for Bedroom-2 of Dwelling 1 and Dwelling 2. A condition of consent has been imposed to require window WF1.06 and window WF2.07 of Bedroom 2 in Dwelling 1 and Dwelling 2 respectively, to provide for window sill heights of 1.7m or be have obscured glazing to a height of 1.7m, measured from the finished floor level.

With considerations to the levelness of the subject land, the ground floor windows are not considered to be provided with opportunities for overlooking as they are blocked to by the 1.8m high boundary fence.

In terms of acoustic privacy, the proposed development shall be constructed of brick external walls with appropriate insulation treatment. Considering that the proposed development shall be used for residential purposes, no undue acoustic impacts, other than the usual associated with residential developments, are considered to be occur.

A condition of consent has been imposed to ensure that the development comply with the internal noise levels determined by the Australian Standard (AS2021-2000) for acoustic – aircraft noise. This will further reduce any acoustic impacts resulting from the future use of the development.

**6. Views and outlook from adjoining rear yards.** *Objections were raised regarding the fact that the proposed development would impact on views and outlook from the backyard of neighbouring properties.*

**Comment:** The development has been assessed against Council's development controls regarding views and vistas. See *Section 8.3* of this report. The subject site is not located on a ridge or a high point within the existing residential subdivision, nor are any view corridors applicable through the subject site. The proposed development complies with Council's maximum permitted height of 8.5m.

The nearest heritage item is the St Gabriel's Church located 100m east of the subject site. Considering the physical separation distance of the church to the subject site and adjoining development, it is considered unreasonable to require the proposed development to be re-designed or be reduced in height below what is permitted to ensure that all adjoining development could maintain a view of the spire of St Gabriel's Church.

In accordance with the four-step assessment in the planning principle for 'view sharing' established in *Tenacity Consulting v Waringah* [2004] NSWLEC 140:

- The available views from the adjoining rear yards are not of iconic views and are limited,
- The views are not available from the entire property, but are limited to portions of the rear yard of adjoining properties,
- The extent of impact on those views as a result of the development are limited,
- The proposed development complies with all the planning controls including the provision of a generous 20m rear setbacks. it is not considered that reasonable design changes would elevate the impact on all the views or outlook.

It should be noted that future development on other adjoining sites, or the maturing of trees could easily impact on the view of the St Gabriel's Church spire from the rear yards of adjoining developments.

The combination of these factors indicate that the impact resulting from the proposed development on the limited views from adjoining rear yards does not provide any basis upon which the proposed development could be refused or require the removal of the first storey.

- 7. Asbestos.** *One (1) submission noted the age of the house and the likelihood of it containing building elements of asbestos.*

**Comment:** The proposed development will be subject to conditions of consent. One such condition will require that the development employ appropriate measures for the removal of any asbestos in accordance with the *Work Health and Safety Act 2011* and the Code of practice for the Safe Removal of Asbestos.

- 8. Constructions hours.** *One (1) submission expressed concerns regarding the construction hours.*

**Comment:** The proposed development shall be conditioned to comply with Council's permitted hours of construction, and shall minimise the excessive noise in accordance with the *Protection of the Environment Operations Act 1997*.

Specifically, the following conditions have been included in the attached recommended conditions of consent:

*Hours of construction shall be confined to between 7 am and 6.30 pm Mondays to Fridays, inclusive, and between 8 am and 3.30 pm Saturdays with no work being carried out on Sundays and all public holidays.*

*Demolition and construction shall minimise the emission of excessive noise and prevent "offensive noise" as defined in the Protection of the Environment Operations Act 1997.*

- 9. Air conditions noise.** *One (1) submission expressed concerns regarding the location of the conducted air condition unit and the potential for it to cause offensive noise.*

The proposed development indicates that a conducted air conditioning unit is proposed to be utilised in the residence. The location of the external component of the air conditioning unit has not been specified on the submitted architectural plans or accompanying documents. As such, separate approval will need to be obtained prior to the installation of the unit.

Notwithstanding the above, the following condition of consent have been imposed in the attached recommended conditions of consent to ensure that any residential air conditioner shall not give rise to offensive noise.

*Residential air conditioners shall not cause 'offensive noise' as defined by the Protection of the Environment Operations Act 1997 or contravene provisions of the Protection of the Environment (Noise Control) Regulation 2008 where emitted noise*



*from a residential air conditioner can be heard within a habitable room in any other residential premises at night.*

**10. Traffic and Parking.** *Numerous submissions raised objections to the resulting impact to traffic and parking.*

Despite the proposed development increasing in density, sufficient provisions for off-street parking have been provided on site which will cater for any increased demand as a result of the proposed development. The parking arrangements have been assessed as compliant with Council's parking provisions under RDCP 2011.

With regards to increased traffic generation, it is considered the existing surrounding streets will have sufficient capacity to cater for the minor increase in traffic anticipated as a result of the development. Accordingly, concerns in relation to the impact to street parking and the increase in traffic generation are not supported in this instance.

**11. Property values of homes** – *A number of submissions have raised concerns regarding the impact the proposed development will have on the value of adjoining developments.*

**Comment:** Property values are not a valid planning consideration. Council cannot refuse a development application based on speculative impacts of property value.

**12. Multiple occupancy.** *One (1) submission raised concerns regarding the potential for the proposed dwellings to be used as more than a single occupancy each.*

**Comment:** To ensure that the each of the two proposed dwellings are not habituated by more than a single occupancy, the following condition of consent has been imposed in the attached recommended conditions of consent:

- 1. Each of the two dwellings shall be used as a single occupancy only.*

## **8.8 PUBLIC INTEREST (S.79C(1)(e))**

The public interest has been considered in the assessment of the development with respect to satisfying the objectives and the requirements of the *Rockdale Local Environmental Plan 2011* and the *Rockdale Development Control Plan 2011*. These instruments having been subject to public consultation are considered to exhibit the public interest.

The concerns and objections of the eight (8) submissions received during the notification period have been considered and addressed in the assessment of the development.

On balance, with the respect to the recommended conditions of consent, the proposed development is considered to be in the interest of the public.

## **9. CONCLUSION**

This application has been assessed under the heads of consideration of section 79C of the Act and all relevant instruments and policies. The applicant seeks consent construction for a two (2) storey dual occupancy development, with a front boundary fence, Torrens Title subdivision, boundary adjustment, and demolition of existing structures. The development is to take place at 1 Bowood Avenue, Bexley NSW 2207.

As demonstrated by this assessment, and subject to the imposition of appropriate conditions, the proposal will have minimal adverse impacts upon the adjoining properties. Accordingly the application is recommended for approval pursuant to Section 80 of the Act.

*Creative Planning Solutions*

*Town Planning Consultants*

*15 August 2016*

## **PRELIMINARY ASSESSMENT**

<b>DA No:</b>	<b>DA-2016/310</b>
<b>Date DA lodged</b>	<b>07/03/2016</b>
<b>Address:</b>	<b>1 Bowood Avenue, BEXLEY</b>
<b>Proposal:</b>	<b>Construction of a two (2) storey dual occupancy, front fence, Torrens Title subdivision, boundary adjustment and demolition of existing structures</b>
<b>Constraints Identified:</b>	<b>Acid Sulfate Soils – Class 5 Between 20-25 ANEF (2033) contours</b>
<b>Zoning:</b>	<b>R2 – Low Density Residential</b>

<b>ROCKDALE LEP 2011</b>	<b>PROPOSAL</b>	<b>COMPLIANCE</b>
<b>4.3(2) Height of buildings</b> <ul style="list-style-type: none"> <li>8.5m overall</li> </ul>	<b>8.5m</b> (Ridge 62.1- Ground 53.6)	Yes
<b>4.3 Min lot size</b> <ul style="list-style-type: none"> <li>450sq.m.</li> </ul>	<b>736.3m</b> (subject to minor amalgamation)	Yes
<b>4.4(2) Floor space ratio</b> <ul style="list-style-type: none"> <li>0.5:1</li> </ul>	<u>1 Bowood Avenue:</u> Subject site = 736.3m <sup>2</sup> GFA for dual occ is 358.5m <sup>2</sup> therefore FSR = <b>0.49:1</b> Proposed Lot 1 = 382.68m <sup>2</sup> Proposed Lot 2 = 353.55m <sup>2</sup> GFA for proposed lot 1 is 186.1m <sup>2</sup> , FSR = <b>0.49:1</b> GFA for proposed lot 1 is 172.4m <sup>2</sup> , FSR = <b>0.49:1</b> <u>13 Salisbury Avenue:</u> Subject site = 458.2m <sup>2</sup> GFA for existing dwelling is 130m <sup>2</sup> (approx.), FSR= <b>0.28:1</b>	Yes

ROCKDALE DCP 2011	PROPOSED	COMPLIANCE
<b>Part 4 – General Principles for Development</b>		
<b>Part 4.1 – Site Planning</b>		
<b>Part 4.1.1 – Views &amp; Vistas</b>		
– Development must consider any significant views to, from and across site.	The subject site is not located on a ridge or a high point, nor are any view corridors maintained adjacent to the subject site. As such the only applicable view to, from or across the site is that of Bowood Ave. Views associated to the existing streetscape have been considered and after the receipt of amended plans are considered suitable.	Yes
– Development must retain existing views to Botany Bay.	Considering that the properties to the rear adjoin the subject site with the rear yard, no views to, from or across the site is considered to be impacted by the proposed development. Development does not have a view to Botany Bay.	N/A
– Development on highly visible sites to complement character of area.	The subject site is not located on a ridge, or a high point in the subdivision, nor is it highly isolated, and as such it is not considered to be a highly visible site.	N/A
– View corridors to landmarks and significant heritage items to be protected.	No view corridors are present from or through the subject site to the nearest landmarks or heritage items (i.e. Bexley Park, St Gabriel's Church).	N/A
– Views from public spaces to the bay and districts to be preserved.	No public open space views will be impacted by the proposed development. View along Bowood Ave, is not impacted.	Yes
– Roof forms on low side of street to be well articulated to allow public views.	Subject site is located on a level side of Bowood Avenue. The roof form of the proposed development is a	Yes

ROCKDALE DCP 2011	PROPOSED	COMPLIANCE
<ul style="list-style-type: none"> <li>- Building forms enable sharing of views with surrounding residences</li> </ul>	<p>hipped roof, which is considered appropriate considering that no specific public views are available to, from or across the subject site.</p> <p>The proposed building form aligns with the predominant street setback. Views from neighbouring development over Bowood Ave is not considered to be adversely impacted.</p>	Yes
<b>Part 4.1.2 – Heritage Conservation</b>		
<ul style="list-style-type: none"> <li>- Heritage impact statement required for development of heritage items.</li> </ul>	Subject site does not contain a heritage item, nor is it located adjacent to a heritage item.	N/A
<ul style="list-style-type: none"> <li>• <b>Development in the vicinity of Heritage Items</b></li> <li>- Any proposed development located adjacent to or nearby a heritage item must not have an adverse impact on the heritage item including its setting and curtilage</li> <li>- Development adjacent to a heritage item must be designed:               <ul style="list-style-type: none"> <li>o To be of a similar scale to the heritage item</li> <li>o To pay attention to design elements</li> </ul> </li> <li>- Where new development is proposed adjacent to a</li> </ul>	<p>Pursuant to the Rockdale LEP, St Gabriel's Church (item I159) is located approximately 100m east, and Bexley Park (item I159) and a Californian bungalow (item I115) are located approximately 200m west of the subject site.</p> <p>Considering the distance of the subject site and the shielding by existing development in the established subdivision to the heritage items, the proposed development is not considered to adversely impact the heritage items or their setting.</p> <p>The development is not located adjacent to any heritage items.</p> <p>The proposed development is not adjacent to a heritage</p>	<p>Yes</p> <p>N/A</p> <p>N/A</p>

ROCKDALE DCP 2011	PROPOSED	COMPLIANCE
heritage item in a street of buildings similar to the heritage item, new development must maintained historic streetscape pattern.	item.	
<b>Part 4.1.3 – Water Management</b>		
<ul style="list-style-type: none"> <li>• <b>Stormwater Management</b> <ul style="list-style-type: none"> <li>- Development to comply with Councils Technical Specs.</li> </ul> </li> </ul>	<p>Section 2.4 of Council's Stormwater Management Technical Specs applies to the proposed development. A stormwater drainage plan prepared by Development Engineers Solutions has been submitted with the DA.</p> <p>The subject site is not identified as being flood affected or being constrained by any other restrictions that would prevent the realisation of the submitted hydraulic plans. Accordingly, it is appropriate to impose a condition of consent requiring that detailed drainage design plans with design certification prepared by a qualified hydraulic engineer for the management of stormwater are to be submitted to Principal Certifying Authority for assessment and approval.</p>	<p>Yes</p> <p>Subject to conditions of consent.</p>
<ul style="list-style-type: none"> <li>- WSUD to be incorporated into design of stormwater drainage.</li> </ul>	<p>The proposed development has been accompanied by a BASIX Certificate, which provides for requirements for use of low water consumption indigenous species in landscaped areas and use of rainwater tanks, which is supports the intent of the principles of WSUD.</p>	<p>Yes</p>
<ul style="list-style-type: none"> <li>• <b>Flood Risk Management</b> <ul style="list-style-type: none"> <li>- Development to comply with</li> </ul> </li> </ul>	<p>The subject site is not</p>	<p>N/A</p>

ROCKDALE DCP 2011	PROPOSED	COMPLIANCE
Councils Flood Management Policy.	identified as being flood affected in accordance with Councils Flood Planning Map.	
<ul style="list-style-type: none"> <li>• <b>Water Conservation</b></li> <li>- BASIX Compliant</li> <li>- Water efficient appliance must meet minimum WELS Scheme Standards</li> </ul>	<p>BASIX Certificate 707384M submitted with the DA.</p> <p>The submitted BASIX sets out requirements to install 4 star water rating showerheads, toilets and taps</p>	Yes, subject to condition of consent.
<ul style="list-style-type: none"> <li>• <b>Water Quality</b></li> <li>- Measures to control pollutants in stormwater discharge from development sites.</li> <li>- Runoff to waterways/bushland to be treated.</li> </ul>	<p>The proposed development will be conditioned to comply with Council's Erosion and Sediment Controls and Councils Stormwater Engineer conditions which considers this control.</p> <p>Subject site is not located adjacent to any waterways or bushlands.</p>	Yes, subject to conditions of consent.
<ul style="list-style-type: none"> <li>• <b>Groundwater protection</b></li> <li>- Operating practices and technology must be employed to prevent contamination of groundwater</li> <li>- Development which has potential risk to groundwater must submit a geotechnical report.</li> <li>- Certain development in areas subject to Botany Sands Aquifer may be considered Integrated Development.</li> </ul>	<p>Development works will be done in accordance with Council's Erosion and Sediment Controls. A trash screen shall be installed on the control pit of the stormwater drainage system.</p> <p>Development site is not located in the Botany Sands Aquifer. Proposed development for residential purposes is not considered to present a risk to groundwater.</p> <p>A water use approval or water management work approval pursuant to the Water Management Act 2000 is not required for the subject site.</p>	<p>Yes, subject to conditions of consent.</p> <p>N/A</p> <p>N/A</p>
<b>Part 4.1.4 – Soil Management</b>		
- Development must minimise	Development will be	Yes, subject to



ROCKDALE DCP 2011	PROPOSED	COMPLIANCE
<p>soil loss</p> <ul style="list-style-type: none"> <li>- Erosion and Sediment control plan required where development involves site disturbance.</li> <li>- Development is to minimise site disturbance.</li> </ul>	<p>required to comply with Soil and Sediment Erosion standards.</p> <p>Development works shall be done in accordance with Council's Erosion and Sediment Controls.</p>	<p>conditions of consent</p>
<b>Part 4.1.5 – Contaminated Land</b>		
<ul style="list-style-type: none"> <li>- Development on land that is likely to have contamination must follow State Environmental Planning Policy 55 – Remediation of Land.</li> </ul>	<p>Subject site is zoned R2 Low Density residential the RLEP 2011. Under the previous LEP (RLEP 2000) the subject site was zoned 2(a1) Low Density (restricted) Residential. Therefore, the subject site has been zoned for residential purposes for at least the past 16 years. There is no evidence that the subject site or local area have been used for potentially land contaminating uses identified under Table 1 of the NSW <i>Managing Land Contamination Guidelines</i>, as such the subject site is considered suitable for the proposed development. Accordingly, the provisions under SEPP 55 are considered to have been satisfied.</p>	<p>Yes</p>
<b>Part 4.1.6 Development on Sloping Sites</b>		
<ul style="list-style-type: none"> <li>• <b>Deep Soil Areas</b></li> <li>- Building footprint designed to minimise cut and fill</li> <li>- Any habitable room of dwelling must have at least one external wall entirely above existing ground level.</li> </ul>	<p>The proposed building does not involve any specific cut and fill. Minor site grading is expected for site preparation of the building slab.</p> <p>Existing ground floor habitable rooms are entirely above ground level.</p>	<p>Yes</p> <p>Yes</p>

ROCKDALE DCP 2011	PROPOSED	COMPLIANCE
<b>4.1.7 Tree Preservation</b>		
<ul style="list-style-type: none"> <li>- Council consent required to undertake tree work for a tree that is:               <ul style="list-style-type: none"> <li>o More than 3m tall or</li> <li>o Has a circumference in excess of 300mm at a height of 1m above ground</li> </ul> </li> <li>- Existing significant trees and vegetation are to be incorporated into proposed landscaping</li> <li>- Building setbacks are to preserve existing significant trees and vegetation and allow for new planting.</li> </ul>	<p>Response from Councils Tree Officer states the stormwater layout will need to be redesigned to protect the critical structural roots of the Eucalyptus street tree. A condition of consent will be imposed to ensure that an amended stormwater plan be submitted which does not critically impact the root structure of the subject tree.</p> <p>One (1) tree approx. 3m in height is proposed to be removed to make room for the building footprint. A landscape plan has been submitted with the proposal providing for replacement planting species. Sufficient rear building setback is provided to allow for new planting. Design amendments to stormwater plan is required to accommodate the critical structural roots of the Eucalyptus located in front.</p>	<p>Yes, subject to conditions of consent.</p> <p>Yes</p> <p>Yes, subject to conditions of consent</p>
<b>4.1.8 Biodiversity</b>		
<ul style="list-style-type: none"> <li>- Development is to be sited and designed to minimise impact on indigenous flora and fauna.</li> <li>- Indigenous species planting is encouraged</li> <li>- Development abutting</li> </ul>	<p>The proposed development is located in an established urban area with limited tree coverage and presence of indigenous flora and fauna. With this in mind, the proposed development is not considered to result in the immediate impact on indigenous flora and fauna. Native plantings including Lilly Pilly's, White Anzac and Gynea Lily are included in the submitted Landscape Plan prepared by TruLandscaping. Subject site does not abut</p>	<p>Yes</p> <p>Yes</p> <p>N/A</p>

ROCKDALE DCP 2011	PROPOSED	COMPLIANCE
<p>bushland, creek lines or wetland areas is to utilise local indigenous plant species</p> <ul style="list-style-type: none"> <li>- Statement of Flora/Flora Impact required for development in or adjacent to bushland or wetlands</li> <li>- Species Impact Statement required where development is to occur adjacent to threatened species or endangered ecological communities.</li> </ul>	<p>bushland, creek lines or wetland areas.</p> <p>Subject site is not adjacent to any bushlands or vegetation.</p> <p>Subject site is not adjacent to land identified as containing threatened species or EEC.</p>	<p>N/A</p> <p>N/A</p>
<b>4.1.9 Lot Size and Site Consolidation</b>		
<ul style="list-style-type: none"> <li>• <b>Lot Size and Minimum Site Frontage</b></li> <li>• <b>Dwelling House</b> <ul style="list-style-type: none"> <li>- Minimum lot size 450m<sup>2</sup></li> <li>- Minimum width 15m at the front building alignment</li> </ul> </li> <li>• <b>Dual Occupancy</b> <ul style="list-style-type: none"> <li>- Minimum lot size 700m<sup>2</sup></li> <li>- Minimum site frontage 15m</li> </ul> </li> <li>• <b>Multi Dwelling Housing</b> <ul style="list-style-type: none"> <li>- Minimum site frontage of 18m unless site fronts classified road, then minimum of 27m.</li> </ul> </li> <li>• <b>Avoidance of Isolated Sites</b> <ul style="list-style-type: none"> <li>- Adjoining parcels must be capable of being economically developed</li> </ul> </li> </ul>	<p>Proposed development seeks consent for dual occ.</p> <p>Subject to proposed minor site amalgamation, the development site will be <b>736.21m<sup>2</sup></b>.</p> <p>Development site has a frontage of <b>21.26m</b> according to Plan of Proposed Subdivision prepared by W. Buxton Pty Ltd.</p> <p>Does not apply.</p> <p>Proposed development site is comprised of the existing site at 1 Bowood Ave (Lot 48), and a portion (139.3m<sup>2</sup>) of 13 Salisbury (Lot 49). As a result, the subject development site is capable of being economically developed for a dual occupancy. The adjoining site at 13 Salisbury maintains a site area of 458.2m<sup>2</sup> which complies</p>	<p>N/A</p> <p>Yes</p> <p>Yes</p> <p>N/A</p> <p>Yes</p>

ROCKDALE DCP 2011	PROPOSED	COMPLIANCE
<ul style="list-style-type: none"> <li>- Development of existing isolated sites is not to detract from the character of the streetscape.</li> </ul>	<p>with the minimum lot size for a dwelling house, which further represents the most economical use of the land. Accordingly, no adjoining site will be isolated as a result of the proposed development.</p> <p>Proposed development site is not an isolated site in terms of being unrestricted to accommodate the envisioned development pursuant to the R2 zoning (i.e. dwelling houses and dual occupancy residential development).</p>	N/A
<b>4.2 Streetscape and Site Context</b>		
<ul style="list-style-type: none"> <li>- Development is to respond and sensitively relate to the broader urban context including topography, block patterns and subdivision, street alignments, landscape, views and the patterns of development within the area</li> <li>- Development adjoining land use zone boundaries should provide a transition in form.</li> <li>- Buildings addressing or bordering public open space must relate positively to it.</li> <li>- Cohesive streetscape must be created through building design and materials.</li> </ul>	<p>Development responds to the permissible urban context of the R2 zoning, and corresponds to existing street alignments, landscaping and follows what appears to be a development pattern for two storey dwellings, see, 20 Highworth St, 14 Highworth, 11 Salisbury Ave, St and dual occupancy semi-detached dwelling, see, 19 Salisbury Ave, 6 Donanan St, located within the area. Subject site does not adjoin a land use zone.</p> <p>Proposed development does not adjoin any public parks or reserves. The building adequately addresses Bowood Street in terms of passive surveillance and coherent setback.</p> <p>Proposed development includes contemporary dwelling building design including presence of first floor front facing balconies,</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes, Please refer to qualitative assessment in the assessment</p>

ROCKDALE DCP 2011	PROPOSED	COMPLIANCE
<ul style="list-style-type: none"> <li>- Consistent building setbacks from the street boundary.</li> <li>- Buildings on corner sites are to address each frontage.</li> <li>- Access to garages should not require major cut and fill.</li> <li>- First floor additions for streets of predominately single storey dwellings shall:               <ul style="list-style-type: none"> <li>o Locate addition at rear and/or</li> <li>o Incorporate addition into the existing roof space and/or</li> </ul> </li> </ul>	<p>built-in garage, and materials consisting of brick rendering, stone cladding detail and roof sheeting. The streetscape of Bowood Ave is representative of single storey Californian style bungalows, with a minor presence of larger two storey non-traditional dwellings. Although the proposed development is not of a single storey Californian bungalow construction, the development is representative of contemporary building design and provides for considerations of the streetscape through gabled roof design and sympathetic first floor front facing balconies.</p>	<p>report.</p>
	<p>Proposed development provides for a 5m-6m setback which is in line with adjoining property to the west. Note the adjoining property to the west is the only other property with the same street orientation as the subject site on the southern side of Bowood Ave.</p>	<p>Yes</p>
	<p>Not a corner site.</p>	<p>N/A</p>
	<p>Access to proposed garage will not necessitate alterations of natural ground level.</p>	<p>Yes</p>
	<p>Proposed development is not for alterations or additions of an existing dwelling.</p>	<p>Yes</p>

ROCKDALE DCP 2011	PROPOSED	COMPLIANCE
<ul style="list-style-type: none"> <li>○ Use similar proportion if existing windows and doors in new work.</li> </ul> <p>Garages and carports are not permitted in front setback</p> <p>• <b>Pedestrian Environment</b></p> <ul style="list-style-type: none"> <li>- Residential buildings must address the street</li> <li>- Buildings adjacent to public area must have at least one habitable room window overlooking public area, to provide casual surveillance.</li> <li>- Pedestrian and cycle thoroughfares are safe routes through:               <ul style="list-style-type: none"> <li>○ Appropriate lighting</li> <li>○ Casual surveillance from the street</li> <li>○ Minimised opportunities for concealment</li> <li>○ Landscaping which allows clear sight-lines between buildings and the street</li> <li>○ Avoidance of blind corners.</li> </ul> </li> <li>- Clearly defined public, common, semi-private and private space</li> <li>- Discrete vehicle entries with minimal pedestrian conflict</li> <li>- Development it to take advantage of rear lane access to sites, where possible.</li> </ul> <p>• <b>Fencing</b></p> <ul style="list-style-type: none"> <li>- Sandstone fences and walls to be retained and repaired (if necessary)</li> <li>- Front fences/walls to enable surveillance of street</li> </ul>	<p>Proposed garage is built into the front façade of the building. Front facing balconies overhang the garages.</p> <p>Proposed semi-detached development adequately addresses Bowood Ave. Subject site is not adjacent to any parks or reserves. The master bedrooms with attached balconies overlook Bowood Ave.</p> <p>The proposed development will not adversely impact on the pedestrian or cycle thoroughfares as opportunities for concealment provided by the building are minimal, low level landscaping is provided in the front setback and blind corners are not provided on the street.</p> <p>Public, common open space for the existing development, and private areas remain clearly identified, through use of appropriate fencing. Standard vehicle entries are proposed to the site. The vehicle entries are considered appropriate. No rear access lane to the site.</p> <p>No sand stone fence present at the subject site.</p> <p>Proposed front fence being 1.2m high will not prevent</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>N/A</p> <p>N/A</p> <p>N/A</p>

ROCKDALE DCP 2011	PROPOSED	COMPLIANCE
<ul style="list-style-type: none"> <li>- Front fences are to be maximum 1.2m above footpath level</li> <li>• <b>Sandstone Walling, Rock Outcrops and Kerbing</b></li> <li>- Excavation of sandstone or rock outcrops for the purpose of providing a garage is not permitted where:               <ul style="list-style-type: none"> <li>- The rocky outcrop forms a significant part of the streetscape and character of the locality; or</li> <li>- Adequate on street parking is available; or</li> <li>- Alternative access to a site is available.</li> </ul> </li> <li>- Where excavation of rock outcrop is considered acceptable for provision of off-street car parking, garage entry is to utilise sandstone, stone coloured mortar and a recessive coloured door.</li> </ul>	<p>surveillance of the street.</p> <p>No excavation is proposed.</p> <p>As above</p>	<p>N/A</p> <p>N/A</p>
<b>4.3 Landscape Planning and Design</b>		
<b>4.3.1 Open Space and Landscape Design</b>		
<ul style="list-style-type: none"> <li>- Must comply with Council's Technical Specifications</li> <li>- Landscape Plan submitted and prepared by qualified Landscape Architect</li> <li>- Significant trees and natural features incorporated into design</li> <li>- Min Landscape area – low to med density residential = 25%</li> </ul>	<p>Landscape plan complies with Council's Technical Specifications.</p> <p>Landscape Plan is prepared by TruLandscaping</p> <p>One (1) tree approx. 3m in height is proposed to be removed to make room for the building footprint. A landscape plan has been submitted providing for replacement landscaping. Subject to amendments the exiting street tree in front of the subject site shall be retained.</p> <p>Proposed Lot 1 will be comprised of 48% landscaped area</p> <p>Proposed Lot 2 will be comprise of 44% landscaped area.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>



ROCKDALE DCP 2011	PROPOSED	COMPLIANCE
	The remaining 13 Salisbury shall provide for 33% landscaping.	
<b>4.3.2 Private Open Space</b>		
<ul style="list-style-type: none"> <li>• <b>Dwelling House/Dual Occupancy/ Attached Dwelling/Semi-detached Dwelling</b> <ul style="list-style-type: none"> <li>- Minimum 60m<sup>2</sup> POS for dwelling with up to 125m<sup>2</sup> GFA</li> <li>- Minimum 80m<sup>2</sup> POS for dwelling with &gt;125m<sup>2</sup> GFA</li> <li>- Minimum 80m<sup>2</sup> required for Secondary Dwelling which may be shared with existing dwelling.</li> <li>- Minimum width of 3m</li> </ul> </li> <li>• <b>Multi Dwelling Housing</b> <ul style="list-style-type: none"> <li>- Minimum of 30m<sup>2</sup> for 1 bedroom dwelling</li> <li>- Minimum of 40m<sup>2</sup> for 2 bedroom dwelling</li> <li>- Minimum of 50m<sup>2</sup> for 3 or more bedroom dwelling</li> <li>- Minimum width of 3m for villas and 5.5m for townhouses</li> </ul> </li> <li>• <b>General POS</b> <ul style="list-style-type: none"> <li>- Private open space is to be clearly defined</li> <li>- Provide north-facing POS</li> <li>- POS should not impact usability of neighbouring POS</li> <li>- POS to act as extension of indoor living areas</li> <li>- Balcony design is to:</li> </ul> </li> </ul>	<p>Lot 1 – 150m<sup>2</sup>  Lot 2 – 140m<sup>2</sup>  13 Salisbury Ave – Over 80m<sup>2</sup> of POS is provided in the rear setback and within the area adjacent to the secondary boundary. Widths of 4m achieved.</p> <p>Proposal is not for multi-dwelling housing.</p> <p>POS located in the rear yard is clearly defined through appropriate boundary fencing.</p> <p>Subject site is located in the southern side of Bowood Ave, and as such the private open space is located on the southern side. Sufficient sunlight access is available to the POS areas.</p> <p>Proposed POS areas do not provide for undue opportunities for overlooking to neighbouring properties.</p> <p>POS is directly accessible from the living and dining areas of the semi-detached dwellings.</p> <p>The proposal provides for</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>

ROCKDALE DCP 2011	PROPOSED	COMPLIANCE
<ul style="list-style-type: none"> <li>○ Maximise habitability</li> <li>○ Provide privacy</li> <li>○ Provide for a variety of uses.</li> </ul>	<p>Juliet-like street addressing balconies connected to the master bedrooms. The balconies are adequately designed to provide for improved amenity to the residents and improve passive surveillance.</p>	
<b>4.3.3 Communal Open Space</b>		
<ul style="list-style-type: none"> <li>- A primary communal open space area must be provided for use by all resident of:</li> <li>- Multi dwelling housing &gt;12 dwellings</li> <li>- RFB with &gt;12 dwellings</li> <li>- Shoptop housing of mixed use development &gt;12 dwellings</li> <li>- Development must provide communal area of 5m<sup>2</sup>/dwelling.</li> <li>- For development containing &lt;12 dwellings an equivalent area of addition POS is to be provided.</li> <li>- Communal areas should:</li> <li>- Contribute positively to amenity of development</li> <li>- Be part of overall design of building</li> <li>- Be north facing and receive adequate solar access</li> <li>- Min. 40% of area that receives sunlight at 1pm on 21 June</li> <li>- Be clearly defined</li> <li>- Of dimension to suit proposed use</li> <li>- Provide for a range of recreational uses and activities</li> <li>- Be cost effective to maintain</li> <li>- Contribute to stormwater management</li> <li>- Any internal communal area must have regard to outdoor communal areas.</li> <li>- Communal space may be on a podium or roof.</li> </ul>	<p>No communal open space is required to be provided for the proposal as the lots are intended to be owned and resided in independently.</p>	<p>N/A</p>

ROCKDALE DCP 2011	PROPOSED	COMPLIANCE
<b>4.4 Sustainable Building Design</b>		
<b>4.4.1 Energy Efficiency</b>		
- BASIX certificate submitted	BASIX Certificate number 707384M has been submitted with the DA.	Yes
<b>4.4.2 Solar Access</b>		
<ul style="list-style-type: none"> <li>- Development must be designed and sited to minimise the extent of shadows that it casts on               <ul style="list-style-type: none"> <li>o private and communal open space within the development;</li> <li>o private and communal open space of adjoining dwellings;</li> <li>o public open space such as parkland and bushland reserves;</li> <li>o solar collectors of adjoining development; and</li> <li>o habitable rooms within the development and in adjoining developments.</li> </ul> </li> </ul>	<p>The proposed development is conventionally designed in terms of south facing semi-detached dwellings. As demonstrated by the submitted shadows diagrams the shadow cast from the proposal will:</p> <p>At 9:00am, primarily be cast over the rear of western adjoining property;</p> <p>At 12 noon, partially be cast over approx. 30% of the subject POS,</p> <p>At 3.00pm, primarily be cast over the rear yard of eastern adjoining neighbour.</p> <p>Accordingly, the POS of the proposed lots and of adjoining development will not be overshadowed by the proposed development for more than 3 hours on the winter solstice.</p>	Yes
- Development to provide good solar access to internal and external living spaces.	Proposed semi-detached dwellings will have adequate opportunities for solar access through windows to dinning/living areas. Front facing Juliet balconies, deep rear yards.	Yes
- Buildings must be sited and designed to reduce overshadowing	As assessed earlier under control 1 of section 4.4.2, the impact of the shadow cast by the proposed development is considered to be commensurate and acceptable for the proposed residential type of development.	Yes
- Development must have adequate solar access:	As assessed earlier, dwellings within the subject	Yes

ROCKDALE DCP 2011	PROPOSED	COMPLIANCE
<ul style="list-style-type: none"> <li>○ Dwellings within the development site and adjoining properties should receive a minimum of 3 hours direct sunlight in habitable rooms and in at least 50% of the private open space between 9am and 3pm in mid winter</li> <li>- Shadow diagrams required for DA of any building two or more storeys</li> <li>- Shadow diagrams should provide information relating to the effect of the proposed development at 9am, 12pm and 3pm on:               <ul style="list-style-type: none"> <li>- 21 June (mid-winter)</li> <li>- 21 December (mid-summer) and</li> <li>- 21 March/September (equinox)</li> </ul> </li> <li>- Where a significant level of overshadowing occurs, elevational shadow diagrams are to be submitted.</li> </ul>	<p>site and dwellings of adjoining properties will not receive less than 3 hours of sunlight access between 9am and 3pm on the winter solstice, as a result of the shadow cast from the proposed development.</p> <p>Shadow diagrams prepared by MCAD Design have been submitted with the DA. Shadow diagrams provide for the necessary information.</p>	<p>Yes</p> <p>Yes</p>
<b>4.4.3 Natural Lighting and Ventilation</b>		
<ul style="list-style-type: none"> <li>- Minimum 2.7m ceiling height for habitable space</li> <li>- Minimum 2.4m ceiling height for non-habitable space</li> <li>- Designed to maximise opportunities for cross flow ventilation.</li> <li>- Openable windows which can control airflow must be installed</li> </ul>	<p>Ground floor has ceiling heights of 3m and first floor has ceiling heights of 2.7m. Min ceiling heights of 2.7m are proposed.</p> <p>Cross flow ventilation opportunities are provided by front and rear doors, and adjacent window openings to the rear living areas, and between first floor bedrooms.</p> <p>Proposed windows are openable.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
<b>4.4.4 Glazing</b>		
<ul style="list-style-type: none"> <li>- Areas of glazing are located to avoid energy loss and unwanted energy gain</li> <li>- Development provides</li> </ul>	<p>Requirements to comply with thermal comfort loads under the BASIX certificate ensures that energy loss and unwanted energy gain are moderated.</p> <p>Submitted BASIX Certificate</p>	<p>Yes, subject to conditions of consent</p> <p>Yes, subject to</p>

ROCKDALE DCP 2011	PROPOSED	COMPLIANCE
appropriate sun protection during summer for glazed areas facing north, west and east.	provides for appropriate energy gain and loss measures. An awning is proposed over the north facing balconies to support the provision of a high level of balcony amenity for the future residents.	conditions of consent
<b>4.4.5 Visual and Acoustic Privacy</b>		
<ul style="list-style-type: none"> <li>- Windows of habitable rooms with a direct sightline to the windows of a habitable room of an adjacent dwelling and located within 9.0m:               <ul style="list-style-type: none"> <li>o Are to be sufficiently off-set to preclude views into the or</li> <li>o have sill heights of 1.7m above floor level; or</li> <li>o have fixed obscure glazing in any part of the window below 1.7m above floor level.</li> </ul> </li> </ul>	No direct sightlines to adjoining dwellings will be available from the ground floor windows due to the presence of the 1.8m boundary fence.	Yes
<ul style="list-style-type: none"> <li>- Balconies, terraces, rooftop recreation areas etc are to minimise overlooking</li> </ul>	Proposed first floor for both semi-detached dwellings are limited to use of bedrooms.	
<ul style="list-style-type: none"> <li>- Adjoining dwellings are single storey. Accordingly, there are no direct sightlines from windows of the proposed dwelling to windows of adjoining dwellings.</li> </ul>	Proposed front facing balconies do not provide for opportunities of overlooking into neighbouring properties.	Yes.
<ul style="list-style-type: none"> <li>- Use of roof top area for recreational purposes is permissible subject to:</li> </ul>	No roof top area is proposed.	N/A
<ul style="list-style-type: none"> <li>- Internal stair access</li> </ul>		
<ul style="list-style-type: none"> <li>- Usable area of roof must be set back at least 1.5m from building edge</li> </ul>		
<ul style="list-style-type: none"> <li>- Planters/privacy screens must be utilised to protect visual and acoustic amenity of neighbouring properties</li> </ul>		
<ul style="list-style-type: none"> <li>• <b>Acoustic Privacy</b></li> </ul>		
<ul style="list-style-type: none"> <li>- Driveways, open space and recreation areas must minimise noise impacts</li> </ul>	Driveways and POS areas are appropriately located and are not considered to result in undue acoustic impacts.	Yes
<ul style="list-style-type: none"> <li>- Bedrooms of one dwelling should not share walls with</li> </ul>	No bedrooms of the adjoining semi-detached	Yes

ROCKDALE DCP 2011	PROPOSED	COMPLIANCE
<p>living rooms or garages of adjacent dwellings.</p> <ul style="list-style-type: none"> <li>Party walls must be carried to the underside of the roof</li> <li>AAAC Acoustical Star Rating of 5 for all except dwelling houses</li> <li>Acoustic Report to be submitted confirming the standards have been met</li> <li>Attached dwellings and multi-unit development's internal layouts should consider acoustic privacy by locating circulation spaces and non-habitable rooms adjacent to party walls</li> </ul>	<p>dwellings share walls with garages or living rooms. There is no evidence to suggest that the party walls will not be carried to the underside of the roof. This control does not apply as there are no floors between dwellings.</p> <p>Proposal is for a semi-detached development.</p>	<p>N/A</p> <p>N/A</p> <p>Yes</p>
<b>4.4.6 Noise Impact</b>		
<ul style="list-style-type: none"> <li>Development must comply with the Australian Standard 2021 – 2000 acoustic – aircraft noise.</li> <li>Mitigation measures must be BASIX compliant</li> <li>External walls to be constructed with material with good sound insulating quality</li> <li>The building plan, walls, windows, doors and roof are to be designed to reduce intrusive noise levels.</li> <li>Balconies and other external building elements are to minimise noise infiltration.</li> </ul>	<p>In accordance with Figure 14.5 regarding 2033 ANEF for Sydney Airport signed and dated 03/12/2012, the subject site appears to be located within the 20-25 ANEF contour. Accordingly, AS2021-2000 applies to the proposed development. Details of BASIX requirements included on the Floor Plans and Elevations, are consistent with submitted BASIC Certificate 707384M. External walls facing potential sources are to be constructed of brick. Living/dining areas are located away from Bowood Ave. Non-habitable rooms, where possible, are sited directly adjacent to the common part wall. Balconies are appropriately sized and located, overlooking Bowood Ave, to minimise noise infiltration to</p>	<p>Yes, subject to conditions of consent.</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>

ROCKDALE DCP 2011	PROPOSED	COMPLIANCE
<ul style="list-style-type: none"> <li>- New windows to be fitted with noise attenuating glass</li> <li>- Design landscaping to create a buffer between new residential development and adjacent potential sources of noise.</li> </ul>	<p>adjoining property and subject building.</p> <p>Window attenuation will be subject to requirements of the submitted BASIX certificate and AS2021-2000.</p> <p>The submitted Landscape Plan, prepared by TruLandscaping, provides for appropriate landscape hedging along the rear POS areas and in areas of the front setback.</p>	<p>Yes</p> <p>Yes</p>
<b>4.4.7 Wind Impact</b>		
<ul style="list-style-type: none"> <li>- Buildings must be designed and proportioned to consider the wind generation effects</li> </ul>	<p>Building is appropriately located on the subject site with considerations of setbacks and orientation.</p> <p>The building is limited to two storeys, and as such is not considered to create any undue wind generation effects.</p>	<p>Yes</p>
<b>4.5 Social Equity</b>		
<b>4.5.1 Housing Diversity and Choice</b>		
<ul style="list-style-type: none"> <li>- Multi-dwelling housing must be compliant with AS4299:</li> <li>- 1 adaptable dwelling required for &gt;10 dwellings</li> <li>- 2 adaptable dwellings required for 10-30 dwellings; and</li> <li>- 10% adaptable dwellings required for more than 30 dwellings.</li> </ul>	<p>Proposal is not multi-dwelling housing, pursuant to the standard instrument definitions.</p>	<p>N/A</p>
<b>4.5.2 Equitable Access</b>		
<ul style="list-style-type: none"> <li>- Access is to meet the requirements of:</li> <li>- Disability Discrimination Act</li> <li>- Relevant Australian Standards BCA</li> <li>- Access Report required for DA's other than single dwellings and dual occupancies.</li> </ul>	<p>The proposal is considered to provide for appropriate access for the proposed use. A condition of consent will be imposed to ensure compliance with BCA.</p> <p>Proposed development is for a dual occupancy.</p>	<p>Yes, subject to conditions of consent.</p> <p>N/A</p>
<b>4.6 Car Parking, Access and Movement</b>		
<ul style="list-style-type: none"> <li>• Dwelling House/Dual</li> </ul>		



ROCKDALE DCP 2011	PROPOSED	COMPLIANCE
<p><b>Occupancy</b></p> <ul style="list-style-type: none"> <li>- 1 car parking space/dwelling with 2 bedrooms or less</li> <li>- 2 car parking spaces/dwelling with 3 bedrooms or more</li> <li>• <b>Car Park Location and Design</b> <ul style="list-style-type: none"> <li>- Vehicle access points and parking areas are to be: <ul style="list-style-type: none"> <li>o Easily accessible</li> <li>o Minimise traffic hazards</li> <li>o Located on secondary frontage where possible</li> <li>o Minimise loss of on-street parking, multiple driveway crossings not permitted</li> </ul> </li> <li>- Car parking areas not to be visually dominant</li> <li>- Car parking areas must be well lit and laid out convenient to manoeuvring</li> <li>- Developments of four or more dwellings to be designed so that vehicles can enter and exit in forward direction</li> <li>- Mechanical parking systems supported subject to Council's Tech Specs</li> <li>- All visitor parking must be clearly marked and not located behind shutter unless intercom is provided.</li> <li>- Disable parking spaces must be close to lifts</li> <li>- Garage doors must be integrated in building design.</li> </ul> </li> <li>• <b>Basement Car Parking</b></li> </ul>	<p>Dwelling 1 will provide for a double width car garage, and lot 2 provides for a double car tandem garage.</p> <p>Proposal provides for a driveway per dual occupancy dwelling. The driveways are appropriately located and are separated by 5.44m, sufficient for an on-street car space.</p> <p>Associated driveway landscaping ensures that the asphalt/concrete of the driveway is not visually dominant.</p> <p>Proposed garages and driveway are appropriate of a low density residential development. Appropriate lighting is considered to be provided by the associated dwelling.</p> <p>Development is for two semi-detached dwellings.</p> <p>No mechanical parking systems are proposed.</p> <p>No visitor parking is required for dual occ development.</p> <p>As above</p> <p>Garage doors are integrated into the building design, in conjunction with the overhanging juliet style balcony and building pedestrian access.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>N/A</p> <p>N/A</p> <p>N/A</p> <p>N/A</p> <p>N/A</p>

ROCKDALE DCP 2011	PROPOSED	COMPLIANCE
<ul style="list-style-type: none"> <li>- Is to be adequately ventilated</li> <li>- Located within the building footprint</li> <li>- Located fully below NGL</li> <li>- Designed for safe and convenient pedestrian movement.</li> <li>- Provided with daylight where feasible</li> </ul>	No basement car parking Associated to the subject building.	N/A
<ul style="list-style-type: none"> <li>• <b>Car Wash Facilities</b></li> <li>- For buildings &gt;5 dwellings car wash facilities must be available</li> </ul>	Building includes two dwellings.	N/A
<ul style="list-style-type: none"> <li>• <b>Pedestrian Access and Sustainable Transport</b></li> <li>- Separate pedestrian access should be provided</li> <li>- Safe and convenient pedestrian access from car parking and public areas</li> </ul>	Separate pedestrian access to that of vehicular access is provided to each of the two dwellings.	Yes
<ul style="list-style-type: none"> <li>- Provide bicycle access which does not interfere with pedestrian access</li> </ul>	Bicycle use in association to the proposed development is as standard for single and dual occ residential dwellings.	Yes
<ul style="list-style-type: none"> <li>- Bicycle parking to be secure and minimise pedestrian obstruction</li> </ul>	As above.	N/A
<ul style="list-style-type: none"> <li>- Bicycle parking to cater to various users.</li> </ul>	As above.	N/A
<ul style="list-style-type: none"> <li>- Where bicycle parking is to be provided for residents in basement, it is to be individual bicycle lockers</li> </ul>	As above.	N/A
<ul style="list-style-type: none"> <li>- New development must enhance and maintain pedestrian, cycle and public transport networks.</li> </ul>	As above.	N/A
<ul style="list-style-type: none"> <li>- Design initiatives promoting sustainable transport are encouraged.</li> </ul>	As above.	N/A
<ul style="list-style-type: none"> <li>- Use slip resistant ground surfaces which are traversable by wheelchairs and indicate changes of grade.</li> </ul>	As above.	N/A
<b>4.7 Site Facilities</b>		
<ul style="list-style-type: none"> <li>• <b>Air Conditioning and Communication Structures</b></li> </ul>		

ROCKDALE DCP 2011	PROPOSED	COMPLIANCE
<ul style="list-style-type: none"> <li>- Ancillary structures are:               <ul style="list-style-type: none"> <li>o Not to be visually intrusive.</li> <li>o Located to have minimal impact on amenity of adjoining properties.</li> <li>o Do not have negative impact on architectural character of building.</li> </ul> </li> </ul>	Approval is not sought for satellite dishes or TV antennas.	N/A
<ul style="list-style-type: none"> <li>- For each building comprising &gt;2 dwelling a master TV antenna/satellite dish to be provided.</li> </ul>	Semi-detached building comprises of two dwellings.	N/A
<ul style="list-style-type: none"> <li>• <b>Waste Storage and Recycling Facilities</b></li> </ul>		
<ul style="list-style-type: none"> <li>- Must comply with Council's Tech Specs</li> </ul>	DA was submitted a Waste Management Plan which includes details of waste generation during construction/ demolition.	Yes
<ul style="list-style-type: none"> <li>- Provision of separate recycling and waste reuse facilities</li> </ul>	Sufficient areas for recycling and general waste bin storage is available on the subject dwelling sites.	Yes
<ul style="list-style-type: none"> <li>- Bins must be appropriately located</li> </ul>		
<ul style="list-style-type: none"> <li>- Must incorporate convenient access</li> </ul>		
<ul style="list-style-type: none"> <li>• <b>Service Lines/Cables</b></li> </ul>		
<ul style="list-style-type: none"> <li>- Internal communication cabling must be installed for telephone, internet and cable television use.</li> </ul>	Any applicable conditions of consent will ensure that internal communication cabling is installed.	Yes, subject to conditions of consent.
<ul style="list-style-type: none"> <li>• <b>Laundry Facilities and Drying Areas</b></li> </ul>		
<ul style="list-style-type: none"> <li>- Laundry in each dwelling</li> </ul>	Subject dwellings includes a laundry.	Yes
<ul style="list-style-type: none"> <li>- Drying areas not to be located forward of building line or in any street frontage setback</li> </ul>	Clothes drying area is not located in the street setback.	Yes
<ul style="list-style-type: none"> <li>- Drying areas in open, sunny part of site.</li> </ul>	Drying areas are located at a sufficient distance from the proposed dwellings in the rear setback.	
<ul style="list-style-type: none"> <li>- Each dwelling in dual occ or multi-dwelling must be provided with a clothes line with min. length of 7.5m</li> </ul>	Proposed development provides for an appropriately sized retractable clothes lines.	Yes
<ul style="list-style-type: none"> <li>• <b>Letterboxes</b></li> </ul>		
<ul style="list-style-type: none"> <li>- Letterbox points to be integrated with building design</li> </ul>	Proposed letterboxes are integrated into the 1.2m high	Yes

ROCKDALE DCP 2011	PROPOSED	COMPLIANCE
<p>and located in covered area</p> <ul style="list-style-type: none"> <li>- Letterboxes to be centrally located and lockable</li> <li>- Letterboxes are to be visible for at least some dwellings</li> <li>• <b>Hot Water Systems</b></li> <li>- HWS to be encased in recessed box if located on balcony.</li> </ul>	<p>front boundary fence. Letterbox is located adjacent to the pedestrian walkway of Bowood Ave. Letterboxes are visible.</p> <p>Hot water system is not proposed to be located on the balcony.</p>	<p>Yes</p> <p>N/A</p>
<b>Part 5 – Building Types</b>		
<b>Part 5.1 – Low and Medium Density Residential</b>		
<b>Storey Height</b>		
<ul style="list-style-type: none"> <li>• <b>Dwelling House &amp; Attached Dwelling</b></li> <li>- Maximum two storeys</li> <li>- On battle axe lot – one storey</li> <li>• <b>Dual occupancy &amp; semi-detached dwelling</b></li> <li>- Maximum two storeys</li> <li>- Dwelling located at rear – one storey</li> <li>• <b>Secondary Dwelling</b></li> <li>- Maximum one storey</li> <li>• <b>Multi dwelling housing</b></li> <li>- Maximum two storeys</li> </ul>	<p>Proposed semi-detached dual occupancy is limited to two (2) storeys. Both dwellings front Bowood Ave.</p> <p>No secondary dwelling proposed.</p>	<p>Yes</p> <p>N/A</p>
<b>Setbacks</b>		
<ul style="list-style-type: none"> <li>- Sites subject to overland flooding require greater side and rear setbacks</li> <li>• <b>Dwelling House &amp; Attached Dwelling</b></li> <li>• <b>Street Setback</b></li> <li>- Must be consistent with the prevailing setbacks in the street</li> <li>- If there is not a consistent or</li> </ul>	<p>Subject site is not identified as being flood affected.</p> <p>Proposed development provides for a street setback ranging between 5-6m. This is consistent with the setback provided by adjoining dwelling to the east (only other dwelling on southern side of Bowood Ave). Street setback for 13 Salisbury is unchanged.</p>	<p>N/A</p> <p>Yes</p>

ROCKDALE DCP 2011	PROPOSED	COMPLIANCE
<p>established setback, a 6m setback</p> <ul style="list-style-type: none"> <li>• <b>Secondary Street Setback</b> <ul style="list-style-type: none"> <li>- Min 1.5m</li> </ul> </li> <li>• <b>Side Setback</b> <ul style="list-style-type: none"> <li>- min 0.9m for single storey building or ground floor of a two storey building</li> <li>- min 1.5m for first floor of a two storey building, except on lots with street frontages less than 15m, it may be set back a min of 1.2m</li> </ul> </li> <li>- 0m between Attached Dwellings and Semi-detached Dwellings</li> <li>• <b>Rear setback and rear lane setback</b> <ul style="list-style-type: none"> <li>- min 3m for single storey building or ground floor of a two storey building</li> <li>- min 6m for first floor of a two storey building, except when fronting a lane may be set back 3m</li> <li>- on battle axe lot – 4.5m rear boundary of the front allotment</li> </ul> </li> </ul>	<p>Subject site is not a corner lot.</p> <p><b>Proposed development:</b> Min side setback of 0.9m is provided from ground floor component of the building. A minimum side setback of 1.2m is provided to the western boundary. Eastern boundary is provided with a side setback of 1.3m. Proposed subject lots will have frontages of less than 15m subject to subdivision.</p> <p><b>13 Salisbury Ave:</b> Side setbacks are not impacted by the boundary adjustment.</p> <p>A party wall is provided between the proposed semi-detached dual occupancy developments.</p> <p><b>Proposed development:</b> A ground floor rear setback of approximately 13m is provided from ground floor of Lot 1, and 6m-14m is provided to Lot 2. First floor rear setbacks of greater than 20m is provided in Lot 1 and 12m-20m is provided in Lot 2. Not a battle axe allotment.</p> <p><b>13 Salisbury Ave:</b> A min rear setback of about 11m is provided from the dwelling on 13 Salisbury Ave. A rear setback of 1.66m is</p>	<p>N/A</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>N/A</p>

ROCKDALE DCP 2011	PROPOSED	COMPLIANCE
	provided from the existing garage. This setback complies with the BCA requirement for fire safety distances,	
<b>Building Design</b>		
<ul style="list-style-type: none"> <li>- Building design is to interpret and respond to character of the locality.</li> <li>- Building articulation must respond to environmental conditions</li> <li>- Architectural design features, are to be utilised to minimise blank walls.</li> <li>- For multi dwelling housing, the front dwelling must address the street</li> <li>- Building heights should be sympathetic to the natural land form and topographical features of the site and to existing buildings in the immediate vicinity.</li> </ul>	<p>Building design provides for a modernistic design and appearance which is distinct to the traditional Californian Bungalow's characteristic of the northern side of Bowood Ave. The building design however, does respond to the character of the street through the provision of gable roofing, brick façade and sympathetic front facing first floor balconies that are incorporated into the roof design.</p> <p>Building articulation provides for appropriate awnings, and overhang on the northern façade.</p> <p>Presence of windows and articulation provided presence of side courtyard in Lot 2 and wrap around design of Lot 1 ensures that the presence of blank walls are minimised.</p> <p>Not multi-dwelling housing.</p> <p>The natural land form of the subject site and locality is relatively flat. No significant undulations have been identified. The proposed building height does not present any overshadowing issues and although the proposal includes two storeys and neighbouring development are single storeys, the one storey</p>	<p>Yes, Refer to assessment report for discussion.</p> <p>Yes</p> <p>Yes</p> <p>N/A</p> <p>Yes</p>

ROCKDALE DCP 2011	PROPOSED	COMPLIANCE
<ul style="list-style-type: none"> <li>- Staircases leading to the first floor should be internal.</li> <li>- Split level dwellings should be considered in situations where a two storey building will be out of character with adjoining and nearby properties.</li> <li>- Balconies may be located up to 1.2m into the front setback.</li> <li>- Garages must be integrated with the overall design of the building in terms of height, form, materials, detailing and colour.</li> <li>- Garages and carports are to be located a minimum distance of 300mm behind the front building line.</li> <li>- The total width of the garage doors which address the street must be a maximum width of 6.3m or 40% of the site frontage width, whichever is lesser.</li> <li>- Roof must provide continuity and character of streetscape.</li> </ul>	<p>increase is not considered to be unsympathetic to existing buildings in the immediate vicinity.</p> <p>Stair case to first floor is internal for both dwellings.</p> <p>Two storey dwellings are present in the streetscape of Bowood Ave and to the rear of the subject site. It is considered that a split level design is not appropriate to the level subject site as it will require a significant amount of additional earthworks.</p> <p>Coherent and compliant street setbacks are provided.</p> <p>Garage doors are integrated into the building design, through use of overhanging Juliet style balcony and adjacent building pedestrian access.</p> <p>Front facing Juliet style balconies are in-line with the proposed garages.</p> <p>Lot 1 frontage = 13.76m Lot 2 frontage = 8.51m As such, permitted frontages are 5.5m and 3.4m respectively.</p> <p>Lot 1 garage width = 5m Lot 2 garage width = 3m</p> <p>Proposed roof is of a cross hipped roof with front facing gables associated to the balconies. The roof is proposed to be constructed of metal roof sheeting with a 20 degree pitch.</p> <p>The southern portion of Bowood Ave is addressed by the subject site and adjoining property to the east only (3 Bowood Ave).</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>N/A</p> <p>No</p> <p>Yes</p> <p>Yes</p>



ROCKDALE DCP 2011	PROPOSED	COMPLIANCE
<ul style="list-style-type: none"> <li>- Mansard roofs are prohibited.</li> </ul>	<p>Other lots are orientated to address alternative streets. 3 Bowood Ave includes a tiled cross gable roof. Dwellings on the northern side of Bowood Ave are predominantly comprised of dwellings with cross gable tiled roofs. Accordingly, the proposed roof is considered to be coherent with existing roof forms in the street. A mansard roof is not proposed.</p>	Yes
<b>Additions to Semi-detached Buildings</b>		
<ul style="list-style-type: none"> <li>- Must not dominate or compromise the uniformity or geometry of the principal/street front elevation</li> <li>- First floor additions should be set back beyond apex or main ridge.</li> </ul>	Proposal is not for additions to a semi-detached dwelling.	N/A
<b>Attics</b>		
<ul style="list-style-type: none"> <li>- Attics may be habitable provided windows are small dormer windows</li> <li>- Attic roof space may be used provided it is:</li> <li>- contained wholly within the roof pitch</li> <li>- is part of the dwelling unit immediately below; and</li> <li>- is incapable of being used as separate unit</li> <li>- use of attic must not adversely impact on privacy of adjoining properties</li> </ul>	No attic is proposed.	N/A
<b>Residential Subdivision</b>		
<ul style="list-style-type: none"> <li>- Torrens, Strata or Community title subdivision for dwelling houses, attached dwellings and semi-detached dwellings must take into account the principles in 4.1 Site Planning and other provisions in Part 4 of this DCP to achieve a desirable development outcome with</li> </ul>	Section 4.1 regarding Site Planning has been assessed earlier in this compliance table.	Yes

ROCKDALE DCP 2011	PROPOSED	COMPLIANCE
minimal adverse impacts on the environment.		
- Each allotment in a proposed Torrens, Strata or Community title subdivision for dwelling houses, attached dwellings and semidetached dwellings must have a frontage to a public road under the Local Government Act which has a width greater than 6m	Proposed dual occupancy development exhibits a frontage of 21.26m. Subject to subdivision of the proposed development Lot 1 will exhibit a frontage of 13.38m and Lot 2 will exhibit a frontage of 7.88m.	Yes
- Min lot width and depth <ul style="list-style-type: none"> <li>o Dwelling: min 15m at front alignment, min 25m depth</li> <li>o Attached and Semi: min 9m at the front alignment of building, min 25m depth</li> <li>o Dual occ: min 15m street frontage</li> </ul>	Proposed dual occupancy development exhibits a street frontage of <b>21.26m</b> . Subject to subdivision of the semi-detached development Lot 1 will exhibit a building line width of <b>12.85m</b> , and Lot 2 will exhibit a frontage of <b>7.89m</b> .	Complies as dual occupancy.  Non-compliant for Torrens Title subdivision.

BASIX	PROPOSAL	COMPLIANCE
All ticked "DA plans" commitments on the BASIX Certificate are to be shown on plans (list) <b>BASIX Cert 707384M dated 29 February 2016</b>	Satisfactory BASIX certificate submitted.	Yes
<ul style="list-style-type: none"> <li>▪ Thermal Comfort Commitments:</li> <li>- Construction</li> <li>- TCC – Glazing.</li> </ul>	BASIX commitments will be conditioned in any development consent.	Yes  Yes
Correct description of property/proposal on 1 <sup>st</sup> page of Certificate.	Correct details shown	Yes

#### Summary of Issues/Non compliances:

- Response from Councils Tree Officer - stormwater layout will need to be redesigned to protect the critical structural roots of the Eucalyptus street Tree
- Streetscape (Section 4.2) – Cohesive streetscape.
- Private Open Space & Visual Privacy (Part 4.3.2 and Part 4.4.5) - Non-compliance - Window WF1.04 from Bedroom 2 of Lot 1 will have opportunities for overlooking into neighbouring eastern property. To be conditioned to have window sill height or obscure glazing to a height of 1.7m from FFL.
- Noise Impacts (Section 4.4.6) – Compliance with AS 2021-2000 req.

- Building design (Section 5.1) - Building design is to interpret and respond to character of the locality.
- Building design (Section 5.1) - Garages and carports are to be located a minimum distance of 300mm behind the front building line.
- Residential subdivision (Section 5.1) – minimum lot width for semi-detached dwelling is 9m

### Notes

- Compliance with BCA to be included in any conditions of consent
- A heritage listed Californian bungalow is located 200m east from the subject site on Donnan Street, however there is a presence of Californian bungalow style dwellings in Bowood Avenue.
- Conditions of consent to include compliance with hydraulic plans to be certified with practicing hydraulic engineer.
- Assessment to apply 'compatibility with context' planning principle for streetscape consideration.

### Certification

I certify that all of the above issues have been accurately and professionally examined by me.

Name: Ben Tesoriero



Signature:

Date: 15 August 2016



Our Ref: DA-2016/310  
Contact: Michael Maloof 9562 1666

MCAD Design  
PO BOX 280  
MARRICKVILLE NSW 1475



2 Bryant Street Rockdale NSW 2216  
PO Box 21 Rockdale NSW 2216  
T 9562 1666 F 9562 1777  
rcc@rockdale.nsw.gov.au  
[www.rockdale.nsw.gov.au](http://www.rockdale.nsw.gov.au)

## NOTICE OF DETERMINATION

Issued in accordance with section 81(1a) of the *Environmental Planning and Assessment Act, 1979*

<b>Application Number:</b>	DA-2016/310
<b>Property:</b>	1 Bowood Avenue, BEXLEY NSW 2207 Lot 48 DP 8760
<b>Proposal:</b>	Construction of two (2) storey dual occupancy, front boundary fence, Torrens Title subdivision, boundary adjustment and demolition of existing structures
<b>Authority:</b>	Council
<b>Determination:</b>	
<b>Date of determination:</b>	
<b>Date consent commences:</b>	
<b>Date consent lapses:</b>	

### General Conditions

The following conditions restrict the work to the detail provided in the Development Application and are to ensure that the development is complete.

1. The term of this consent is limited to a period of five (5) years from the date of the original approval. The consent will lapse if the development does not commence within this time.
2. The development must be implemented substantially in accordance with the plans listed below, the application form and on any supporting information received with the application, except as may be amended in red on the attached plans and by the following conditions.

Plan/Dwg No.	Drawn by	Dated	Received by Council
First Floor Plan/Ground Floor Plan/Site Plan, Drawing No. 1655-01, Rev A	MCAD Design	5 February 2016	7 March 2016
Elevations/Section AA, Drawing No. 1655-02 Rev A	MCAD Design	5 February 2016	7 March 2016
Soil and Water MGMT Plan/Demolition Plan, Drawing No. 1655-03	MCAD Design	5 February 2016	7 March 2016
Concept Subdivision Plan, Drawing 1655-04	MCAD Design	5 February 2016	7 March 2016
Landscape Plan, Drawing No. L-01 Rev D	Tru Landscaping	26 February 2016	7 March 2016

3. All new building work must be carried out in accordance with the provisions of the Building Code of Australia (BCA).
4. **A Construction Certificate must be obtained from Council or an Accredited Certifier prior to any building work commencing.**
5. The development must be implemented and all BASIX commitments thereafter maintained in accordance with BASIX Certificate Number **707384M** other than superseded by any further amended consent and BASIX certificate.  
**Note:** Clause 145(1)(a1) of the Environmental Planning & Assessment Regulation 2000 provides: A certifying authority must not issue a construction certificate for building work unless it is satisfied of the following matters: -
  - (a1) that the plans and specifications for the building include such matters as each relevant BASIX certificate requires.**Note:** Clause 154B(2) of the Environmental Planning & Assessment Regulation 2000 provides: "A certifying authority must not issue a final occupation certificate for a BASIX affected building to which this clause applies unless it is satisfied that each of the commitments whose fulfilment it is required to monitor has been fulfilled."  
Note: For further information please see <http://www.basix.nsw.gov.au>.
6. Further alterations and/or additions to the subject building shall not be undertaken without first obtaining approval. This includes the fitting of any form of doors and/or walls.
7. This approval is not to be construed as permission to erect any structure on or near a boundary contrary to the provisions of the Dividing Fences Act.
8. The dwelling located on the eastern part of the site shall be known as 1 Bowood Avenue and the dwelling located on the western part of the site shall be known as 1A Bowood Avenue.
9. The two dwellings, being dwelling 1 and dwelling 2 in the stamped Site Plan shall each be used as a single occupancy.
10. An amended Schedule of Colours and Materials, which correctly reflects the approved Elevations/ Section AA plan (revision A), shall be submitted to the satisfaction of the PCA.

## Development specific conditions

The following conditions are specific to the Development Application proposal.

11. All condensation from the air conditioning unit shall be discharged into the sewerage system.
12. The rainwater tank shall be routinely de-sludged and all contents from the de-sludging process disposed – solids to the waste disposal and de-sludged liquid to the sewer.
13. Residential air conditioners shall not cause 'offensive noise' as defined by the Protection of the Environment Operations Act 1997 or contravene provisions of the Protection of the Environment (Noise Control) Regulation 2008 where emitted noise from a residential air conditioner can be heard within a habitable room in any other residential premises at night.
14. The visible light reflectivity from building materials used on the façade of the building shall not exceed 20% and shall be designed so as not to result in glare that causes any nuisance or interference to any person or place. A statement demonstrating compliance with these requirements shall be submitted to the satisfaction of the Certifying Authority prior to the issue of a Construction Certificate for the relevant stage of works.
15. Trees located within the footprint of the proposed buildings may be removed.
16.
  1. An amended stormwater plan prepared by a suitably qualified hydraulic engineer must be submitted to the PCA prior to the issue of a Construction Certificate. The amended stormwater plan must include the following offset from the existing Eucalyptus tree in the street reserve in front of proposed Lot 1:
    - (a) An AQF Level 5 qualified Arboriculturist shall determine appropriate offset from the existing Eucalyptus. Note. This offset shall determine the minimum distance any stormwater pipes can be located from the Eucalyptus tree.
  2. An Arboriculturist is to supervise any excavations that may occur within the tree protection zone of the Eucalyptus tree located on the street reserve in front of proposed Lot 1.
  3. Any utility services to be located underground within the TPZ of the Eucalyptus tree located on the street reserve in front of proposed Lot 1, are to be undertaken utilising excavation techniques that prevent or minimise damage to structural roots (roots greater than 20 mm diameter). Further, in order to prevent soil compaction and root damage these works should be conducted with non-motorised hand tools, air knife or directional drilling.
17. Temporary site access during demolition and construction, and the proposed vehicle entrance shall be located not less than 2 metres from the base of the Eucalyptus Tree in the street reserve of Bowood Avenue.
18. The existing and future owners (Registered Proprietor) of the property will be responsible for the operation and maintenance of the detention system.  
The Registered Proprietor will:
  - i). permit stormwater to be temporarily detained by the system;
  - ii). keep the system clean and free of silt, rubbish and debris;
  - iii). maintain, renew and repair the whole or parts of the system so that it functions in a safe and efficient manner; and in doing so complete the same within the time and in the manner specified in written notice issued by the Council;
  - iv). carry out the matters referred to in paragraphs (ii) and (iii) at the proprietor's expense;
  - v). not make alterations to the system or elements thereof without prior consent in



writing of the Council.

vi). permit the Council or its authorised agents from time to time upon giving reasonable notice (but at any time and without notice in the case of emergency) to enter and inspect the land for compliance with the requirement of this clause;

vii). comply with the terms of any written notice issued by the Council in respect to the requirements of this clause within the time stated in the notice.

19. The off-street parking areas associated with the subject development shall be designed strictly in accordance with AS2890.1:2004.
20. The window of bedroom 2 of the dwelling on proposed Lot 1 and the window of bedroom 2 of the dwelling on proposed Lot 2, identified as WF1.06 and WF2.07 on the First Floor Plan/ Ground Floor Plan/ Site Plan prepared by MCAD Design (revision A), shall have window sill heights of a minimum 1.7 metres measured from fixed floor level, or shall be obscured to a minimum height of 1.7 metres measured from fixed floor level.

### **Prior to issue of the construction certificate**

The following conditions must be completed prior to the issue of the Construction Certificate.

21. The following fees shall be paid to Council prior to the issue of a Construction Certificate. If payment is made after the end of the financial year, the amount shall be adjusted in accordance with Council's adopted fees and charges.
  - i. A Footpath Reserve Restoration Deposit of \$2,508.00. This is to cover repair of any damages, or other works to be done by Council. This includes construction, removal, or repair as required to: kerb and guttering, existing or new driveways; paved areas and concrete footpaths. The deposit may be lodged with Council in the form of a Bank Guarantee (Any proposed Bank Guarantee must not have an expiry date). The deposit will not be returned by Council until works are completed and all damage is restored and all specified works are completed by Council.
  - ii. An environmental enforcement fee of 0.25% of the cost of the works.
  - iii. A Soil and Water Management Sign of \$17.50.
22. For work costing \$25,000 or more, a Long Service Leave Levy shall be paid. For further information please contact the Long Service Payments Corporation on their Helpline 13 1441.
23. An application for Boundary levels shall be made to Council's Customer Service Centre prior to issue of the Construction Certificate. All boundary works, egress paths, driveways and fences shall comply with this level.

A fee is payable to Council for the determination of boundary levels. If payment is made after the end of the financial year, the amount shall be adjusted in accordance with Council's adopted fees and charges.
24. A Section 94 contribution of \$11,122.83 shall be paid to Council. Such contributions are only used towards the provision or improvement of the amenities and services identified below. The amount to be paid is adjusted at the time of payment, in accordance with the contribution rates contained in Council's current Adopted Fees and Charges. The contribution is to be paid prior to the issue of any construction certificate for works above the floor level of the ground floor. (Payment of the contribution is not required prior to any separate construction certificates issued only for demolition, site preparation works and the construction of basement levels). The

contribution is calculated from Council's adopted Section 94 contributions plan in the following manner:

Open Space	\$9,481.84
Community Services & Facilities	\$552.65
Town Centre & Streetscape Improvements	\$207.70
Pollution Control	\$819.57
Plan Administration & Management	\$61.07

Copies of Council's Section 94 Contribution Plans may be inspected at Council's Customer Service Centre, Administration Building, 2 Bryant Street, Rockdale.

25. In the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance or owner builder's permit in force in accordance with Part 6 of that Act, that such a contract or permit is in place.
26. The approved plans must be submitted to Sydney Water to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. The Principal Certifying Authority must ensure that Sydney Water has approved the plans before issue of any Construction Certificate. For more information, visit [www.sydneywater.com.au](http://www.sydneywater.com.au).
27. The residential dwellings are to be designed and constructed to achieve interior noise levels which comply with Australian Standard 2012-2000 Acoustic - Aircraft Noise Intrusion. An appropriately qualified Noise Consultant is to advise on appropriate measures to be incorporated in the design of the building so that it will meet this standard. The information shall be submitted to Council prior to issue of the Construction Certificate.
28. A Waste Management Plan shall be prepared and implemented in accordance with Council's Development Control Plan 2011.
29. Prior to the issue of the Construction Certificate, detailed drainage design plans for the management of stormwater and the treatment of stormwater are to be submitted to Principal Certifying Authority for assessment and approval. Design certification, in the form specified in Council's Technical Specification – Stormwater Management, and drainage design calculations and conformance with stormwater pollution reduction targets using MUSIC modelling are to be submitted with the plans. Council's Technical Specification – Stormwater Management sets out the minimum documentation requirements for detailed design plans and minimum pollution reduction targets.  
Note: The plans shall also be certified by a suitably qualified structural engineer deeming the proposed OSD tank can withstand the forces imposed by a fully laden delivery vehicle.

## **Prior to commencement of works**

The following conditions must be completed prior to the commencement of works.

30. A Soil and Water Management Plan shall be prepared. The Plan must include details of the proposed erosion and sediment controls to be installed on the building site. A copy of the Soil and Water Management Plan must be kept on-site at all times and made available on request.

Soil and sedimentation controls are to be put in place prior to commencement of any work on site. The controls are to be maintained in effective working order during

construction.

Council's warning sign for soil and water management must be displayed on the most prominent point on the building site, visible to both the street and site workers. The sign shall be erected prior to commencement of works and shall be displayed throughout construction.

31. A sign must be erected at the front boundary of the property clearly indicating the Development Approval Number, description of work, builder's name, licence number and house number before commencement of work. If owner/builder, the Owner/Builder Permit Number must be displayed.
32. A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:
  - i. stating that unauthorised entry to the work site is prohibited, and
  - ii. showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours. Any such sign is to be removed when the work has been completed. This condition does not apply to:
    - iii. building work carried out inside an existing building or
    - iv. building work carried out on premises that are to be occupied continuously (both during and outside working hours) while the work is being carried out.
33. Prior to the commencement of any work on site, a sign shall be placed in a prominent position on each protective fence identifying the area as a Tree Protection Zone and prohibiting vehicle access, waste bins, storage of materials and equipment, site residue and excavations within the fenced off area.
34. The site shall be secured by a 1800 mm (minimum) high temporary fence for the duration of the work. Gates shall be provided at the opening points.
35. Toilet facilities must be available or provided at the work site before works begin and must be maintained until the works are completed at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site.

### **During demolition / excavation / construction**

The following conditions must be complied with during demolition, excavation and or construction.

36. A copy of the Construction Certificate and the approved plans and specifications must be kept on the site at all times and be available to Council officers upon request.
37. Hours of construction shall be confined to between 7 am and 6.30 pm Mondays to Fridays, inclusive, and between 8 am and 3.30 pm Saturdays with no work being carried out on Sundays and all public holidays.
38. For Class 1 and 10 structures, the building works are to be inspected during construction, by the principal certifying authority (or other suitably qualified person on behalf of the principal certifying authority) to monitor compliance with Council's approval and the relevant standards of construction encompassing the following stages:
  - i) after excavation for, and prior to the placement of, any footings,
    - a. Trench and steel for footings
    - b. Pier/pad holes, and
  - ii) prior to pouring any in-situ reinforced concrete building element,
    - a. Ground floor steel

- b. First floor steel, and
- iii) prior to covering the framework for any floor, wall, roof or other building element,
- a. Bearers and joists
- b. First floor joists
- c. Framework
- d. Damp proof course, and

iv) prior to covering waterproofing in any wet areas, and

v) prior to covering any stormwater drainage connections, and

vi) after the building work has been completed and prior to any occupation certificate being issued in relation to the building.

Documentary evidence of compliance with Council's approval and relevant standards of construction is to be obtained prior to proceeding to the subsequent stages of construction and copies of the documentary evidence are to be maintained by the principal certifying authority and be made available to Council officers upon request. If Council is appointed as the Principal Certifying Authority, 48 hours notice is to be given that the above works is ready for inspection.

39. Upon inspection of each stage of construction, the Principal Certifying Authority (or other suitably qualified person on behalf of the Principal Certifying Authority) is also required to ensure that adequate provisions are made for the following measures (as applicable), to ensure compliance with the terms of Council's approval:

- Sediment control measures
- Provision of perimeter fences or hoardings for public safety and restricted access to building sites.
- Maintenance of the public place free from unauthorised materials, waste containers or other obstructions.

40. Ground water shall only be pumped or drained to Council's stormwater system if the water is clean and unpolluted. The standard used to determine the acceptability of the quality of the water is the 'Australian and New Zealand Environment and Conservation Council - Australian Water Quality Guidelines for Fresh and Marine Waters 1992'.

Note: Prior treatment and/or filtration of the water may be necessary to achieve acceptable quality, including a non-filterable residue not exceeding 50 milligrams/litre or small quantities may be removed by the services of a Licenced Liquid Waste Transporter. It is an offence under the provisions of the Protection of the Environment Operations Act 1997 to pollute the stormwater system.

41. Demolition operations shall not be conducted on the roadway or public footway or any other locations, which could lead to the discharge of materials into the stormwater drainage system.
42. All waste generated on site shall be disposed of in accordance with the submitted Waste Management Plan.
43. Any new information discovered during remediation, demolition or construction works which has the potential to alter previous conclusions about site contamination, shall be notified to Council being the Regulatory Authority for the management of contaminated land.
44. Provide drop edge beams where and if necessary to contain all filling within the building envelope.
45. All contractors shall comply with the following during all stages of demolition and construction:
- A Waste Container on Public Road Reserve Permit must be obtained prior to the placement of any waste container or skip bin in the road reserve (i.e. road

or footpath or nature strip). Where a waste container or skip bin is placed in the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.

- A Road Opening Permit must be obtained prior to any excavation in the road reserve (i.e. road or footpath or nature strip). Where excavation is carried out on the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
- A Hoarding Permit must be obtained prior to the erection of any hoarding (Class A or Class B) in the road reserve (i.e. road or footpath or nature strip). Where a hoarding is erected in the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
- A Crane Permit must be obtained from Council prior to the operation of any activity involving the swinging or hoisting of goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway. Permits can be obtained from Council's Customer Service Centre.
- A Permit to Dewater or Pump Out a site must be obtained prior to the discharge of pumped water into the road reserve, which includes Council stormwater pits and the kerb and gutter. Permits can be obtained from Council's Customer Service Centre.

46. All demolition work shall be carried out in accordance with AS2601 – 2001: The Demolition of Structures and with the requirements of the WorkCover Authority of NSW.

47. The new building work shall be protected in accordance with the provisions of AS 3660.1-2000 'Termite Management - Part 1: New Building Work', as required by Part 3.1.3 of the Building Code of Australia. Certification is required to be submitted to the Principal Certifying Authority (PCA), prior to the next stage of works to ensure that the selected method of treatment is in compliance with the relevant provisions of the standard. Such certification is to be prepared by a suitably qualified person.

48. The following conditions are necessary to ensure minimal impacts during construction:

- i. Building, demolition and construction works not to cause stormwater pollution and being carried out in accordance with Section 2.8 of Council's Stormwater Pollution Control Code 1993. Pollutants such as concrete slurry, clay and soil shall not be washed from vehicles onto roadways, footways or into the stormwater system. Drains, gutters, roadways and access ways shall be maintained free of sediment. Where required, gutters and roadways shall be swept regularly to maintain them free from sediment.
- ii. Stormwater from roof areas shall be linked via a temporary downpipe to an approved stormwater disposal system immediately after completion of the roof area.
- iii. All disturbed areas shall be stabilised against erosion within 14 days of completion, and prior to removal of sediment controls.
- iv. Building and demolition operations such as brickcutting, washing tools or paint brushes, and mixing mortar shall not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.

- v. Stockpiles are not permitted to be stored on Council property (including nature strip) unless prior approval has been granted. In addition stockpiles of topsoil, sand, aggregate, soil or other material shall be stored clear of any drainage line or easement, natural watercourse, kerb or road surface.
- vi. Wind blown dust from stockpile and construction activities shall be minimised by one or more of the following methods:
  - a) spraying water in dry windy weather
  - b) cover stockpiles
  - c) fabric fences
- vii. Access to the site shall be restricted to no more than two 3m driveways. Council's footpath shall be protected at all times. Within the site, provision of a minimum of 100mm coarse crushed rock is to be provided for a minimum length of 2 metres to remove mud from the tyres of construction vehicles.

An all weather drive system or a vehicle wheel wash, cattle grid, wheel shaker or other appropriate device, shall be installed prior to commencement of any site works or activities, to prevent mud and dirt leaving the site and being deposited on the street. Vehicular access is to be controlled so as to prevent tracking of sediment onto adjoining roadways, particularly during wet weather or when the site is muddy. Where any sediment is deposited on roadways it is to be removed by means other than washing and disposed of appropriately.

In addition builders / demolishers are required to erect a 1.5m high fence along the whole of the street alignment other than at the two openings. Such protection work, including fences, is to be constructed, positioned and maintained in a safe condition to the satisfaction of the Principal Certifying Authority, prior to the demolition of the existing structures and commencement of building operations.

- viii. Any noise generated during construction of the development shall not exceed limits specified in any relevant noise management policy prepared pursuant to the Protection of the Environment Operations Act, 1997 or exceed approved noise limits for the site.
- 49. Council's warning sign for soil and water management must be displayed on the most prominent point on the building site, visible to both the street and site workers. The sign must be displayed throughout construction. A copy of the sign is available from Council.
  - 50. The existing Eucalyptus street tree located at the front of the property is not to be removed or pruned, including root pruning, without the written consent of Council.

### **Prior to issue of occupation certificate or commencement of use**

The following conditions must be complied with prior to issue of the Occupation Certificate or Commencement of Use.

- 51. An Occupation Certificate shall be obtained in relation to the approved works prior to any use or occupation of the building.
- 52. Where Council's park/reserve is damaged as a result of building work or vehicular building traffic, this area shall be restored by Council at the applicant's expense.

Repairs shall be completed prior to the issue of the Occupation Certificate.

53. All works within the road reserve, which are subject to approval pursuant to Section 138 of the Roads Act 1993, shall be completed and accepted by council.
54. Prior to completion of the building works, a full width vehicular entry is to be constructed to service the property. Any obsolete vehicular entries are to be removed and reconstructed with kerb and gutter. This work may be done using either a Council quote or a private contractor. There are specific requirements for approval of private contractors.
55. The width of the single driveway of proposed Lot 2 shall be a minimum of 2.5 metres and a maximum of 3.0 metres.

The width of the double driveway at the boundary of proposed Lot 1 shall be a maximum of 5 metres.

Note: Council's Vehicular Entrance Policy restricts the width of the vehicular entrance over the footpath to a maximum of 4.5 metres.

The distance between the driveway of proposed Lot 2 and proposed Lot 1 shall be a minimum 6 metres.

56. Prior to occupation, a registered surveyor shall certify that the driveway(s) over the footpath and within the property have been constructed in accordance with the approved driveway profile(s). The certification shall be based on a survey of the completed works. A copy of the certificate and a works-as-executed driveway profile shall be provided to Council if Council is not the Principal Certifying Authority.
57. An appropriately qualified Noise Consultant is to certify that Australian Standard 2021- 2000 Acoustic - Aircraft Noise Intrusion has been met before an occupation certificate will be issued.
58. A Landscape Architect shall provide a report to the certifying authority (with a copy provided to Council, if Council is not the principal certifying authority) stating that the landscape works have been carried out in accordance with the approved plans and documentation.
59. Prior to occupation, a chartered professional engineer shall certify that the tanking and waterproofing has been constructed in accordance with the approved design and specification. A copy shall be provided to Council if council is not the Principal Certifying Authority.
60. Prior to occupation a Chartered Professional Engineer shall certify that the stormwater system has been constructed in accordance with the approved plans and as required by Rockdale Technical Specification Stormwater Management. The certificate shall be in the form specified in Rockdale Technical Specification Stormwater Management and include an evaluation of the completed drainage works. A works-as-executed drainage plan shall be prepared by a registered surveyor based on a survey of the completed works. A copy of the certificate and works-as-executed plan(s) shall be supplied to the Principal Certifying Authority. A copy shall be provided to Council if Council is not the Principal Certifying Authority.
61. The development shall comply with Rockdale Development Control Plan (DCP) 2011, and the Planning Considerations and Development Controls listed in the Flood Advice letter, referenced FA-2016/03, issued by Council on 9 July 2015.
62. Signs shall be displayed adjacent to all stormwater drains on the premises, clearly indicating "Clean water only - No waste".
63. The owner of the premises is required to comply with the following requirements



when installing a rainwater tank:

- Inform Sydney Water that a Rainwater tank has been installed in accordance with applicable requirements of Sydney Water.
- The overflow from the rainwater tank shall be directed to the storm water system.
- All plumbing work proposed for the installation and reuse of rainwater shall comply with the NSW Code of Practice: Plumbing and Drainage and be installed in accordance with Sydney Water "Guidelines for rainwater tanks on residential properties.
- A first flush device shall be installed to reduce the amount of dust, bird faeces, leaves and other matter entering the rainwater tank.

### **Prior to issue of subdivision certificate**

The following conditions must be complied with prior to the issue of the Subdivision Certificate or the Strata Certificate.

64. A Subdivision Certificate and four (4) copies of the plans for the endorsement of the General Manager shall be submitted to Council prior to lodgment with the Land and Property Information office. If applicable, an original and four (4) copies of the 88B Instrument are to be submitted.
65. The endorsed subdivision certificate shall not be released until completion of the development and the issue of the Final Occupation Certificate.
66. The submission and approval of a subdivision certificate application. In this regard, a fee is payable in accordance with Council's current adopted Fees and Charges.
67. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Coordinator. Please refer to the Building Developing and Plumbing section of the web site [www.sydneywater.com.au](http://www.sydneywater.com.au) then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

The Section 73 Certificate must be submitted to the Principal Certifying Authority prior to release of the Subdivision/Strata Certificate.

68. The new lots created are to be numbered lot 700 and lot 701.
69. All existing and proposed services on the property shall be shown on a plan, and shall be submitted to Council. This includes electricity, gas, water, sewer, stormwater and telephone services. Where any service crosses one lot but benefits another lot, it is to be covered by an easement. The service easement is to be covered by a Section 88B Instrument, which may only be varied or extinguished with the consent of Rockdale City Council. These provisions are to be put into effect prior to the release of the Subdivision/Strata Certificate.
70. A positive covenant shall be provided over the on-site detention system. A Section 88B Instrument and four copies shall be lodged with the Subdivision/Strata

Certificate.

71. Where the installation of electricity conduits is required in the footway, the builder shall install the conduits within the footway across the frontage/s of the development site, to Energy Australia's specifications. Energy Australia will supply the conduits at no charge. A Road Opening Permit must be obtained from Council prior to the installation of the conduits. The builder is responsible for compaction of the trench and restoration of the footway in accordance with Council direction. A Compliance Certificate from Energy Australia shall be obtained prior to the issue of the Subdivision Certificate.
72. Council will not issue the Subdivision Certificate unless the following has been provided to Council:
- Works-As-Executed Plan for Stormwater Drainage System
  - Engineer's Compliance certificate for Stormwater Drainage System & work as executed drawing
  - Final Occupation Certificate
  - Utility Service Plan
  - Original of Section 73 Compliance Certificate referring to Subdivision – (Sydney Water Act 1994)
  - Landscape certification (if Council not appointed as PCA)
  - Administration Sheet and 88B instruments prepared by a qualified surveyor

### **Integrated development/external authorities**

The following conditions have been imposed in accordance with Section 91A of the Environmental Planning and Assessment Act, 1979.

73. Sydney Airport Corporation Limited (SACL) has approved the maximum height of the proposed building at 62.10 metres relative to Australian Height Datum (AHD). This height is inclusive of all vents, chimneys, aerials, TV antennae and construction cranes etc. No permanent or temporary structure is to exceed this height without further approval from Sydney Airport Corporation Limited.

At the completion of the construction of the building, a certified surveyor is to notify (in writing) the airfield manager of the finished height of the building.

**Note:** Under Section 186 of the Airports Act 1996, it is an offence not to give information to the Airport Operator that is relevant to a proposed "controlled activity" and is punishable by a fine of up to 50 penalty units.  
For further information on Height Restrictions please contact SACL on 9667 9246.

Separate approval must be sought under the Airports (Protection of Airspace) Regulations 1996 for any cranes required to construct the buildings. Construction cranes may be required to operate at a height significantly higher than that of the proposed controlled activity and consequently, may not be approved under the Airports (Protection of Airspace) Regulations, therefore Sydney Airport advises that approval to operate construction equipment (i.e. cranes) should be obtained prior to any commitment to construct.

At the completion of the construction of the building, a certified surveyor is to notify (in writing) the airfield design manager of the finished height of the building.

## Roads Act

74. Construction related activities must not take place on the roadway without Council approval.

Short-term activities (including operating plant, materials delivery) that reduce parking spaces, affect access to a particular route or prevent or restrict the passage of vehicles along the road must not occur without a valid Temporary Roadside Closure Permit.

Activities involving occupation of the parking lane for durations longer than allowed under a Temporary Roadside Closure Permit require a Construction Zone Permit and must not occur prior to the erection of Works Zone signs by Council's Traffic and Road Safety Section.

Permit application forms should be lodged at Council's Customer Service Centre allowing sufficient time for evaluation. An information package is available on request.

75. Where applicable, the following works will be required to be undertaken in the road reserve at the applicant's expense:

- i) construction of two new fully constructed concrete vehicular entrances;
- ii) removal of the existing concrete vehicular entrance/s, and/or kerb laybacks which will no longer be required;
- iii) removal of redundant paving;
- iv) smooth transition with new driveways and footpath areas.

76. All footpath, or road and drainage modification and/or improvement works to be undertaken in the road reserve shall be undertaken by Council, or by a Private Licensed Contractor subject to the submission and approval of a Private Contractor Permit, together with payment of all inspection fees. An estimate of the cost to have these works constructed by Council may be obtained by contacting Council. The cost of conducting these works will be deducted from the Footpath Reserve Restoration Deposit, or if this is insufficient the balance of the cost will be due for payment to Council upon completion of the work.

77. This Roads Act approval does not eradicate the need for the Contractor to obtain a Road Opening Permit prior to undertaking excavation in the road or footpath.

78. Any driveway works to be undertaken in the footpath reserve by a private contractor requires an "Application for Consideration by a Private Contractor" to be submitted to Council together with payment of the application fee. Works within the footpath reserve must not start until the application has been approved by Council.

79. Following completion of concrete works in the footpath reserve area, the balance of the area between the fence and the kerb over the full frontage of the proposed development shall be turfed with either buffalo or couch (not kikuyu) or landscaped. If landscaping is proposed rather than turfing, details shall be submitted to the Property and Community Services Department for approval.

## Development consent advice

- a. You are advised to consult with your utility providers (i.e. Energy Aust, Telstra etc) in order to fully understand their requirements before commencement of any work.
- b. *Telstra Advice – Dial Before You Dig*

Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets, please contact Dial before You Dig at [www.1100.com.au](http://www.1100.com.au) or telephone on 1100 before excavating or erecting structures (This is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contacting the Dial before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial before You Dig service in advance of any construction or planning activities.

c. *Telstra Advice - Telecommunications Act 1997 (Commonwealth)*

Telstra (and its authorised contractors) are the only companies that are permitted to conduct works on Telstra's network and assets. Any person interfering with a facility or installation owned by Telstra is committing an offence under the Criminal Code Act 1995 (Commonwealth) and is liable for prosecution. Furthermore, damage to Telstra's infrastructure may result in interruption to the provision of essential services and significant costs. If you are aware of any works or proposed works which may affect or impact on Telstra's assets in any way, you are required to contact: Telstra's Network Integrity Team on phone number 1800810443.

- d. If Council is appointed as the Principal Certifying Authority (PCA), a fee shall be paid before a Construction Certificate is issued. If the fee is paid after the end of the financial year, it will be adjusted in accordance with Council's adopted fees and charges. The fees charged encompass all matters related to ensuring that the proposed development is carried out in accordance with the approved plans and any post inspection issues that may arise.
- e. If Council is the Principal Certifying Authority for the development, a drainage inspection fee shall be paid prior to the issue of the Construction Certificate. If payment is made after the end of the financial year, the amount shall be adjusted in accordance with Council's adopted fees and charges.

NB: This fee does not include a confined space entry into the on-site detention tank. Where a confined space entry is required, an additional fee is payable. A confined space entry will be required where:

- a) Information provided in the works-as-executed drawing and engineering certification is inconclusive as to the compliance of the system with the approved plans; and/or
- b) Visual inspection from outside the tank is inconclusive as to the compliance of the system with the approved plans.
- f. In order for the final Subdivision/Strata Certificate to be signed and released by Council, the following must occur:
- i) all of the above conditions of consent must be complied with;
- ii) a Section 73 certificate from Sydney Water must be supplied. If it is for a Torrens Title subdivision, the certificate must clearly state subdivision into 2 lots;
- iii) a Section 88B Instrument which contains a positive covenant written in accordance with Council's standard wording for on site detention systems must be submitted. The 88B Instrument should also provide a space for Council's authorized person to sign on each page;
- iv) If Council is the PCA, Council's Building Surveyor, Engineer and Landscape Officer must conduct satisfactory final inspections of the development, or if a Private

Certifier is the PCA, Council must receive a copy of the final Occupation Certificate including a note that the landscaping and drainage works have been completed in accordance with the approved plans.

- g. Where Council is not engaged as the Principal Certifying Authority for the issue of the Subdivision Certificate, and the Section 88B Instrument contains easements and/or covenants to which Council is a Prescribed Authority, the Council must be provided with all relevant supporting information (such as works-as-executed drainage plans and certification) prior to Council endorsing the Instrument.
- h. All asbestos fibre demolition material and asbestos dust shall be handled, stored and removed in accordance with the relevant legislation and guidelines including:
  - Work Health and Safety Act 2011
  - Work Health and Safety Regulation 2011
  - Code of Practice for the Safe Removal of Asbestos [NOHSC: 2002 (2005)]
  - Code of Practice for the Management and Control of Asbestos in Workplaces [NOHSC: 2018 (2005)]
  - Protection of the Environment Operations (Waste) Regulation 2005

All work procedures shall be devised to minimise the release of dust and fibres. A checklist of safety precautions when working with asbestos is available in Health & Safety Guidelines prepared by the WorkCover Authority of NSW. Collection, storage and transportation is subject to the Protection of the Environment Operations (Waste) Regulation 2005.

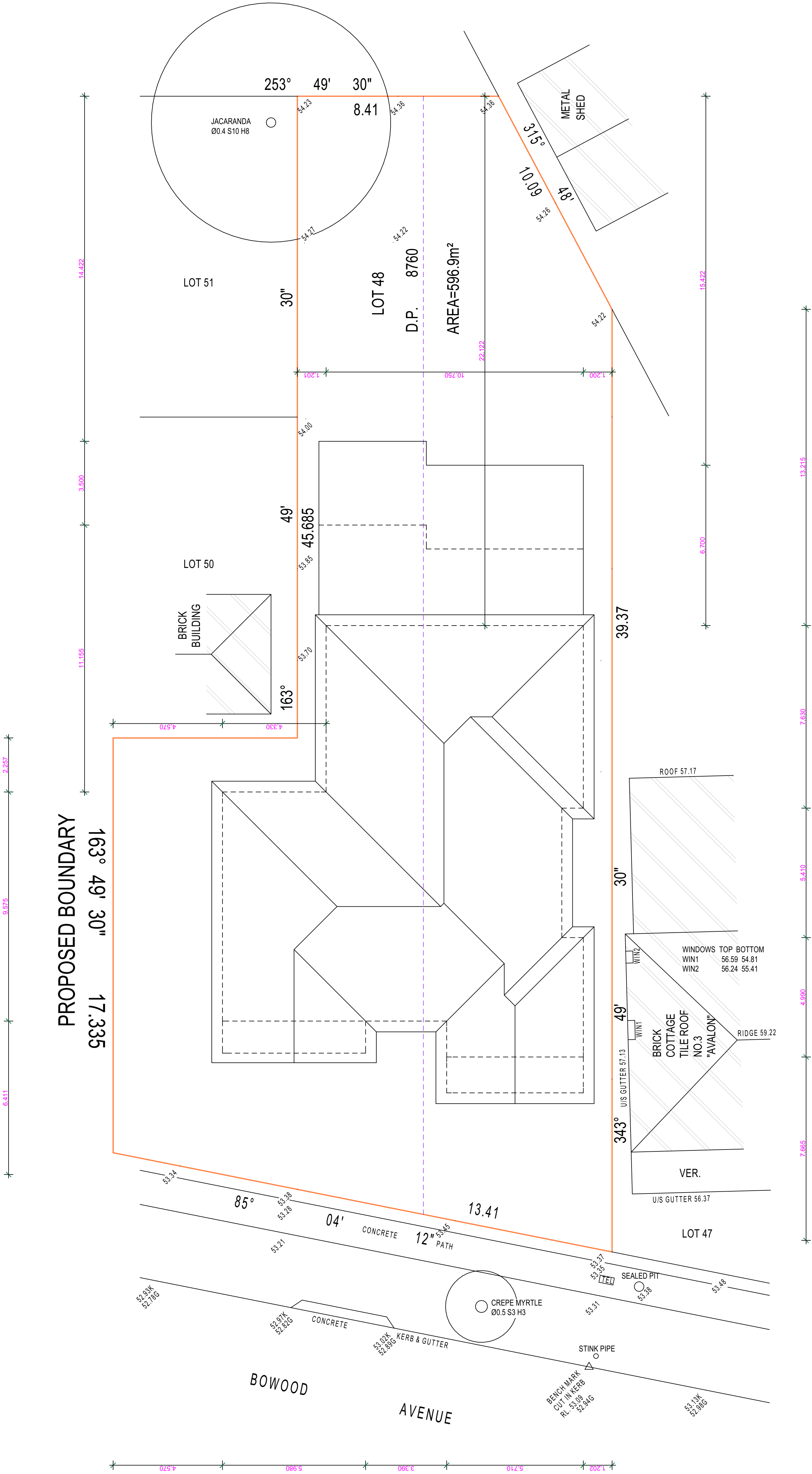
- i. Demolition and construction shall minimise the emission of excessive noise and prevent “offensive noise” as defined in the Protection of the Environment Operations Act 1997. Noise reduction measures shall include, but are not limited to the following strategies:
  - choosing quiet equipment
  - choosing alternatives to noisy activities
  - relocating noise sources away from affected neighbours
  - educating staff and contractors about quiet work practices
  - informing neighbours of potentially noise activities in advance
  - equipment, such as de-watering pumps, that are needed to operate on any evening or night between the hours of 8 p.m. and 7 a.m. or on any Sunday or Public Holiday, shall not cause a noise nuisance to neighbours of adjoining or nearby residences. Where the emitted noise exceeds 5 dB(A) [LAeq(15m)] above the background sound level [LA90] at the most affected point on the nearest residential boundary at any time previously stated, the equipment shall be acoustically insulated, isolated or otherwise enclosed so as to achieve the sound level objective.
- j. The water from the rainwater tank should not be used for drinking, Sydney Water shall be advised of the installation of the rainwater tank.
- k. All site works shall comply with the occupational health and safety requirements of the NSW WorkCover Authority.
- l. In the event of any inconsistency between conditions of this approval and the drawings/documents referred to in condition 2, the conditions of this approval prevail.

## **Additional Information**

- To confirm the date upon which this consent becomes effective, refer to Section 83 of the *Environmental Planning and Assessment Act, 1979*. Generally the consent becomes effective from the determination date shown on the front of this notice. However if unsure applicants should rely on their own enquiries.
  - To confirm the likelihood of consent lapsing, refer to Section 95 of the Act. Generally consent lapses if the development is not commenced within five (5) years of the date of approval. However if a lesser period is stated in the conditions of consent, the lesser period applies. If unsure applicants should rely on their own enquiries.
  - Section 82A allows Council to reconsider your proposal. Should you wish to have the matter reconsidered you should make an application under that section with the appropriate fee.
  - Under Section 97 of the Act applicants who are dissatisfied with the outcome of a consent authority have a right of appeal to the Land and Environment Court. This right must be exercised within six (6) months from the date of this notice. The Court's Office is situated at Level 1, 225 Macquarie Street, Sydney (Telephone 9228 8388), and the appropriate form of appeal is available from the Clerk of your Local Court.
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Should you have any further queries please contact Michael Maloof on 9562 1666

**Luis Melim**  
**Manager - Development Services**



amendment	date	rev.	amendment	date	rev.	client	project	drawing title	TRUE NORTH	<div><div><div>MCAD DESIGN</div><div>AS/N: 33 139 182 219</div><div>PC BOX 280, MARRICKVILLE, NSW 1475</div><div>ADDRESS: PHONE: +614 12 840 507</div><div>EMAIL: tom@mcad.net.au</div></div><div><div>drawn</div><div>TM</div></div><div><div>checked</div><div>TM</div></div><div><div>date</div><div>05-02-2016</div></div><div><div>scale</div><div>AS SHOWN</div></div><div><div>sheet no.</div><div>1655-09</div></div><div><div>rev.</div><div></div></div></div>
						MR SALEVSKI	PROPOSED DUAL OCCUPANCY 1 BOWOOD AVENUE BEXLEY NSW 2207	ROOF PLAN SITE PLAN	<div><div>TRUE NORTH</div><div>N</div></div>	
										contractors are responsible for all site levels and dimensions and must verify these at the job before commencing any work or making any stop drawings





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## **Council Meeting**

**12/10/2016**

Item No	9.8
Property	<b>33 Florence Street, Ramsgate Beach</b>
Proposal	Temporary use of Ramsgate Public School for Saturday Markets
Report by	Luis Melim, Manager Development Services Fiona Prodromou, Senior Assessment Officer
Application No	(R) DA-2016/275

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## **Council Resolution**

Resolved by the Administrator:

- 1 That the development application DA-2016/275 for the temporary use of Ramsgate Public School for Saturday markets at 33 Florence Street Ramsgate Beach be approved for a Trial Period of 12 months pursuant to Section 80(1)(a) of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report.
  - 2 That the objectors be advised of Council's decision.
  - 3 That Council monitor the parking on site and undertake any compliance activity that may be necessary from time to time during the 12-month period.
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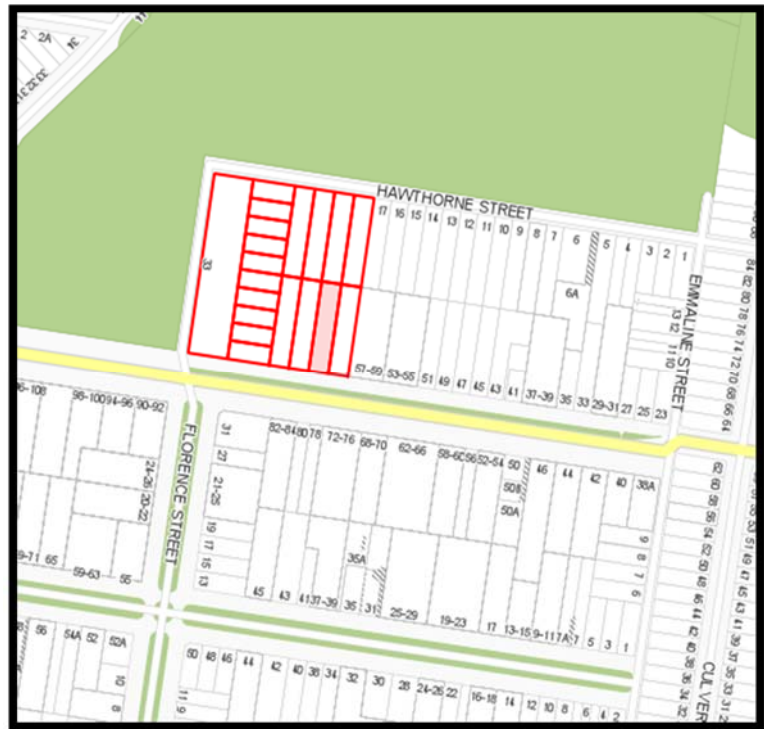
## **Officer Recommendation**

- 1 That the development application DA-2016/275 for the temporary use of Ramsgate Public School for Saturday markets at 33 Florence Street Ramsgate Beach be Approved for a Trial Period of 12 months pursuant to Section 80(1)(a) of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report.
  - 2 That the objectors be advised of Council's decision.
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## Attachment

- Assessment Report
- Site Plan for Markets

## Location Plan



# BAYSIDE COUNCIL

## Planning Assessment Report

### Application Details

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<b>Application Number:</b>	DA-2016/275
<b>Date of Receipt:</b>	11 February 2016
<b>Property:</b>	33 Florence Street, RAMSGATE BEACH NSW 2217 Lot 1 DP 9499 Lot 2 DP 9499 Lot 36 DP 9499 Lot 11 DP 11829 Lot 12 DP 11829 Lot 13 DP 11829 Lot 14 DP 11829 Lot 15 DP 11829 Lot 16 DP 11829 Lot 17 DP 11829 Lot 18 DP 11829 Lot 19 DP 11829 Lot 3 DP 9499 Lot 4 DP 9499 Lot 33 DP 9499 Lot 34 DP 9499 Lot 35 DP 9499 Lot 20 DP 11829 Lot 1 DP 431569
<b>Owner:</b>	The Minister For School Education & Youth Affairs
<b>Applicant:</b>	Krisari Farmers Market Pty Ltd
<b>Proposal:</b>	Temporary use of Ramsgate Public School for Saturday Markets
<b>Recommendation:</b>	Approved
<b>No. of submissions:</b>	Seventeen (17) opposed One (1) in support
<b>Author:</b>	Fiona Prodromou
<b>Date of Report:</b>	21 September 2016

### Key Issues

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The proposed use is defined as a 'market' as per the provisions of Rockdale LEP 2011 and is a prohibited use within the R2 - Low Density Residential zone. Notwithstanding, the provisions of Clause 2.8 - Temporary Use of Land of Rockdale LEP 2011 permit the temporary use of land if the use does not compromise future development of the land, or have detrimental economic, social, amenity or environmental effects on the land. The proposed development is satisfactory in regard to the provisions



of Clause 2.8 and is supported on this basis.

The proposal was publicly notified on three occasions in accordance with the requirements of Rockdale DCP 2011. A total of seventeen (17) submissions were received opposing the proposed use, with one (1) in support. Issues raised include but are not limited to traffic, car parking, blocking of driveways, headlight glare, acoustic impacts, privacy impacts etc. These matters have been addressed in detail within this report.

The proposal was considered by Councils Engineer and the Rockdale Development Traffic Advisory Committee (RDTAC) who recommended Approval of the proposed use, subject to a 12 month trial period to ascertain traffic and parking volumes associated with the use of the site for the markets. The proposal has thus been conditioned accordingly.

## Recommendation

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1. That the development application DA-2016/275 for the temporary use of Ramsgate Public School for Saturday markets at 33 Florence Street Ramsgate Beach be Approved for a Trial Period of 12 months pursuant to Section 80(1)(a) of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report.
2. That the objectors be advised of Council's decision.

## Background

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### History

Approved by Council on 4 April 2007

DA-2007/201 - Weekly farmers markets within Ramsgate Public School operating Saturdays.

The above consent was subject to 28 conditions, including a restriction to a maximum of 35 stalls and Condition 1, which restricted the use to a maximum trial period of 12 months from the first market day held on the school grounds. Prior to the expiry date of this trial period a new application was required to be submitted to and approved by Council in order to enable the applicant to continue the use. This did not occur and as such the following application, subject of this report was submitted.

Submitted to Council on 11 February 2016

DA-2016/275 - Temporary use of Ramsgate Public School for Saturday Markets comprising 75 stalls and operating 7am to 3pm and parking for 70 vehicles.

Public notification of DA-2016/275 has occurred on the following three occasions, after various amendments and the provision of additional information:

- a. 22 February - 7 March 2016
- b. 8 - 30 March 2016
- c. 21 July - 5 August 2016

### Proposal

The proposal seeks to operate what is known as the 'Ramsgate Organic Foodies Market' within the

grounds of Ramsgate Public School every Saturday between the hours of 7am - 3pm. The markets include up to 88 stalls, comprising 75 sellers, some of which have multiple stalls. The markets sell an array of fresh and processed food and drink items, arts, crafts, flowers and organically grown fruits and vegetables. An inflatable jumping castle and pony rides are also proposed in the south western most corner on site. These are proposed to occur a minimum of once a month. The proposal seeks approval for a temporary period of 5 years.

The markets are proposed to open to the public every Saturday between the hours of 8am - 2pm, with an hour before and after proposed to enable stall holders to allow for set up and pack down. Proposed stalls comprise demountable vinyl / canvas tents on poles with associated side walls and counters / bench tops. The stalls are set up upon the bitumen area within the school grounds.

It is proposed to provide vehicular access to the site for stall holders from Hawthorne Street. A total of 93 on site car parking spaces for stall holders are proposed within the grounds of the school upon the bitumen area. All stall holder vehicles are to be parked and shall remain on site until the markets close to the public. It is proposed that on site parking marshalls monitor on site car parking and assist in traffic control for stall holders.

Pedestrian access to the markets for members of the public is proposed via the existing pedestrian gates of the school at Chuter Avenue, Hawthorne Street and Florence Street.

The proposed use seeks to utilize the existing male / female toilet facilities of the school and on site hot / cold water connections.

The markets are proposed to employ a total of 10 staff, including a Director and Project Manager. Staff responsibilities are proposed to include first aid, on site traffic management, set up, clean up and food safety.

## **Site location and context**

The subject site is a rectangular shaped allotment with a frontage of approximately 124m to Chuter Avenue and Hawthorne Street, 136m to Florence Street and an approximately site area of 16 864sq/m.



Figure 1 - Aerial Context

The site is currently utilised for the purposes of an infants and primary school known as Ramsgate Public School. The school grounds are occupied by a number of single and two storey detached and attached school buildings of varying ages, with associated structures including fire stairs, awnings, canopies and children's play equipment also located within the grounds. The site comprises large unbuilt upon areas utilised as playground spaces incorporating a range of scattered trees and shrubs across the site.



Figure 2 - View from little Chute Avenue looking south west



Figure 3 - View from Florence Avenue looking west

To the south opposite Florence Street and west opposite Hawthorne Street lies Scarborough Park.



This parkland comprises wetlands, urban bushland areas and car parking along the periphery of the public roads. A sporting field is located directly opposite the school on the southern side of Florence Street.



Figure 4 - View from junction of Florence and Hawthorne Streets



Figure 5 - View from Hawthorne Street vehicular / pedestrian entrance

To the east of the site is little Chuter Avenue which adjoins an extensive and lengthy planted median island separating it from Chuter Avenue. On the eastern side of Chuter Avenue are a range of single and two storey villa developments. To the north of the site adjoining the school grounds, the remainder of the subject street block comprises a mixture of low density residential dwellings comprising single and two storey detached dwellings, villas, town houses and dual occupancy developments.

The subject site is zoned R2 - Low Density Residential and is affected by the following conditions:

- Flooding
- Adjacent to Endangered Ecological Community
- Class 3 - Acid Sulfate Soils
- In vicinity of a heritage item, LEP 2011
- Affected by Council pipes.

## Statutory Considerations

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### *Environmental Planning and Assessment Act, 1979*

An assessment of the application has been undertaken pursuant to the provisions of the *Environmental Planning and Assessment Act, 1979*.

### **S.79C(1) - Matters for Consideration - General**

### **S.79C(1)(a)(i) - Provisions of Environmental Planning Instruments**

The following Environmental Planning Instruments are relevant to this application:

## **State Environmental Planning Policy (Miscellaneous Consent Provisions) 2007**

Part 2 - Erection of temporary structures of SEPP (Miscellaneous Consent Provisions) 2007 requires the applicant to obtain consent from the consent authority for the erection of temporary structures.

Before granting consent, to the erection of a temporary structure, the consent authority must consider the following matters:

*(a) whether the number of persons who may use the structure at any one time should be limited,*

Comment: It is proposed to accommodate up to 88 stalls on site, with each stall staffed by up to a maximum of two persons. Additionally a total of 10 staff, including a Director and Project Manager are proposed to be employed by the operator each week to manage the markets and undertake duties including but not limited to first aid, on site traffic management, set up, clean up and food safety. It is understood that the markets have the ability to attract up to 3500 patrons through out the day on a Saturday, scattered between the hours of 8am - 2pm.

Accordingly a maximum of up to 186 staff / stall holders are likely to be on site at any one time, in addition to members of the public whom visit the markets. The aforementioned staffing number is a maximum and it is noted that the number of stalls per week varies depending on the supply of goods and local weather.

Given the size of the school grounds, availability of on site and on street car parking and nature of the use, it is not considered that the number of patrons visiting the markets should be limited. The proposal will however be conditioned to restrict the number of stalls to 75 with a maximum of 2 staff members per stall and staff members overseeing the markets to 10.

*(b) any adverse impact on persons in the vicinity of any noise likely to be caused by the proposed erection or use of the structure and any proposed measures for limiting the impact,*

Comment: The operation of the proposed markets does not include the broadcast of any music or the use of loudspeakers. The proposed markets may have the occasional busker's e.g. guitar, and busker's are generally on site between the hours of 9am - 12pm.

The proposed use is likely to generate minor additional noise from patrons parking their vehicles, conversing and visiting the markets, the use of the occasional jumping castle on site and children whom may play within the school grounds. Notwithstanding, it is important to note that the market stalls are located centrally within the grounds of the school and are situated a minimum of 45m from the common northern boundary of the site with villas at 57-59 Chuter Avenue and the dwelling at 17 Hawthorne Street. Further the market stalls are buffered by substantial single and two storey existing school buildings.

It is noted that minor additional noise may be generated by pedestrians walking within the local surrounding road network in order to obtain access to the markets, yet this is not likely to result in adverse acoustic impacts.

It is not considered that the proposed market use generates unreasonable acoustic impacts to residents within the vicinity of the subject site, that would be otherwise greater than or equal to the weekday use of the property as a school.

*(c) whether the hours during which the structure is used should be limited,*

Comment: The proposal seeks to operate once a week on a Saturday between the hours of 7am - 3pm. The markets are proposed to open to the public between the hours of 8am - 2pm, with an hour prior and following, to enable stall holders to set up and pack down. The proposed hours of operation are not deemed to be unreasonable.

*(d) any parking or traffic impacts likely to be caused by the erection of the structure or its proposed use,*

Comment: The matter of traffic and car parking has been addressed further within this report. Subject to a trial period of 12 months, the proposal is satisfactory in this regard.

*(e) the principles for minimising crime risk set out in Part B of the Crime Prevention Guidelines,*

Comment: The proposed use is located within a secure and fully enclosed public school property. Pedestrian ingress and egress is restricted to existing access points along Chuter Avenue, Hawthorne and Florence Streets. The market stalls on site are positioned to enable clear lines of sight.

*(f) whether the proposed location of the structure is satisfactory in terms of the following:*

*(i) the proposed distance of the structure from public roads and property boundaries,*

Comment: Proposed market stalls are appropriately situated and distanced from nearby public roads and property boundaries. i.e. Minimum of 45m from the common northern boundary of the site with villas at 57-59 Chuter Avenue and the dwelling at 17 Hawthorne Street.

*(ii) the location of underground or overhead utilities,*

Comment: The proposed temporary use of the site is not affected by underground or overhead utilities.

*(iii) vehicular and pedestrian access,*

Comment: Pedestrian access to the markets for members of the public is proposed via the existing pedestrian gates of the school at Chuter Avenue, Hawthorne Street and Florence Street. Vehicular access to the site shall be restricted to prior to 8am and only from Hawthorne Street. Vehicular and pedestrian access to the subject site is satisfactory.

*(g) whether it is necessary to provide toilets and washbasins in association with the use of the structure,*

Comment: Toilet facilities including amenities for persons with a disability / mobility impairment are provided as existing within the school grounds. These facilities are available for public use during the hours of the proposed temporary use. Submitted documentation also confirms that a dedicated demountable toilet and washroom with soap and paper towels will be available for use of stall holders.

*(h) whether the structure is proposed to be erected on land that comprises, or on which there is:*

*(i) an item of environmental heritage that is listed on the State Heritage Register, or that is subject to an interim heritage order, under the Heritage Act 1977, or*

(ii) a place, building, work, tree, relic or Aboriginal object that is described as an item of environmental heritage or as a heritage item in another environmental planning instrument, or  
(iii) land identified as a heritage conservation area, an archaeological site or a place of Aboriginal heritage significance in another environmental planning instrument,

Comment: The subject site is not a heritage item, does not comprise any items of environmental heritage and is not within a heritage conservation area.

(i) the duration for which the structure should be permitted to remain on the land concerned,

Comment: As discussed further within this report, the proposal is recommended for approval subject to a trial period of 12 months, as recommended by the Rockdale Development Traffic Advisory Committee (RDTAC) to ascertain traffic and parking volumes associated with the use of the site for the markets.

(j) whether any conditions should be imposed on the granting of consent in relation to the dismantling or removal of the structure in view of any safety issues.

Comment: It is reiterated that market stalls are temporary in nature, with individual stalls being dismantled and removed from 2pm each Saturday following the cessation of the market day. Given the lightweight structure of the market stalls and any associated seating, removal of these structures and items is not likely to result in adverse safety issues.

## Rockdale Local Environmental Plan 2011

Relevant clauses	Compliance with objectives	Compliance with standard/provision
2.3 Zone R2 Low Density Residential	Yes	No - see discussion
2.8 Temporary use of land	Yes	Yes - see discussion
5.10 Heritage conservation	Yes	Yes - see discussion
6.6 Flood Planning Land	Yes	Yes - see discussion
6.8 Biodiversity protection	Yes	Yes - see discussion

### 2.3 Zone R2 Low Density Residential

The proposed development is defined as a 'market' as per the provisions of Rockdale LEP 2011. A 'market' is not permissible within the R2 - Low Density Residential zone.

Notwithstanding, the provisions of Clause 2.8 - Temporary Use of Land of Rockdale LEP 2011 permit the temporary use of land if the use does not compromise future development of the land, or have detrimental economic, social, amenity or environmental effects on the land. The proposed development complies with the provisions of Clause 2.8.

### 2.8 Temporary use of land

The objective of this clause is to provide for the temporary use of land, if the use does not compromise future development of the land, or have detrimental economic, social, amenity or environmental effects on the land.

The provisions of this clause enable consent to be granted for development on land in any zone for a temporary use for a maximum period of 52 days (whether or not consecutive days) in any period of 12 months.

Development consent must not be granted unless the consent authority is satisfied that:

*(a) the temporary use will not prejudice the subsequent carrying out of development on the land in accordance with this Plan and any other applicable environmental planning instrument, and*

Comment: The proposed Saturday use of the school grounds do not prejudice the operation of the school during weekdays. The proposed use is of a temporary nature and will not restrict the carrying out of development upon the land as permitted by RLEP 2011.

*(b) the temporary use will not adversely impact on any adjoining land or the amenity of the neighborhood, and*

Comment: Matters relating to traffic, car parking and acoustics have been addressed further within this report. The proposed use results in a minor increase in traffic on Saturdays during the hours of 7am - 3pm, yet this is not considered to result in adverse amenity impacts, nor is unreasonable in this location.

The proposal is not considered likely to adversely impact upon adjoining land or upon the amenity of the surrounding neighborhood.

*(c) the temporary use and location of any structures related to the use will not adversely impact on environmental attributes or features of the land, or increase the risk of natural hazards that may affect the land, and*

Comment: Proposed temporary markets stalls are to be erected and removed each Saturday by stall holders. At the cessation of Saturday trading, stall holders are to collect and dispose of their waste off site. The temporary use and location of stalls is unlikely to adversely impact upon environmental attributes or features of the site, nor result in an increase in risk of natural hazards of the property.

*(d) at the end of the temporary use period the land will, as far as is practicable, be restored to the condition in which it was before the commencement of the use.*

Comment: Given the demountable nature of stalls and temporary nature of the proposed use, the site is easily able to be restored to its original condition following the cessation of the markets each Saturday.

The proposal is consistent with the objectives and requirements of this clause and it is recommended that the proposed temporary use be conditioned to restrict the use to a maximum of 52 Saturdays per calendar year, for a trial period of 12 months from the date of this consent. Prior to the expiration of any consent, the applicant is required to reapply and seek consent to further continue the operation of the markets on site.

#### 5.10 Heritage conservation

The proposed development is located in the vicinity of heritage items known as Hawthorne Street and Leo Smith Reserve which is located on the western side of Hawthorne Street opposite the site to the rear.

The reserves are an area of approximately 4.21 hectares of diverse urban bushland, this area also acts as an important wildlife corridor. The western edge of the bushland remnant is an important example of wetland shore of Botany Bay. The area has two vegetation communities which are of coastal sands origin.

The Coastal Sands Swamp Forest is located along the western section of this remnant vegetation and is representative of Bangalay Sand Forest as listed in the Threatened Species Conservation (TSC) Act (1995). This vegetation is dominated by *Eucalyptus botryoides* and is relatively undisturbed. The Coastal Sands Open Forest located within the eastern portion of this remnant vegetation is dominated by *Angophora costata* and has a high diversity of native species with relatively low exotic weed incursions. The main weed incursions occur along the eastern boundary where it adjoins urban development. This vegetation community is representative of Kurnell Dune Forest as listed in the TSC Act (1995) and subsequently is considered to be of high conservation value due to the small areas of this vegetation community left within the Sydney Bioregion. This community also contains a record of the threatened flora species *Syzygium paniculatum* (Magenta Lilly Pilly).

The proposed use of the school grounds for a temporary market in no way affects the heritage nature of the aforementioned reserve. The location of the proposed market is on the eastern side of Hawthorne Street within the existing school grounds, therefore the qualities that makes the heritage item and its setting significant will not be diminished.

#### 6.6 Flood Planning Land

The subject site is affected by flooding and subject to minimum floor levels. Given the temporary structures proposed to be erected on the site, no further flooding consideration is required. The proposal is satisfactory in this regard.

#### 6.8 Biodiversity protection

The land is not identified as environmentally sensitive land upon the natural resources biodiversity map.

### **S.79C(1)(a)(ii) - Provisions of any Draft EPI's**

No relevant proposed instruments are applicable to this proposal.

### **S79C(1)(a)(iii) - Provisions of any Development Control Plan**

The following Development Control Plan is relevant to this application:

#### **Rockdale Development Control Plan 2011**

The application is subject to Rockdale DCP 2011. A compliance table for the proposed development is provided below:

<b>Relevant clauses</b>	<b>Compliance with objectives</b>	<b>Compliance with standard/provision</b>
4.1.2 Heritage Conservation - Vicinity of Heritage Item	Yes	Yes
4.1.3 Flood Risk Management	Yes	Yes
4.2 Streetscape and Site Context - General	Yes	Yes - see discussion
4.4.6 Noise Impact - Non-residential	Yes	Yes - see discussion

Relevant clauses	Compliance with objectives	Compliance with standard/provision
4.5.2 Social Equity - Equitable Access	Yes	Yes - see discussion
4.6 Vehicles Enter and Exit in a Forward Direction	Yes	Yes
4.7 Waste Storage and Recycling Facilities	Yes	Yes - see discussion

#### 4.2 Streetscape and Site Context - General

The proposed market stalls are predominantly obscured from view within Chuter Avenue and Florence Street given the location of existing single and two storey school buildings upon school grounds at the periphery of the site. The market stalls are visible when viewed from the Hawthorne Street frontage of the site as there are nil buildings positioned along this frontage of the site in this location.

The proposed market stalls and associated items on site i.e. tables, chairs etc. are lightweight structures, temporary in nature, limited in overall height to no more than 3m and are not considered to result in adverse streetscape impacts. The proposal is satisfactory with regards to the objectives of this clause.

#### 4.4.6 Noise Impact - Non-residential

The matter of acoustics has been previously discussed within this report.

#### 4.5.2 Social Equity - Equitable Access

Level, direct and equitable pedestrian access is available to the subject site via the existing pedestrian gates of the school from Chuter Avenue, Hawthorne Street and Florence Street.

The proposed use seeks to utilize the existing male / female toilet facilities which are also accessible. Accessible car parking is not provided on site and no designated accessible spaces are existing on street.

Notwithstanding, on street car parking within surrounding streets is capable of being utilised by persons with a disability / mobility impairment and is provided with direct and level access to the subject site.

Given the above the proposal is satisfactory with regards to the provisions of this clause.

#### 4.7 Waste Storage and Recycling Facilities

At the cessation of Saturday trading, stall holders are to collect and dispose of their waste off site, the proposal has been conditioned in this manner. Additionally the applicant advises that up to eight (8) red garbage bins are scattered throughout the site, a large dumpster bin is located near the Hawthorne Street exit and bins are provided within existing toilet facilities on site, allowing visitors to dispose of rubbish whilst they are on school grounds. The proposal is satisfactory with regards to this clause.

### **S.79C(1)(a)(iv) - Provisions of regulations**

All relevant provisions of the Regulations have been taken into account in the assessment of this proposal.

### **S.79C(1)(b) - Likely Impacts of Development**

#### Car Parking

Documentation submitted with the application indicates that a total of 93 on site car spaces are



available for use by stall holders only, with the applicant relying upon on street car parking within local surrounding streets including Hawthorne, Emmaline, Florence Streets and Chuter Avenue for customers visiting the markets.

Of the 93 on site car spaces provided for stall holders, 55 of these spaces are proposed to be provided between buildings J and H on site, with 38 accommodated around the perimeter of the market stalls. Vehicular entry and exit to the site for stall holders and any deliveries is proposed to be restricted to the existing driveway from Hawthorne Street and sufficient area exists on site in order to enable vehicles to manoeuvre, enter and exit in a forward direction.

Unloading of goods and / or items associated with the markets are to be undertaken on site between the hours of 7am - 8am and / or 2pm - 3pm on Saturdays. Should any deliveries be required outside of these hours, it is proposed that delivery vehicles be required to park outside school grounds with deliveries to be physically carried into the site. All stall holder vehicles are to be parked and shall remain on site until the markets close to the public. It is proposed that on site parking marshal's monitor on site car parking and assist in traffic control for stall holders.



*Figure 6 - Site Plan*

The proposal was accompanied by a Traffic Report prepared by Apex Engineers and dated May 2016. The traffic report reviewed the traffic and car parking impacts of a 75 market stall operation within the grounds of Ramsgate Public School. Parking surveys were undertaken within local surrounding streets on two consecutive Saturdays, 30th April and 7th May to determine on street parking availability during the hours of 8am - 2pm at half hourly intervals. It is noted that on 30th April, 72 market stalls were operating, with 74 stalls in operation on 7th May.

Given Rockdale DCP 2011 does not stipulate car parking requirements for the proposed use, an assessment has been undertaken against the parking rates stipulated within the Roads and Maritime Service Guide to Traffic Generating Development, which details the following parking rates for the proposed use.

- Minimum 2 car spaces per stall
- Desirable 2.5 spaces per stall

The applicant's consulting engineers noted that the above rates do not account for stall holder vehicles and that '*separate provision should be made for these vehicles*'. As such the consulting traffic engineers adopted a parking rate of 3.5 car spaces per market stall, for assessment purposes.

The Traffic Report noted that a total of 263 car spaces would be required for stall holders and visitors in the event of a market operation with 75 stalls. This being 188 customer spaces and 75 spaces for stall holders.

The Traffic Report noted that there are 536 on-street public car spaces, with the majority being of unrestricted time within local surrounding streets within vicinity of the subject site. The report further notes that *"peak occupancy levels for on-street car parking spaces, within the site vicinity, occurs at 10.30am"*. Notwithstanding, during this period 92 on street car spaces were still available within vicinity of the subject site.

Given the above, the following observations are made:

- a. Of the required 75 car spaces for stall holders, 93 spaces are proposed to be provided on site. This being a surplus of 18 car spaces than the minimum required.
- b. Of the required 188 car spaces for visitors, a total of 536 on street car spaces exist within local surrounding streets, with 92 spaces available during the peak occupancy period.

The above demonstrates that sufficient on street car parking exists within local surrounding streets, to accommodate for the demand generated by the markets, with on street car spaces remaining available for other users during the peak period of visitation for the markets. i.e. residents, ballet school within Syd Frost Hall, tennis courts within Scarborough Park etc.

Further to the above, the proposal was reviewed by Councils Engineer and the Rockdale Development Traffic Advisory Committee (RDTAC) whom made the following recommendations.

- 1. That 75 stall holders be encouraged to park on site, therefore 75 parking spaces should be made available on site.*
- 2. That pedestrian access and pedestrian safety measures be provided on site.*
- 3. That a PA system be provided to announce illegal parking activities.*
- 4. Delivery activities be carried out on site safely and details to be provided to demonstrate how this can be achieved.*
- 5. That the traffic and parking situation be reviewed in 12 months time.*

In response to the above, it is noted.

1. The proposal has been conditioned to require that all stall holders park on site and that the number of stalls on site be restricted to a maximum of 75.
2. Nil vehicular movements are proposed to occur between 8am - 2pm on site. The proposal has been conditioned accordingly and is satisfactory.
3. The proposal has been conditioned to require the market organisers to have access to the schools PA system which shall only be used in the event of any illegal parking activities. Temporary signage shall also be required to be provided at all pedestrian entries to the site to inform visitors that that illegal parking is prohibited. The proposal has been conditioned accordingly.
4. Deliveries on site shall be restricted to prior to 8am and / or following 2pm.
5. The proposal has been recommended for Approval subject to a 12 month trial period as recommended by Councils RDTAC to ascertain traffic and parking volumes associated with the use of the site for the markets.

Given the above, and the availability of on street car parking the proposal is satisfactory with regards to

parking provision.

### Traffic Impacts

The submitted Traffic Report was considered by Councils Engineer and RDTAC. The traffic impact assessment reveals that the subject markets are likely to generate 1,080 daily vehicular trips, distributed throughout the proposed operating hours of 8am to 2pm, with 240 peak hour trips. This equates to 120 vehicles likely to arrive and 120 vehicles likely to depart the local surrounding road network during the peak hours of operation of the markets i.e. 10.30am - 11.30am.

Given the proposed on street parking within various local side streets, Councils Engineer has confirmed that the traffic generated by the proposed markets is likely to be distributed evenly through the local surrounding road network, as drivers will be seeking on-street public car parking, without being accumulated at a single intersection.

Given the above, traffic impacts likely to be generated from the proposed use of the site are not considered to be unreasonable.

### Health

Councils Health Inspectors reviewed the proposal and noted as follows:

*Council's Environmental Health team have previously carried out inspections of the food stalls at Ramsgate Foodies Markets. It was observed that almost 40 of the stalls set up, were selling food for immediate consumption. Observations made during the course of the inspections also revealed serious breaches of the Food Act 2003. These breaches included:*

- 1. Lack of hand washing facilities*
- 2. Food was seized by Council Officers for not being maintained at the correct temperature*
- 3. Food stalls were not enclosed on three sides or had protected flooring*
- 4. Food stalls had food on display that was unprotected*
- 5. No adequate sanitising facilities*

For this reason, it is recommended by Councils Environmental Health Officers that the proposed markets run on a monthly basis rather than weekly.

With regards to the above, it is noted that appropriate conditions of consent have been incorporated into the draft Notice of Determination with regards to the design of food stalls i.e. roof and three sides required, packaging and labelling requirements for food items and disposal of waste / oils etc.

It is considered that the conditions to be imposed shall ensure that the above matters are addressed and that the stall holders adhere to the Food Act 2003, Food Regulation 2015, Food Standards Code and the Food Handling Guidelines for Temporary Events – NSW Food Authority dated June 2016. Accordingly, the proposal has been conditioned for a trial period of 12 months, operating once a week in lieu of once a month as recommended by the Health Officers.

### **S.79C(1)(c) - Suitability of the site**

The relevant matters pertaining to the suitability of the site for the proposed development have been considered in the assessment of the proposal. Additional conditions of consent are proposed to further minimise any impacts on neighbouring properties. There are no known major physical constraints,

environmental impacts, natural hazards or exceptional circumstances that would hinder the suitability of the site for the proposed development.

### **S.79C(1)(d) - Public submissions**

The development was notified in accordance with the provisions of Rockdale DCP 2011 on three occasions. A total of seventeen (17) submissions were received opposing the proposal and one (1) in support. The issues raised in the submission are discussed below:

*Traffic impacts compounded given competing uses nearby / Competing uses have not been considered within traffic report / Increased traffic volumes are dangerous to pedestrians and other motorists*

Comment: The Traffic Report included parking surveys which were undertaken within local surrounding streets (Hawthorns / Florence / Emmaline Street and Chuter Avenue) on two consecutive Saturdays, 30th April and 7th May. The parking survey was undertaken to determine on street parking availability during the hours of 8am - 2pm at half hourly intervals.

It is noted that a number of various other uses exist within and in close proximity of Ramsgate Public School in addition to the proposed market uses. i.e. Syd Frost Hall within Hawthorne Street hosts ballet lessons on Saturdays as does the school hall within Ramsgate Public School, a playground is situated within Hawthorne Street outside Syd Frost Hall and a number of public sporting fields are located within Scarborough Park. The traffic report included parking surveys undertaken within local surrounding streets.

Given the aforementioned times the parking survey was undertaken, these times coincide with a number of the other uses previously referred to and as such the vehicular traffic and car parking associated with these uses has been captured within the results of the traffic study.

The matter of traffic and car parking has been further discussed within this report and is found to be satisfactory subject to a 12 month trial period.

*Paving in residents driveway damaged as it is used for three point turns*

Comment: Given the number of various other uses which exist within close proximity of Ramsgate Public School in addition to the proposed markets, it cannot be substantiated that any alleged damage of driveways has occurred as a direct result of visitors to the markets. Further no evidence was provided to support this claim.

*Disfigurement of school grounds, landscape and bushland to provide parking is unacceptable*

Comment: The site plan submitted to Council on 4 July 2016 confirms the location of on site car parking upon bitumen areas within the school grounds. Parking is not proposed upon turfed areas. The proposal has further been conditioned to restrict parking to bitumen areas on site only.

*Opposed to extended trading hours for markets / Acoustic impact of traders arriving prior to 5am / Headlights beaming into neighbouring houses early in the morning*

Comment: The hours of operation of the proposed use shall be restricted to between 7am and 3pm Saturdays and shall only be open to the public between the hours of 8am - 2pm. No deliveries or

access to the site will be permitted prior to 7am, this will assist in minimising headlight glare in the early hours of the morning. Hours of operation are not considered to be unreasonable. Acoustic impacts have been discussed previously within this report.

*Insufficient on site car parking provision / Car parking impacts / Parking allocation on site is inadequate and does not account for future growth and demand for the markets / Residents cannot park close to their homes*

Comment: The matter of car parking has been previously addressed within this report. Any future growth of the markets will be considered as part of any future application. The proposal has been restricted to a trial period of 12 months and with a maximum of 75 stalls. Local surrounding streets are available at all times for public parking unless otherwise signposted or line marked.

*Safety concerns within Emmaline Street given speed of vehicles using this street and increase in traffic / Safety concerns in Hawthorne Street as there is no footpath*

Comment: Public constructed footpaths and / or grass verges are available within both Emmaline and Hawthorne Streets to enable pedestrians to access the subject site. These are local streets with a speed limit of 50km/h.

*Markets should not increase by more than 20 additional stalls / Health concerns as there is no hot and cold running water*

Comment: Hot and cold running water is available within school grounds and stall holders will have access to this. The proposal for 75 market stalls is deemed to be acceptable for the reasons outlined within this report.

*Litter being disposed of by visitors in local streets*

Comment: As previously discussed within this report, bins are provided within the school grounds for visitors to appropriately dispose of litter. The proposal has been conditioned to require the placement of bins at or near all three pedestrian entries / exits to the site to allow visitors to dispose of litter in bins as they leave.

*Council Rangers or Police should have a visible presence on Saturdays to enforce illegal parking / Blocking of residential driveways and vehicles parked close to driveways affecting visibility*

Comment: Council Regulation Officers generally patrol the local government area to enforce parking regulations. In the event that a residents driveway is blocked by a vehicle, the resident may contact Councils Customer Service Centre to lodge a complaint. Council's Regulation Officers will visit the site and if vehicles are observed to be illegally parked action will be undertaken accordingly.

*Additional "No Stopping" signage should be provided by Council along Chuter Avenue*

Comment: The request for additional signage is beyond the scope of this application and has been referred to Councils Traffic and Road Safety Coordinator for review.

*Privacy and noise impacts given additional traffic*

Comment: It is not considered that unreasonable acoustic or privacy impacts of nearby residential dwellings occur as a result of the minor additional traffic generated by the proposed development.

#### *Inappropriate site for the proposed use*

Comment: As discussed within this report, the site comprises suitable facilities for the proposed temporary use. This included but is not limited to access to hot / cold water, toilets, existing vehicular and pedestrian access, ability to accommodate stallholders and associated vehicles on site. The site is considered to be suitable for the proposed use.

#### *Lack of community consultation and workshops by the applicant prior to the finalisation of the SEE*

Comment: The applicant is not required to undertake community workshops prior to the lodgement of the application. The proposal was appropriately notified on three occasions in accordance with the provisions of DCP 2011.

### **S.79C(1)(e) - Public interest**

The proposal has been assessed against the relevant planning policies applying to the site having regard to the objectives of the controls. As demonstrated in the assessment of the development application, the proposal will allow the temporary use of the subject site once a week for the purposes of an open air food market. The proposed use of the site is considered to be a positive social contribution for the local community and does not create unreasonable impacts on surrounding properties. As such it is considered that the development application is in the public interest.

## **Schedule 1 - Draft Conditions of consent**

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### **General Conditions**

The following conditions restrict the work to the detail provided in the Development Application and are to ensure that the development is complete.

1. The term of this consent is limited to a maximum period of 12 months from the date of this approval. The consent will lapse if the development does not commence within this time. Prior to the expiry date of this consent, a new application shall be submitted for any continuance of the use. Such an application shall include details of any incidents and complaints received during the trial period.

Councils consideration of the proposed continuation of the use permitted by the trial period will be based on, amongst other things, the performance of the operator in relation to compliance with development consent conditions and any substantiated complaints received.

2. The development must be implemented substantially in accordance with the plans listed below, the application form and on any supporting information received with the application, except as may be amended in red on the attached plans and by the following conditions. In the event of any inconsistency between conditions of this approval and the drawings/documents referred to in condition 2, the conditions of this approval prevail.

Plan/Dwg No.	Drawn by	Dated	Received by Council
Site Plan Drawing 11714	-	31 March 2015	04/07/2016
Stall Layout Plan	-	Undated	04/07/2016

## Development specific conditions

The following conditions are specific to the Development Application proposal.

3. No amplified music / loudspeakers or the broadcast of any music is permitted on the site. This excludes the use of the schools existing PA system to announce any illegal parking activities.
4. The hours of operation of the approved use shall be restricted to between 7am and 3pm Saturdays and shall only be open to the public between the hours of 8am - 2pm. No deliveries or access to the site is permitted prior to 7am.
5. Waste Management

a) A total of (8) red garbage bins are to be scattered throughout the site with one (1) bin at each pedestrian entry / exit to enable visitors to appropriately dispose of litter as they arrive and depart from the subject site.

b) Stallholders are to dispose of waste off site following the conclusion of the markets each Saturday.

6. Adequate accessible toilet facilities shall be provided on site for stall holders and members of the public between the hours of 7am - 3pm each Saturday.
7. All existing trees located within the site and street trees located adjacent to the site shall be retained and protected throughout all times of operation.
8. Health and Food Safety

A. The development shall be designed, constructed and operated in compliance with the requirements of the Food Act 2003, Food Regulation 2015, Food Standards Code and the Food Handling Guidelines for Temporary Events – NSW Food Authority dated June 2016.

B. All temporary food stalls must have a roof and three sides designed to maintain adequate ventilation and protection of food. The stalls shall be of plastic or vinyl type sheeting and care must be taken to ensure the stalls are stable and secure.

C. An overhead cover must be provided to all cooking areas or food storage areas outside of the stall. This may be achieved by providing a sun shade structure or open sided stalls.

D. A durable dust and moisture cover must be laid over the entire floor area of each stall. A suitable material would be an impervious membrane such as rubber matting.

E. All stall counter surfaces shall be smooth, durable and impervious. Surfaces can be covered with plastic or plastic table cloths to meet this requirement. Surfaces that cannot be easily cleaned, such as wood, will not be accepted.

F. All power and gas service leads must be secured.



G. A compliant fire extinguisher of adequate size must be provided in a convenient and accessible location for each stall who provides hot food.

H. All food on display must be either:

- i) whole fruit, vegetables;
- ii) wrapped or packaged; or
- iii) completely enclosed in a suitable display cabinet; or
- iv) be protected by a physical barrier such as perspex glass sneeze guard or clear plastic siding to the stall or
- v) located so as not to be openly accessible to the public.

I. All food for retail sale must comply with the labelling requirements of the Food Standards Code Chapter 1 (General Food Standards), Part 1.2 – 'Labelling and other Information Requirements'.

J. Each stall is to be provided with a covered garbage bin for the storage of the stall's wastes. A separate adequate storage of paper, cardboard or other recyclable material must be provided by the event/ market organiser in a suitable location to be used by all stall holders.

K. Waste water and oils must not be disposed of into the stormwater system or on the ground. All waste water must be disposed of through Sydney Water's sewerage system. All waste oils must be disposed of through a licensed contractor.

L. Hand-washing facilities must be provided within each food stall. A sealed container of potable water (minimum capacity 20 litres) with a tap and suitable bowl or container must be provided for hand washing only. The waste water is to be disposed of into a waste water container. Each hand wash basin must have an adequate supply of warm running water (approximately 40°C), liquid soap and disposable paper towels.

M. Potentially hazardous food items must be kept under temperature control. The hot food must be kept at or above 60°C (hot holding). The cold food must be kept at or below 5°C (cold holding). The frozen food must be kept below (minus) -18°C.

N. Any food stall selling food that is ready-to-eat, potentially hazardous and not sold and served in the supplier's original package must have a designated Food Safety Supervisor present during the operation of the business.

O. Stall food holders registration details and food safety supervisor details (where applicable) shall be recorded and copies kept with the event/ market organiser. This must be available for inspection upon request by Council's Officers.

P. Other than fresh fruit and vegetables, the foods sold at the market, must be sourced from a reputable supplier or manufacturer who are registered with either the NSW Food Authority or a local enforcement agency as defined under the Food Act 2003. A copy of the current approval by the authorised agency, shall be submitted to Council prior to trade at the markets.

Q. All food stall holders must complete and return Council's temporary food stall event registration form to Council 1 (one) month prior to trade at the markets.

R. There shall be a maximum of 25 (twenty-five) food stall holders selling fresh fruit and vegetables and a maximum of 15 (fifteen) stalls dedicated for ready-to-eat food items permitted to operate at any one event. The total number of stalls selling food must not exceed 40 (forty) stalls at any one event.

S. Details of any new food stall holders shall be provided to Council 1 (one) month prior to trade by the event/ market organiser. This information shall be accompanied with proposed menu plans as well as relevant documentation such as Food Safety Supervisor Certificate details and completed temporary food stall event registration form.

T. All takeaway food prepared at the food stall must be sold immediately unless there is a suitable food warmer or display cabinet in which to keep the food either hot or cold. All raw and perishable foods such as steaks, hamburger patties, seafood and other meat products must be kept in a refrigerated unit such as a portable cool room. Ready-to-eat food products or pre-cooked foods which contain fresh cream, custard, cheese or any similar food that promotes bacterial growth must be stored and displayed in a refrigerated unit at a temperature below 5°C. For events that will last 3 (three) hours or longer, a cool room (walk in refrigerator) must be provided to ensure all potentially hazardous food can remain under temperature control. A maximum of two stalls to share a cool room within 5 metres of entry point of stall.

U. All food stalls shall have a temperature probe that is able to measure the core temperature of food to +/-1°C.

V. A minimum of 4 (four) communal wash up sinks shall be provided by the event/ market organisers and accessible to all food stall holders during trade. An adequate supply of hot and cold running water must be provided at each facility, which shall be large enough to accommodate for a maximum of 40 (forty) food stalls.

W. All stall fixtures, fittings and equipment, and those parts of vehicles used to transport food, must be maintained and cleaned so there is no accumulation of food waste, dirt, grease or other visible matter. All food contact surfaces, such as food preparation bench tops must be cleaned and sanitised with a suitable food grade chemical sanitiser. A suitable food grade chemical sanitiser shall be provided. Only single use eating and drinking utensils such as cups, plates, forks and knives are permitted.

9. A copy of this consent must be provided to all stall holders prior to the commencement of the first market event, from the date of this consent. Any new market stalls are to be provided with a copy of this consent prior to commencement of the new stall on site.
10. Signs or goods shall not be displayed or placed on the public footpath or any other part of the public road at any time without Council's consent.
11. The use of the site shall not give rise to an "offensive noise" as defined under the provisions of the Protection of the Environment Operations Act, 1997.
12. The temporary use on site is restricted to a maximum of 52 Saturday's per calendar year.
13. A maximum of 75 stalls are permitted on site. Each stall may be staffed by up to a maximum of 2 persons. All stalls shall be dismantled by 3pm each Saturday.
14. Car Parking and Traffic Management

A. A minimum of 93 on site car parking spaces are to be provided for stall

holders. All stall holders shall park their vehicles on site for the duration of the markets on a Saturday. Car parking areas are only permitted upon bitumen areas on site. No parking is permitted upon turfed / landscaped areas within school grounds.

B. All loading / unloading of goods and / or items associated with the operation of the markets are to be undertaken on site between the hours of 7am - 8am and / or 2pm - 3pm on Saturdays. Nil vehicular movements are permitted on site between the hours of 8am - 2pm. No loading / unloading is permitted on site prior to 7am.

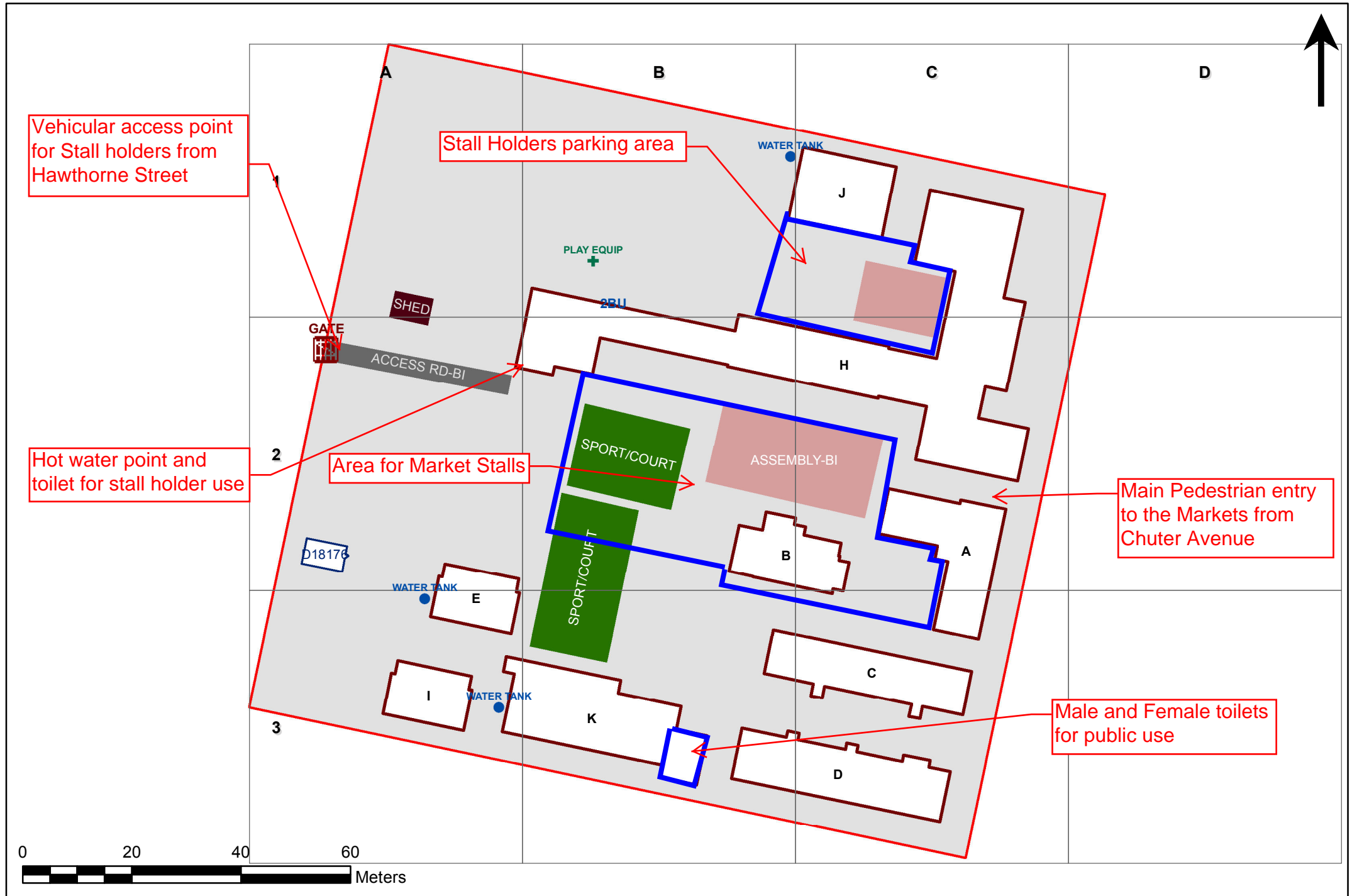
C. A minimum of two staff are to be employed by the operator of the markets to undertake on site traffic and pedestrian management and control during the hours of operation of the markets each Saturday.

D. The schools existing PA system shall only be used to announce illegal parking activities. Temporary signage shall be erected at all pedestrian entries to the markets to inform visitors that illegal parking is prohibited. Signage shall be removed each Saturday following the cessation of the markets.

E. During the trial 12 month operation as noted by this consent a Traffic Report is to be undertaken by the applicant to ascertain traffic and parking volumes associated with the use of the site for the markets. The traffic study shall include multiple survey dates throughout summer, winter and include school holiday periods and include all activities adjacent to the site (i.e. playground, tennis court, use of Syd Frost Hall etc). Parking surveys shall be undertaken for a minimum of 3 typical Saturdays during the peak season. This traffic report is to be submitted to Council with any further application for the continued use of the site.

15. A maximum of 10 staff members are to be employed by the operator of the markets to oversee and manage the operation of the markets on a weekly basis.

3830 - Ramsgate Public School  
Site Plan (11714)



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## Council Meeting

**12/10/2016**

Item No	9.9
Property	<b>16, 18 and 20 Princess Street, Brighton Le Sands</b>
Proposal	Integrated Development – Construction of a Nine (9) Storey Residential Flat Building Comprising Thirty One (31) Residential Units; Basement Parking and Demolition of Existing Structures
Report by	Luis Melim, Manager Development Services Alexandra Hafner, Development Assessment Planner
Application No	(R) DA-2016/325

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## Council Resolution

Resolved by the Administrator:

- 1 That Council support the variation to Clause 4.3 - Height of Building of the Rockdale Local Environmental Plan 2011 (RLEP2011) in accordance with the clause 4.6 justification submitted by the applicant.
  - 2 That the development application DA-2016/325 for the construction of a nine (9) storey residential flat building comprising of thirty one (31) residential units; basement parking and demolition of existing structures be APPROVED pursuant to Section 80(1)(a) of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report.
  - 3 That the NSW Department of Planning and Environment be advised of Council's decision.
  - 4 That the objectors be advised of Council's decision.
- 

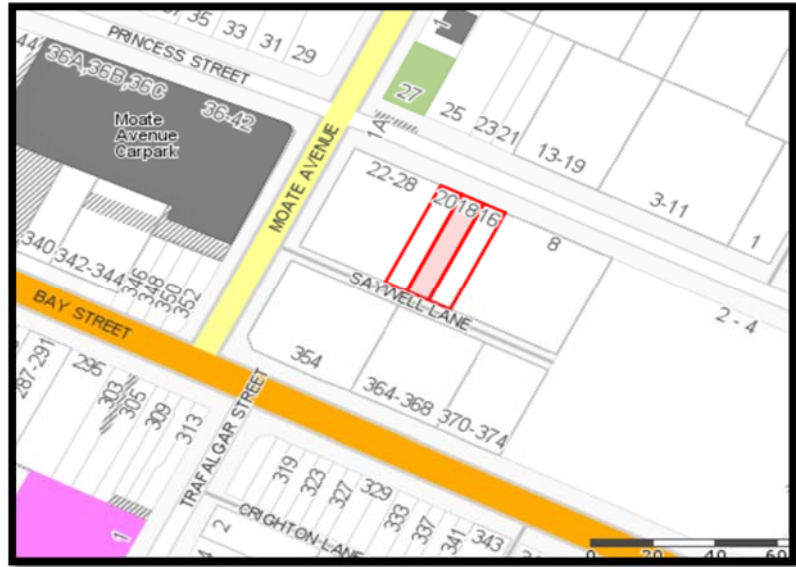
## Officer Recommendation

- 1 That Council support the variation to Clause 4.3 - Height of Building of the Rockdale Local Environmental Plan 2011 (RLEP2011) in accordance with the clause 4.6 justification submitted by the applicant.
- 2 That the development application DA-2016/325 for the construction of a nine (9) storey residential flat building comprising of thirty one (31) residential units; basement parking and demolition of existing structures be APPROVED pursuant to Section 80(1)(a) of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report.
- 3 That the NSW Department of Planning and Environment be advised of Council's decision.
- 4 That the objectors be advised of Council's decision.

## Attachment

- Planning Assessment Report
- Roof & Site Plan
- Elevations 01
- Elevations 02
- Elevations 03
- Elevations 04
- Clause 4.6 submission

## Location Plan



# BAYSIDE COUNCIL

## Planning Assessment Report

### Application Details

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<b>Application Number:</b>	DA-2016/325
<b>Date of Receipt:</b>	15 March 2016
<b>Property:</b>	16 Princess Street, BRIGHTON LE SANDS NSW 2216 Lot 5 DP 435253 Lot 4 DP 435253 Lot 3 DP 435253
<b>Owner:</b>	Brighton International Pty Ltd
<b>Applicant:</b>	Mr Alex Scionti
<b>Proposal:</b>	16-20 Princess Street, Brighton Le Sands NSW 2216 - Integrated Development - Construction of a nine (9) storey residential flat building comprising thirty one (31) residential units, basement parking and demolition of existing structures
<b>Recommendation:</b>	Approved
<b>No. of submissions:</b>	The development has been notified and advertised in accordance with the provisions of Rockdale DCP, 2011. Seven (7) submissions were received concerning the proposal.
<b>Author:</b>	Alexandra Hafner
<b>Date of Report:</b>	23 August 2016

### Key Issues

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The following key issues arise in consideration of the subject application:

- The proposed development fails to comply with Clause 4.3 - Height of Building of the RLEP 2011 which permits a maximum building height of 28 metres AHD. The subject development seeks consent for an overall building height of 29.1 metres AHD.
- Accordingly, the application is accompanied by a written Clause 4.6 submission seeking to vary the statutory provisions of Clause 4.3 of the RLEP 2011, which is discussed in the body of this Report.
- The application is considered under the remit of SEPP 55; SEPP 65 and the ADG; the RLEP 2011 and the RDCP 2011 and generally complies with the provisions contained therein.

### Recommendation

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1 That Council support the variation to Clause 4.3 - Height of Building of the Rockdale Local Environmental Plan 2011 (RLEP2011) in accordance with the clause 4.6 justification submitted by the applicant.



2 That the development application DA-2016/325 for the construction of a nine (9) storey residential flat building comprising of thirty one (31) residential units; basement parking and demolition of existing structures be APPROVED pursuant to Section 80(1)(a) of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report.

3 That the NSW Department of Planning and Environment be advised of Council's decision.

4 That the objectors be advised of Council's decision.

## Background

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### History

Council's records show the following applications have previously been considered in relation to the subject sites:

16 Princess Street, Brighton Le Sands:

- Development Application No. DA-2006/187 for the demolition of the existing dwelling and associated structures, was approved on 2 November 2005.

18 Princess Street, Brighton Le Sands:

- Building Application BA-1992/660 for the construction of an outbuilding (Class 10), was approved on 13 November 1992; and
- Development Application No. DA-2005/425 for the demolition of existing single storey semi-attached dwelling, associated structures and pathways, was approved on 18 April 2005.

20 Princess Street, Brighton Le Sands:

- Development Application No. DA-2005/430 for the demolition of the existing single storey semi-attached dwelling, associated structures and pathways, was approved on 18 April 2005.

A Planning Proposal was submitted to Rockdale City Council in March 2015 to rezone the subject site in accordance with the following:

- From R4 High Density to B4 Mixed Use;
- Increase the maximum building height from 26 metres to 28 metres; and
- Increase the FSR from 2:1 to 3:1.

The Planning proposal was gazetted by the Department of Planning and Environment late 2015/early 2016. A pre-lodgement application, PDA-2016/23, for the construction of a nine (9) storey residential flat building development, comprising of thirty-one (31) residential units and basement car parking was finalised on 23 December 2015. The proposal was then referred to the DRP on Wednesday 2 March 2016.

### Proposal

The proposed development consists of the following:

- Demolition of the existing structures and removal of nominated trees and landscaping
- Basement Level 03
  - 17 x residential car spaces;
  - 14 x storage lockers;
  - 2 x fire isolated exit stairs;

- 2 x lift access to each upper level; and
- Vehicular access ramp.
  - Basement Level 02
    - 15 x residential car spaces (inclusive of 4 accessible spaces);
    - 11 x storage lockers;
    - 2 x fire isolated exit stairs;
    - 2 x lift access to each level of development; and
    - Vehicular access ramp.
  - Basement Level 01
    - 6 x residential car spaces;
    - 7 x visitor car spaces (inclusive of 1 accessible);
    - Motorcycle and bicycle spaces;
    - 2 x storage lockers;
    - 2 x fire isolated exit stairs;
    - 2 x lift access to each level of development; and
    - Vehicular access ramp.
  - Nine residential floors containing 31 units in the following mix:
    - 1 x 1 bedroom and 2 x 2 home occupation units on the Ground Floor (Units 2, 3 and 4);
    - 3 x three bedroom units;
    - 22 x 2 bedroom units;
    - 3 x one bedroom units.
  - 250sqm of communal open space provided on the Ground, Seventh and Eighth Floors.

Pedestrian entry is provided off Princess Street and Saywell Lane with vehicular access provided via Saywell Lane.

The image below is a photomontage of the proposed development, Drawing No. A-0000, dated March 2016.



**Figure 1.** Photomontage of proposed development, Drawing No. A-0000, Architecture & Building Works, March 2016.

## Site location and context

The subject sites are known as No's. 16, 18 and 20 Princess Street, Brighton Le Sands, formally identified as Lots 3, 4 and 5 in Deposited Plan 435253. Consolidated, the site is a slightly irregular shaped allotment zoned B4 - Mixed Use and located on the southern side of Princess Street, approximately 80 metres south east of the intersection between Princess Street and Moate Avenue. The site has a combined primary frontage of 22.805 metres addressing Princess Street and a secondary frontage of 22.98 metres addressing Saywell Lane. The total surveyed site area is 917.7sqm and has a gentle cross fall of 0.3 metres in a westerly direction, towards the rear of the site.

The land contains three single storey, detached and attached residential dwellings and ancillary structures including two detached garages. Various trees and plantings are also located towards the northern and western allotment corners. Vehicular access is provided via Saywell Lane, with pedestrian access provided via either front or rear of the properties.

## Statutory Considerations

### *Environmental Planning and Assessment Act, 1979*

An assessment of the application has been undertaken pursuant to the provisions of the *Environmental*

### **S.91A - Development that is Integrated Development**

The proposed development constitutes Integrated Development pursuant to the provisions of Section 91A of the *Environmental Planning and Assessment Act, 1979*, and approval is required by the Department of Primary Industries - Water given that temporary groundwater extraction is required within the subject site to allow excavation and earthworks for the basement level construction.

Accordingly, the development application was referred to the NSW Office of Water who granted concurrence to the proposed development, subject to conditions imposed on any consent granted by Council.

### **S.79C(1) - Matters for Consideration - General**

#### **S.79C(1)(a)(i) - Provisions of Environmental Planning Instruments**

The following Environmental Planning Instruments are relevant to this application:

##### **State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

BASIX Certificate No. 688111M, dated Sunday 20 December 2015, accompanies the Development Application. The Certificate details the thermal, energy and water commitments of the proposal, which are also detailed on the submitted plans, and hence, satisfy the requirements of the State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004. Accordingly, a condition is imposed on the draft Notice of Determination ensuring that the commitments contained therein are adhered to.

##### **State Environmental Planning Policy No 55—Remediation of Land**

In accordance with Clause 7 of the State Environmental Planning Policy No. 55 - Remediation of Land, a consent authority must not consent to the carrying out of any development on land unless:

- (a) it has considered whether land is contaminated, and*
- (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable after remediation) for the purpose for which the development is proposed to be carried out, and*
- (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

The application was originally accompanied by a *Preliminary Contamination and Groundwater Assessment*, prepared by C.S.T.S, Document Reference 343-E1110-AA and dated 18 June 2016. The Report was referred to Council's Environmental Health Officer and determined unsatisfactory with regards to the provisions of SEPP 55. Specifically, the Report states the site can be made suitable, subject to further soil assessment in areas currently inaccessible.

A further request was made to the Applicant seeking either a Stage 2 - Detailed Site Investigation (DSI) or a Stage 3 - Remediation Action Plan (RAP), prepared in accordance with NSW EPA's Guidelines

for Consultants Reporting on Contaminated Sites.

Accordingly, a RAP, prepared by Compaction and Soil Testing Services Pty Ltd (CSTS) and dated 1 September 2016 was received by Council on 2 September 2016 and referred to Council's Environmental Health Officer for review and comment. The RAP concludes 'based on the conducted assessment, CSTS has concluded that the site will be suitable in accordance with the National Environment Protection Assessment of Site Contamination Measure 1999 (Amended 2013) for the proposed development'. Subject to conditions, the considerations of Clause 7 of SEPP 55 are satisfied.

### **State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development**

In accordance with clause 28(2) of this policy, the consent authority must take into consideration the following:

#### *a. The advice of the Design Review Panel (DRP)*

The proposal was referred to the DRP on Wednesday 2 March 2016. Subject to minor amendments relating to the provision of landscaped front setbacks; additional street planting and better integration of planting for common areas, the DRP was supportive of the proposed development. The aforementioned matters are discussed in detail below with respect to SEPP 65 and the Apartment Design Guidelines (ADG).

#### *b. The design quality of the development when evaluated in accordance with the design quality principles.*

The design quality principles have been considered in the assessment of the proposal and are found to be satisfactory as indicated below.

#### Principle 1 – Context and Neighborhood Character

The proposal sits within a residential apartment/mixed use precinct between The Grand Parade and Moate Avenue, adjacent to a 9 storey mixed use building adjoining east and a 4 storey residential flat development adjoining west. The area is generally undergoing substantial change with major high rise developments and there is a strong case for the provision of ground floor commercial/retail/business use on the ground floor connecting The Grand Parade to Coles (located further westward). The proposal incorporates three (3) ground floor home occupation units as recommended by the DRP.

The streetscape of Princess Street contains large Eucalypt species in addition to significant Norfolk Pines at the eastern end with the potential to further contribute to the landscape character through the addition of street tree planting and landscaped primary setbacks to ground floor dwellings.

#### Principle 2 – Built Form and Scale

The DRP noted the building form and scale is appropriate for the location given the adjoining development eastward and the recently gazetted planning proposal relating to the subject sites.

#### Principle 3 – Density

The proposed density was supported by the DRP in addition to complying with the maximum permissible FSR in accordance with Clause 4.4 of the RLEP 2011.

#### Principle 4 - Sustainability

The development is subject to the *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004* and requires the submission of a valid BASIX Certificate. Accordingly, the application is accompanied by BASIX Certificate No. 688111M, dated Sunday 20 December 2015 and demonstrates the proposed development satisfies the relevant thermal, water and energy commitments as required by SEPP (BASIX).

In addition to this, the development satisfies communal and private open space requirements; ventilation and solar access standards. The proposal will result in a suitable mix of housing choice, including one; two and three bedroom units; further contributing to housing affordability within the Brighton Le Sands area.

#### Principle 5 – Landscape

The DRP noted the proposed development shall take into consideration the following with respect to landscaping:

- *Care must be taken to ensure the retention, protection and health of the mature tree to the west on the adjacent site. The TPZ shall be identified and accurately represented on all drawings with amendments made to basement egress to not intrude into the established TPZ.*
- *The design of the ground floor communal open space shall be improved via better integration of soft landscaping in addition to screening between the POS of Unit A01 and the proposed communal area.*
- *Strengthening of the streetscape through additional street planting.*
- *Further contribute to the amenity of communal open space on Levels 7 and 8 via inclusion of outdoor kitchen/BBQ areas and toilets.*

Revised plans incorporate a total of 250sqm of communal open space, shared between the ground, seventh and eighth floors in accordance with the rate of 5sqm per dwelling. User amenity is ensured through the provision of soft and hard landscaping surfaces, BBQ facilities and seating areas acting as a catalyst for social interaction. Additional planting has been providing along the secondary frontage, addressing Saywell Lane, to further contribute to amenity of ground floor communal open space. The proposal is considered to contribute to the environmental performance of the development and immediate locality.

#### Principle 6 – Amenity

The development satisfies natural ventilation and solar access requirements whilst providing an appropriate unit mix for the Brighton Le Sands area. The proposal has optimised solar access with a predominantly northern orientation for the majority of units in addition to 74% of units being cross ventilated. The development will result in a sustainable building which reduces overall energy requirements whilst contributing to residential amenity. The DRP was satisfied with regard to residential amenity resulting from the proposed development.

### Principle 7 - Safety

The proposed development provides a prominent and clearly identifiable pedestrian entry portico from Princess Street with all residential apartments, communal open space areas and basement level car parking accessible via a secure electronic system. Ground floor units A.02, A.03 and A.04 are provided with separate entry points also accessed via Princess Street with a secondary entry point for the development provided via Saywell Lane. Common areas will be appropriately lit with satisfactory ventilation and clearly defined pathways. The DRP noted the proposal is satisfactory in regards to the requirements of this principle.

### Principle 8 - Housing Diversity and Social Interaction

The design of the development and proposed unit mix generally provides for varied housing choice, however the DRP has recommended the conversion of one x two (2) bedroom unit to a one (1) bedroom unit to marginally improve the unit mix. The proposal failed to achieve this however has provided documentary support for the proposed unit mix better reflecting market demand and demographics of the Brighton Le Sands area. Further, the development provides a total of 250sqm communal open space area distributed on the proposed ground, seventh and eighth floors which will encourage and provide opportunity for social interaction between future occupants. The DRP was generally supportive of the proposed development in regards to this principle.

### Principle 9 – Aesthetics

The DRP was satisfied the proposed development achieves a balanced and proportional built form using a variety of materials; colours and textures in accordance with the considerations of this principle. The development is acceptable in this regard.

#### *c. the Apartment Design Guide*

The proposal has been assessed against the Apartment Design Guide (ADG)

The proposed development is considered to have performed adequately in respect to the objectives and design criteria contained within the ADG. The relevant issues are discussed below:

CLAUSE	DESIGN CRITERIA	COMMENTS	COMPLIES
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3D - Communal Open Space	<p>25% of site area (229.425sqm).</p> <p>50% direct sunlight to principal usable part of COS for two (2) hours in midwinter.</p>	<p>Development provides a total of 250sqm communal open space shared between ground, seventh and eight floors.</p> <p>Accompanying Shadow Diagrams demonstrate proposed development fails to satisfy performance provisions due to north/south orientation of site and requirement for development to address Princess Street frontage with extension of existing street wall.</p>	<p>Yes.</p> <p>Acceptable - see discussion below.</p>
3E - Deep Soil Zones	<p>Site areas between 650 - 1500sqm are to provide 10% of site (91.79sqm) as deep soil planting with minimum dimensions of 3 metres throughout.</p>	<p>The proposal includes 102.717sqm of deep soil planting contained to Units A.02; A.03 and A.04 and the ground floor common open space.</p>	<p>Yes.</p>

3J - Bicycle and car parking	<p>As per Guide to Traffic Generating Developments, or per Council requirement, whichever is less. Parking provided off-street.</p> <p>Rockdale Council DCP 2011 provisions:</p> <ul style="list-style-type: none"><li>• 34 residential spaces;</li><li>• 7 visitor spaces;</li><li>• 4 bicycle spaces;</li><li>• 3 motorcycle spaces.</li></ul>	<p>The development provides three basement levels with the following parking mix:</p> <ul style="list-style-type: none"><li>• 38 residential spaces;</li><li>• 7 visitor spaces;</li><li>• 4 bicycle spaces;</li><li>• 3 motorcycle spaces.</li></ul>	Yes.												
4D – Apartment size and layout	<p>Minimum internal areas:</p> <table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>35m<sup>2</sup></td></tr><tr><td>1 bedroom</td><td>50M<sup>2</sup></td></tr><tr><td>2 bedroom</td><td>70m<sup>2</sup></td></tr><tr><td>3 bedroom</td><td>90m<sup>2</sup></td></tr></table> <p>Internal areas includes only one bathroom. Additional bathrooms increase area by 5m<sup>2</sup> each.</p> <p>Further bedrooms increase minimum internal area by 12m<sup>2</sup> each.</p>	Apartment type	Minimum internal area	Studio	35m <sup>2</sup>	1 bedroom	50M <sup>2</sup>	2 bedroom	70m <sup>2</sup>	3 bedroom	90m <sup>2</sup>	<p>All proposed units adhere to minimum size requirements in accordance with the ADG.</p>	Yes		
Apartment type	Minimum internal area														
Studio	35m <sup>2</sup>														
1 bedroom	50M <sup>2</sup>														
2 bedroom	70m <sup>2</sup>														
3 bedroom	90m <sup>2</sup>														
4C – Ceiling heights	<table><tr><th colspan="2">Minimum ceiling heights:</th></tr><tr><td>Habitable</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>Two storey apartments</td><td>2.7m main living 2.4m first floor, area &lt; 50% of apartment area</td></tr><tr><td>Attic spaces</td><td>1.8m at edge 30deg min slope</td></tr><tr><td>Mixed use area</td><td>3.3m for ground and first floor</td></tr></table>	Minimum ceiling heights:		Habitable	2.7m	Non-habitable	2.4m	Two storey apartments	2.7m main living 2.4m first floor, area < 50% of apartment area	Attic spaces	1.8m at edge 30deg min slope	Mixed use area	3.3m for ground and first floor	<p>The following minimum FCL heights are proposed in accordance with the ADG:</p> <ul style="list-style-type: none"><li>• Ground to Seventh Floor - 3 metres;</li><li>• Eighth Floor (Units A7.01; A7.02 and A7.03 comprise two storey) - 2.8 metres.</li></ul>	Yes
Minimum ceiling heights:															
Habitable	2.7m														
Non-habitable	2.4m														
Two storey apartments	2.7m main living 2.4m first floor, area < 50% of apartment area														
Attic spaces	1.8m at edge 30deg min slope														
Mixed use area	3.3m for ground and first floor														

3F Visual Privacy	Min separation - side & rear boundaries:			The proposed development includes nil side setback to eastern allotment boundary acceptable in instances where blank wall adjoining in accordance with ADG (AGD, July 2015, page 61).  Nil setback to western allotment boundary (22-28 Princess Street, Brighton).	Yes.  Acceptable - see discussion below.
	Building height	Habitable rooms and balconies	Non habitable rooms		
	Up to 12m (4 storeys)	6m	3m		
	Up to 25m (5-8 Storeys)	9m	4.5m		
	Over 25m (9+storeys)	12m	6m		
	Buildings on the same site combine required building separations. Gallery treated as habitable space				
4A – Solar and daylight access	Living rooms + POS of at least 70% of apartments receive min 2hrs direct sunlight b/w 9am & 3 pm mid-winter  Max 15% apartments receive no direct sunlight b/w 9am & 3pm mid-winter			The proposed development provides 24 of 31 units (77%) with a northern orientation to ensure no less than 2 hours direct access is received to each. Six (6) units receive indirect solar access between 9am and 3pm in midwinter.  Unit A.01 receives no direct solar access between 9am and 3pm in midwinter (3.2%).	Yes.  Yes.

4F – Common circulation and spaces	<p>Max apartments off a circulation core on a single level is eight.</p> <p>10 storeys and over, max apartments sharing a single lift is 40.</p>	<p>Four units are proposed on each floor from Ground to Level 6 with Level 7 containing three units in accordance with the provisions of the ADG (Level 8 contains upper floor levels only).</p> <p>N/A</p>	Yes.															
4E – Private open space and balconies	<p>Primary balconies as follows:</p> <table> <tr> <th>Dwelling type</th> <th>Minimum area</th> <th>Minimum depth</th> </tr> <tr> <td>Studio</td> <td>4m²</td> <td>-</td> </tr> <tr> <td>1 bed</td> <td>8m²</td> <td>2m</td> </tr> <tr> <td>2 bed</td> <td>10m²</td> <td>2m</td> </tr> <tr> <td>3+ bed</td> <td>12m²</td> <td>2.4m</td> </tr> </table> <p>Min balcony depth contributing to the balcony area is 1m.</p> <p>Ground level, podium or similar -POS provided instead of a balcony: min area 15m² and min depth of 3m.</p>	Dwelling type	Minimum area	Minimum depth	Studio	4m²	-	1 bed	8m²	2m	2 bed	10m²	2m	3+ bed	12m²	2.4m	<p>All units satisfy minimum dimensions relating to primary balconies, except for Units A.02; A.03; and A.04.</p>	Acceptable - see discussion below.
Dwelling type	Minimum area	Minimum depth																
Studio	4m²	-																
1 bed	8m²	2m																
2 bed	10m²	2m																
3+ bed	12m²	2.4m																
4B – Natural ventilation	<p>Min 60% of apartments are naturally cross ventilated in the first nine storeys of the building.</p> <p>Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.</p>	<p>74% (23 of 31) units are cross ventilated.</p> <p>Unit depths do not exceed 18 metres.</p>	<p>Yes.</p> <p>Yes.</p>															

4G – Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:	All units satisfy minimum storage requirements of the ADG which is provided per unit in addition to basement level storage.	Yes.										
	<table><tr><th>Dwelling type</th><th>Storage size volume</th></tr><tr><td>Studio</td><td>4m<sup>2</sup></td></tr><tr><td>1 bed</td><td>6M<sup>2</sup></td></tr><tr><td>2 bed</td><td>8m<sup>2</sup></td></tr><tr><td>3 bed</td><td>10m<sup>2</sup></td></tr></table>	Dwelling type	Storage size volume	Studio	4m <sup>2</sup>	1 bed	6M <sup>2</sup>	2 bed	8m <sup>2</sup>	3 bed	10m <sup>2</sup>		
Dwelling type	Storage size volume												
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1 bed	6M <sup>2</sup>												
2 bed	8m <sup>2</sup>												
3 bed	10m <sup>2</sup>												
	At least 50% of the required storage is located within apartment												

### 3D - Communal Open Space

The proposal comprises a total of 250sqm communal open space provided in the form of three separate areas, i.e. ground floor addressing Saywell Lane (134sqm); seventh floor (61sqm); eighth floor (55sqm). Communal open space areas are appropriately designed with soft and hard landscaping; seating; equitable access and varied spaces for interaction and leisure. Solar access to the ground and seventh floor communal open space areas is restricted, given its orientation to the south and behind the proposed development. However, the proposed communal open space area on the eighth floor receives in excess of two (2) hours solar access. Whilst the proposed development fails to satisfy the subject numerical provisions, it provides for appropriate site amenity for future occupants given solar access provisions to individual units is achieved and proximity to high quality open space areas, including Heslehurst Reserve and Brighton Le Sands beach. The proposed development therefore satisfies the objectives of Part 3D - Communal and Public Open Space of the ADG.

### 3F - Visual Privacy

The proposal seeks consent for a nil side setback to both the eastern and western allotment boundaries, which are identified as 6-14 Princess Street and 22-28 Princess Street, respectively. The proposed blank wall with a nil setback to the western adjoining allotment fails to satisfy the minimum building separation distances however has been endorsed by the DRP on the basis of future development potential of 22-28 Princess Street. In addition to this, the nil setback is deemed acceptable as the desired future character is to create a street wall along Princess Street further westwards towards Moate Avenue. The proposal continues the existing street alignment created by 6-16 Princess Street and is therefore acceptable with regards to the objectives of Part 3F - Visual Privacy of the ADG.

Sufficient building separation is provided both north and south of the subject site, aided by both Princess Avenue and Saywell Lane, ensuring that the potential for overlooking to surrounding residential development is minimised.

### 4E - Private Open Space and Balconies

As noted above, the proposal ensures all units satisfy minimum private open space requirements,

except for Units A.02 and A.04 which are 13sqm and 12sqm respectively, instead of the required 15sqm minimum. All 31 units satisfy the minimum depth requirements. The private open space to Unit A.02; A.03 and A.04 is orientated north, ensuring sufficient solar access is received between 9am and 3pm in midwinter and is deemed acceptable in this regard.

## Rockdale Local Environmental Plan 2011

Relevant clauses	Compliance with objectives	Compliance with standard/provision
2.3 Zone B4 Mixed Use	Yes	Yes - see discussion
2.7 Demolition requires consent	Yes	Yes - see discussion
4.3 Height of buildings	Yes	No - see discussion
4.4 Floor space ratio - Residential zones	Yes	Yes - see discussion
4.6 Exceptions to development standards	Yes	Yes - see discussion
5.9 Preservation of trees or vegetation	Yes	Yes - see discussion
6.1 Acid Sulfate Soil - Class 4	Yes	Yes - see discussion
6.2 Earthworks	Yes	Yes - see discussion
6.4 Airspace operations	Yes	Yes - see discussion
6.7 Stormwater	Yes	Yes - see discussion
6.12 Essential services	Yes	Yes - see discussion

### 2.3 Zone B4 Mixed Use

The subject site is zoned B4 - Mixed Use under the provisions of Rockdale Local Environmental Plan 2011 (RLEP 2011). The proposal is defined as a *residential flat building*, which constitutes a permissible form of development, only with consent. The objectives of the zone are:

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*

The proposed development is consistent with the objectives of the zone as the development provides the net addition of residential dwellings within proximity of public transport, shops and services.

### 2.7 Demolition requires consent

The application is accompanied by a Survey Plan, prepared by Denny Linker & Co, Reference No. 090639 and dated 7 July 2009. The proposed development seeks consent for the demolition of three existing, single storey detached and attached residential dwellings and associated structures as shown on the accompanying Survey Plan and hence satisfies the provisions of this Clause.

### 4.3 Height of buildings

The maximum permissible height of building in accordance with this Clause is 28 metres as measured from NGL (existing).

The proposed development seeks an overall building height of 29.1 metres (RL 35.70 - RL 6.60) and

therefore exceeds the numerical provisions of this Clause. Accordingly, the application is accompanied by a written Clause 4.6 submission seeking to vary the maximum permissible height of building, which is discussed further below in the body of this report.

#### 4.4 Floor space ratio - Residential zones

The maximum permissible FSR is 3:1 in accordance with this Clause.

The proposed development seeks a GFA calculated at 2795.056sqm, over a consolidated site area of 917.7sqm. This equates to an FSR of 3:1, which complies with the numerical provisions of this Clause. In this regard, the proposed density is in accordance with the desired future character of Brighton Le Sands, will have minimal adverse environmental effects on the use or enjoyment of adjoining properties and will maintain an appropriate visual relationship between new development and the existing character of the area. Accordingly, the proposed development also satisfies the objectives of this Clause.

#### 4.6 Exceptions to development standards

Clause 4.6 allows a variation to a development standard subject to a written request by the applicant justifying the variation by demonstrating:

- (3)(a) that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and*
- (3)(b) that there are sufficient environmental planning grounds to justify the variation.*

In considering the applicant's written submission, the consent authority must be satisfied that:

- (i) the applicant's written request is satisfactory in regards to addressing subclause (3) above, and*
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives of the relevant zone.*

- 5(a) The consent authority must also consider whether contravention of the development standard raises any matter of significance for State or Regional Environmental Planning and*
- 5(b) the public benefit of maintaining the standard.*

Variations to the maximum permissible height of building are discussed below.

It is noted that the proposal has been further assessed against the principles established by the Land and Environment Court Judgement "*Four2Five v Ashfield Council [2015] NSWLEC 90*", where it was established that justification to vary a standard requires more than just achieving the objectives of the standard. Consideration shall also be given to the particular site circumstances of the proposal and whether the proposed variation achieves a better design outcome than if the control had been applied.

The objectives of Clause 4.3 are as follows:

- (a) to establish the maximum limit within which buildings can be designed and floor space can be achieved;*
- (b) to permit building heights that encourage high quality urban form;*
- (c) to provide building heights that maintain satisfactory sky exposure and daylight to buildings; key areas and the public domain;*
- (d) to nominate heights that will provide an appropriate transition in built form and land use intensity.*



The building parapet along the perimeter of the building complies with the maximum permissible 28 metre height. The proposed lift overrun and parapet at the south western portion of the development breach the maximum permissible height of 28 metres by a total of 1.1 metres and 200mm respectively. This is a proposed variation of 3.9%, in total, to a small portion of the development site as shown in the figure below.

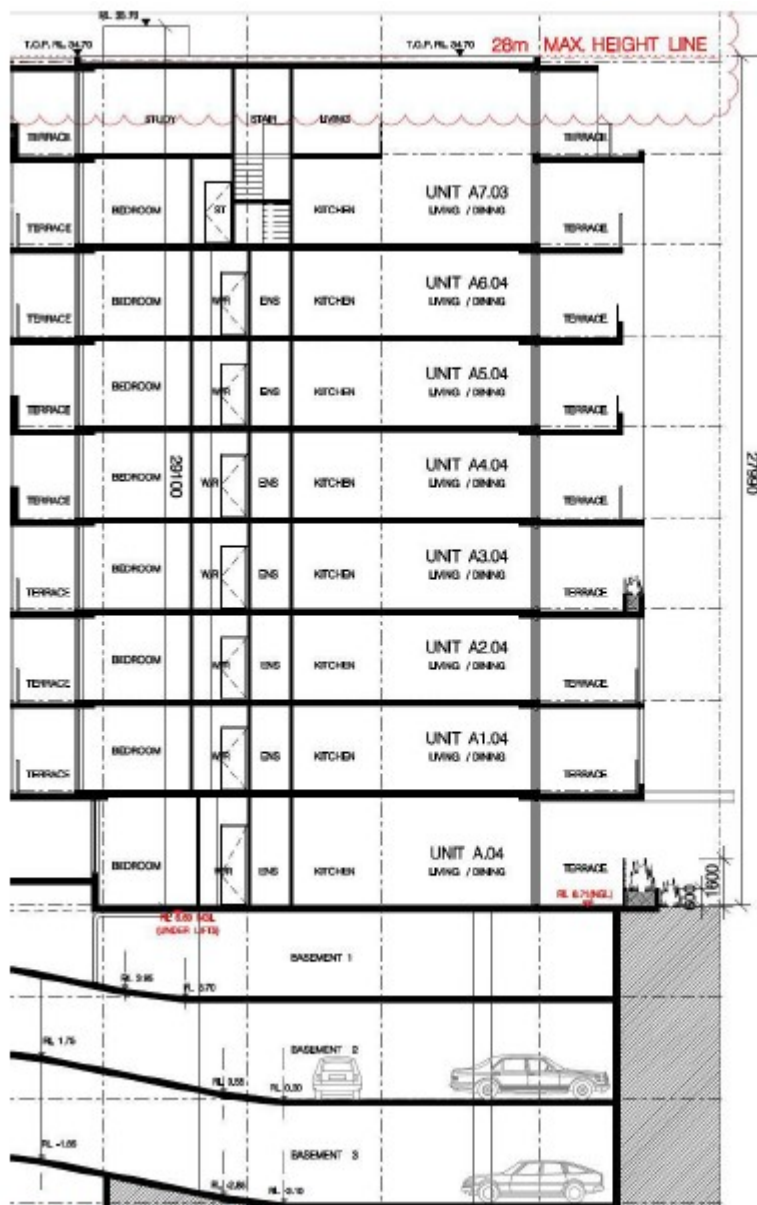


Figure 4 Building Section AB VVorks

### Applicants Height Justification

A summary of the key arguments contained within the applicant's Clause 4.6 submission are as follows:

Strict compliance with the height control is unreasonable and unnecessary on the following grounds:

- The non-compliant portion of the building is located centrally within the building and unlikely to be perceived from public domain viewpoints (specifically Princess Street and Saywell Lane);
- Does not result in increased floor space or dwelling yield;
- Results in a minimal increase in overshadowing as compared to a compliant envelope; and
- results in no increased privacy impacts to surrounding dwellings.

Strict compliance would require:

- The deletion of a level, resulting in reduced consistency of streetscape character in terms of street frontage heights along the southern side of Princess Street; or
- The reduction of floor to ceiling heights resulting in reduced amenity to future occupants of the proposed residential flat building and consistency of streetscape character in terms of horizontal elements along the southern side of Princess Street.

Council comment:

The applicant's written request is satisfactory with regards to addressing considerations of Clause 4.6(3). Following a review of the application, it is considered that the height variation as proposed, is acceptable for the following reasons:

- The proposed area which results in the extent of the non-compliance is not considered to result in a size or scale of development that is incompatible with the desired future character of the locality. The proposal is of a height which is commensurate with the approved and emerging residential building heights within the immediate context of the site, including those to the east and south east.
- The absence of environmental impacts associated with the minor non-compliance in regards to view loss; shadows and loss of privacy; further underlines the reasonableness of the height variation in this instance.
- The proposed building height is not inconsistent with the aims of the Building Height control as referred to within the Apartment Design Guide.
- The proposed variation results in a better planning outcome than compliance with the maximum permissible height.
- In this context, the proposed development is consistent with the objectives of Clause 4.3 - Height of Buildings of the RLEP 2011 as it maintains satisfactory sky exposure to nearby buildings and the public domain.

Given the site and development circumstances as discussed above, the proposed additional height sought by the application is not considered to be unreasonable in this instance and is supported. The proposal provides for a development that facilitates the orderly and economic development of the site and in an appropriate manner. The particular circumstances of the non-compliance are considered to outweigh strict adherence to the numeric standards presented by Clause 4.3 of the RLEP 2011.

It is considered that in this instance, there are sufficient environmental planning grounds and site circumstances which justify contravening the subject clause for this site.

#### 5.9 Preservation of trees or vegetation

The site contains trees that are subject to approval by Council under clause 5.9 of RLEP 2011 conferred by:

- (a) development consent, or
- (b) a permit granted by Council.

The application was referred to Council's Tree Management Officer who has determined the existing site trees to be *generally in fair condition only and/or sit within the footprint of the proposed building*. *All existing site trees may therefore be removed*. Further, the Officer concludes the proposed development provides more than adequate compensation of replacement planting in the accompanying Landscape Plan. In this regard, the proposed development maintains the amenity of the Brighton Le

Sands area and accordingly, satisfies the relevant provisions of this Clause.

The proposed development is acceptable in this regard.

#### 6.1 Acid Sulfate Soil - Class 4

Acid Sulfate Soils (ASS) – Class 4 affect the property and Development Consent is required as the proposal involves works below the natural ground level and the works may lower the watertable. Accordingly, the application is accompanied by a *Supplementary Geotechnical Investigation*, prepared by Douglas Partners and dated March 2016.

The proposed development will require bulk excavation to depths of approximately 12 metres (RL -4.8). The intent of the investigation is to provide information on the soil permeability to assist the hydraulic design of the proposed stormwater management system, together with a preliminary investigation to assess the presence of acid sulphate soils at the site. Due to the limited sampling capacity, The Report concludes that an Acid Sulfate Soils (ASS) Management Plan is not required at this preliminary stage and that further investigation shall be required once the extent of material to be excavated has been undertaken. Subject to conditions imposed on the draft Notice of Determination, the proposed development is acceptable with regards to this Clause.

#### 6.2 Earthworks

The proposed development includes demolition of all existing structures on site including earthworks and excavation to depths of approximately 12 metres from ground surface level to accommodate three basement levels for car parking purposes. Accordingly, the application is accompanied by a *Preliminary Geotechnical Investigation*, prepared by Douglas Partners and dated December 2015 (Project ID 85174.00).

In addition to this, the application is also accompanied by Shoring System Detail, provided by Structural Design Solutions - Consulting Engineers and dated 6 April 2016. All associated documentation was referred to Council's Development Engineer for review and comment and determined acceptable, subject to the recommendations contained therein imposed on the draft Notice of Determination. Subject to conditions, the proposed development is acceptable with regards to this Clause.

#### 6.4 Airspace operations

The proposed development is affected by the Obstacle Limitation Surface (OLS) which is set at 51 metres AHD. The proposed development seeks an overall building height of 29.1 metres AHD (RL 35.70 - RL 6.60) and in this regard, it is considered that the proposed building will have minimal adverse impact on the OLS. The proposed development therefore satisfies the provisions of this Clause.

#### 6.7 Stormwater

The application is accompanied by revised Stormwater Plans, prepared by mgp Building and Infrastructure Services, Project No. 2015-0689. Standard conditions are to be included in the draft Notice of Determination that the discharge of stormwater will be required to comply with Rockdale Technical Specification for Stormwater Management with appropriate certification and checklist completed and received prior to release of the Construction Certificate. Subject to conditions, the provisions of this Clause are satisfied.

#### 6.12 Essential services

Services will generally be available on the site. Additional conditions have been incorporated in the

draft Notice of Determination requiring consultation with relevant utility providers in regards to any specific requirements for the provision of services on the site.

## **S79C(1)(a)(iii) - Provisions of any Development Control Plan**

The following Development Control Plan is relevant to this application:

### **Rockdale Development Control Plan 2011**

The application is subject to Rockdale DCP 2011. A compliance table for the proposed development is provided below:

<b>Relevant clauses</b>	<b>Compliance with objectives</b>	<b>Compliance with standard/provision</b>
4.1.1 Views and Vista	Yes	Yes - see discussion
4.1.3 Water Management	Yes	Yes - see discussion
4.1.3 Groundwater Protection	Yes	Yes - see discussion
4.1.4 Soil Management	Yes	Yes - see discussion
4.1.7 Tree Preservation	Yes	Yes - see discussion
4.1.9 Lot size and Site Consolidation - Residential flat buildings	Yes	No - see discussion
4.2 Streetscape and Site Context - General	Yes	Yes - see discussion
4.2 Streetscape and Site Context - Fencing	Yes	Yes - see discussion
4.3.1 Open Space and Landscape Design - Residential Flat Buildings	Yes	Yes - see discussion
4.3.2 Private Open Space - Residential Flat Building/Shoptop housing	Yes	Yes - see discussion
4.3.3 Communal Open Space	Yes	No - see discussion
4.4.1 Energy Efficiency - Residential	Yes	Yes - see discussion
4.4.2 Solar Access - Residential Flat Buildings and Shop Top Housing	Yes	Yes - see discussion
4.4.3 Natural Lighting and Ventilation - Residential	Yes	Yes - see discussion
4.4.4 Glazing - General Controls	Yes	Yes - see discussion
4.4.5 Acoustic privacy		
4.4.7 Wind Impact	Yes	Yes - see discussion
4.5.1 Social Equity - Housing Diversity and Choice	Yes	No - see discussion
4.5.2 Social Equity - Equitable Access	Yes	Yes - see discussion
4.6 Parking Rates Residential Flat Buildings	Yes	Yes - see discussion
4.6 Car Park Location and Design	Yes	Yes - see discussion
4.6 Vehicles Enter and Exit in a Forward Direction	Yes	Yes - see discussion
4.6 Basement Parking - General	Yes	Yes - see discussion
4.6 Driveway Widths	Yes	Yes - see discussion
4.6 Basement Parking - Residential Flat Buildings	Yes	Yes - see discussion
4.6 Access to Parking	Yes	Yes - see discussion
4.6 Design of Loading Facilities	Yes	Yes - see discussion
4.6 Car Wash Facilities	Yes	Yes - see discussion
4.6 Pedestrian Access and Sustainable Transport	Yes	Yes - see discussion
4.7 Air Conditioning and Communication Structures	Yes	Yes - see discussion

Relevant clauses	Compliance with objectives	Compliance with standard/provision
4.7 Waste Storage and Recycling Facilities	Yes	Yes - see discussion
4.7 Service Lines/Cables	Yes	Yes - see discussion
4.7 Laundry Facilities and Drying Areas	Yes	Yes - see discussion
4.7 Letterboxes	Yes	Yes - see discussion
4.7 Hot Water Systems	Yes	Yes - see discussion
5.2 RFB - Site Coverage	Yes	No - see discussion
5.2 RFB Front Setback	Yes	Yes - see discussion
5.2 RFB - Side Setbacks	Yes	No - see discussion
5.2 RFB Secondary Street/Laneway Setback	Yes	Yes - see discussion
5.2 RFB - Building Design	Yes	Yes - see discussion
5.2 RFB - Building Entry	Yes	Yes - see discussion
5.2 RFB - Lift Size and Access	Yes	Yes - see discussion

#### 4.1.1 Views and Vista

The siting of the proposed development will ensure there is minimal adverse impact to surrounding and available views to Botany Bay presently enjoyed by surrounding residential developments.

The Land and Environment Court has established 'planning principles' in relating to impacts on views from neighbouring properties. In *Tenacity Consulting Pty Ltd v Warringah Council (2004) NSWLEC 140*, Roseth SC states that 'the notion of view sharing is involved when a property enjoys existing views and a proposed development would share that view by taking some of it away for its own enjoyment'.

In deciding whether or not view sharing is reasonable, Commissioner Roseth set out a four (4) step assessment in regards to what will constitute a 'reasonable sharing of view'. The steps are as follows:

- 1. Description and assessment of views to be affected proposal and the value of these views.*
- 2. Ascertain whether view retention expectations are realistic. Consider from what part of the property the views are obtained.*
- 3. Assess the extent of the impact for the whole property. The impact should be qualified on a scale of negligible to devastating.*
- 4. Assess the reasonableness of the proposal that is causing the impact, taking into account any non-compliance that is causing view loss (A development that complies with all the planning controls would be more reasonable than one that breaches them).*

The following comments are offered in respect to the above considerations:

1. The subject views are to the surrounding Botany Bay located directly east of the subject site. The views are not iconic however do offer amenity value and are likely experienced in a northerly direction over rooftops by 354-362 Bay Street; 394-368 Bay Street and 22-28 Princess Street. Existing development directly adjoining the subject site at 6-14 Princess Street and further east, 70 The Grand Parade, already significantly interrupt views to the aforementioned developments. In addition to this, further eastward on Princess Street are a number of street trees which are locally listed heritage items (Item I170) in Schedule 5 of the RLEP 2011. The proposed development does not interrupt view corridors to the heritage item in this regard.

2. The proposed development will provide partial views towards Botany Bay and the locally heritage listed street trees in an north/north-east direction and over the roofline of 3-11 Princess Street and 13-

19 Princess Street. The views will be obtained by proposed Units A7.01; A7.02 and A7.03 only.

3. The ADG contains a number of design considerations relating to building separation and minimum distance provisions to which the development generally complies. Where the development seeks a variation to required building separation, this has been endorsed by the Design Review Panel (DRP) on the basis to maintain a continuous street wall along Princess Street as well as the future development potential of the western adjoining allotment known as 22-28 Princess Street. In this regard, the proposed development does not unreasonably affect or impose upon views which may be experienced by surrounding developments. It is deemed unrealistic to require the subject application to reduce development height and floor plate given Council had resolved to rezone the subject site in November 2015 via a Planning Proposal.

4. The proposed development will not detract from, nor contribute to, views which may be experienced from the surrounding street network or public places.

#### 4.1.3 Water Management

As discussed in the above body of this report, the application is accompanied by revised Stormwater Plans, prepared by mgp Building and Infrastructure Services, Project No. 2015-0689. Standard conditions are to be included in the draft Notice of Determination that the discharge of stormwater will be required to comply with Rockdale Technical Specification for Stormwater Management with appropriate certification and checklist completed and received prior to release of the Construction Certificate. Subject to conditions, the provisions of this Clause are satisfied.

#### 4.1.3 Groundwater Protection

The site is affected by the Groundwater Protection Zone 3. Accordingly, the application is accompanied by a Geotechnical Report, prepared by Douglas Partners Pty Ltd, Consulting Engineers and dated 8 December 2015. The Report and associated documentation was referred to Council's Development Engineer for comment and review, who advised that subject to recommended conditions, the proposal is acceptable with regards to this Clause.

#### 4.1.4 Soil Management

The application is accompanied by a Sediment Erosion and Control Plan, Drawing No. SW17, Revision A and dated 14 March 2016. The Plan provides general erosion and sediment control strategies to ensure that the potential for impact on adjoining land and surrounding waterways is minimised. Subject to the recommended conditions, the proposed development is acceptable with regards to this Clause.

#### 4.1.7 Tree Preservation

As discussed in the above body of this Report, the application was referred to Council's Tree Management Officer who has determined the existing site trees to be *generally in fair condition only and/or sit within the footprint of the proposed building. All existing site trees may therefore be removed.* Further, the Officer concludes the proposed development provides more than adequate compensation of replacement planting in the accompanying Landscape Plan. In this regard, the proposed development maintains the amenity of the Brighton Le Sands area and accordingly, satisfies the relevant provisions of this Clause.

The proposed development is acceptable in this regard.

#### 4.1.9 Lot size and Site Consolidation - Residential flat buildings

Clause 4.1.9.1 requires development for purposes of a residential flat building to be provided with a minimum allotment width of 24 metres at the street frontage. Consolidated, the subject site has an allotment width of 22.98 metres. Although the site fails to satisfy the technical provisions of this Clause, the proposed development has demonstrated efficient use of land with compliant landscaping, parking, vehicular and pedestrian access. Further, the proposed development does not preclude the future development of the western adjoining site at No. 22-28 Princess Street and is acceptable in this regard.

#### 4.2 Streetscape and Site Context - General

The proposed development forms a continuous street wall along Princess Street, ensuring development is consistent with the eastern adjoining allotment at 6-14 Princess Street. The proposal provides a satisfactory pedestrian scale through the inclusion of a 2.5 metre landscaped primary setback and an awning over the lobby entry consistent with those along The Grand Parade and Bay Street. The nine storey development ensures appropriate transition in built form an easterly direction to the 15 storey development at 70 The Grand Parade.

Elevations to Princess Street and Saywell Lane comprise of appropriate building expression with the use of articulation and modulation to the façades including the incorporation of balconies, pedestrian entry portico's at both frontages and a range of colours, textures and materials. this includes a varied palette of colours which contribute to the overall visual interest of the development when viewed from the public domain as shown in the figure below.





Materials include but are not limited to rendered concrete; louvres and privacy screening; dark anodised aluminium framing; fine oak feature walls and landscaped planter boxes. The proposed materials create a modern, contemporary and visually appealing development. Landscaped frontages at Princess Street and mass planting fronting Saywell Lane soften the base of the development and contribute to visual amenity and overall interest to the development. Planting includes ground cover in addition to shrubs, screen planting and larger shade trees.

The proposed bulk, scale and siting of the development is designed appropriately and responds sensitively to existing development as well as future anticipated development sites further north and west of the subject site. In this regard, the development is consistent with the scale of existing and emerging contextual development and is generally consistent with the desired future character of the area.

#### 4.2 Streetscape and Site Context - Fencing

The development proposes a 1.6 metre high (0.6 metre solid wall and 1 metre screening with 30% transparency) addressing Princess Street to enable casual surveillance of from the ground floor units. In addition to this, side and rear boundary fences is no more than 1.8 metres, are of solid construction and are openable to allow pedestrian egress where appropriate. The proposed development is acceptable in this regard.

#### 4.3.1 Open Space and Landscape Design - Residential Flat Buildings

The application is accompanied by Landscape Plan Package inclusive of Drawing No's. 000; 101 to 103; 501; 701 and 702, Issue D and dated 8 March 2016. In accordance with Council provisions, the development provides a total of 135.054sqm or 15% of the total site area as landscaped. The proposed development is acceptable in regards to minimum landscaped areas.

The application was referred to Council's Landscape Officer who noted the proposal deficient with regard to landscaping design of the rear, ground floor communal open space. Accordingly, a condition is imposed requiring the submission of a revised landscape plan, prepared in accordance with Council's Technical Specifications and to the satisfaction of Council's Landscape Officer, prior to the issue of a Construction Certificate for the approved development.

#### 4.3.2 Private Open Space - Residential Flat Building/Shoptop housing

The development provides each unit with a principal balcony area with 15 of 31 units provided with secondary balconies and 24 of 31 units orientated north to maximise solar access. Each principal balcony satisfies the minimum 2 metre depth provision in accordance with this Clause. Private open space areas located on ground level are defined through the inclusion of planter boxes and louvres ensuring privacy is maintained for future occupants with upper floor levels divided from adjacent balconies through use of privacy screens and blade walls. The proposed development is acceptable in this regard.

#### 4.3.3 Communal Open Space

The proposed development provides a total of 250sqm of communal open space, shared between the ground, seventh and eighth floors in accordance with the rate of 5sqm per dwelling. Due to the orientation of the site and development intent to provide a continuous street wall addressing Princess Street, the communal open space cannot physically achieve a north facing orientation. As a result, the communal open space fails to receive the minimum required solar access at 1 pm on 21 June required by Council's DCP 2011. Whilst the development fails to satisfy the technical provisions of this Clause, user amenity is ensured through the provision of soft and hard landscaping surfaces, BBQ facilities and seating areas acting as a catalyst for social interaction in accordance with the objectives of this Clause. The development is acceptable in this regard.

#### 4.4.1 Energy Efficiency - Residential

As discussed in the above body of this Report, BASIX Certificate No. 688111M, dated Sunday 20 December 2015, accompanies the Development Application. The Certificate details the thermal, energy and water commitments of the proposal, which are also detailed on the submitted plans, and hence, satisfy the requirements of the State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004. Accordingly, a condition is imposed on the draft Notice of Determination ensuring that the commitments contained therein are adhered to. The proposed development therefore satisfies the provisions of this Clause.

#### 4.4.2 Solar Access - Residential Flat Buildings and Shop Top Housing

Council's DCP 2011 requires that living rooms and private open spaces for at least 70% of apartments in a development and adjoining properties should receive a minimum of 3 hours direct sunlight between 9am and 3pm in midwinter. Where a development seeks to vary from the minimum standard, the proposal must demonstrate how site constraints and orientation prohibit the achievement of these standards.

The site has a north/south orientation with 24 of 31 units orientated north to ensure each receives no less than three (3) hours solar access on 21 June, equating to 77%, in accordance with the provisions of this Clause. In addition, the application is accompanied by Shadow Diagrams, Drawing Number A-035 - A-040 (inclusive), Issue D and dated 4 July 2016. The diagrams demonstrate the following resultant shadow impacts:

- Nil impact on properties located west of the subject site;
- The development will partially overshadow 6-14 Princess Street from approximately 11am to 3pm on 21 June with 70% of apartments still receiving no less than two (2) hours solar access in accordance with the ADG.

It should be noted that shadows projected are consistent with those from surrounding residential flat development with a similar orientation. The proposal is acceptable in this regard.

#### 4.4.3 Natural Lighting and Ventilation - Residential

The proposed development is designed to achieved natural ventilation and lighting, incorporating minimum floor to ceiling levels (FCL) of 3.8 metres to the ground floor and 3 metres for upper floor levels. The proposed development is acceptable with regards to this Clause.

#### 4.4.4 Glazing - General Controls

The application is accompanied by BASIX Certificate No. 688111M and dated Sunday 20 December 2015. The proposed development incorporates glazing in accordance with the relevant BASIX commitments in addition to the recommendations contained within the accompanying Acoustic Report, prepared by Acoustic Logic. The proposed development is acceptable with regards to this Clause.

#### 4.4.7 Wind Impact

The application is accompanied by a *Pedestrian Wind Environment Statement*, prepared by Windtech and dated March 9, 2016. The report presents an analysis on the likely impact of the proposed design on local wind environments to the critical outdoor areas within and around the proposed development. The report concludes that subject to recommended treatments which have been implemented within the current and proposed design, the development will not result in adverse wind impacts on the site or surrounding public domain.

The proposed development therefore satisfies the provisions of this Clause.

#### 4.5.1 Social Equity - Housing Diversity and Choice

The proposed development includes the provision of one, two and three bedroom units in the following mix:

Dwelling type	No. of dwellings	Council Requirement	Complies
3 bedroom	3 or 9.7%	10-20% of dwellings	No
2 bedroom	24 or 77.4%	50-75% of dwellings	No
1 bedroom	4 or 12.9%	10-30% of dwellings	Yes

The proposed development fails to provide the required unit mix in accordance with the provisions of this Clause. The applicant is seeking a variation to the technical provisions of the Clause, given the variation related to one (1) unit only. Accordingly, the applicant has submitted a Housing Diversity Letter, prepared by McGrath Real Estate Pty Ltd demonstrating the proposed unit mix satisfactorily responds to market demands within the Brighton Le Sands precinct. The proposed unit mix is acceptable in this regard.

Council's DCP 2011 also requires at least 10% of the total number of units as adaptable in accordance with AS 4299. Units A1.02, A2.02, A3.02 and A4.02 are identified as adaptable two (2) bedroom units, equating to 12.9% and hence satisfying the numerical provisions of this Clause.

#### 4.5.2 Social Equity - Equitable Access

The application is accompanied by an Access Report, prepared by AED Group, Report Number A2475 - Rev 1.1 and dated December 2015. The Report provides a detailed technical review and accessibility design assessment of the proposed development and concludes that 'whilst some compliance departures do exist in the current design, such can be remedied in all instances to achieve compliance with the BCA'. Based on compliance with the provisions contained therein, the proposed development is acceptable with regards to this Clause.

#### 4.6 Parking Rates Residential Flat Buildings

The proposed development includes three (3) basement levels incorporating the following parking mix:

	<b>Required</b>	<b>Proposed</b>	<b>Complies</b>
<b>Studio; 1 and 2 bedroom</b>	1 space per Unit - 28 required	Refer below	Yes
<b>3 bedroom</b>	2 spaces per Unit - 6 required	41 residential spaces in total	Yes
<b>Visitor</b>	1 space per 5 Units - 6 required	7	Yes
<b>Bicycle</b>	1 space per 10 Units - 3 required	4	Yes
<b>Motorcycle</b>	1 space per 15 Units - 2 required	3	Yes
<b>Service/Loading Bay</b>	1 service/loading Bay	1	Yes
<b>Car Wash Bay</b>	Dedicated car wash bay	1	Yes

The proposed development satisfies the numerical provisions of this Clause.

#### 4.6 Car Park Location and Design

The proposed development incorporates a medium duty vehicle footway crossing (VFC) accessed via Saywell Lane providing access to three (3) basement levels for residents and vehicles. The proposed design of the VFC has been reviewed by Council's Development Engineer and determined to be satisfactory with regards to location and design; appropriate with regard to sufficient; convenient and safe on-site car parking in accordance with the provisions of this Clause. The proposed development is acceptable in this regard.

#### 4.6 Vehicles Enter and Exit in a Forward Direction

The proposed basement level provide appropriate internal manoeuvring areas to ensure forward entry and exit in accordance with the provisions of this Clause. The proposed development is acceptable in this regard.

#### 4.6 Basement Parking - General

The proposed basement level is wholly contained within the proposed building footprint, designed for safe and convenient pedestrian and vehicle movement in accordance with the provisions of this Clause.

#### 4.6 Driveway Widths

The width of the vehicle footway crossing on Saywell Lane is designed in accordance with Council's Technical Specifications and hence satisfies the provisions of this Clause.

#### 4.6 Basement Parking - Residential Flat Buildings

All proposed car parking for the residential flat development is provided within the basement level car park, with the exception of one (1) loading bay which is provided at-grade on Saywell Lane. Subject to conditions relating to sight distances for the loading bay, the development is acceptable with regards to this Clause.

#### 4.6 Access to Parking

The proposed development provides seven (7) visitor parking spaces on Basement Level 1, one (1) of which is reserved for disabled access and one (1) nominated as a carwash bay. An additional four (4) disabled parking spaces are located on Basement Level 2 and all are located in close proximity to lift access points in accordance with the provisions of this Clause. The proposed development is acceptable in this regard.

#### 4.6 Design of Loading Facilities

The following condition is imposed on the draft Notice of Determination:

*The proposed SRV loading bay shall be fully contained within the site beyond the required 900mm footpath easement. Prior to the issue of a Construction Certificate, for the approved development, the design of the loading bay shall be amended to accommodate a corner splay either side to accommodate vehicle manoeuvring in accordance with the relevant Australian Standard. In this regard, boundary walls shall be set back a minimum of 2.5 metres at the location of the car park and loading bay entries. The wall shall then return at a splay of 45 degrees to maintain adequate sight distances to pedestrians and vehicles.*

Subject to the above condition, the loading bay shall permit all loading and unloading to take place wholly within the site and prevent pedestrian and vehicle conflicts in accordance with the provisions of this Clause.

#### 4.6 Car Wash Facilities

The proposed development incorporates one (1) car wash bay located on Basement Level 1. Accordingly, a condition imposed on the draft Notice of Determination requiring the provision of a car wash facility which has a cold water tap and is connected to the sewer system. The proposed development is acceptable with regards to this Clause.

#### 4.6 Pedestrian Access and Sustainable Transport

As per the requirements of this Clause, a minimum of 4 bicycle spaces and 3 motorcycle spaces are to be provided on site. Plans indicate the provision of the required number of spaces and the proposed development complies with the objectives and numerical provisions of this Clause.

#### 4.7 Air Conditioning and Communication Structures

Plans do not depict the location of proposed residential air conditioning units on site. Accordingly, a condition is imposed on the draft Notice of Determination requiring air conditioning units to be obscured from public view should they be provided. Subject to conditions, the development is acceptable with regards to this Clause.

#### 4.7 Waste Storage and Recycling Facilities

The application is accompanied by a Waste Management Plan (WMP) prepared by Architecture & Building Works. The WMP has been prepared in accordance with Council's Technical Specifications - Waste Minimisation and Management regarding construction waste and in this regard, satisfies the objectives of this Clause. In addition, the development incorporates appropriate waste management

facilities located within the ground floor providing direct and convenient access to Saywell Lane for waste collection. The development is acceptable in this regard.

#### 4.7 Service Lines/Cables

The applicant has advised that a substation is not required for the proposed development.

A condition is imposed on the draft Notice of Determination which requires service lines and cable detail to be screened from public view. Amended architectural plans are to be submitted to the Certifying Authority prior to the issue of a Construction Certificate for the approved development. Subject to conditions, the proposed development is acceptable with regards to this Clause.

#### 4.7 Laundry Facilities and Drying Areas

The development provides internal laundry facilities to each residential unit in accordance with the provisions of this Clause. A condition is imposed on the draft Notice of Determination requiring a by law to restrict the use of balconies for clothes drying purposes. The proposed development is acceptable in this regard.

#### 4.7 Letterboxes

A letterbox is located adjacent to the lobby entrance addressing Princess Street, located undercover and attached to the building wall. Whilst not viewed from any proposed dwelling, the letterboxes are located in an area of high pedestrian activity, lockable and deemed acceptable with regards to this Clause.

#### 4.7 Hot Water Systems

A condition is imposed on the draft Notice of Determination which requires hot water systems on balconies to dwellings to be encased in a recessed box with the lid/cover designed to blend with the building. All associated pipe work is to be concealed. Subject to condition, the proposed development is acceptable with regard to this Clause.

#### 5.2 RFB - Site Coverage

The proposed development has a total building footprint of 430sqm, equating to 46.9% of the total site area and exceeding the numerical provisions of this Clause. The applicant submits a variation to this Clause is appropriate on the basis of the following:

- *Solar access compliant with ADG controls;*
- *Units and communal open space achieve visual and acoustic privacy;*
- *250sqm of communal open space is provided, compliant with Rockdale DCP control.*
- *109.5sqm of the site is deep soil planting which exceeds ADG requirements.*

Council has previously varied this Clause where privacy; solar access and outdoor space design principles in accordance with the ADG are satisfied. The increased site coverage is acceptable in this instance.

#### 5.2 RFB Front Setback

The development maintains a minimum 2.5 metre landscaped setback consistent with the eastern adjoining development with a 5.5 metre setback to the front building line in accordance with the provisions of this Clause.

#### 5.2 RFB - Side Setbacks

As per the requirements of this Clause, a minimum 3 metre side setback is required for buildings up to three storeys, with a 4.5 metre side setback for all upper levels. Plans indicate nil setbacks with the development intent to create a continuous ground floor and continuous street wall along Princess Street. Proposed nil setbacks have been endorsed by the DRP on 2 March 2016 and are acceptable on this basis.

#### 5.2 RFB Secondary Street/Laneway Setback

The proposed development incorporates a rear setback to Saywell Lane of 13.655 metres, allowing ample common open space to be located within the ground floor. The development is acceptable with regards to this Clause.

#### 5.2 RFB - Building Design

The proposed development is responsive to environmental conditions with 24 out of 31 units orientated north to ensure a high level of solar access and occupant amenity. Each unit is designed in a manner to mitigate potential noise intrusion through insulation; seals and glazing of windows and doors. In addition, private open spaces minimise wind impacts through vegetative screening; recessing of balconies; privacy screening and blade walls.

The proposed awning used to define the lobby entrance strengthens the relationship of the development to Princess Street with planter boxes softening edges at a pedestrian scale. Upper level facades incorporate glass balustrading with aluminium louvres to provide additional forms of privacy screening for future occupants. Overall, the facade is given a visual prominence through feature wall colours and materials and is acceptable with regards to the considerations of this Clause.

#### 5.2 RFB - Building Entry

The proposed residential entry is clearly identifiable from Princess Street with a secondary pedestrian access provided from Saywell Lane. All ground floor units have separate and secure individual access ensuring activation of the ground level on Princess Street. The design and configuration of circulation spaces and lobbies are of sufficient width to enable movement of bulk items as required and hence satisfy the provisions of this Clause.

#### 5.2 RFB - Lift Size and Access

Two (2) lift cores are provided to service Basement Level 3 to Level 8 in addition to a single stairlift core. Both are accessed via Princess Street and Saywell Lane and satisfy the minimum dimensions as required by this Clause. The proposed development is acceptable in this regard.

### **S.79C(1)(a)(iv) - Provisions of regulations**

The proposed development is not inconsistent with the relevant provisions of the *Environmental Planning and Assessment Regulation, 2000*.

### **S.79C(1)(b) - Likely Impacts of Development**

Potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls and deemed acceptable with regards to the matters of consideration contained therein. The impacts that have not already been addressed are as follows:

#### **Safety and Security**

The development provides for a clearly identifiable and legible building entry from Princess Street. The



proposed residential lobby comprises of direct pedestrian access and a high level of visibility to the primary frontage. Residential units; communal open space and proposed basement level car parks from both Princess Street and Saywell Lane are accessible via a secure electronic system with common areas well lit with clearly identifiable pathways. The proposed development is satisfactory with regard to safety and security matters.

## **Social Impact**

The proposed development will activate and contribute to the public domain of Princess Street and includes residential units of adequate size and mix for the demographics of the Brighton Le Sands area. Proposed residential units have access to appropriately serviced public transport means, including an array of bus networks, and the development encourages alternative transport modes via the provision of bicycle and motorcycle parking. The development will provide a well designed and located communal area with facilities which encourage social interaction between future occupants on the site. The development is not considered to result in any adverse social impacts and is considered to be satisfactory with regards to this site.

## **Construction**

Construction of the proposed development shall include excavation works, piling and the construction of nine (9) storey development. Anticipated impacts will be minimised through the imposition of standard conditions of consent, relating to hours of construction; noise; dust suppression; traffic management and the like.

## **S.79C(1)(c) - Suitability of the site**

The relevant matters pertaining to the suitability of the site for the proposed development have been considered in the assessment of the proposal. Additional conditions of consent are proposed to further minimise any impacts on neighbouring properties. There are no known major physical constraints, environmental impacts, natural hazards or exceptional circumstances that would hinder the suitability of the site for the proposed development. The development is considered to be a suitable for of development for the site and worthy of Council support in this instance.

## **S.79C(1)(d) - Public submissions**

The development has been notified and advertised in accordance with the provisions of Rockdale DCP, 2011. Seven (7) submissions were received concerning the proposal. Items of concern are discussed as follows:

### **Concern: View Loss**

Comment: The Land and Environment Court has established 'planning principles' in relating to impacts on views from neighbouring properties. In *Tenacity Consulting Pty Ltd v Warringah Council (2004) NSWLEC 140*, Roseth SC states that 'the notion of view sharing is involved when a property enjoys existing views and a proposed development would share that view by taking some of it away for its own enjoyment'.

In deciding whether or not view sharing is reasonable, Commissioner Roseth set out a four (4) step assessment in regards to what will constitute a 'reasonable sharing of view'. The steps are as follows:

1. *Description and assessment of views to be affected proposal and the value of these views.*
2. *Ascertain whether view retention expectations are realistic. Consider from what part of the property*

*the views are obtained.*

*3. Assess the extent of the impact for the whole property. The impact should be qualified on a scale of negligible to devastating.*

*4. Assess the reasonableness of the proposal that is causing the impact, taking into account any non-compliance that is causing view loss (A development that complies with all the planning controls would be more reasonable than one that breaches them).*

As discussed within the body of this report, an assessment was undertaken with regard to view loss and the proposed development determined satisfactory in this regard. The subject views are to the surrounding Botany Bay located directly east of the subject site. The views are not iconic however do offer amenity value and are likely experienced in a northerly direction over rooftops by 354-362 Bay Street; 394-368 Bay Street and 22-28 Princess Street. Existing development directly adjoining the subject site at 6-14 Princess Street and further east, 70 The Grand Parade, already significantly interrupt views to the aforementioned developments. In addition to this, further eastward on Princess Street are a number of street trees which are locally listed heritage items (Item I170) in Schedule 5 of the RLEP 2011. The proposed development does not interrupt view corridors to the heritage item in this regard.

The ADG contains a number of design considerations relating to building separation and minimum distance provisions to which the development generally complies. Where the development seeks a variation to required building separation, this has been endorsed by the Design Review Panel (DRP) on the basis to maintain a continuous street wall along Princess Street as well as the future development potential of the western adjoining allotment known as 22-28 Princess Street. In this regard, the proposed development does not unreasonably affect or impose upon views which may be experienced by surrounding developments. It is deemed unrealistic to require the subject application to reduce development height and floor plate given Council had resolved to rezone the subject site in November 2015 via a Planning Proposal which resulted in an increased FSR (2:1 to 3:1) and height of building (26 metres to 28 metres)

#### **Concern: Privacy**

Comment: Concerns were raised regarding potential privacy impacts resulting from the proposed development. As demonstrated in the above body of this Report, the siting of the proposed development will ensure there is minimal adverse impact to surrounding and available views to Botany Bay presently enjoyed by surrounding residential developments. The proposed development is acceptable with regards to maintaining privacy in accordance with the provisions of SEPP 65.

#### **Concern: Reduced property values**

Comment: This statement has not been substantiated. There are a number of socio-economic factors which influence property values and the proposed development cannot be held solely attributed to the loss in market value of adjoining or nearby residential developments. In addition to this, property value is not a relevant planning matter under Section 79C of the Environmental Planning and Assessment Act, 1979.

#### **Concern: Traffic and Parking**

Comment: Concerns were raised regarding resultant traffic and parking impacts from the proposed development to the surrounding street network. The proposed development incorporates three (3) levels of basement car parking that shall contain 38 residential spaces; 7 visitor spaces; 4 bicycle; 3 motorcycle and 1 car wash bay in accordance with the provisions of Clause 4.6 of the Rockdale DCP 2011. The development is acceptable with regards to Council's DCP 2011 provisions.

In addition to this, the application is accompanied by a Traffic and Parking Assessment Report, prepared by Varga Traffic Planning Pty Ltd and dated 10 March 2016 (Ref 14224). The Report examines the traffic and parking implications of the development proposal and concludes that any additional traffic flows projected by the proposal will not have a detrimental impact upon the existing road network capacity. In addition, the site adequately accommodates required parking spaces to satisfy parking demand.

#### **Concern: Building Setbacks and Separation**

Comment: Concerns were raised regarding proposed nil setbacks to adjoining development known as 6-14 Princess Street and 22-28 Princess Street. The application is considered under the remit of SEPP 65 and the ADG, which requires Council to consider a set of design quality principles for residential flat development. Contained within this is minimum building separation requirements to which the development fails to comply. Nevertheless, the application was referred to the Design Review Panel (DRP) on Wednesday 2 March 2016 for review and comment. The proposed blank wall with a nil setback to the western adjoining allotment fails to satisfy the minimum building separation distances however has been endorsed by the DRP on the basis of future development potential of 22-28 Princess Street. In addition to this, the nil setback was deemed acceptable as the desired future character is to create a street wall along Princess Street further westwards towards Moate Avenue. The proposal is acceptable on this basis.

#### **Concern: Streetscape and Site Context**

Comment: Concerns were raised regarding the resultant streetscape and site context. The proposal sits within a residential apartment/mixed use precinct between The Grand Parade and Moate Avenue, adjacent to a 9 storey mixed use building adjoining east and a 4 storey residential flat development adjoining west. The area is generally undergoing substantial change with major high rise developments.

The streetscape of Princess Street contains large Eucalypt species in addition to significant Norfolk Pines at the eastern end with the potential to further contribute to the landscape character through the addition of street tree planting and landscaped primary setbacks to ground floor dwellings. In addition to this, the DRP noted the building form and scale is appropriate for the location given the adjoining development eastward and the recently gazetted planning proposal relating to the subject site.

#### **Concern: Proposed Building Height**

Comment: Concerns were raised regarding the overall building height and failure to comply with the numerical provisions of Clause 4.3 of the RLEP 2011. The proposed development exceeded the maximum permissible 28 metre building height in accordance with this Clause for the lift overrun and parapet and accordingly, the application was accompanied by a written Clause 4.6 submission seeking to vary the statutory provisions and is discussed in the above body of the Report.

For the reasons discussed above, there are sufficient environmental planning grounds and site circumstances which justify contravening the subject Clause.

#### **Concern: Overshadowing**

Comment: Concerns were raised regarding resultant overshadowing which will impact upon existing residential development. The application is accompanied by Shadow Diagrams, Drawing Number A-035 - A-040 (inclusive), Issue D and dated 4 July 2016. The diagrams demonstrate nil impacts to properties located west of the subject site and the development will partially overshadow 6-14 Princess Street from approximately 11am to 3pm on 21 June with 70% of apartments still receiving no less than

two (2) hours solar access in accordance with the ADG. It should be noted that shadows projected are consistent with those from surrounding residential flat development with a similar orientation. The proposal is acceptable in this regard.

### **Concern: Landscaping**

Comment: Concerns were raised regarding the provision of landscaping and soft cover. Revised plans incorporate a total of 250sqm of communal open space, shared between the ground, seventh and eighth floors in accordance with the rate of 5sqm per dwelling. User amenity is ensured through the provision of soft and hard landscaping surfaces, BBQ facilities and seating areas acting as a catalyst for social interaction. Additional planting has been provided along the secondary frontage, addressing Saywell Lane, to further contribute to amenity of ground floor communal open space. The proposal is considered to contribute to the environmental performance of the development and immediate locality in addition to satisfying the performance objectives of Part 3D - Communal and Public Open Space of the ADG.

### **S.79C(1)(e) - Public interest**

The proposal is considered under the heads of consideration of Section 79C of the *Environmental Planning and Assessment Act, 1979*, which requires amongst other things, an assessment against the provisions contained within the following:

- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*;
- *State Environmental Planning Policy No. 55 - Remediation of Land*;
- *State Environmental Planning Policy No. 65 - Design Quality of Residential Flat* and the considerations of the Apartment Design Guide;
- *Rockdale Local Environmental Plan, 2011*; and
- Rockdale Development Control Plan, 2011.

The development generally complies with the relevant provisions contained within each of the above listed environmental planning instruments and applicable development control plan. The applicant has submitted a written Clause 4.6 submission to support the proposed variation to the maximum permissible height of building. As demonstrated within the assessment of the application, the proposal will allow the development of the site in accordance with its environmental capacity. The development is considered to be in the public interest and recommended for approval on this basis.

### **S94 Contribution towards provision or improvement of amenities or services**

A Section 94 Contribution Payment of \$207,138.69 is required to be paid to Council, prior to the issue of a Construction Certificate for the approved development. A condition is imposed on the draft Notice of Determination accordingly.

### ***Civil Aviation Act, 1988***

The site is within an area that is subject to the Civil Aviation (Building Controls) Regulations 1988 made under the *Civil Aviation Act, 1988*.

### **Civil Aviation (Building Control) Regulations 1988**

The Regulations require a separate approval from the Civil Aviation Safety Authority if a building or structure exceeds a prescribed height limit.

## Section 5 Prohibition of the construction of buildings of more than 50 feet in height in specified areas

The subject site lies within an area defined in schedules of the Civil Aviation (Buildings Control) Regulations which limit the height of structures to 15.24 metres above existing ground height (AEGH) without prior approval of the Civil Aviation Safety Authority. The original proposal sought development approval to a height of 34.5 metres AHD and accordingly, was referred to the Civil Aviation Safety Authority (CASA). Revised plans were received by Council on 7 July 2016 with an overall building height of 29.1 metres AHD and hence remains a matter for consideration under the Civil Aviation (Buildings Control) Regulations.

Council has received concurrence pursuant to Section 138 of the *Airports Act* and are imposed as conditions on the draft Notice of Determination. The proposed development, therefore, is acceptable with regards to this Clause.

## **Schedule 1 - Draft Conditions of consent**

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### **General Conditions**

The following conditions restrict the work to the detail provided in the Development Application and are to ensure that the development is complete.

1. The term of this consent is limited to a period of five (5) years from the date of the original approval. The consent will lapse if the development does not commence within this time.
2. The development must be implemented substantially in accordance with the plans listed below, the application form and on any supporting information received with the application, except as may be amended in red on the attached plans and by the following conditions.

<b>Plan/Dwg No.</b>	<b>Drawn by</b>	<b>Dated</b>	<b>Received by Council</b>
Material Samples, Drawing No. A-0000	Architecture and Building Works	March 2016	15 March 2016
Basement 03, Drawing No. A-007, Issue D	Architecture and Building Works	4 July 2016	7 July 2016
Basement 02, Drawing No. A-008, Issue D	Architecture and Building Works	4 July 2016	7 July 2016
Basement 01, Drawing No. A-009, Issue D	Architecture and Building Works	4 July 2016	7 July 2016
Ground Floor Plan, Drawing No. A-010, Issue D	Architecture and Building Works	4 July 2016	9 September 2016
First Floor Plan, Drawing No. A-011, Issue D	Architecture and Building Works	4 July 2016	9 September 2016
Second Floor Plan, Drawing No. A-012, Issue D	Architecture and Building Works	4 July 2016	7 July 2016

Third Floor Plan, Drawing No. A-013, Issue D	Architecture and Building Works	4 July 2016	7 July 2016
Fourth Floor Plan, Drawing No. A-014, Issue D	Architecture and Building Works	4 July 2016	7 July 2016
Fifth Floor Plan, Drawing No. A-015, Issue D	Architecture and Building Works	4 July 2016	7 July 2016
Sixth Floor Plan, Drawing No. A-016, Issue D	Architecture and Building Works	4 July 2016	7 July 2016
Seventh Floor Plan, Drawing No. A-017, Issue D	Architecture and Building Works	4 July 2016	7 July 2016
Eighth Floor Plan, Drawing No. A-018, Issue D	Architecture and Building Works	4 July 2016	7 July 2016
Roof and Site Plan, Drawing No. A-019, Issue D	Architecture and Building Works	4 July 2016	9 September 2016
Section, Drawing No. A- 030, Issue D	Architecture and Building Works	4 July 2016	9 September 2016
Elevations, Drawing No. A-031, Issue D	Architecture and Building Works	4 July 2016	7 July 2016
Elevations, Drawing No. A-032, Issue D	Architecture and Building Works	4 July 2016	9 September 2016
Elevations, Drawing No. A-033, Issue D	Architecture and Building Works	4 July 2016	7 July 2016
Elevations, Drawing No. A-034, Issue D	Architecture and Building Works	4 July 2016	9 September 2016

3. All new building work must be carried out in accordance with the provisions of the Building Code of Australia (BCA).
4. A Construction Certificate must be obtained from Council or an Accredited Certifier prior to any building work commencing.
5. The development must be implemented and all BASIX commitments thereafter maintained in accordance with BASIX Certificate No. 688111M, dated Sunday 20 December 2015, other than superseded by any further amended consent and BASIX certificate.

**Note:** Clause 145(1)(a1) of the Environmental Planning & Assessment Regulation 2000 provides: A certifying authority must not issue a construction certificate for building work unless it is satisfied of the following matters: -

- (a1) that the plans and specifications for the building include such matters as each relevant BASIX certificate requires.

**Note:** Clause 154B(2) of the Environmental Planning & Assessment Regulation 2000 provides: "A certifying authority must not issue a final occupation certificate for a BASIX affected building to which this clause applies unless it is satisfied that each of the commitments whose fulfilment it is required to monitor has been fulfilled."

Note: For further information please see <http://www.basix.nsw.gov.au>.

6. The approved communal open space to Level 7 and approved rear terrace areas to Units located on Level 8 shall not be enclosed at any future time without prior development consent.

7. This approval is not to be construed as permission to erect any structure on or near a boundary contrary to the provisions of the Dividing Fences Act.
8. The materials and façade details approved under condition 2 and any other relevant condition of this consent shall not be altered or amended at the construction certificate stage without a prior S96 application and approval under the EP&A Act.
9. Mail boxes must be installed along the street frontage of the property boundary in accordance with Australia Post Guidelines. Prominent house numbers are to be displayed, with a minimum number size of 150 mm in height for each number and letter in the alphabet.
10. Parking spaces shall be allocated to residential units in the following manner and this shall be reflected in any subsequent Strata Subdivision of the development:

#### **Allocated Spaces**

Studi; 1 and 2 bedroom Units 1 space per Unit  
 3 bedroom Units 2 spaces per Unit

#### **Non-Allocated Spaces**

Residential Visitor Spaces 1 space per 5 units  
 (incorporating 1 car wash bay)

1 loading/unloading bay (SRV) within secondary frontage facing Saywell Lane

Parking calculations that are not whole numbers must be rounded up to the nearest whole number.

All residential visitor spaces, car wash bays and loading bays shall be labelled as common property on the final strata plan for the site. Note: This parking allocation condition applies to any Strata Certificate issued with respect to a Consent issued in accordance with Section 81(1)(A) of the *Environmental Planning and Assessment Act 1979* or a Complying Development Certificate issued in accordance with Part 6 of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

### **Development specific conditions**

The following conditions are specific to the Development Application proposal.

11. All loading, unloading and transfer of goods to and from the loading bay and premises shall take place wholly within the property. Loading areas are to be used only for the loading and unloading of goods, materials etc. not for any other purpose.
12. Parking spaces shall not be enclosed without further approval of Council. The enclosure of car spaces is not permitted unless the enclosure complies with the design requirements of AS2890.1.
13. The existing and future owners (Registered Proprietor) of the property will be responsible for the operation and maintenance of the retention system. The registered proprietor will:
  - (i) permit stormwater to be retained by the system;
  - (ii) keep the system clean and free of silt, rubbish and debris;
  - (iii) maintain, renew and repair the whole or parts of the system so that it functions in a safe and efficient manner, and in doing so complete the same within the



- time and in the manner specified in written notice issued by the Council;
- (iv) carry out the matters referred to in paragraphs (ii) and (iii) at the proprietor's expense;
  - (v) not make any alterations to the system or elements thereof without prior consent in writing of the Council;
  - (vi) permit the Council or its authorised agents from time to time upon giving reasonable notice (but at any time and without notice in the case of emergency) to enter and inspect the land for compliance with the requirements of this clause;
  - (vii) comply with the terms of any written notice issued by the Council in respect to the requirements of this clause within the time stated in the notice.
14. All wastewater and stormwater treatment devices (including drainage systems, sumps and traps) shall be regularly maintained in order to remain effective. All solid and liquid wastes collected from the device shall be disposed of in accordance with the Protection of the Environment Operations Act, 1997.
  15. The rainwater tank shall be routinely de-sludged and all contents from the de-sludging process disposed – solids to the waste disposal and de-sludged liquid to the sewer.
  16. The use of the premises, building services, equipment, machinery and, ancillary fittings shall not give rise to an "offensive noise" as defined under the provisions of the Protection of the Environment Operations Act, 1997.
  17. The use of mechanical plant including air conditioners, fans, compressors, condensers, freezers, swimming pool or spa pumps (whether commercial or domestic) shall not cause sound pressure levels in excess of the criteria given in the NSW Industrial Noise Policy – 2000.
  18. The visible light reflectivity from building materials used on the façade of the building shall not exceed 20% and shall be designed so as not to result in glare that causes any nuisance or interference to any person or place. A statement demonstrating compliance with these requirements shall be submitted to the satisfaction of the Certifying Authority prior to the issue of a Construction Certificate for the relevant stage of works.
  19. The off-street parking areas associated with the subject development shall be designed strictly in accordance with AS2890.1 and AS2890.6.
  20. Internal height clearance shall be designed throughout the car park and access driveway in accordance with AS2890.1 and AS2890.6.
  21. All existing and proposed lights shall comply with the Australian Standard AS4282 - 1997 "Control of the Obtrusive Effects of Outdoor Lighting". In this regard, the lighting of the premises shall be directed so as not to cause nuisance to the owners or occupiers of adjacent/adjoining premises or to motorists on adjoining or nearby roads.
  22.
    - a) In order to ensure the design quality/excellence of the development is retained:
      - i Jim Apostolou of AB Works is to have direct involvement in the design documentation, contract documentation and construction stages of the project;
      - ii. The design architect is to have full access to the site and is to be authorised by the applicant to respond directly to the consent authority where information or clarification is required in the resolution of design issues throughout the life of the project;
      - iii. Evidence of the design architect's commission is to be provided to Council prior to release of the Construction Certificate.
    - b) The design architect of the project is not to be changed without prior notice and approval of Council.

23. The contaminated site shall be remediated in accordance with 'State Environmental Planning Policy No 55 Remediation of Land' (SEPP55). All remediation and validation works shall be carried out in accordance with the Site Remedial Action Plan called Report – Remedial Action Plan - 16 – 20 Princess Street Brighton Le Sand NSW – Doc Ref: 405-E1110-AB prepared by Compaction & Soil Testing Services Pty Ltd (C.S.T.S.) dated 1 September 2016.
24. A Construction Management Plan (CMP) shall be prepared in accordance with the requirements of all relevant regulatory approval bodies. Prior to the commencement of works the Certifying Authority shall be satisfied that the Construction Management Plan has obtained all relevant regulatory approvals. The Construction Management Plan shall be implemented during demolition, excavation and construction.
- Prior to the issue of the relevant Construction Certificate, a Construction Traffic Management Plan (TMP) prepared by a suitably qualified person shall be submitted to and approved by the Certifying Authority. The Plan shall address, but not be limited to, the following matters:
- (a) ingress and egress of vehicles to the site;
  - (b) loading and unloading, including construction zones;
  - (c) predicted traffic volumes, types and routes; and
  - (d) pedestrian and traffic management methods.
25. Any soil disposed of off-site shall be classified in accordance with the procedures in the NSW Environment Protection Authority's Environmental Guidelines: Waste Classification Guidelines (2009).

### **Prior to issue of the construction certificate**

The following conditions must be completed prior to the issue of the Construction Certificate.

26. The following fees shall be paid to Council prior to the issue of a Construction Certificate. If payment is made after the end of the financial year, the amount shall be adjusted in accordance with Council's adopted fees and charges.
- i. A Footpath Reserve Restoration Deposit of \$18,472.04. This is to cover repair of any damages, or other works to be done by Council. This includes construction, removal, or repair as required to: kerb and guttering, existing or new driveways; paved areas and concrete footpaths. The deposit may be lodged with Council in the form of a Bank Guarantee (Any proposed Bank Guarantee must not have an expiry date). The deposit will not be returned by Council until works are completed and all damage is restored and all specified works are completed by Council.
  - ii. An environmental enforcement fee of 0.25% of the cost of the works.
  - iii. A Soil and Water Management Sign of \$17.50.
27. For work costing \$25,000 or more, a Long Service Leave Levy shall be paid. For further information please contact the Long Service Payments Corporation on their Helpline 13 1441.
28. An application for Boundary levels shall be made to Council's Customer Service Centre prior to issue of the Construction Certificate. All boundary works, egress paths, driveways and fences shall comply with this level.

A fee is payable to Council for the determination of boundary levels. If payment is made after the end of the financial year, the amount shall be adjusted in accordance with Council's adopted fees and charges.

29. A Section 94 contribution of \$207,138.69 shall be paid to Council. Such contributions are only used towards the provision or improvement of the amenities and services identified below. The amount to be paid is adjusted at the time of payment, in accordance with the contribution rates contained in Council's current Adopted Fees and Charges. The contribution is to be paid prior to the issue of any construction certificate for works above the floor level of the ground floor (Payment of the contribution is not required prior to any separate construction certificates issued only for demolition, site preparation works and the construction of basement levels). The contribution is calculated from Council's adopted Section 94 contributions plan in the following manner:

Open Space	\$165,932.17
Community Services & Facilities	\$13,965.36
Town Centre & Streetscape Improvements	\$5,278.69
Pollution Control	\$20,710.56
Plan Administration & Management	\$1,251.91

Copies of Council's Section 94 Contribution Plans may be inspected at Council's Customer Service Centre, Administration Building, 2 Bryant Street, Rockdale.

30. Prior to the issue of the Construction Certificate a certificate from a practicing Structural Engineer, registered with NPER, shall be submitted to Council stating that the subsurface structural components located on the boundary of the public road and neighbouring buildings, including but not limited to the slabs, walls and columns, have been designed in accordance with all SAA Codes for the design loading from truck and vehicle loads.

An engineering design certificate is required to be submitted for the design of the basement system including shoring wall.

31. In the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance or owner builder's permit in force in accordance with Part 6 of that Act, that such a contract or permit is in place.
32. A landscape plan, prepared by a qualified Landscape Architect shall be submitted to to the satisfaction of Council's Landscape Officer prior to the issue of a Construction Certificate for the approved development. The plan shall be at a scale of 1:100 or 1:200 and comply with Rockdale Technical Specification Landscape and all other relevant conditions of this Consent.
33. The approved plans must be submitted to Sydney Water to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. The Principal Certifying Authority must ensure that Sydney Water has approved the plans before issue of any Construction Certificate. For more information, visit [www.sydneywater.com.au](http://www.sydneywater.com.au).
34. Prior to issue of the Construction Certificate, a longitudinal driveway profile shall be submitted to Principal Certifying Authority for assessment and approval. The profile shall start in the centre of the road and be along the critical edge (worst case) of the driveway. Gradients and transitions shall be in accordance with Council's Code. The profile shall be drawn to a scale of 1 to 25 and shall include all relevant levels, grades (%) and lengths.

35. The subsurface structure shall be designed with a waterproof retention system (ie Structural tanking and waterproofing) with adequate provision for future fluctuation of the water table. The subsurface structure is required to be designed with consideration of uplift due to water pressure and “flotation” (buoyancy) effects.

Subsoil drainage around the subsurface structure must allow free movement of groundwater around the structure, but must not be connected to the internal drainage system. The design of subsurface structure, tanking and waterproofing, and subsoil drainage shall be undertaken by a suitably experienced Chartered Professional Engineer(s). Design details and construction specifications shall be included in the documentation accompanying the Construction Certificate.

A design certificate is required to be submitted for the design of the Basement system including shoring wall. The certificate shall be issued by a Chartered Professional Engineer competent in Structural engineering.

The design of the basement and any other underground structure or excavation shall take into consideration of geotechnical recommendations.

Note:

- a. All structures that are fully or significantly below ground shall be fully tanked to finished ground level.
- b. After construction is completed no seepage water is to discharge to the kerb. Permanent dewatering will not be permitted.
- c. Continuous monitoring of ground water levels may be required.

36. Geotechnical

As the basement floor is being proposed closer to existing built structures on neighbouring properties, which may be in the zone of influence of the proposed works and excavations on this site, a qualified practicing geotechnical engineer must;

- a. Implement all recommendations contained in the report prepared by Douglas Partners Pty Ltd., Consulting Engineers Ref: Project 85174.00, dated 8 December 2015.
- b. Provide a certificate that the construction certificate plans are satisfactory from a geotechnical perspective and
- c. Confirm the proposed construction methodology, including any excavation, and the configuration of the built structures,) will have no adverse impact on any surrounding property and infrastructure. The report must be submitted with the application for a Construction Certificate for the relevant stage of works.
- d. Inspect the works as they progress. The Inspections are to occur at frequencies determined by the geotechnical engineer.
- e. Determine the soil absorption rate and satisfy the other requirements of Rockdale Technical Specification Stormwater Management relating to the water table, impact on footings, etc prior to design of the drainage system.
- f. Where a Private Certifier issues the Construction Certificate a copy of the above documentation must be provided to Council, once the Construction Certificate is issued for the relevant stage of works.

Note: A failure by contractors to adequately assess and seek professional engineering (geotechnical) advice to ensure that appropriate underpinning and support to adjoining land is maintained prior to commencement may result in damage to adjoining land and buildings. Such contractors are likely to be held responsible for any damages arising from the removal of any support to supported

land as defined by section 177 of the Conveyancing Act 1919.

37. Vibration monitoring

Vibration monitoring equipment must be installed and maintained, under the supervision of a professional engineer with expertise and experience in geotechnical engineering, between any potential source of vibration and any building identified by the professional engineer as being potentially at risk of movement or damage from settlement and/or vibration during the excavation and during the removal of any excavated material from the land being developed.

If vibration monitoring equipment detects any vibration at the level of the footings of any adjacent building exceeding the peak particle velocity adopted by the professional engineer as the maximum acceptable peak particle velocity an audible alarm must activate such that the principal contractor and any sub-contractor are easily alerted to the event.

Where any such alarm triggers all excavation works must cease immediately. Prior to the vibration monitoring equipment being reset by the professional engineer and any further work recommencing the event must be recorded and the cause of the event identified and documented by the professional engineer.

Where the event requires, in the opinion of the professional engineer, any change in work practices to ensure that vibration at the level of the footings of any adjacent building does not exceed the peak particle velocity adopted by the professional engineer as the maximum acceptable peak particle velocity these changes in work practices must be documented and a written direction given by the professional engineer to the principal contractor and any sub-contractor clearly setting out required work practice.

The principal contractor and any sub-contractor must comply with all work directions, verbal or written, given by the professional engineer.

A copy of any written direction required by this condition must be provided to the Principal Certifying Authority within 24 hours of any event.

Where there is any movement in foundations such that damaged is occasioned to any adjoining building or such that there is any removal of support to supported land the professional engineer, principal contractor and any sub-contractor responsible for such work must immediately cease all work, inform the owner of that supported land and take immediate action under the direction of the professional engineer to prevent any further damage and restore support to the supported land.

*Note: Professional engineer has the same mean as in Clause A1.1 of the BCA.*

*Note: Building has the same meaning as in section 4 of the Act i.e. "building includes part of a building and any structure or part of a structure".*

*Note: Supported land has the same meaning as in section 88K of the Conveyancing Act 1919.*

38. The applicant shall confer with Energy Australia to determine the following:

- a. if satisfactory clearances to any existing overhead High Voltage mains will be affected;
- b. if an electricity distribution substation is required; and/or
- c. if installation of electricity conduits in the footway is required.

39. The Principal Certifying Authority shall not issue a Construction Certificate until a detailed acoustic assessment /report of all mechanical plants (ventilation systems, exhaust fans, ventilation fans and condenser units) and equipment including air-conditioners which meet the NSW EPA Industrial Noise Policy and Protection Of Environment Operations Act 1997 noise emission criteria for residential air - conditioners as specified in DA Noise Impact Assessment for 16-20 Princess Street Brighton Le Sands by Acoustic Logic – Project Number 20140451.1, Document Reference 20140451.1/1503A/R2/BW dated the 15 March 2016 has been carried out.

The acoustic assessment / report shall include at least the following information:

- the name and qualifications or experience of the person(s) preparing the report
- the project description, including proposed or approved hours of operation
- relevant guideline or policy that has been applied
- results of background and any other noise measurements taken from most noise affected location at the boundary line
- meteorological conditions and other relevant details at the time of the measurements
- details of instruments and methodology used for noise measurements (including reasons for settings and descriptors used, calibration details)
- a site map showing noise sources, measurement locations and potential noise receivers
- noise criteria applied to the project
- noise predictions for the proposed activity
- a comparison of noise predictions against noise criteria
- a discussion of proposed mitigation measures, the noise reduction likely and the feasibility and reasonableness of these measures
- how compliance can be determined practically

The report shall be prepared by a suitably qualified and experienced acoustic engineer (who is a member of either the Australian Acoustical Society or the Association of Australian Acoustical Consultants). It shall be submitted to the Principal Certifying Authority. All recommendations and/or noise mitigation measures (If applicable) shall be complied with.

40. The low level driveway must be designed to prevent inflow of water from the road reserve, and gutter flow - road reserve. The assessment of flows and design of prevention measures shall be in accordance with the requirements of Rockdale Technical Specification Stormwater Management. Details shall be included in the documentation presented with the Construction Certificate application.
41. Any part of the proposed building within 3m of the proposed retention tank or absorption trench shall be constructed on a pier and beam foundation with piers extending no less than 300mm below the bottom of the tank or trench base. This requirement shall be reflected on the Construction Certificate plans and supporting documentation.
42. The driveway over the absorption trench shall be either constructed on a pier and

beam foundation with piers extending no less than 300mm below the bottom of the trench base or constructed as a structural slab so that no load is transferred to the plastic trench. This requirement shall be reflected on the Construction Certificate plans and supporting documentation.

43. The visitor car space shall also operate as a car wash bay. A tap shall be provided. A sign shall be fixed saying 'Visitor Car Space and Car Wash Bay'. The runoff shall be directed and treated as per Rockdale Technical Specification Stormwater Management. Details shall be provided with the plans accompanying the Construction Certificate.
44. All basement surface runoff including car wash bay shall be directed through a propriety oil and sediment filtration system prior to discharge. Details of the pit type, location, performance and manufacturer's maintenance and cleaning requirements shall be submitted and approved prior to the issue of the construction certificate.

The owners/occupiers are to undertake all future maintenance and cleaning to the manufacturer's requirements.

45. Prior to the issue of the Construction Certificate, amended detailed drainage design plans for the management of stormwater are to be submitted to Principal Certifying Authority for assessment and approval. Design certification, in the form specified in Rockdale Technical Specification Stormwater Management, and drainage design calculations are to be submitted with the plans. Council's Rockdale Technical Specification Stormwater Management sets out the minimum documentation requirements for detailed design plans. Stormwater management requirements for the development site, including the final discharge/end connection point, must comply with Rockdale Technical Specification Stormwater Management.

*The drainage plans must show how groundwater is managed within basement including shoring walls, temporary and permanent.*

The emergency kerb discharge must be less than 50 l/s for the combined discharge of the site for the 50 year ARI event.

*Subsoil drainage shall be provided and designed to allow the free movement of groundwater around any proposed structure, but is not to be connected to the internal drainage system.*

*The design shall take into consideration of geotechnical recommendations.*

46. The proposed SRV loading bay shall be fully contained within the site beyond the required 900mm footpath easement and designed in accordance with AS2890.2:2002. Prior to the issue of a Construction Certificate, for the approved development, the design of the loading bay shall be amended to accommodate a corner splay either side to accommodate vehicle manoeuvring in accordance with the relevant Australian Standard. In this regard, boundary walls shall be set back a minimum of 2.5 metres at the location of the car park and loading bay entries. The wall shall then return at a splay of 45 degrees to maintain adequate sight distances to pedestrians and vehicles.

The details should be in accordance with Council DCP, Rockdale Technical Specification - Traffic, Parking and Access and AS 2890.2 and the swept path analysis for the Single Rigid Vehicle (SRV) entering the loading bay shall be provided using a recognised computer software package such as Autoturn,



complying with Section B3 of AS/NZS2890.1:2004.

## **Prior to commencement of works**

The following conditions must be completed prior to the commencement of works.

47. A dilapidation survey shall be undertaken of all properties and/or Council infrastructure, including but not limited to all footpaths, kerb and gutter, stormwater inlet pits, and road carriageway pavements, in the vicinity which could be potentially affected by the construction of this development. Any damage caused to other properties during construction shall be rectified. A copy of the dilapidation survey and an insurance policy that covers the cost of any rectification works shall be submitted to the Accredited Certifier (AC) or Council prior to Commencement of Works. The insurance cover shall be a minimum of \$10 million.
48. A Soil and Water Management Plan shall be prepared. The Plan must include details of the proposed erosion and sediment controls to be installed on the building site. A copy of the Soil and Water Management Plan must be kept on-site at all times and made available on request.

Soil and sedimentation controls are to be put in place prior to commencement of any work on site. The controls are to be maintained in effective working order during construction.

Council's warning sign for soil and water management must be displayed on the most prominent point on the building site, visible to both the street and site workers. The sign shall be erected prior to commencement of works and shall be displayed throughout construction.

49. A sign must be erected at the front boundary of the property clearly indicating the Development Approval Number, description of work, builder's name, licence number and house number before commencement of work. If owner/builder, the Owner/Builder Permit Number must be displayed.
50. A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:
  - i. stating that unauthorised entry to the work site is prohibited, and
  - ii. showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours. Any such sign is to be removed when the work has been completed. This condition does not apply to:
    - iii. building work carried out inside an existing building or
    - iv. building work carried out on premises that are to be occupied continuously (both during and outside working hours) while the work is being carried out.
51. Where it is necessary to import landfill material onto the site to fill the land to levels shown on the plans forming part of the consent, a certificate, prepared by a suitably qualified and experienced Contaminated Land Consultant, shall be submitted to Council being the Regulatory Authority prior to the commencement of works, certifying that the imported fill is suitable for the land use.
52. The site shall be secured by a 1800 mm (minimum) high temporary fence for the duration of the work. Gates shall be provided at the opening points.
53. Toilet facilities must be available or provided at the work site before works begin and must be maintained until the works are completed at a ratio of one toilet plus one

additional toilet for every 20 persons employed at the site.

54. Consultation with Ausgrid is essential prior to commencement of work. Failure to notify Ausgrid may involve unnecessary expense in circumstances such as:
  - i) where the point of connection and the meter board has been located in positions other than those selected by Ausgrid or
  - ii) where the erection of gates or fences has restricted access to metering equipment.
55. Where clearances to any existing overhead High Voltage mains are affected, the builder shall make arrangements with Ausgrid for any necessary modification to the electrical network in question. These works shall be at the applicant's expense.  
Ausgrid's requirements under Section 49 Part 1 of the Electricity Supply Act 1995 shall be met prior to commencement of works or as agreed with Ausgrid.

### **During demolition / excavation / construction**

The following conditions must be complied with during demolition, excavation and or construction.

56. A copy of the Construction Certificate and the approved plans and specifications must be kept on the site at all times and be available to Council officers upon request.
57. Hours of construction shall be confined to between 7 am and 6.30 pm Mondays to Fridays, inclusive, and between 8 am and 3.30 pm Saturdays with no work being carried out on Sundays and all public holidays.
58. Ground water shall only be pumped or drained to Council's stormwater system if the water is clean and unpolluted. The standard used to determine the acceptability of the quality of the water is the 'Australian and New Zealand Environment and Conservation Council - Australian Water Quality Guidelines for Fresh and Marine Waters 1992'.

Note: Prior treatment and/or filtration of the water may be necessary to achieve acceptable quality, including a non-filterable residue not exceeding 50 milligrams/litre or small quantities may be removed by the services of a Licenced Liquid Waste Transporter. It is an offence under the provisions of the Protection of the Environment Operations Act 1997 to pollute the stormwater system.

59. Demolition operations shall not be conducted on the roadway or public footway or any other locations, which could lead to the discharge of materials into the stormwater drainage system.
60. All waste generated on site shall be disposed of in accordance with the submitted Waste Management Plan.
61. A Registered Surveyor's check survey certificate or compliance certificate shall be forwarded to the certifying authority detailing compliance with Council's approval at the following stage/s of construction:
  - i. After excavation work for the footings, but prior to pouring of concrete, showing the area of the land, building and boundary setbacks.
  - ii. Prior to construction of each floor level showing the area of the land, building and boundary setbacks and verifying that the building is being constructed at the approved level.
  - iii. On completion of the building showing the area of the land, the position of the building and boundary setbacks and verifying that the building has been constructed at the approved levels.

- iv. On completion of the drainage works (comprising the drainage pipeline, pits, overland flow paths, on-site detention or retention system, and other relevant works) verifying that the drainage has been constructed to the approved levels, accompanied by a plan showing sizes and reduced levels of the elements that comprise the works.
62. All excavation and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards and guarded and protected to prevent them from being dangerous to life or property.

When excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building or an adjoining allotment of land, you shall:

- i. preserve and protect the building from damage and
- ii. underpin and support the building in an approved manner, if necessary and
- iii. give notice of intention to excavate below the level of the base of the footings of a building on an adjoining allotment of land to the owner at least 7 days prior to excavation and furnish particulars of the excavation to the owner of the building being erected or demolished.

Note: The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this conditions allotment of land includes a public road and any other public place.

Works shall not encroach onto or over adjoining properties, including retaining walls, fill material or other similar works. Soil shall not be lost from adjoining sites due to construction techniques employed on the subject site.

63. When soil conditions require it:
- i. retaining walls associated with the erection or demolition of a building or other approved methods of preventing movement of the soil shall be provided, and
  - ii. adequate provision shall be made for drainage.
64. Any new information discovered during remediation, demolition or construction works which has the potential to alter previous conclusions about site contamination, shall be notified to Council being the Regulatory Authority for the management of contaminated land.
65. All contractors shall comply with the following during all stages of demolition and construction:
- A Waste Container on Public Road Reserve Permit must be obtained prior to the placement of any waste container or skip bin in the road reserve (i.e. road or footpath or nature strip). Where a waste container or skip bin is placed in the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
  - A Road Opening Permit must be obtained prior to any excavation in the road reserve (i.e. road or footpath or nature strip). Where excavation is carried out on the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.

- A Hoarding Permit must be obtained prior to the erection of any hoarding (Class A or Class B) in the road reserve (i.e. road or footpath or nature strip). Where a hoarding is erected in the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
  - A Crane Permit must be obtained from Council prior to the operation of any activity involving the swinging or hoisting of goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway. Permits can be obtained from Council's Customer Service Centre.
  - A current Permit to Dewater or Pump Out a site must be obtained prior to the discharge of pumped water into the road reserve, which includes Council stormwater pits and the kerb and gutter. Permits can be obtained from Council's Customer Service Centre.
66. All demolition work shall be carried out in accordance with AS2601 – 2001: The Demolition of Structures and with the requirements of the WorkCover Authority of NSW.
67. The following conditions are necessary to ensure minimal impacts during construction:
- i. Building, demolition and construction works not to cause stormwater pollution and being carried out in accordance with Section 2.8 of Council's Stormwater Pollution Control Code 1993. Pollutants such as concrete slurry, clay and soil shall not be washed from vehicles onto roadways, footways or into the stormwater system. Drains, gutters, roadways and access ways shall be maintained free of sediment. Where required, gutters and roadways shall be swept regularly to maintain them free from sediment.
  - ii. Stormwater from roof areas shall be linked via a temporary downpipe to an approved stormwater disposal system immediately after completion of the roof area.
  - iii. All disturbed areas shall be stabilised against erosion within 14 days of completion, and prior to removal of sediment controls.
  - iv. Building and demolition operations such as brickcutting, washing tools or paint brushes, and mixing mortar shall not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.
  - v. Stockpiles are not permitted to be stored on Council property (including nature strip) unless prior approval has been granted. In addition stockpiles of topsoil, sand, aggregate, soil or other material shall be stored clear of any drainage line or easement, natural watercourse, kerb or road surface.
  - vi. Wind blown dust from stockpile and construction activities shall be minimised by one or more of the following methods:
    - a) spraying water in dry windy weather
    - b) cover stockpiles
    - c) fabric fences
  - vii. Access to the site shall be restricted to no more than two 3m driveways. Council's footpath shall be protected at all times. Within the site, provision of a minimum of 100mm coarse crushed rock is to be provided for a minimum length of 2 metres to remove mud from the tyres of construction vehicles.

An all weather drive system or a vehicle wheel wash, cattle grid, wheel shaker or other appropriate device, shall be installed prior to commencement of any site works or activities, to prevent mud and dirt leaving the site and being deposited on the street. Vehicular access is to be controlled so as to prevent tracking of sediment onto adjoining roadways, particularly during wet weather or when the site is muddy. Where any sediment is deposited on roadways it is to be removed by means other than washing and disposed of appropriately.

In addition builders / demolishers are required to erect a 1.5m high fence along the whole of the street alignment other than at the two openings. Such protection work, including fences, is to be constructed, positioned and maintained in a safe condition to the satisfaction of the Principal Certifying Authority, prior to the demolition of the existing structures and commencement of building operations.

- viii. Any noise generated during construction of the development shall not exceed limits specified in any relevant noise management policy prepared pursuant to the Protection of the Environment Operations Act, 1997 or exceed approved noise limits for the site.
- 68. Council's warning sign for soil and water management must be displayed on the most prominent point on the building site, visible to both the street and site workers. The sign must be displayed throughout construction. A copy of the sign is available from Council.
- 69. Any pruning of branches or roots of trees growing from within adjoining properties requires the prior written consent of the tree's owners and the prior written consent of Council in the form of a Permit issued under Council's Development Control Plan 2011. The work must be carried out in accordance with AS4373:2007 by an experienced Arborist with minimum AQF Level 2 qualifications in Arboriculture.

### **Prior to issue of occupation certificate or commencement of use**

The following conditions must be complied with prior to issue of the Occupation Certificate or Commencement of Use.

- 70. An Occupation Certificate shall be obtained in relation to the approved works prior to any use or occupation of the building.
- 71. Where Council's park/reserve is damaged as a result of building work or vehicular building traffic, this area shall be restored by Council at the applicant's expense. Repairs shall be completed prior to the issue of the Occupation Certificate.
- 72. All excess excavated material, demolition material, vegetative matter and builder's rubbish shall be removed to the Waste Disposal Depot or the Regional Tip prior to final inspection.  
Note: Burning on site is prohibited.
- 73. A by-law shall be registered and maintained for the life of the development, which requires that :
  - (a) balconies are not to be used as clothes drying areas, storage of household goods and air-conditioning units that would be visible from the public domain;
  - (b) an owner of a lot must ensure that all floor space within the lot complies with the acoustic conditions specified in this consent;
  - (c) Notwithstanding subclause (b), in the event that a floor covering in the lot is removed, the newly installed floor covering shall have a weighted standardized

impact

sound pressure level not greater than L'nT,w 45 measured in accordance with AS ISO 140.7 and AS ISO 717.2, A test report from a qualified acoustic engineer employed by a firm eligible to membership of the Association of Australian Acoustical Consultants shall be submitted to the Owners Corporation within 14 days of the installation of the new floor covering demonstrating compliance with that standard. In the event that the standard is not complied with, the floor covering shall be removed and replaced with a floor covering that conforms to that standard in accordance with any directions given by the Owners Corporation.

Proof of registration of the By Law shall be submitted to Council prior to the issue of the Occupation Certificate.

74. Damage to brick kerb and/or gutter and any other damage in the road reserve shall be repaired using brick kerb and gutter of a similar type and equal dimensions. All works shall be to Council's satisfaction at the applicant's expense. Repairs shall be completed prior to the issue of the Occupation Certificate.
75. Lots 3; 4 and 5 DP 435253 shall be consolidated into one allotment. Council requires proof of lodgement of the plan of consolidation with the Land and Property Information Office prior to occupation.
76. All works within the road reserve, which are subject to approval pursuant to Section 138 of the Roads Act 1993, shall be completed and accepted by council.
77. The underground placement of all low voltage street mains in that section of the street/s adjacent to the development, and associated services and the installation of underground supplied street lighting columns, shall be carried out at the applicant's expense. The works shall be completed and Ausgrid's requirements shall be met prior to issue of the Occupation Certificate.
78. Prior to completion of the building works, a full width vehicular entry is to be constructed to service the property. Any obsolete vehicular entries are to be removed and reconstructed with kerb and gutter. This work may be done using either a Council quote or a private contractor. There are specific requirements for approval of private contractors.
79. The width of the double driveway at the boundary shall be a maximum of 6 metres.
80. A convex mirror is to be installed at ramps to provide increased sight distance for vehicles.
81. The provision of a 0.9 metre wide right of footway in favour of Rockdale City Council along the boundary with Saywell Lane. The right of footway is to be covered by a Section 88B Instrument, which may only be varied or extinguished with the consent of Rockdale City Council.  
Council requires proof of lodgement of the signed Subdivision/Strata Certificate and 88B Instrument with the Land Titles Office.
82. Bollard(s) shall be installed at adaptable parking shared areas. Future maintenance will be the responsibility of the owner and/or occupier.
83. 41 off-street basement car spaces shall be provided in accordance with the submitted plan and shall be linemarked to Council's satisfaction. The pavement of all car parking spaces, manoeuvring areas and internal driveways shall comply with Australian Standard AS3727 – Guide to Residential Pavements.
84. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.  
Application must be made through an authorised Water Servicing Coordinator.  
Please refer to the Building Developing and Plumbing section of the web site [www.sydneywater.com.au](http://www.sydneywater.com.au) then refer to "Water Servicing Coordinator" under

"Developing Your Land" or telephone 13 20 92 for assistance. Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design. The Section 73 Certificate must be submitted to the Principal Certifying Authority prior to occupation of the development.

85. Prior to occupation, a registered surveyor shall certify that the driveway(s) over the footpath and within the property have been constructed in accordance with the approved driveway profile(s). The certification shall be based on a survey of the completed works. A copy of the certificate and a works-as-executed driveway profile shall be provided to Council if Council is not the Principal Certifying Authority.
86. Where the installation of electricity conduits is required in the footway, the builder shall install the conduits within the footway across the frontage/s of the development site, to Ausgrid's specifications. Ausgrid will supply the conduits at no charge. A Road Opening Permit must be obtained from Council prior to the installation of the conduits. The builder is responsible for compaction of the trench and restoration of the footway in accordance with Council direction. A Compliance Certificate from Ausgrid shall be obtained prior to the issue of the Occupation Certificate.
87. Prior to issue of Occupation Certificate the applicant shall submit to the Principal Certifying Authority (PCA) an acoustic compliance report to verify that the measures stated in the 'DA Noise Impact Assessment for 16-20 Princess Street Brighton Le Sands by Acoustic Logic – Project Number 20140451.1, Document Reference 20140451.1/1503A/R2/BW dated the 15 March 2016' and all other noise mitigation measures associated with the mechanical plants (ventilation systems, exhaust fans, ventilation fans and condenser units) and equipment including air-conditioners have been carried out and certify that the construction meets the above requirements. If Council is not the PCA, a copy shall be submitted to Council concurrently. The report shall be prepared by a suitably qualified and experienced acoustic engineer (who is a member of either the Australian Acoustical Society or the Association of Australian Acoustical Consultants).
88. An accredited auditor under the Contaminated Land Management Act 1997 shall review the Validation Report prepared by the contaminated land consultant and issue a Site Audit Statement. The accredited auditor shall provide Council being the Regulatory Authority for the management of contaminated land, with a copy of the Site Audit Report and Site Audit Statement, prior to issue of the Occupation Certificate.
89. A Site Audit Statement (SAS) shall be submitted to Council being the Regulatory Authority for the management of contaminated land, prior to the issue of Occupation Certificate, clearly demonstrating that the site is suitable for the intended use. Conditions imposed on the SAS shall form part of this consent. In circumstances where the SAS conditions (if applicable) are not consistent with the consent, the consent shall prevail to the extent of inconsistency and a S96 application pursuant to the Environmental Planning & Assessment Act 1979 will be required.
90. Prior to occupation, a chartered professional engineer shall certify that the tanking and waterproofing has been constructed in accordance with the approved design and specification. A copy shall be provided to Council if council is not the Principal Certifying Authority.
91. Prior to occupation a Chartered Professional Engineer shall certify that the stormwater system has been constructed in accordance with the approved plans and as required by Rockdale Technical Specification Stormwater Management. The certificate shall be in the form specified in Rockdale Technical Specification



Stormwater Management and include an evaluation of the completed drainage works. A works-as-executed drainage plan shall be prepared by a registered surveyor based on a survey of the completed works. A copy of the certificate and works-as-executed plan(s) shall be supplied to the Principal Certifying Authority. A copy shall be provided to Council if Council is not the Principal Certifying Authority.

92. All absorption trenches must be inspected, and a compliance certificate under Part 4A of the EP&A Act issued prior to back filling and proceeding to subsequent stages of construction. Copies of the certificate are to be maintained by the principal certifying authority and be made available to Council officers upon request.
93. The underground garage shall be floodproofed to a minimum of 100mm above the 1% Annual Exceedance Probability Gutter flow level. The levels shall be certified by a registered surveyor prior to construction of the driveway or other openings.
94. The underground garage shall be floodproofed- Gutter Flow to a minimum of 500mm above the 1% Annual Exceedance Probability flood level. The levels shall be certified by a registered surveyor prior to construction of the driveway or other openings.
95. A positive covenant pursuant to the Conveyancing Act 1919 shall be created on the title of the lots that contain the stormwater retention facility to provide for the maintenance of the retention facility.
96. The pump system, including all associated electrical and control systems, shall be tested and inspected by a suitably qualified and experienced person. Records of testing shall be retained and provided to the certifying hydraulic engineer and/or PCA upon request.
97. The drainage system shall be constructed in accordance with the approved drainage plans and any amendments in red. All stormwater drainage plumbing work shall comply with the NSW Code of Practice: Plumbing and Drainage and Australian Standard AS3500.

Drainage grates shall be provided at the boundary. Width of the drainage grates shall be in accordance with Rockdale Technical Specification Stormwater Management.

A silt/litter arrestor pit as detailed in Rockdale Technical Specification Stormwater Management shall be provided prior to discharge of stormwater from the site.

98. The owner of the premises is required to comply with the following requirements when installing a rainwater tank:
  - Inform Sydney Water that a Rainwater tank has been installed in accordance with applicable requirements of Sydney Water.
  - The overflow from the rainwater tank shall be directed to the storm water system.
  - All plumbing work proposed for the installation and reuse of rainwater shall comply with the NSW Code of Practice: Plumbing and Drainage and be installed in accordance with Sydney Water "Guidelines for rainwater tanks on residential properties.
  - A first flush device shall be installed to reduce the amount of dust, bird faeces, leaves and other matter entering the rainwater tank.

## **Integrated development/external authorities**

The following conditions have been imposed in accordance with Section 91A of the Environmental Planning and Assessment Act, 1979.

99. **Sydney Airport**

- i) The crane **must not exceed** a maximum height of **65 metres AHD**.
- ii) The crane **must be obstacle marked** in alternating red and white bands of colour in accordance with subsection 8.10.2 of the Manual of Standards - Part 139 Aerodromes (Part 139 MOS) or lit with flashing white obstacle lighting during daylight hours.
- iii) The crane **must be obstacle lit** with medium intensity steady red lighting at night at the highest point of the structure. Obstacle lights are to be arranged to ensure the lighting can be observed in a 360 degree radius as per subsection 9.4.3 of Part 139 MOS. Characteristics for medium intensity lights are stated in subsection 9.4.7 of Part 139 MOS.
- iv) The crane may engage in operations which will cause it to intrude into prescribed airspace **only as follows**:
  - \* from 1 January 2017 to 10 October 2017
- v) The proponent **must provide SACL** with surveyed as installed details in writing including the height of the tower crane after it is erected.
- vi) The proponent **must give SACL** at least 48 hours notice before commencing operations which will result in intrusions into prescribed airspace (to allow SACL to raise the required Notices to Airmen (NOTAM)).
- vii) The proponent **must** ensure the obstacle lighting has a remote monitoring capability, or make a visual observation of the lighting each 24 hour period.
- viii) The obstacle lighting **must** be maintained in serviceable condition and any outage immediately reported to the aerodrome operator.
- ix) The proponent **must** advise Airservices at least three (3) business days prior to the controlled activity commencing by emailing [<pds.obs@airservicesaustralia.com>](mailto:pds.obs@airservicesaustralia.com) and quoting "SY-CA-332".
- x) At the end of the project the proponent **must** notify SACL of the dates and hours for the removal of the Tower Crane and give a minimum of 48 hours notice.

100. **Department of Primary Industries - Water**

**General**

An authorisation shall be obtained for the take of groundwater as part of the activity. Groundwater shall not be pumped or extracted for any purpose other than temporary construction dewatering at the site identified in the development application. The authorisation shall be subject to a currency period of 12 months from the date of issue and will be limited to the volume of groundwater take identified.

The design and construction of the building must prevent any take of groundwater after the authorisation has lapsed by making any below-ground levels that may be impacted by any water table watertight for the anticipated life of the building.

Waterproofing of below-ground levels must be sufficiently extensive to incorporate adequate provision for unforeseen high water table elevations to prevent potential future inundation.

Sufficient permanent drainage shall be provided beneath and around the outside of the watertight structure to ensure that natural groundwater flow is not impeded and:

- (a) any groundwater mounding at the edge of the structure shall be at a level not greater than 10 % above the level to which the water table might naturally rise in the location immediately prior to the construction of the structure; and
- (b) any elevated water table is more than 1.0 m below the natural ground surface existent at the location immediately prior to the construction of the structure; and
- (c) where the habitable structure is founded in bedrock or impermeable natural soil then the requirement to maintain groundwater flows beneath the structure is not applicable.

Construction methods and material used in and for construction shall be designed to account for the likely range of salinity and pollutants which may be dissolved in groundwater, and shall not themselves cause pollution of the groundwater.

DPI Water requires documentation (referred to as 'report') comprising measurements, maps, bore logs, calculations, results, discussion and justification for various matters related to the dewatering process. Information will be required at several stages: prior to construction commencing (initial report - which will accompany the application for the authorisation), at any time when an authorisation renewal is required or a significant change in activities occurs (intermediate report); and at the completion of dewatering and related operations (completion report). Reports need to be submitted to DPI Water at Parramatta Office, in a format consistent with electronic retrieval without editing restrictions; raw data should be presented in Excel spreadsheets without editing restrictions.

### **Prior to excavation**

The following shall be included in the initial report:

- (a) measurements of groundwater levels beneath the site from a minimum of three relevant monitoring bores, together with details of the bores used in the assessment including bore logs and three-dimensional identification information.
- (b) a map of the site and its immediate environs depicting the water table (baseline conditions) shown relative to the topography and approved construction footprint from the surface level and below. An assessment of the potential variation in the water table during the life of the proposed building together with a discussion of the methodology and information on which this assessment is based.
- (c) details of the present and potential groundwater flow paths and hydraulic gradients in and around the site; the latter in response to the final volumetric emplacement of the construction.
- (d) a schedule for the ongoing water level monitoring and description of the methodology to be used, from the date of consent until at least two months after the cessation of pumping. [DPI Water prefers that monitoring be undertaken on a continuous basis using automatic loggers in boreholes.]

The Applicant shall assess the likely impacts of the dewatering activities on other groundwater users or structures or public infrastructure; this assessment will include an appropriate bore, spring or groundwater seep census and considerations relevant to potential subsidence or excessive settlement induced in nearby buildings and property, and be documented together with all calculations and information to support

the basis of these in the initial report.

Groundwater quality testing of samples taken from outside the footprint of the proposed construction, with the intent of ensuring that as far as possible the natural and contaminant hydrochemistry of the potential dewatered groundwater is understood, shall be conducted on a suitable number of samples and tested by a NATA-certified laboratory. Details of the sampling locations and the protocol used, together with the test results accompanied by laboratory test certificates shall be included in the initial report. An assessment of results must be done by suitably qualified persons with the intent of identifying the presence of any contaminants and comparison of the data against accepted water quality objectives or criteria for the intended dewatering purpose. In the event of adverse quality findings, the Applicant must develop a plan to mitigate the impacts of the hydrochemistry on the dewatered groundwater and present the details of all assessments and plans in the initial report.

Groundwater quality testing generally in accordance with Clause 8, shall be undertaken on any anniversary or other renewal or alteration of any dewatering authorisation.

A reasonable estimate of the total volume of groundwater to be extracted shall be calculated and included in the initial report; together with details and calculation methods for the parameters and supporting information to confirm their development or measurement (e.g. permeability predicted by slug-testing, pump-testing or other means).

A copy of a valid consent for the development shall be provided in the initial report.

The method of disposal of pumped water shall be nominated (i.e. reinjection, drainage to the stormwater system or discharge to sewer) and a copy of the written permission from the relevant controlling authority shall be provided in the initial report. The disposal of any contaminated pumped groundwater (sometimes called “tailwater”) must comply with the provisions of the Protection of the Environment Operations Act 1997 and any requirements of the relevant controlling authority.

Contaminated groundwater (i.e. above appropriate NEPM 2013 thresholds) shall not be reinjected into any aquifer. The reinjection system design and treatment methods to remove contaminants shall be nominated and included in the initial report and any subsequent intermediate report as necessary. The quality of any pumped water that is to be reinjected must be demonstrated to be compatible with, or improve, the intrinsic or ambient groundwater in the vicinity of the reinjection site.

### **During Excavation**

Engineering measures designed to transfer groundwater around and beneath the basement shall be incorporated into the basement construction to prevent the completed infrastructure from restricting pre-existing groundwater flows.

Piping, piling or other structures used in the management of pumped groundwater shall not create a flooding hazard or induce mounding of groundwater. Control of pumped groundwater is to be maintained at all times during dewatering to prevent unregulated off-site discharge.

Measurement and monitoring arrangements to the satisfaction of DPI Water are to be implemented. Weekly records of the volumes of all groundwater pumped and the

quality of any water discharged are to be kept and a completion report provided after dewatering has ceased. Records of groundwater levels are to be kept and a summary showing daily or weekly levels in all monitoring bores provided in the completion report.

Pumped groundwater shall not be allowed to discharge off-site (e.g. adjoining roads, stormwater system, sewerage system, etc.) without the controlling authority's approval and/or owner's consent/s. The pH of discharge water shall be managed to be between 6.5 and 8.5. The requirements of any other approval for the discharge of pumped groundwater shall be complied with.

Dewatering shall be undertaken in accordance with groundwater-related management plans applicable to the excavation site. The requirements of any management plan (such as acid sulfate soils management plan or remediation action plan) shall not be compromised by the dewatering activity.

The location and construction of groundwater extraction works that are decommissioned are to be recorded in the completion report. The method of decommissioning is to be identified in the documentation.

Access to groundwater management works used in the activity is to be provided to permit inspection when required by DPI Water under appropriate safety procedures.

### **Following excavation**

Following completion of the dewatering operations, the applicant shall submit to DPI Water, Parramatta Office, the completion report which shall include:

- (a) detail of the volume of water taken, the precise periods and location of water taken, the details of water level monitoring in all of the relevant bores; and
- (b) a water table map depicting the aquifer's settled groundwater condition and a comparison to the baseline conditions; and
- (c) a detailed interpreted hydrogeological report identifying all actual resource and third party impacts, including an assessment of altered groundwater flows and an assessment of any subsidence or excessive settlement induced in nearby buildings and property and infrastructure.

The completion report is to be assessed by DPI Water prior to any certifying agency's approval for occupation or use of the completed construction.

## **Roads Act**

101. Construction related activities must not take place on the roadway without Council approval.

Short-term activities (including operating plant, materials delivery) that reduce parking spaces, affect access to a particular route or prevent or restrict the passage of vehicles along the road must not occur without a valid Temporary Roadside Closure Permit.

Activities involving occupation of the parking lane for durations longer than allowed under a Temporary Roadside Closure Permit require a Construction Zone Permit and must not occur prior to the erection of Works Zone signs by Council's Traffic and Road Safety Section.

Permit application forms should be lodged at Council's Customer Service Centre allowing sufficient time for evaluation. An information package is available on request.

102. Where applicable, the following works will be required to be undertaken in the road reserve at the applicant's expense:
  - i) construction of a concrete footpath along the frontage of the development site;
  - ii) construction of a new fully constructed concrete vehicular entrance/s;
  - iii) removal of the existing concrete vehicular entrance/s, and/or kerb laybacks which will no longer be required;
  - iv) reconstruction of selected areas of the existing concrete Footpath/vehicular entrances and/or kerb and gutter;
  - v) construction of paving between the boundary and the kerb;
  - vi) removal of redundant paving;
  - vii) construction of kerb and gutter.
103. All footpath, or road and drainage modification and/or improvement works to be undertaken in the road reserve shall be undertaken by Council, or by a Private Licensed Contractor subject to the submission and approval of a Private Contractor Permit, together with payment of all inspection fees. An estimate of the cost to have these works constructed by Council may be obtained by contacting Council. The cost of conducting these works will be deducted from the Footpath Reserve Restoration Deposit, or if this is insufficient the balance of the cost will be due for payment to Council upon completion of the work.
104. All driveway, footpath, or road and drainage modification and/or improvement works to be undertaken in the road reserve shall be undertaken in accordance with Council's Subdivision and Civil Works Construction Specification (AUS-SPEC 1). Amendment to the works specification shall only apply where approved by Council. Where a conflict exists between design documentation or design notes and AUS-SPEC 1, the provisions of AUS-SPEC 1 shall apply unless otherwise approved by Council.
105. This Roads Act approval does not eradicate the need for the Contractor to obtain a Road Opening Permit prior to undertaking excavation in the road or footpath.
106. Any driveway works to be undertaken in the footpath reserve by a private contractor requires an "Application for Consideration by a Private Contractor" to be submitted to Council together with payment of the application fee. Works within the footpath reserve must not start until the application has been approved by Council.
107. Following completion of concrete works in the footpath reserve area, the balance of the area between the fence and the kerb over the full frontage of the proposed development shall be turfed with either buffalo or couch (not kikuyu) or landscaped. If landscaping is proposed rather than turfing, details shall be submitted to the Property and Community Services Department for approval.

## **Development consent advice**

- a. You are advised to consult with your utility providers (i.e. Energy Aust, Telstra etc) in order to fully understand their requirements before commencement of any work.
- b. *Telstra Advice – Dial Before You Dig*

Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets,

please contact Dial before You Dig at [www.1100.com.au](http://www.1100.com.au) or telephone on 1100 before excavating or erecting structures (This is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contacting the Dial before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial before You Dig service in advance of any construction or planning activities.

c. *Telstra Advice - Telecommunications Act 1997 (Commonwealth)*

Telstra (and its authorised contractors) are the only companies that are permitted to conduct works on Telstra's network and assets. Any person interfering with a facility or installation owned by Telstra is committing an offence under the Criminal Code Act 1995 (Commonwealth) and is liable for prosecution. Furthermore, damage to Telstra's infrastructure may result in interruption to the provision of essential services and significant costs. If you are aware of any works or proposed works which may affect or impact on Telstra's assets in any way, you are required to contact: Telstra's Network Integrity Team on phone number 1800810443.

d. All asbestos fibre demolition material and asbestos dust shall be handled, stored and removed in accordance with the relevant legislation and guidelines including:

- Work Health and Safety Act 2011
- Work Health and Safety Regulation 2011
- Code of Practice for the Safe Removal of Asbestos [NOHSC: 2002 (2005)]
- Code of Practice for the Management and Control of Asbestos in Workplaces [NOHSC: 2018 (2005)]
- Protection of the Environment Operations (Waste) Regulation 2005

All work procedures shall be devised to minimise the release of dust and fibres. A checklist of safety precautions when working with asbestos is available in Health & Safety Guidelines prepared by the WorkCover Authority of NSW. Collection, storage and transportation is subject to the Protection of the Environment Operations (Waste) Regulation 2005.

e. Hazardous and/or intractable wastes arising from the demolition process shall be removed and disposed of in accordance with the requirements of the relevant statutory authorities (NSW WorkCover Authority and the NSW Environment Protection Authority), together with the relevant regulations, including:

- Work Health and Safety Act 2011
- Work Health and Safety Regulation 2011
- Protection of the Environment Operations (Waste) Regulation 2005.

f. Demolition and construction shall minimise the emission of excessive noise and prevent "offensive noise" as defined in the Protection of the Environment Operations Act 1997. Noise reduction measures shall include, but are not limited to the following strategies:

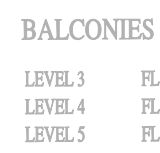
- choosing quiet equipment
- choosing alternatives to noisy activities
- relocating noise sources away from affected neighbours



- educating staff and contractors about quiet work practices
  - informing neighbours of potentially noise activities in advance
  - equipment, such as de-watering pumps, that are needed to operate on any evening or night between the hours of 8 p.m. and 7 a.m. or on any Sunday or Public Holiday, shall not cause a noise nuisance to neighbours of adjoining or nearby residences. Where the emitted noise exceeds 5 dB(A) [LAeq(15m)] above the background sound level [LA90] at the most affected point on the nearest residential boundary at any time previously stated, the equipment shall be acoustically insulated, isolated or otherwise enclosed so as to achieve the sound level objective.
- g. The water from the rainwater tank should not be used for drinking, Sydney Water shall be advised of the installation of the rainwater tank.
- h. The removal, cleaning and disposal of lead-based paint shall conform with the requirements of the NSW Environment Protection Authority's guideline - "Lead Alert - Painting Your Home".
- i. All site works shall comply with the occupational health and safety requirements of the NSW WorkCover Authority.
- j. In the event of any inconsistency between conditions of this approval and the drawings/documents referred to in condition 2, the conditions of this approval prevail.



STREET



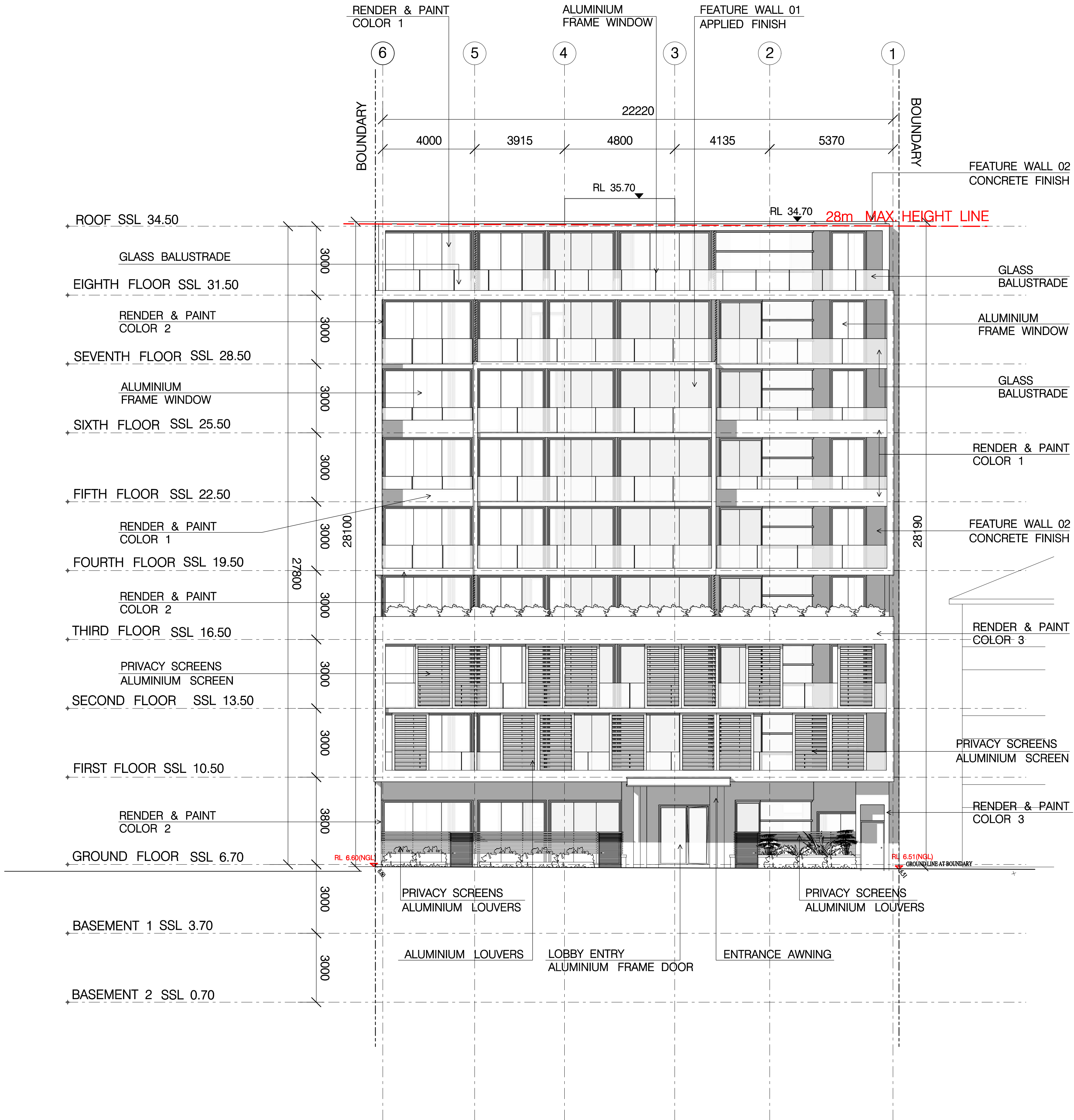
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EXTERNAL WALLS	CONCRETE PANEL PLUS HEBEL PANEL PLUS STUD WALL AND R1.5 INSULATION
GLAZING	ALUMINIUM SINGLE GLAZE CLEAR: U=6.70, SHGC=0.57 - AWNING, CASEMENT, DOORS
GLAZING	ALUMINIUM SINGLE GLAZE CLEAR: U=6.70, SHGC=0.70 - SLIDING, FIXED, LOUVRE
GLAZING	ALUMINIUM SINGLE GLAZE HIGH SOLAR GAIN, LOW-E: U=5.40, SHGC=0.41 - SLIDING, FIXED, LOUVRE - UNITS A601, A701 - SW FACING WINDOWS
GROUND FLOOR	TILES ON SLAB TO WET AREAS WITH R1.0 UNDER SLAB, CARPET ON SLAB TO ALL OTHER AREA WITH R1.0 UNDER SLAB - UNITS A01, A02, A03, A04
FLOOR	TILES ON SLAB TO WET AREAS, CARPET ON SLAB TO ALL OTHER AREAS
INTERNAL WALLS	PLASTERBOARD ON STUDS
INTERNAL WALLS	PLASTERBOARD ON STUDS PLUS R3.0 INSULATION TO PARTY WALLS
ROOF	CONCRETE SLAB PLUS R1.0 INSULATION UNDERNEATH - UNITS A6.01, A7.01, A7.02, A7.03



Level 3, Suite 306, 7-9 Gibbons Street,  
Redfern NSW 2016  
Australia  
Tel: (02) 8052 9600  
Email: [admin@abworks.com.au](mailto:admin@abworks.com.au)

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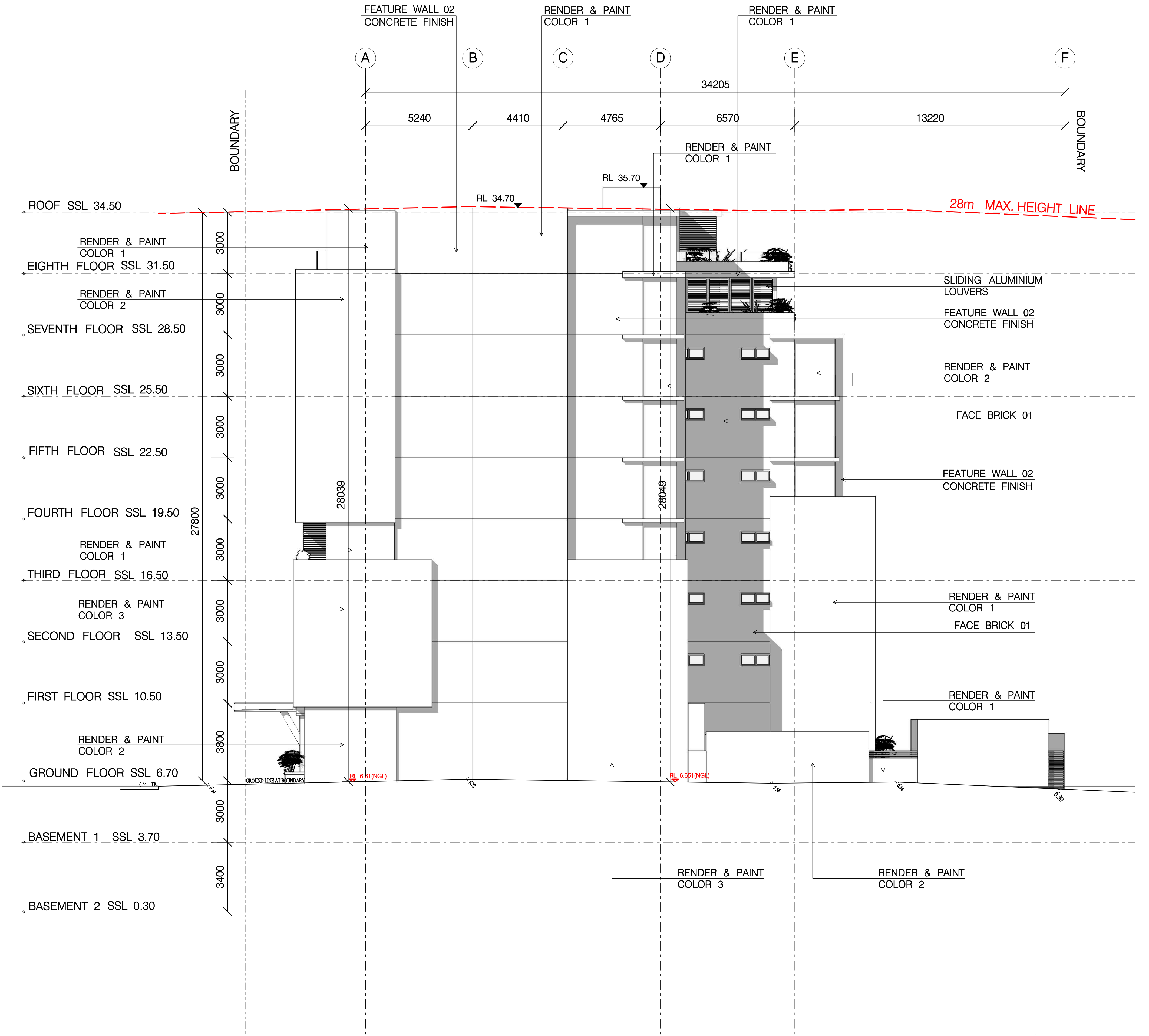
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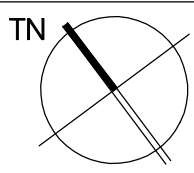
01 NORTH EAST ELEVATION  
SCALE 1:200 @ A3

BASIX THERMAL COMMITMENTS	
BUILDING ELEMENT	REQUIREMENT
EXTERNAL WALLS	CONCRETE PANEL PLUS HEBEL PANEL PLUS STUD WALL AND R1.5 INSULATION
GLAZING	ALUMINIUM SINGLE GLAZE CLEAR: U=6.70, SHGC=0.57 - AWNING, CASEMENT, DOORS
GLAZING	ALUMINIUM SINGLE GLAZE CLEAR: U=6.70, SHGC=0.70 - SLIDING, FIXED, LOUVRE
GLAZING	ALUMINIUM SINGLE GLAZE HIGH SOLAR GAIN, LOW-E: U=5.40, SHGC=0.41 - SLIDING, FIXED, LOUVRE - UNITS A601, A701 - SW FACING WINDOWS
GROUND FLOOR	TILES ON SLAB TO WET AREAS WITH R1.0 UNDER SLAB, CARPET ON SLAB TO ALL OTHER AREA WITH R1.0 UNDER SLAB - UNITS A01, A02, A03, A04
FLOOR	TILES ON SLAB TO WET AREAS. CARPET ON SLAB TO ALL OTHER AREAS
INTERNAL WALLS	PLASTERBOARD ON STUDS
INTERNAL WALLS	PLASTERBOARD ON STUDS PLUS R3.0 INSULATION TO PARTY WALLS
ROOF	CONCRETE SLAB PLUS R1.0 INSULATION UNDERNEATH - UNITS A6.01, A7.01, A7.02, A7.03





02 NORTH WEST ELEVATION  
SCALE 1:200 @ A3



Scale: 1:100 @A1 1:200 @A3

0 1 2 3 4 5 10m

**ARCHITECTURE & BUILDING WORKS**  
ABN 35 093 181 518

Level 3, Suite 305, 7-9 Gibbons Street,  
Rusdell NSW 2016  
Australia  
Tel: (02) 8052 9600  
Email: admin@abwworks.com.au

Architects  
Construction Managers  
Interior Designers  
Town Planners

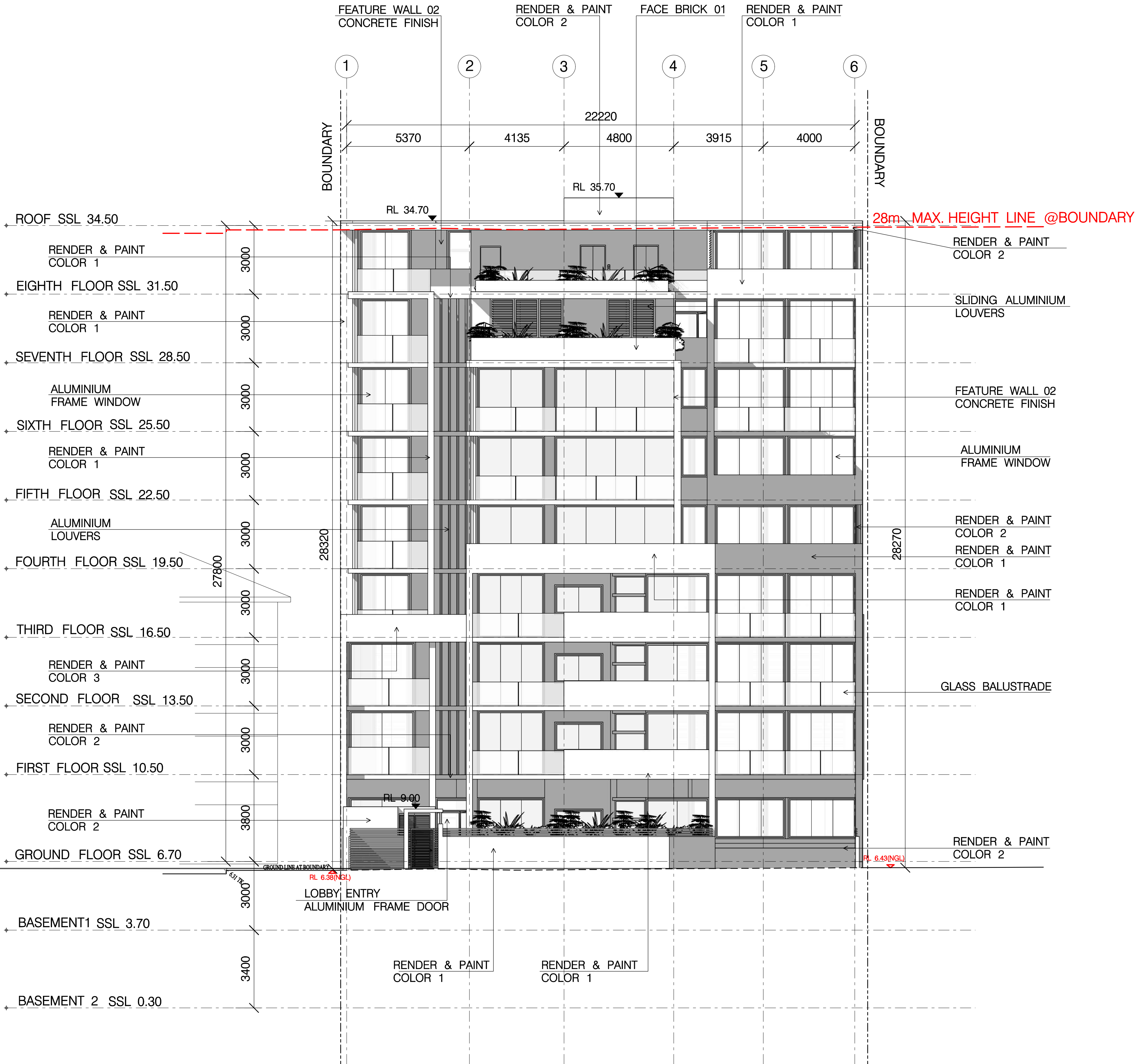
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**RESIDENTIAL DEVELOPMENT**

ADDRESS  
**16-20 PRINCESS STREET,  
BRIGHTON LE SANDS**

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DA ISSUE  
DRP MEETING ISSUE  
PRE-DA ISSUE  
ISSUE REV REVISION DESCRIPTION  
AMENDMENTS

GA 04/07/2016  
MA 09/03/2016  
MA 10/02/2016  
MA 15/12/2015  
APPD DATE

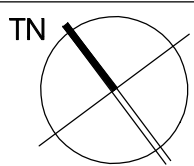
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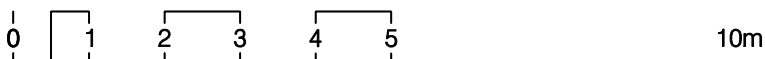
03

SOUTH WEST ELEVATION

SCALE 1:200 @ A3



Scale: 1:100 @A1 1:200 @A3



**ARCHITECTURE & BUILDING WORKS**  
ABN 35 093 181 518  
Level 3, Suite 305, 7-9 Gibbons Street,  
Rusdell NSW 2016  
Australia  
Tel: (02) 8052 9600  
Email: admin@abwworks.com.au

Architects  
Construction Managers  
Interior Designers  
Town Planners

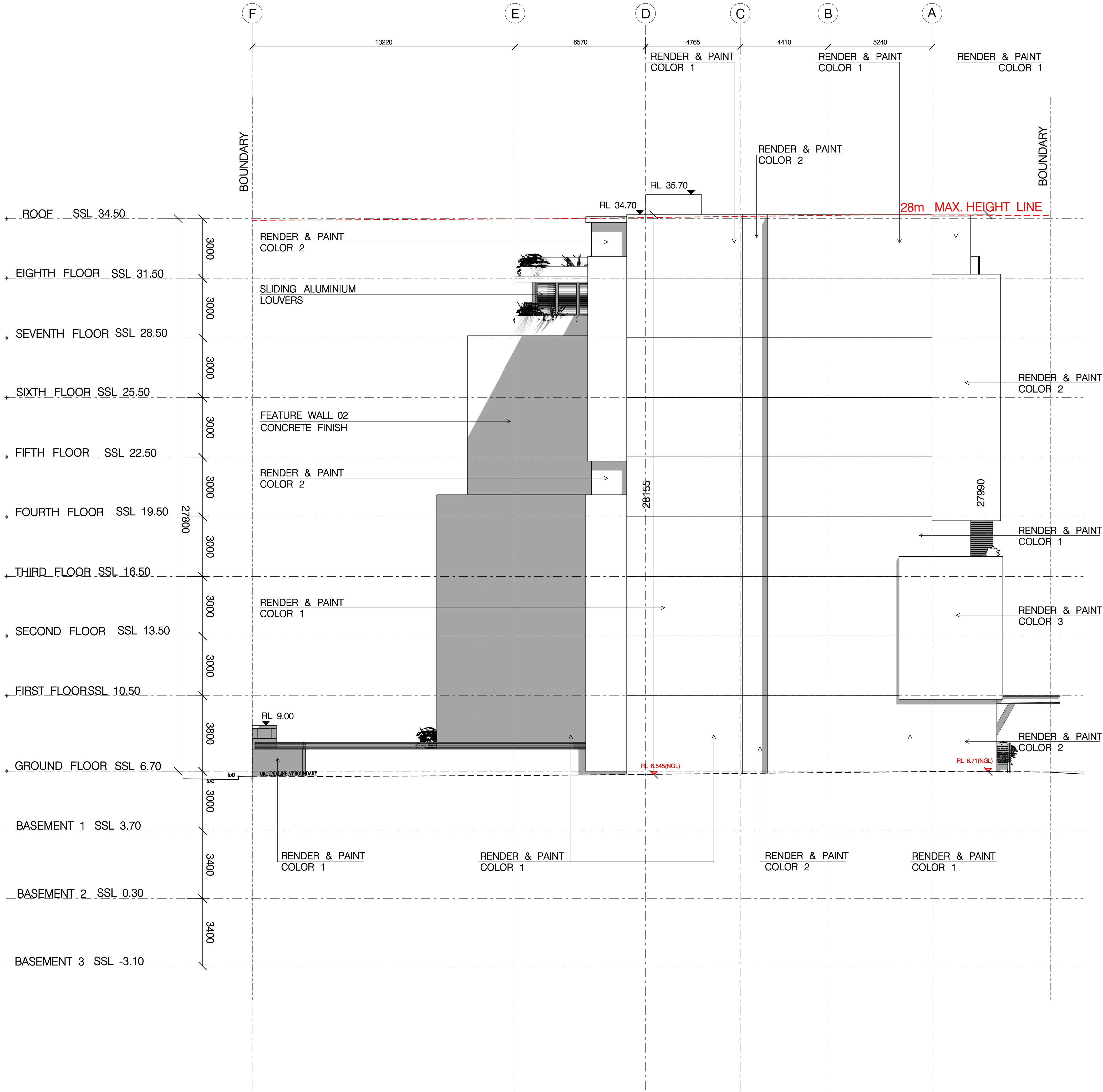
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**16-20 PRINCESS STREET,  
BRIGHTON LE SANDS**

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DA ISSUE  
DRP MEETING ISSUE  
PRECISION ISSUE  
ISSUE REV REVISION DESCRIPTION  
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APP'D DATE

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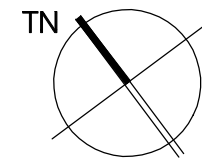




04

SOUTH EAST ELEVATION

SCALE 1:200 @ A3



Scale: 1:100 @A1 1:200 @A3

**ARCHITECTURE & BUILDING WORKS**  
ABN 35 093 181 518  
Level 3, Suite 305, 7-9 Gibbons Street,  
Rusdell NSW 2016  
Australia  
Tel: (02) 8052 9600  
Email: admin@abwworks.com.au

Architects  
Construction Managers  
Interior Designers  
Town Planners

**PROJECT**  
**RESIDENTIAL DEVELOPMENT**  
**ADDRESS**  
**16-20 PRINCESS STREET,  
BRIGHTON LE SANDS**

D AMENDED DA ISSUE  
C DA ISSUE  
B DRP MEETING ISSUE  
A PRE-CON ISSUE

ISSUE REV REVISION DESCRIPTION

GA 04/07/2016  
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# I 6-20 Princess Street

Brighton Le Sands

Residential Flat Building

## Clause 4.6 Application for Exception to Development Standards

July 2016

Prepared by:

**ae** design partnership  
architecture urban design planning



Project:	16-20 Princess Street, Brighton Le Sands	
Document:	Clause 4.6 Application for Exception to Development Standards	
Revision:	Date:	Authored By:
[A]	01/07/2016	Tristan Kell
[B]	05/07/2016	Tristan Kell

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# 1.0 Introduction

This Clause 4.6 Request for Exception to Development Standards has been prepared as part of a Development Application seeking approval for the development of a residential flat building at Allotments 3-5 in DP 435253 (otherwise known as 16-20 Princess Street, Brighton Le Sands) in the Rockdale Local Government Area. As shown in Figure 1, the site is zoned B4 Mixed Use.

The proposed residential flat building has height 29.1 metres, exceeding the maximum permissible height of 28 metres set out in the Rockdale LEP 2011 (RLEP 2011; see Figure 2) by 1.1 metres. As such, variation to Clause 4.3 'Height of buildings' of RLEP 2011 is requested.

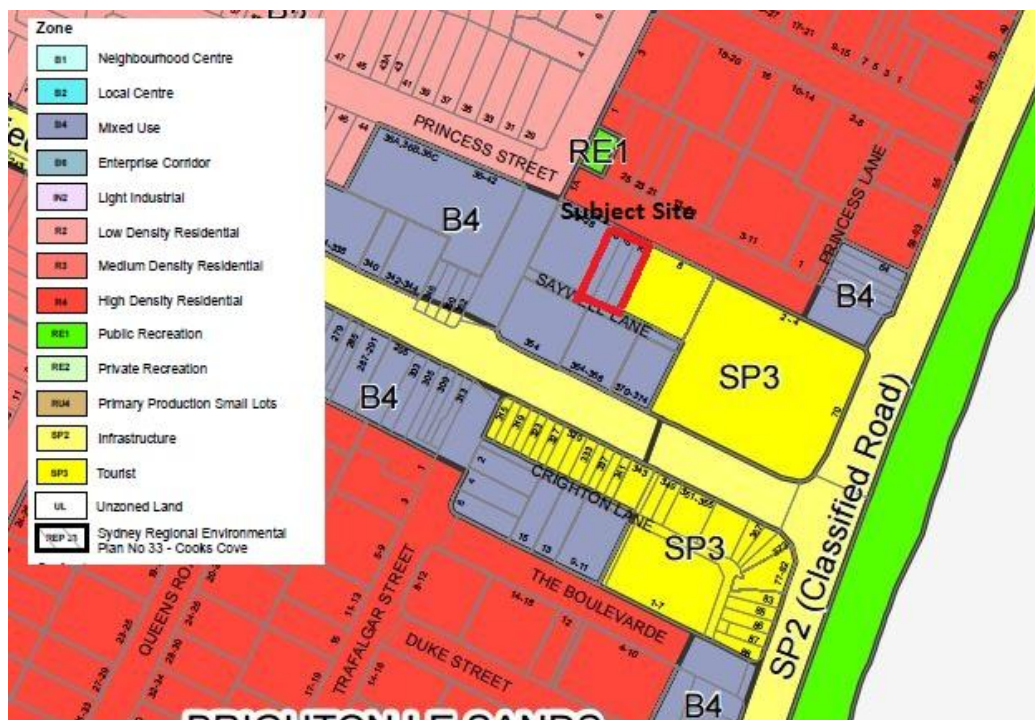


Figure 1: Land Zoning Map Rockdale LEP

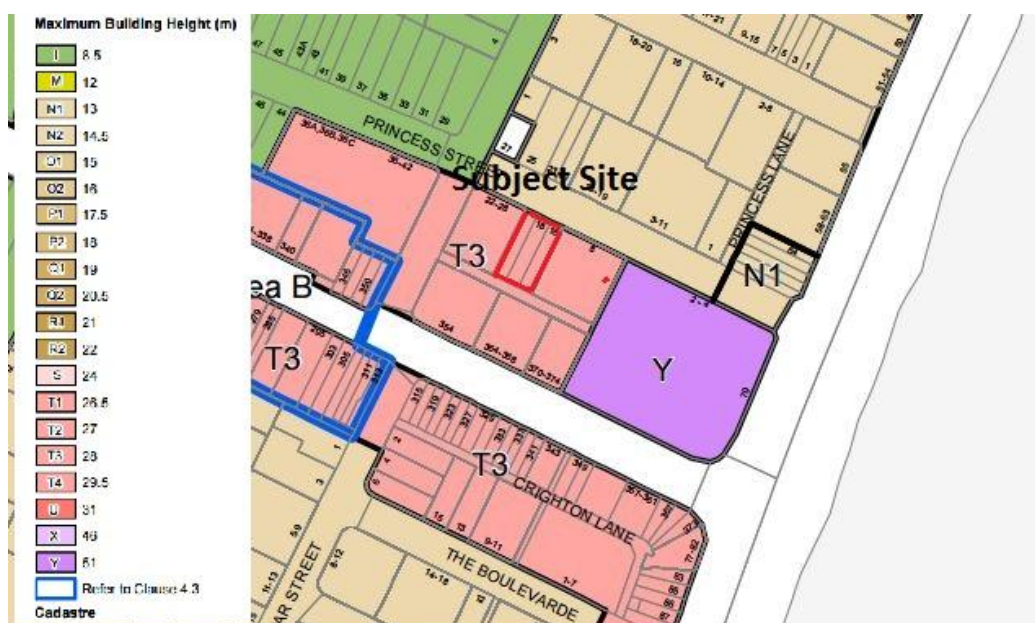


Figure 2: Maximum Height (Rockdale LEP 2011)

## 1.1 Brief Overview of the Proposal

The proposal seeks approval for demolition of existing structures and construction of a nine storey residential flat building including:

- Three levels of basement car parking:
  - 38 residential car spaces.
  - 7 visitor car spaces.
- Nine levels with a total of 31 units:
  - 3 home occupation units on the Ground Floor (Units 2, 3 and 4).
  - 3 three-bedroom units.
  - 22 two-bedroom units.
  - 3 one-bedroom units.

## 1.2 Height of Building

The proposed development has maximum height 29.1 metres, exceeding the maximum permissible height set out in RLEP 2011 by 1.1 metres. However, as shown in Figures 3 and 4 the extent of non-compliance is limited to the lift overrun and the south-western portion of the parapet.

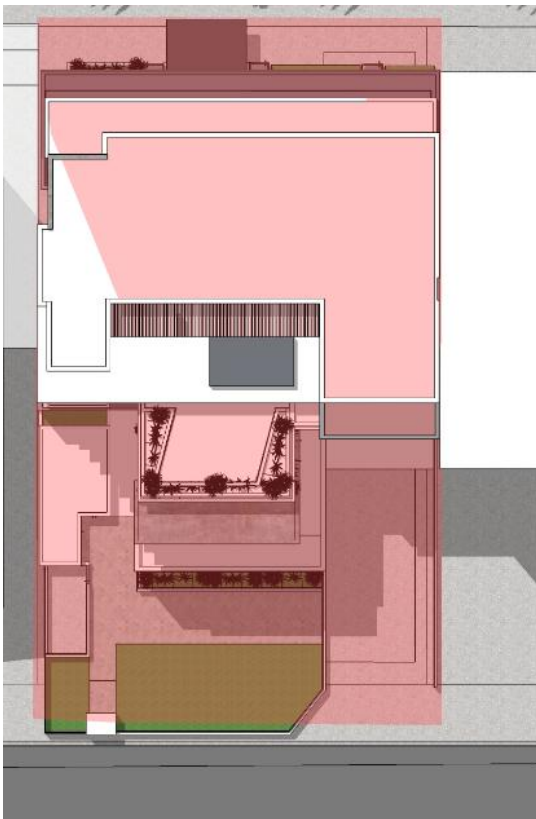


Figure 3 View to roof of proposed development (un-highlighted portion indicates non-compliant portion of building)

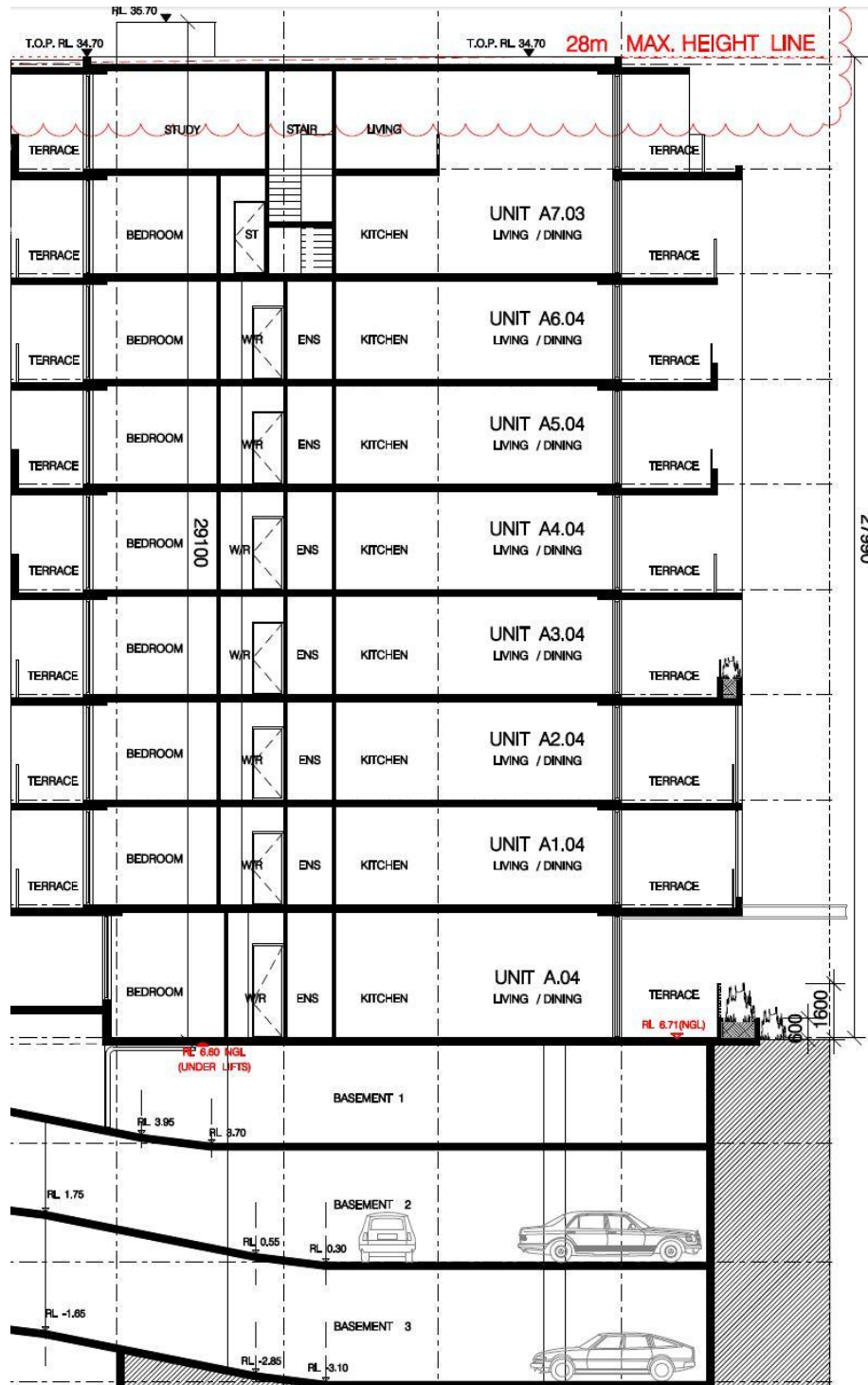


Figure 4 Building Section AB Works

Above is the Section Prepared by AB Works illustrating the height breach located at the lift overrun and parapet.

## 1.3 Shadow Impacts

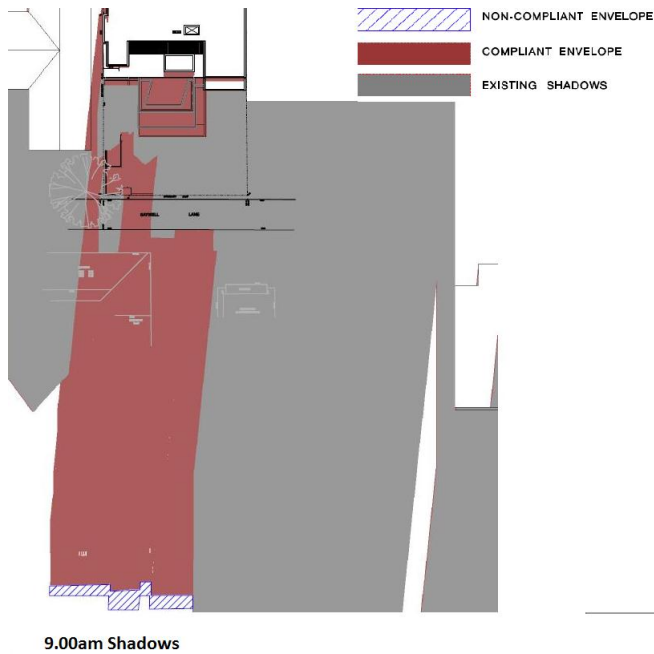


Figure 5 9.00am Shadows AB Works

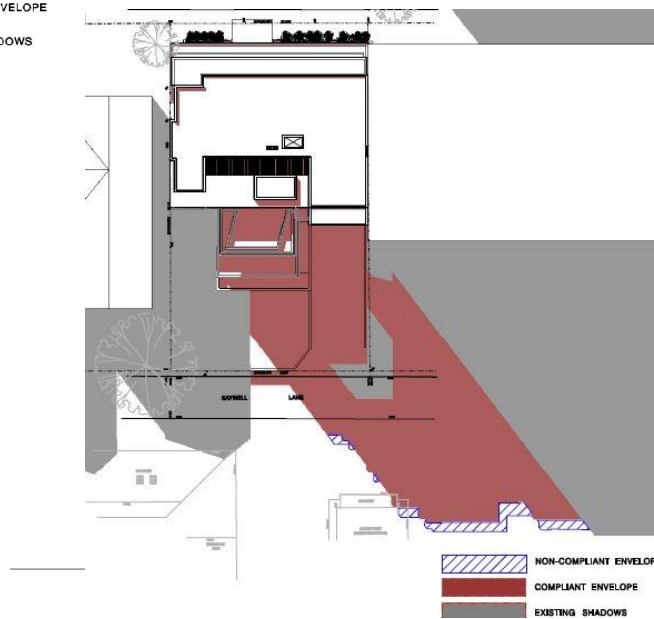


Figure 6 12pm Shadows

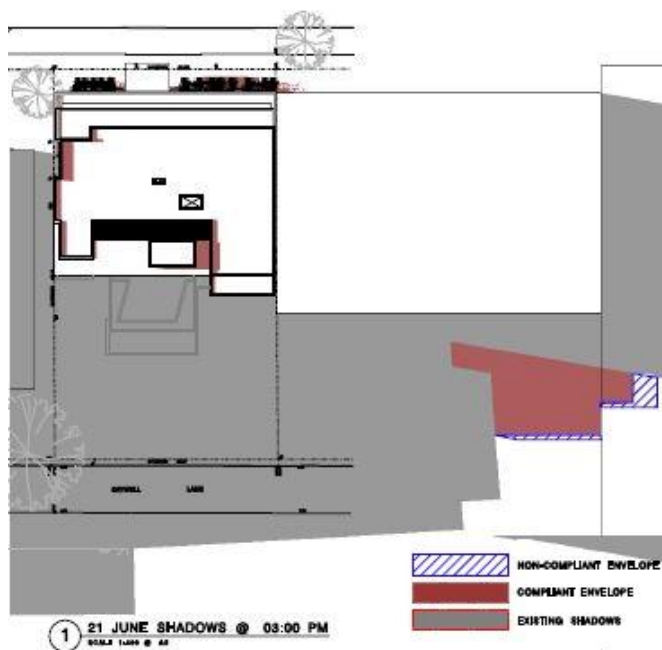


Figure 7 3pm Shadows.

Figures 5-7 illustrate the proposed shadow impacts and the additional impact from the non-compliant portion of the building. Shadow impacts from the proposed development are considered reasonable. The additional overshadowing from the non-compliant portion of the building envelope is reasonable.



## 2.0 Clause 4.6 'Exceptions to development standards'

The Application for Exception to Development Standards is formalised through consideration of the proposed development against Clause 4.6 'Exceptions to development standards'. This clause is reproduced below:

- (1) The objectives of this clause are as follows:*
  - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
  - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) Consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
  - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) Development consent must not be granted for development that contravenes a development standard unless:*
  - (a) the consent authority is satisfied that:*
    - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
    - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
  - (b) the concurrence of the Director-General has been obtained.*
- (5) In deciding whether to grant concurrence, the Director-General must consider:*
  - (a) whether contravention of the development standard raises any matter of significance for State environmental planning, and*
  - (b) the public benefit of maintaining the development standard, and*
  - (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.*
- (6) [Omitted as not relevant]*
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) [Omitted as not relevant]*



## 3.0 Consistent with the objectives of the development standard and the zones

The proposed development will be in the public interest as it is consistent with the objectives of Height of Buildings and the relevant zone objectives of Rockdale LEP 2012.

### 3.1 Clause 4.3 Height of Buildings

(1) *The objectives of this clause are as follows:*

(a) *to establish the maximum limit within which buildings can be designed and floor space can be achieved,*

Majority of the building compliant with 28 metre height limit. Highest point of building is lift overrun at 29 metres.

Development proposes FSR of 3:1, compliant with LEP control.

(b) *To permit building heights that encourage high quality urban form,,*

The proposal creates a high quality urban form:

- Articulated façade.
- Presents a building form with an articulated top, middle and bottom.
- Consistent with surrounding development:
  - Zero side setbacks consistent with development in B4 Mixed Use Zone.
- Development aligned with 6-14 Princess Street through provision 2.5 metre front setback. Proposal is compatible with surrounding properties and does not preclude future development of adjoining sites.

(c) *to provide building heights that maintain satisfactory sky exposure and daylight to buildings, key areas and the public domain,*

Shadow diagrams indicate that proposed development with height of 28 metres will have the following impacts on June 21 (refer to diagrams 3-5):

- Overshadows south east corner of 22-28 Princess Street 9am.
- Overshadows 352-362 Bay Street between approximately 9am and 10am.
- Overshadows 364-368 Bay Street between 10am and 11am.
- Overshadowing of 6-14 Princess Street after 11am. Affected units will still receive 2 hours of direct sunlight between 9am and 3pm.
- Overshadows portion of Saywell Lane between 9am and 12am. This is acceptable as Saywell Lane provides vehicular access to rear of properties and is not a public thoroughfare
- Will not overshadow Princess Street public footpath between 9am and 3pm.
- Will not overshadow Heslehurst Reserve public open space located north of the subject site.
- Development maintains reasonable solar access to surrounding development and the public domain.
- Additional height of building does not have any unreasonable impact on surrounding development.
- Refer diagrams 5-7.

(d) *to nominate heights that will provide an appropriate transition in built form and land use intensity.*

Site located on zone boundary:

- Land to the north zoned R4 High Density Residential.
- Land to the northwest zoned R2 Low Density Residential.

- Development along Princess Street ranges in height from 1 storey to 15 storeys and currently has an illogical transition in height. The southern side of Princess Street from east to west transitions in height.
- The proposal will provide a transition in height between the low densities detached residential dwellings to the north west and the 15 storey development to the east.
- Council's support of the planning proposal submitted in March 2015 indicates that the height of 9 Storey Building seen to reflect the desired land use intensity.

2. *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

Development non-compliant with 28 metre height limit. Highest point of building is lift overrun at 29.1 metres.

## 3.2 Clause 2.3 'Zone objectives and Land Use Table – B4 Mixed Use

While the proposed development is not in contravention of the applicable land use zoning (B4 Mixed Use), the zone objectives are relevant to the broader planning context. The zone objectives are individually addressed below:

<i>To provide a mixture of compatible land uses.</i>	The development of a residential flat building in the B4 Mixed Use Zone is permissible under Rockdale LEP 2011.
<i>To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.</i>	<p>The development of a residential flat building in the B4 Mixed Use Zone is permissible under Rockdale LEP 2011.</p> <p>The proposed development is located in an accessible location, within walking distance to retail, services, recreation, public transport and regional walking/cycling tracks.</p>

## 4.0 Compliance unreasonable or unnecessary

The consent authority must be satisfied that the written Clause 4.6 variation request has addressed Clause 4.6 (3) of the Rockdale LEP 2011. In *Four2Five Pty Ltd* [2015] NSWLEC 90, it was held that the well-established principles of establishing that a standard is unreasonable or unnecessary in relation to SEPP1 were applicable to Clause 4.6. In addition, we have also utilises principles from judgements to justify the variation from maximum permissible height for this development.

In *Moshkovich v Waverly Council* [2-16] NSWLEC 1015, Tuor C summarised the principles from *Four2Five* and *Wehbe v Pittwater Council* in the context of Clause 4.6.

Important principles that are derived from this judgement are:

- The requirement that the consent authority be satisfied the proposed development will be in the public interest because it is consistent with the objectives of the development standard and zone is not a requirement to 'achieve' those objectives. It is a requirement that the development be 'compatible' with them, or 'capable of existing together' in harmony.
  - This application has been tested utilising the principles of *Project Venture v Pittwater Council* [2005] NSWLEC 191
- Establishing that "compliance with a standard is unreasonable or unnecessary in the circumstances of the case" does not always require the applicant to show the relevant objectives of the development standard which are achieved by the proposal (*Wehbe v Pittwater Council* [2007] NSWLEC 827 – Test 1). While the test remains relevant, it is not exclusively so.
- Demonstration that the breach in development standard achieves a better outcome.

This application has addressed these principles in the following component of this report.

### 4.1 Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

Strict compliance with the height control is unreasonable and unnecessary on the grounds that:

- The non-compliant portion of the building:
  - Is located centrally within the building (see Figure 3) and, as shown in Figure 8, unlikely to be perceived from public domain viewpoints (specifically Princess Street and Saywell Lane);
  - Does not result in increased floor space or dwelling yield;
  - Results in a minimal increase in overshadowing as compared to a compliant envelope (see Section 1.3); and
  - No increased privacy impacts to surrounding dwellings.
- Strict compliance would require:
  - The deletion of a level, resulting in reduced consistency of streetscape character in terms of street frontage heights along the southern side of Princess Street (see Figure 8); or
  - The reduction of floor to ceiling heights, resulting in reduced:
    - Amenity to future occupants of the proposed residential flat building; and
    - Consistency of streetscape character in terms of horizontal elements along the southern side of Princess Street (see Figure 8).



Figure 8 Photomontage,

Figure 8 above illustrates a high quality design outcome with relationship with streetscape. The lift overrun and parapet, which breach the Maximum Building Height do not have visual impact when viewed from Princess Street.

In summary, compliance with Clause 4.3 Height of Buildings is unreasonable and unnecessary as that test has been understood, consistent with the principles derived from recent court cases, *Four2Five v Ashfield Council* [2015].

## 4.2 That there are sufficient environmental planning grounds to justify contravening the development standard

There is sufficient environmental planning grounds to enable a variation to Site 1 and Site 2 for the following reasons.

1. Proposed development complies with maximum Floor Space Ratio.
2. Satisfies the objectives of Clause 4.3 Building Height. Demonstrated in Part 3 of this Report.
3. The proposed development is compatible with the surrounding character and landscape character, which is 4.1 of this report.
4. There is no unreasonable impacts on surrounding development through overshadowing.
5. The bulk and scale of the proposed development is reasonable and the breach in height is not visually offensive, therefore is reasonable.

Strict compliance with the maximum building height is unnecessary and unreasonable there is sufficient planning grounds to justify the contravention of the development standard. Primarily to enable flexibility of use at ground level, which is a better planning outcome and all the zone and development standard objectives have been met.

## 5.0 Concurrence of the 'Director-General'

The 'Director-General' (now Secretary, Department of Planning and Environment) can be assumed to have concurred to the variation. This is because of the Department of Planning Circular PS 08-003 'Variations to development standards', dated 9 May 2008. This circular is a notice under 64(1) of the Environmental Planning and Assessment Regulation 2000.

A consent granted by a consent authority that has assumed concurrence is as valid and effective as if concurrence had been given.

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## Council Meeting

**12/10/2016**

Item No	9.10
Property	<b>47 Rowley Street, Brighton Le Sands</b>
Proposal	Construction of a Two Storey Attached Dual Occupancy, Rear Inground Swimming Pools, Associated Landscaping and Torrens Title Subdivision
Report by	Luis Melim, Manager Development Services Alexandra Hafner, Development Assessment Planner
Application No	(R) DA-2017/15

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## Council Resolution

Resolved by the Administrator:

- 1 That Council support the variation to the minimum lot size provisions contained in Clause 4.1(3B) of the Rockdale Local Environmental Plan 2011 (RLEP2011) in accordance with the clause 4.6 justification submitted by the applicant.
  - 2 That the development application DA-2017/15 for the construction of a two storey attached dual occupancy; rear in-ground swimming pools; associated landscaping and Torrens Title Subdivision at No. 47 Rowley Street, Brighton Le Sands, be APPROVED pursuant to Section 80(1)(a) of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report.
  - 3 That the NSW Department of Planning and Environment be advised of Council's decision.
  - 4 That the objectors be advised of Council's decision.
- 

## Officer Recommendation

- 1 That Council support the variation to the minimum lot size provisions contained in Clause 4.1(3B) of the Rockdale Local Environmental Plan 2011 (RLEP2011) in accordance with the clause 4.6 justification submitted by the applicant.
  - 2 That the development application DA-2017/15 for the construction of a two storey attached dual occupancy; rear inground swimming pools; associated landscaping and Torrens Title Subdivision at No. 47 Rowley Street, Brighton Le Sands, be APPROVED pursuant to Section 80(1)(a) of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report.
  - 3 That the NSW Department of Planning and Environment be advised of Council's decision.
  - 4 That the objectors be advised of Council's decision.
-



## Attachment

- Planning Assessment Report
- Site Plan
- North West & South West Elevation Plans
- Subdivision Plan
- Clause 4.6 – 47 Rowley Street

## Location Plan



# BAYSIDE COUNCIL

## Planning Assessment Report

### Application Details

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<b>Application Number:</b>	DA-2017/15
<b>Date of Receipt:</b>	11 July 2016
<b>Property:</b>	47 Rowley Street, BRIGHTON LE SANDS NSW 2216 Lot 6 SecH DP 6718
<b>Owner:</b>	Mr Miodrag Ardalic
<b>Applicant:</b>	Mrs Sara Ardalic
<b>Proposal:</b>	Construction of two (2) storey attached Dual Occupancy including rooftop terrace, swimming pools, front fence and Torrens Title Subdivision creating two lots
<b>Recommendation:</b>	Approved
<b>No. of submissions:</b>	One (1)
<b>Author:</b>	Alexandra Hafner
<b>Date of Report:</b>	22 August 2016

### Key Issues

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There are no pertinent issues for consideration.

### Recommendation

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That this Development Application be **APPROVED** pursuant to Section 80(1)(a) of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report.

### Background

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#### History

Complying Development CD-2017/22 for the demolition of existing structures has been approved by a Private Certifier, Mr Rabih Nakhoul, on 4 August 2016.

#### Proposal

Council is in receipt of Development Application No. DA-2017/15 for No. 47 Rowley Street, Brighton Le Sands. The subject DA seeks consent for the construction of a two storey attached dual occupancy development with a roof top terrace, swimming pools; associated landscaping and Torrens Title Subdivision. Specifically, the development shall consist of the following:

- Single car garage; ground floor open plan living; dining and kitchen area; lounge and bathroom; laundry;

- Four bedrooms; one bathroom and one ensuite, including master bedroom with ensuite and balconies overlooking the primary setback;
- Flat roof terrace area;
- Two light duty vehicular footway crossings to service proposed dwellings;
- Landscaping and a rear swimming pool to proposed dwellings; and
- Torrens Title Subdivision.

## Site location and context

The subject site, formally identified as Lot 6 Sec H DP 6718, is a regular shaped allotment with equal front and rear boundary widths of 15.24 metres; depths of 45.720 metres and a total site area of 697.6sqm (by Survey). The site is currently occupied by a single storey brick dwelling house with an attached carport and two (2) detached sheds. Located on the northern side of Rowley Street, the site contains no trees, nor are there any street trees located forward of the property boundary.

Adjoining development comprises of a single storey brick townhouses to the north west and a two storey brick dual occupancy to the north east. Vehicular access shall be maintained from Rowley Street.

## Statutory Considerations

### *Environmental Planning and Assessment Act, 1979*

An assessment of the application has been undertaken pursuant to the provisions of the *Environmental Planning and Assessment Act, 1979*.

### **S.79C(1) - Matters for Consideration - General**

### **S.79C(1)(a)(i) - Provisions of Environmental Planning Instruments**

The following Environmental Planning Instruments are relevant to this application:

### **State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

The application is accompanied by BASIX Certificate No. 741735S and Certificate No. 741753S both dated Monday 4 July. The Certificates demonstrate the proposed development satisfy the relevant water; thermal and energy commitments as required by SEPP (BASIX). Accordingly, a condition has been imposed on the consent to ensure that these requirements are adhered to.

### **Rockdale Local Environmental Plan 2011**

Relevant clauses	Compliance with objectives	Compliance with standard/provision
2.3 Zone R3 Medium Density Residential	Yes	Yes - see discussion
2.6 Subdivision - consent requirements	Yes	Yes - see discussion
4.1 Minimum subdivision lot size	Yes	No - see discussion
4.3 Height of buildings	Yes	Yes - see discussion
4.4 Floor space ratio - Residential zones	Yes	Yes - see discussion
4.6 Exceptions to development standards	Yes	Yes - see discussion

Relevant clauses	Compliance with objectives	Compliance with standard/provision
6.2 Earthworks	Yes	Yes - see discussion
6.3 Between 20 and 25 ANEF (2033) contours	Yes	Yes - see discussion
6.4 Airspace operations	Yes	Yes - see discussion
6.12 Essential services	Yes	Yes - see discussion

### 2.3 Zone R3 Medium Density Residential

The subject site is zoned R3 - Medium Density Residential under the provisions of Rockdale Local Environmental Plan 2011 (RLEP 2011). The proposed attached dual occupancy is permissible with Council consent. The objectives of this zone are:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that land uses are carried out in a context and setting that minimises any impact on the character and amenity of the area.*

The proposed development is consistent with the objectives of the zone as it will allow for a permissible form of development to be undertaken in a manner which minimises potential impacts on the character and amenity of the area.

### 2.6 Subdivision - consent requirements

The application is accompanied by Subdivision Plan, Drawing Number 05.01, Issue A and dated 5 June 2016. The Plan proposes Torrens Title Subdivision of the attached dual occupancy in accordance with the provisions of this Clause.

#### 4.1 Minimum subdivision lot size

Torrens Title Subdivision of the attached dual occupancy development will result in the following proposed Lots:

Lot 700 - 348.35sqm

Lot 701 - 348.35sqm

The proposal fails to satisfy the minimum numerical requirements of 350sqm per proposed Lot. Accordingly, the application is accompanied by a written Clause 4.6 justification and is addressed below.

#### 4.3 Height of buildings

The maximum permissible height of building in accordance with this Clause is 8.5 metres, as measured from NGL (existing).

The proposed development seeks an overall height of 7.94 metres (RL 14.54 - RL 6.6) which complies with the numerical provisions of this Clause. In this regard, the proposed development results in a high quality urban form, maintains satisfactory sky exposure and daylight to buildings, key areas and public

domain and maintains an appropriate transition in built form and land use intensity. Accordingly, the proposed height also satisfies the objectives of this Clause.

#### 4.4 Floor space ratio - Residential zones

Clause 4.4 permits a maximum FSR of 0.60:1 for the subject site.

The proposed development seeks an overall GFA of 377.501sqm over a site area of 697.6sqm, equating to an FSR of 0.54:1 and hence complying with the numerical provisions of this Clause. In this regard, the proposed density is in accordance with the desired future character of Brighton Le Sands; will have minimal adverse environmental effects on the use or enjoyment of adjoining properties and will maintain an appropriate visual relationship between new development and the existing character of the area. Accordingly, the proposed development also satisfies the objectives of this Clause.

#### 4.6 Exceptions to development standards

The application is accompanied by a written Clause 4.6 submission seeking a variation to Clause 4.1(3B) of the RLEP 2011. Torrens Title Subdivision of the proposal will result in two lots, each 1.2sqm deficient in the minimum area required under the subject Clause.

The objectives of Clause 4.6 are as follows:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development;*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

With regards to the above, the consent authority is required to consider a written request from the applicant justifying a variation to the standard by demonstrating:

- (3)(a) that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case, and*
- (3)(b) that there are sufficient planning grounds to justify contravening the development standard.*

Further, clause 4.6(4) requires that development consent must not be granted for development that contravenes a standard unless:

- (a) the consent authority is satisfied that:*
  - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
  - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) Council has the assumed concurrence of the Director-General.*

#### Clause 4.1 - Minimum subdivision lot sizes

The objectives of Clause 4.1 are as follows:

- (a) to ensure that subdivision reflects and reinforces the predominant subdivision pattern of the area.*

*(b) to minimise any likely impact of subdivision, and development on subdivided land, on the amenity of neighbouring properties.*

*(c) to ensure that lot sizes and dimensions are able to accommodate development consistent with the relevant controls.*

The proposed development seeks consent for the Torrens Title Subdivision of an attached dual occupancy resulting in two new Lots with site areas of 348.8sqm per lot, which is below the minimum subdivision lot size provisions as required by Clause 4.1(3B) of the RLEP 2011. The deficiency in minimum site area is by 1.2sqm or 0.34%.

Accordingly, the application is accompanied by a written Clause 4.6 submission seeking to contravene the development standard imposed by the subject Clause. Within the justification, the applicant's statement regarding compliance with the subject Clause is summarised as follows:

- The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.*
- The immediate locality contains a variety of lot sizes and width. The subdivision will not make a big difference to the presentation of the built form on site. The actual short fall of 1.2sqm per lot could not be considered inconsistent with any future development that may subdivide lots into the 350sqm.*
- The shortfall would make no difference to adjoining properties compared to a strictly compliant scheme.*
- The proposed subdivision is seeking to subdivide the site so each lot is of relatively equal size.*
- The subject site is considered sufficient to accommodate the dual occupancy development and the proposed subdivision will not alter that.*
- The proposed subdivision does not alter the physical relationship of the buildings to the site and adjacent site,s including changes in regards to private open space; landscaping and vehicular access. The siting of the buildings on the site; proposed access and services have been planned to ensure that each lot can be health under separate ownership.a*
- The strict application of the development standard is unreasonable and unnecessary and the application of the objectives of the development standard have been applied.*

Council comment:

The above objectives relate to the subdivision of a residential allotment within the City of Rockdale and compliance with the minimum lot size required under Clause 4.1(3B) as reflected in the associated Lot Size Map. The proposal satisfies the objectives of the Clause where it ensures the predominant subdivision patterns of the area; has no impacts on the amenity of neighbouring properties and ensures the dual occupancy development is consistent with the relevant development controls.

The siting, design and external appearance of the proposed development is considered to be appropriate and complementary to the scale and emerging character of development in the area and will meet the expectations of future residents.

The recent Land and Environmental Court Case '*Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC90*' ('Four2Five') requires any variations to the standards to demonstrate something more than just achieving the objectives of the standard. Council has previously abandoned its controls for varying the minimum site area for a dual occupancy development where the shortfall in site area is

minor. In this regard, the proposed variation satisfies the 'five part test' established by the NSW Land and Environmental Court where the objectives of the standard have been achieved and the standard has been virtually abandoned by Council in other development applications where Clause 4.1(3B) has also applied.

The requirement in Clause 4.6(3)(b) is to justify that there are sufficient environmental planning grounds for the variation particular to the circumstances of the proposed development. These planning grounds are demonstrated in the proposed design and are successfully argued in the written Clause 4.6 submission. The applicant has also successfully argued that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case.

The applicant's request to vary the development standard is also consistent with the objectives contained in Clause 4.6 as well as those of the R3 - Medium Density Residential Zone. Approval of the proposal would not create an undesirable precedent and is in the public interest. As such, the proposed variation to minimum lot size provisions as contained within Clause 4.1(3B) is recommended for approval.

## 6.2 Earthworks

The extent of earthworks and/or excavation required to accommodate the proposed development, including rear in-ground swimming pools is minimal. Nevertheless, standard conditions are imposed on the draft Notice of Determination to ensure minimal impacts on the amenity of surrounding properties, drainage patterns and soil stability. Subject to conditions, the proposed development is acceptable with regards to this Clause.

## 6.3 Between 20 and 25 ANEF (2033) contours

The application is accompanied by Acoustic Report, prepared by Acoustic Logic and dated 24 June 2016. The Report addresses matters relating to aircraft noise and details noise amelioration measures to be incorporated into the construction of the development in order to minimise aircraft noise impacts to future occupants, in compliance with the Australian Standards for indoor design sound levels. Subject to conditions, the development is acceptable with regards to this Clause.

## 6.4 Airspace operations

The proposed development is affected by the Obstacle Limitation Surface (OLS) which is set at 51 metres AHD. The proposed building height is at 7.94 metres and in this regard, it is considered that the proposed building will have minimal adverse impact on the OLS. Accordingly, the considerations of this Clause are satisfied.

## 6.12 Essential services

Services will generally be available on the site. Additional conditions have been incorporated in the draft Notice of Determination requiring consultation with relevant utility providers in regards to any specific requirements for the provision of services on the site.

## **S79C(1)(a)(iii) - Provisions of any Development Control Plan**

The following Development Control Plan is relevant to this application:

### **Rockdale Development Control Plan 2011**

The application is subject to Rockdale DCP 2011. A compliance table for the proposed development is provided below:



<b>Relevant clauses</b>	<b>Compliance with objectives</b>	<b>Compliance with standard/provision</b>
4.1.1 Views and Vista	Yes	Yes - see discussion
4.1.3 Water Management	Yes	Yes - see discussion
4.1.3 Groundwater Protection	Yes	Yes - see discussion
4.1.4 Soil Management	Yes	Yes - see discussion
4.2 Streetscape and Site Context - General	Yes	Yes - see discussion
4.3.1 Open Space & Landscape Design - Low & medium density residential	Yes	Yes - see discussion
4.4.1 Energy Efficiency - Residential	Yes	Yes - see discussion
4.4.2 Solar Access - Low and medium density residential	Yes	Yes - see discussion
4.4.3 Natural Lighting and Ventilation - Residential	Yes	Yes - see discussion
4.4.5 Visual privacy	Yes	Yes - see discussion
4.4.5 Acoustic privacy	Yes	Yes - see discussion
4.6 Parking Rates - Dual Occupancy	Yes	Yes - see discussion
4.6 Car Park Location and Design	Yes	Yes
4.6 Driveway Widths	Yes	Yes - see discussion
4.7 Waste Storage and Recycling Facilities	Yes	Yes - see discussion
4.7 Laundry Facilities and Drying Areas	Yes	Yes - see discussion
5.1 Storey Height and Setbacks - Dwelling house and Attached Dwellings	Yes	Yes - see discussion
5.1 Residential Subdivision	Yes	Yes - see discussion

#### 4.1.1 Views and Vista

The siting of the proposed building will ensure that there is minimal adverse impact on the surrounding views presently enjoyed by adjacent residents.

#### 4.1.3 Water Management

The application is accompanied by a Stormwater Drainage Plan, Drawing No. 2016 ST047 Sheet 1, Issue DA (1) and prepared by DP8 Engineering Pty Ltd. The application has been referred to Council's Development Engineer for review and comment and determined acceptable, subject to conditions of consent, including the amendment of the absorption rate, prior to the issue of a Construction Certificate for the approved development.

Subject to conditions, the development is acceptable with regards to this Clause.

#### 4.1.3 Groundwater Protection

The site is affected by the Groundwater Protection Zone 3, however it is considered that excavation in relation to the proposed building is not deep enough to cause any adverse impact on the Zone. Notwithstanding, an appropriate condition is to be included in the consent to ensure the provisions of this Clause are satisfied.

#### 4.1.4 Soil Management

The application is accompanied by an Erosion and Sediment Plan, Drawing Number 01.03, Issue A and dated 5 June 2016. The Plan proposes general erosion and sediment control strategies to ensure that the potential for impact on adjoining land and surrounding waterways is minimised. Subject to conditions, the proposal is acceptable with regards to this Clause.

#### 4.2 Streetscape and Site Context - General

The subject site is located within an R3 - Medium Density Residential zone and its immediate context is relatively low scale, consisting predominantly of dual occupancy developments interspersed with single storey dwellings. The proposed development is consistent with the desired and future character of the Brighton Le Sands area in terms of height; bulk and scale and is generally appropriate in this context.

The proposed 6 metre primary setback is consistent with the variable setbacks of those adjoining and surrounding the site, and in this regard, the residential streetscape of Rowley Street shall be retained and complemented. The proposed built form complies with the maximum permissible height and FSR provisions of the RLEP 2011 and incorporates an appropriate use of articulation to the primary facade. A range of materials; colours and finishes is used to provide for a contemporary and modern development.

The proposed ground floor entry portico is readily apparent from Rowley Street with upper floor windows and balconies ensuring a level of casual surveillance is provided. Proposed landscaping and other features are sited to ensure a clearly defined public; semi public and private spaces in accordance with the provisions of this Clause.

#### 4.3.1 Open Space & Landscape Design - Low & medium density residential

The proposed development incorporates a total of 174.51sqm or 25% of soft landscaping in accordance with the provisions of this Clause.

#### 4.4.1 Energy Efficiency - Residential

As discussed in the above body of this report, the application is accompanied by BASIX Certificate No. 741735S and Certificate No. 741753S both dated Monday 4 July. The Certificates demonstrate the proposed development satisfy the relevant water; thermal and energy commitments as required by SEPP (BASIX). Accordingly, a condition has been imposed on the consent to ensure that these requirements are adhered to.

#### 4.4.2 Solar Access - Low and medium density residential

The site benefits from a north-east/south-west orientation with primary living areas/habitable floor provided with a north-east orientation. In this regard, each of the proposed dwellings receive no less than three (3) hours solar access on 21 June in accordance with the provisions of this Clause.

In addition to the above, the application is accompanied by Shadow Diagrams, Drawing No. 04.01, Issue A and dated 5 June 2017. The Plans demonstrate the proposed development overshadows the eastern adjoining residential allotment from 9am to 3pm on 21 June, moving in a north easterly direction. Whilst the development fails to satisfy the numerical provisions of this Clause, the development has sought to minimise adverse solar access impacts through increased building separation and articulation. It should be noted that shadows projected are consistent with those from surrounding dual occupancy developments with a similar orientation. The proposal is acceptable in this regard.

#### 4.4.3 Natural Lighting and Ventilation - Residential

The proposed development incorporates a 2.85 metre and 2.75 metre floor to ceiling level (FCL) for ground and first floors respectively, in accordance with the provisions of this Clause. The proposal also incorporates a 2.1 metre FCL for the proposed terrace area. An FCL of 2.1 metres is not considered 'habitable floor' under the BCA and is acceptable in this regard.

#### 4.4.5 Visual privacy

The proposed dual occupancy development is designed and sited to minimise the overlooking of adjoining properties, incorporating the following privacy measures:

- Ground floor habitable windows provided with minimum FCL of 1.8 metres along north-eastern and south-western elevations;
- Ground floor sliding door to courtyard provided with an additional 4.135 metre setback to side allotment boundary. Increased side setbacks and building articulation ensures potential for overlooking minimised;
- Ground floor window to kitchen provided with 1 metre minimum sill height. Whilst the proposal fails to satisfy minimum sill requirements of 1.7 metres, the window services the proposed kitchen and precludes the opportunity for overlooking on this basis;
- All upper floor windows are to bedrooms and bathrooms only. The proposed development incorporates varying sill heights of 1 metre servicing the ensuite; 1.6 metres servicing Bedroom 2; 3 and 4 and 1.8 metres to the proposed Master Bedroom. All upper level windows are deemed to pose a negligible privacy impact to surrounding residential allotments due to the frequency and nature of use; and
- Upper floor level balconies overlook the primary setbacks only, posing negligible privacy impacts to surrounding residential development.

The proposed development seeks consent for a roof top terrace area also. Council's DCP 2011 permits the use of a roof top terrace area for recreational purposes, subject to the trafficable roof area having a 1.5 metre side setback. A condition is imposed on the draft Notice of Determination, requiring the incorporation of planter boxes to be located within the 1.5 metre setback protect the visual and acoustic amenity of neighbouring properties. Having regard to the above, the proposed development provides a reasonable level of visual privacy between the adjoining properties.

#### 4.4.5 Acoustic privacy

There will be minimal adverse impact on the acoustic privacy of adjoining and surrounding properties as consideration has been given to the location and design of the building and landscaping in relation to private recreation areas to minimise noise intrusion on the amenity of adjoining properties.

#### 4.6 Parking Rates - Dual Occupancy

Each proposed dwelling is provided with two (2) off-street parking spaces, one (1) of which is covered and the secondary parking space located forward of the front building line. The development is acceptable with regards to this Clause.

#### 4.6 Driveway Widths

Subject to conditions, the width of the proposed driveways shall comply with Council's Technical Specifications in accordance with the provisions of this Clause.

#### 4.7 Waste Storage and Recycling Facilities

The application is accompanied by a Construction Waste Management Plan, prepared in accordance with Council's Technical Specifications regarding construction waste. In addition to this, the development incorporates sufficient waste management and storage facilities appropriate for a dual occupancy development. The proposed development is therefore acceptable with regards to this Clause.

#### 4.7 Laundry Facilities and Drying Areas

Internal ground floor laundry facilities are provided to each proposed dwelling, in addition to sufficient external drying area in accordance with the provisions of this Clause. The proposed development is acceptable in this regard.

#### 5.1 Storey Height and Setbacks - Dwelling house and Attached Dwellings

The proposed development incorporates compliant 0.9 metre ground floor and 1.5 metre upper floor level setbacks in accordance with the provisions of this Clause. In addition to this, the development provides a 14.75 metre ground floor and 20.25 metre upper level rear setbacks to ensure solar access and landscaping is provided to proposed development and maintained to adjoining. The development is acceptable with regards to this Clause.

#### 5.1 Residential Subdivision

The proposed development seeks consent for the Torrens Title Subdivision of an attached dual occupancy development. In accordance with the provisions of Council's DCP 2011, the subject site has a primary frontage of 15.24 metres with each proposed Lot to have a frontage to a public road, being Rowley Street. Each proposed Lot has adequate provision for infrastructure services.

### **S.79C(1)(a)(iv) - Provisions of regulations**

The proposed development is not inconsistent with the relevant provisions of the *Environmental Planning and Assessment Regulation, 2000*.

### **S.79C(1)(b) - Likely Impacts of Development**

Potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls and deemed acceptable. The impacts that have not already been addressed are as follows:

#### **Construction**

All matters relating to the BCA are addressed by way of conditions imposed on the draft Notice of Determination. In addition to these, site and safety measures are to be implemented in accordance with relevant WorkCover Authority guidelines and requirements.

#### **Swimming Pool and Spa Code**

The proposed swimming pools are assessed against the relevant code and found to comply. Appropriate conditions of consent will be imposed on the draft Notice of Determination.

### **S.79C(1)(c) - Suitability of the site**

Having regard to the above, the site is considered to be suitable for the proposed form of development.

### **S.79C(1)(d) - Public submissions**

The development has been notified in accordance with the provisions of Rockdale DCP, 2011, and Regulations, 2000. One (1) submission was received concerning the proposal. Matters of concern are discussed below:

#### Item 1: Height of Windows

Comment: Concerns were raised regarding upper level windows and varying floor to ceiling levels

(FCL's) in accordance with Council's DCP 2011. Council permits upper level windows to have less than 1.7 metres where they service a bedroom and bathroom only. However, a condition is imposed to rear, upper level windows to Bedroom 4 to ensure a minimum sill height of 1.7 metres is provided to minimise potential for overlooking to the rear, adjoining private open space. All other upper level windows are deemed to pose negligible privacy impacts due to the frequency and nature of use. The development is acceptable in this regard.

Item 2: Roof top terrace

Comment: Council's DCP 2011 permits the use of a roof top terrace area for recreational purposes, subject to the trafficable roof area having a 1.5 metre side setback. A condition is imposed on the draft Notice of Determination, requiring the incorporation of planter boxes within the setback to protect the visual and acoustic amenity of neighbouring properties. Having regard to the above, the proposed development provides a reasonable level of visual privacy between the adjoining properties.

Item 3: SEE and clarification regarding upper balconies

Comment: Clarification is sought regarding the reference of upper level balconies to the rear and primary setbacks. The proposed dual occupancy provides upper level balconies overlooking primary setbacks only and is recommended for approval accordingly. The proposed balconies pose negligible privacy impacts in this regard.

### **S.79C(1)(e) - Public interest**

The proposed development is considered satisfactory having regard to the objectives and requirements of Rockdale Local Environmental Plan 2011 and Development Control Plan 2011. Impacts on adjoining properties have been considered and addressed. As such it is considered that the proposed development is in the public interest.

### **S94 Contribution towards provision or improvement of amenities or services**

A Section 94 Contribution Payment of \$31,332.70 is required and shall be imposed as a condition of consent on the draft Notice of Determination.

## **Schedule 1 - Draft Conditions of consent**

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### **General Conditions**

The following conditions restrict the work to the detail provided in the Development Application and are to ensure that the development is complete.

1. The term of this consent is limited to a period of five (5) years from the date of the original approval. The consent will lapse if the development does not commence within this time.
2. The development must be implemented substantially in accordance with the plans listed below, the application form and on any supporting information received with the application, except as may be amended in red on the attached plans and by the following conditions.

Plan/Dwg No.	Drawn by	Dated	Received by Council
Site Plan, Drawing No. 01.02, Issue A	Arhitektura+	5 June 2016	11 July 2016
Ground Floor Plan, Drawing No. 02.01, Issue A	Arhitektura+	5 June 2016	11 July 2016
First Floor Plan, Drawing No. 02.02, Issue A	Arhitektura+	5 June 2016	11 July 2016
Roof Terrace Plan, Drawing No. 02.03, Issue A	Arhitektura+	5 June 2016	11 July 2016
Roof Floor Plan, Drawing No. 02.04, Issue A	Arhitektura+	5 June 2016	11 July 2016
North-West and South-West Elevation, Drawing No. 03.01, Issue A	Arhitektura+	10 May 2016	11 July 2016
North-East and South-East Elevation, Drawing No. 03.02, Issue A	Arhitektura+	10 May 2016	11 July 2016
Sections, Fence and Pool Details, Drawing No. 03.03, Issue A	Arhitektura+	10 May 2015	11 July 2016
Subdivision Plan, Drawing No. 05.01, Issue A	Arhitektura+	5 June 2016	11 July 2016
Driveway Profile, Drawing No. 06.01, Issue A	Arhitektura+	5 June 2016	11 July 2016

3. All new building work must be carried out in accordance with the provisions of the Building Code of Australia (BCA).
4. A Construction Certificate must be obtained from Council or an Accredited Certifier prior to any building work commencing.
5. The development must be implemented and all BASIX commitments thereafter maintained in accordance with BASIX Certificate No. 741735S and Certificate No. 741753S both dated Monday 4 July other than superseded by any further amended consent and BASIX certificate.

**Note:** Clause 145(1)(a1) of the Environmental Planning & Assessment Regulation 2000 provides: A certifying authority must not issue a construction certificate for building work unless it is satisfied of the following matters: -

- (a1) that the plans and specifications for the building include such matters as each relevant BASIX certificate requires.

**Note:** Clause 154B(2) of the Environmental Planning & Assessment Regulation 2000 provides: "A certifying authority must not issue a final occupation certificate for a BASIX affected building to which this clause applies unless it is satisfied that each of the commitments whose fulfilment it is required to monitor has been fulfilled."

Note: For further information please see <http://www.basix.nsw.gov.au>.

6. This approval is not to be construed as permission to erect any structure on or near a boundary contrary to the provisions of the Dividing Fences Act.

7. Mail boxes must be installed along the street frontage of the property boundary in accordance with Australia Post Guidelines. Prominent house numbers are to be displayed, with a minimum number size of 150 mm in height for each number and letter in the alphabet.

## **Development specific conditions**

The following conditions are specific to the Development Application proposal.

8. The existing and future owners (Registered Proprietor) of the property will be responsible for the operation and maintenance of the retention system. The registered proprietor will:
  - (i) permit stormwater to be retained by the system;
  - (ii) keep the system clean and free of silt, rubbish and debris;
  - (iii) maintain, renew and repair the whole or parts of the system so that it functions in a safe and efficient manner, and in doing so complete the same within the time and in the manner specified in written notice issued by the Council;
  - (iv) carry out the matters referred to in paragraphs (ii) and (iii) at the proprietor's expense;
  - (v) not make any alterations to the system or elements thereof without prior consent in writing of the Council;
  - (vi) permit the Council or its authorised agents from time to time upon giving reasonable notice (but at any time and without notice in the case of emergency) to enter and inspect the land for compliance with the requirements of this clause;
  - (vii) comply with the terms of any written notice issued by the Council in respect to the requirements of this clause within the time stated in the notice.
9. The rainwater tank shall be routinely de-sludged and all contents from the de-sludging process disposed – solids to the waste disposal and de-sludged liquid to the sewer.
10. Retaining walls over 600mm in height shall be designed and specified by a suitably qualified structural engineer.
11. The pool is for the private use of the dwelling residents only and not for public use.
12. The pool/spa pump hours of operation shall be restricted to between 7am to 8pm weekdays and 8am to 8pm weekends.
13. The pool area shall be enclosed by a 1200mm high pool safety fence and all associated gates shall be fitted with a self-latching device in accordance with AS1926.

Note: A dividing fence will be accepted as part of the pool safety fence provided the fence complies with the requirements of AS1926 and provided the outside of the fence is kept clear for a distance of 1200mm of any item that would reduce the effectiveness of the fence as a safety barrier.

14. The bond beam or concrete pool surround shall be provided with a dish drain graded away from the adjoining premises. Alternatively, the outer edge of the bond beam or concrete surround shall be provided with a 100mm hob and all waste water shall be drained away from the adjoining premises.
15. Suitable depth markers shall be provided at each end of the swimming pool.
16. Where the spacing between vertical members of the pool fence is greater than



100mm and horizontal surfaces that could be used as holds for climbing are permanently located near the inside of the fence, such surfaces shall be separated from the fence by a distance of not less than 900mm.

17. Waste water from the pool or spa is to be discharged into a Sydney Water gully riser, in accordance with the typical connection shown in Council's Swimming Pool and Spa Code.
18. The motor, filter, pump and all sound producing equipment or fittings associated with or forming part of the pool filtering system shall be sound insulated and/or isolated so as not to create an offensive noise to the neighbours.
19. A warning notice must be erected near swimming pools/spas. There shall be at all times maintained, in a prominent position in the immediate vicinity of the swimming pool, a sign erected and bearing the notice: "Young Children should be Supervised when using this Swimming Pool", together with details of resuscitation techniques (for adults, children and infants) in accordance with the document entitled "Cardio Pulmonary Resuscitation" published by the Australia Resuscitation Council. The warning notice may be purchased from Rockdale Council or the Royal Life Saving Society.

### **Prior to issue of the construction certificate**

The following conditions must be completed prior to the issue of the Construction Certificate.

20. The following fees shall be paid to Council prior to the issue of a Construction Certificate. If payment is made after the end of the financial year, the amount shall be adjusted in accordance with Council's adopted fees and charges.
  - i. A Footpath Reserve Restoration Deposit of \$5,148. This is to cover repair of any damages, or other works to be done by Council. This includes construction, removal, or repair as required to: kerb and guttering, existing or new driveways; paved areas and concrete footpaths. The deposit may be lodged with Council in the form of a Bank Guarantee (Any proposed Bank Guarantee must not have an expiry date). The deposit will not be returned by Council until works are completed and all damage is restored and all specified works are completed by Council.
  - ii. An environmental enforcement fee of 0.25% of the cost of the works.
  - iii. A Soil and Water Management Sign of \$17.50.
21. For work costing \$25,000 or more, a Long Service Leave Levy shall be paid. For further information please contact the Long Service Payments Corporation on their Helpline 13 1441.
22. An application for Boundary levels shall be made to Council's Customer Service Centre prior to issue of the Construction Certificate. All boundary works, egress paths, driveways and fences shall comply with this level.

A fee is payable to Council for the determination of boundary levels. If payment is made after the end of the financial year, the amount shall be adjusted in accordance with Council's adopted fees and charges.
23. A Section 94 contribution of \$31,332.70 shall be paid to Council. Such contributions are only used towards the provision or improvement of the amenities and services identified below. The amount to be paid is adjusted at the time of payment, in accordance with the contribution rates contained in Council's current Adopted Fees and Charges. The contribution is to be paid prior to the issue of construction

certificate for works above the floor level of the ground floor. (Payment of the contribution is not required prior to any separate construction certificates issued only for demolition, site preparation works and the construction of basement levels). The contribution is calculated from Council's adopted Section 94 contributions plan in the following manner:

Open Space	\$25,099.63
Community Services & Facilities	\$2,112.50
Town Centre & Streetscape Improvements	\$798.43
Pollution Control	\$3,132.75
Plan Administration & Management	\$189.39

Copies of Council's Section 94 Contribution Plans may be inspected at Council's Customer Service Centre, Administration Building, 2 Bryant Street, Rockdale.

24. In the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance or owner builder's permit in force in accordance with Part 6 of that Act, that such a contract or permit is in place.
25. A landscape plan, prepared by a qualified Landscape Architect or Landscape Designer/Consultant, shall be submitted to Council or the accredited certifier (AC) for approval with or before the application for a Construction Certificate. The plan shall be at a scale of 1:100 or 1:200 and comply with Rockdale Technical Specification Landscape and all other relevant conditions of this Consent.
26. The approved plans must be submitted to Sydney Water to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. The Principal Certifying Authority must ensure that Sydney Water has approved the plans before issue of any Construction Certificate. For more information, visit [www.sydneywater.com.au](http://www.sydneywater.com.au).
27. Prior to issue of the Construction Certificate, two longitudinal driveway profile shall be submitted to Principal Certifying Authority for assessment and approval. The profiles shall start in the centre of the road and be along the critical edge (worst case) of the driveway. Gradients and transitions shall be in accordance with Council's Code. The profiles shall be drawn to a scale of 1 to 25 and shall include all relevant levels, grades (%) and lengths.
28. Any part of the proposed building within 3m of the proposed absorption trench/tank shall be constructed on a pier and beam foundation with piers extending no less than 300mm below the bottom of the tank or trench base. This requirement shall be reflected on the Construction Certificate plans and supporting documentation.
29. A geotechnical engineer shall determine the soil absorption rate and satisfy the other requirements of Rockdale Technical Specification Stormwater Management relating to the water table, impact on footings, etc prior to design of the drainage system. A copy of the report shall be forwarded to Council prior to the issue of the Construction Certificate.
30. Prior to the issue of the Construction Certificate, amended detailed drainage design plans for the management of stormwater are to be submitted to Principal Certifying Authority for assessment and approval. Design certification, in the form specified in Rockdale Technical Specification Stormwater Management, and amended drainage design calculations are to be submitted with the plans as per the absorption rate determined by Geotechnical Engineer. Council's Rockdale Technical Specification Stormwater Management sets out the minimum documentation requirements for detailed design plans. Stormwater management requirements for the development

site must comply with Rockdale Technical Specification Stormwater Management.

31. Prior to the issue of a Construction Certificate for the approved development, architectural plans shall be amended to incorporate planter boxes to the roof top terrace within the 1.5 metre setback to the roof edge to protect the visual and acoustic amenity of neighbouring properties.
32. Prior to the issue of a Construction Certificate for the approved development, architectural plans shall be amended to provide a minimum 1.7 metre sill height to Bedroom 4 windows addressing the northern elevation.

### **Prior to commencement of works**

The following conditions must be completed prior to the commencement of works.

33. A Soil and Water Management Plan shall be prepared. The Plan must include details of the proposed erosion and sediment controls to be installed on the building site. A copy of the Soil and Water Management Plan must be kept on-site at all times and made available on request.

Soil and sedimentation controls are to be put in place prior to commencement of any work on site. The controls are to be maintained in effective working order during construction.

Council's warning sign for soil and water management must be displayed on the most prominent point on the building site, visible to both the street and site workers. The sign shall be erected prior to commencement of works and shall be displayed throughout construction.

34. A sign must be erected at the front boundary of the property clearly indicating the Development Approval Number, description of work, builder's name, licence number and house number before commencement of work. If owner/builder, the Owner/Builder Permit Number must be displayed.
35. A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:
  - i. stating that unauthorised entry to the work site is prohibited, and
  - ii. showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours. Any such sign is to be removed when the work has been completed. This condition does not apply to:
    - iii. building work carried out inside an existing building or
    - iv. building work carried out on premises that are to be occupied continuously (both during and outside working hours) while the work is being carried out.
36. The site shall be secured by a 1800 mm (minimum) high temporary fence for the duration of the work. Gates shall be provided at the opening points.

### **During demolition / excavation / construction**

The following conditions must be complied with during demolition, excavation and or construction.

37. A copy of the Construction Certificate and the approved plans and specifications must be kept on the site at all times and be available to Council officers upon request.

38. Hours of construction shall be confined to between 7 am and 6.30 pm Mondays to Fridays, inclusive, and between 8 am and 3.30 pm Saturdays with no work being carried out on Sundays and all public holidays.
39. Ground water shall only be pumped or drained to Council's stormwater system if the water is clean and unpolluted. The standard used to determine the acceptability of the quality of the water is the 'Australian and New Zealand Environment and Conservation Council - Australian Water Quality Guidelines for Fresh and Marine Waters 1992'.

Note: Prior treatment and/or filtration of the water may be necessary to achieve acceptable quality, including a non-filterable residue not exceeding 50 milligrams/litre or small quantities may be removed by the services of a Licenced Liquid Waste Transporter. It is an offence under the provisions of the Protection of the Environment Operations Act 1997 to pollute the stormwater system.

40. All waste generated on site shall be disposed of in accordance with the submitted Waste Management Plan.
41. A Registered Surveyor's check survey certificate or compliance certificate shall be forwarded to the certifying authority detailing compliance with Council's approval at the following stage/s of construction:
- i. After excavation work for the footings, but prior to pouring of concrete, showing the area of the land, building and boundary setbacks.
  - ii. Prior to construction of each floor level showing the area of the land, building and boundary setbacks and verifying that the building is being constructed at the approved level.
  - iii. Prior to fixing of roof cladding verifying the eave, gutter setback is not less than that approved and that the building has been constructed at the approved levels.
  - iv. On completion of the building showing the area of the land, the position of the building and boundary setbacks and verifying that the building has been constructed at the approved levels.
  - v. On completion of the drainage works (comprising the drainage pipeline, pits, overland flow paths, on-site detention or retention system, and other relevant works) verifying that the drainage has been constructed to the approved levels, accompanied by a plan showing sizes and reduced levels of the elements that comprise the works.
42. When soil conditions require it:
- i. retaining walls associated with the erection or demolition of a building or other approved methods of preventing movement of the soil shall be provided, and
  - ii. adequate provision shall be made for drainage.
43. All contractors shall comply with the following during all stages of demolition and construction:
- A Waste Container on Public Road Reserve Permit must be obtained prior to the placement of any waste container or skip bin in the road reserve (i.e. road or footpath or nature strip). Where a waste container or skip bin is placed in the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
  - A Road Opening Permit must be obtained prior to any excavation in the road reserve (i.e. road or footpath or nature strip). Where excavation is carried out

on the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.

- A Hoarding Permit must be obtained prior to the erection of any hoarding (Class A or Class B) in the road reserve (i.e. road or footpath or nature strip). Where a hoarding is erected in the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
- A Crane Permit must be obtained from Council prior to the operation of any activity involving the swinging or hoisting of goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway. Permits can be obtained from Council's Customer Service Centre.
- A Permit to Dewater or Pump Out a site must be obtained prior to the discharge of pumped water into the road reserve, which includes Council stormwater pits and the kerb and gutter. Permits can be obtained from Council's Customer Service Centre.

44. If groundwater is encountered during construction of the pool the pumped discharge from temporary dewatering shall be reinjected by either of the following methods:
- Discharge to the approved absorption system for the development site, or
  - Discharge to a temporary absorption system designed and certified by a qualified Engineer. The absorption system must comply with Rockdale Technical Specification Stormwater Management and be designed for rainfall over the excavated area and the expected pump rate for the dewatering operation.
45. The following conditions are necessary to ensure minimal impacts during construction:
- i. Building, demolition and construction works not to cause stormwater pollution and being carried out in accordance with Section 2.8 of Council's Stormwater Pollution Control Code 1993. Pollutants such as concrete slurry, clay and soil shall not be washed from vehicles onto roadways, footways or into the stormwater system. Drains, gutters, roadways and access ways shall be maintained free of sediment. Where required, gutters and roadways shall be swept regularly to maintain them free from sediment.
  - ii. Stormwater from roof areas shall be linked via a temporary downpipe to an approved stormwater disposal system immediately after completion of the roof area.
  - iii. All disturbed areas shall be stabilised against erosion within 14 days of completion, and prior to removal of sediment controls.
  - iv. Building and demolition operations such as brickcutting, washing tools or paint brushes, and mixing mortar shall not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.
  - v. Stockpiles are not permitted to be stored on Council property (including nature strip) unless prior approval has been granted. In addition stockpiles of topsoil, sand, aggregate, soil or other material shall be stored clear of any drainage line or easement, natural watercourse, kerb or road surface.
  - vi. Wind blown dust from stockpile and construction activities shall be minimised by one or more of the following methods:

- a) spraying water in dry windy weather
  - b) cover stockpiles
  - c) fabric fences
- vii. Access to the site shall be restricted to no more than two 3m driveways. Council's footpath shall be protected at all times. Within the site, provision of a minimum of 100mm coarse crushed rock is to be provided for a minimum length of 2 metres to remove mud from the tyres of construction vehicles.

An all weather drive system or a vehicle wheel wash, cattle grid, wheel shaker or other appropriate device, shall be installed prior to commencement of any site works or activities, to prevent mud and dirt leaving the site and being deposited on the street. Vehicular access is to be controlled so as to prevent tracking of sediment onto adjoining roadways, particularly during wet weather or when the site is muddy. Where any sediment is deposited on roadways it is to be removed by means other than washing and disposed of appropriately.

In addition builders / demolishers are required to erect a 1.5m high fence along the whole of the street alignment other than at the two openings. Such protection work, including fences, is to be constructed, positioned and maintained in a safe condition to the satisfaction of the Principal Certifying Authority, prior to the demolition of the existing structures and commencement of building operations.

- viii. Any noise generated during construction of the development shall not exceed limits specified in any relevant noise management policy prepared pursuant to the Protection of the Environment Operations Act, 1997 or exceed approved noise limits for the site.
46. Council's warning sign for soil and water management must be displayed on the most prominent point on the building site, visible to both the street and site workers. The sign must be displayed throughout construction. A copy of the sign is available from Council.

### **Prior to issue of occupation certificate or commencement of use**

The following conditions must be complied with prior to issue of the Occupation Certificate or Commencement of Use.

- 47. An Occupation Certificate shall be obtained in relation to the approved works prior to any use or occupation of the building.
- 48. Where Council's park/reserve is damaged as a result of building work or vehicular building traffic, this area shall be restored by Council at the applicant's expense. Repairs shall be completed prior to the issue of the Occupation Certificate.
- 49. All excess excavated material, demolition material, vegetative matter and builder's rubbish shall be removed to the Waste Disposal Depot or the Regional Tip prior to final inspection.  
Note: Burning on site is prohibited.
- 50. Damage to brick kerb and/or gutter and any other damage in the road reserve shall be repaired using brick kerb and gutter of a similar type and equal dimensions. All works shall be to Council's satisfaction at the applicant's expense. Repairs shall be completed prior to the issue of the Occupation Certificate.

51. All works within the road reserve, which are subject to approval pursuant to Section 138 of the Roads Act 1993, shall be completed and accepted by council.
52. Prior to completion of the building works, a full width vehicular entry is to be constructed to service the property. Any obsolete vehicular entries are to be removed and reconstructed with kerb and gutter. This work may be done using either a Council quote or a private contractor. There are specific requirements for approval of private contractors.
53. Both driveway accesses are required to have a maximum width of 3m at the boundary and separated by 6m along the kerb.
54. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.  
Application must be made through an authorised Water Servicing Coordinator. Please refer to the Building Developing and Plumbing section of the web site [www.sydneywater.com.au](http://www.sydneywater.com.au) then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.  
Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.  
The Section 73 Certificate must be submitted to the Principal Certifying Authority prior to occupation of the development.
55. Prior to occupation, a registered surveyor shall certify that the driveway(s) over the footpath and within the property have been constructed in accordance with the approved driveway profile(s). The certification shall be based on a survey of the completed works. A copy of the certificate and a works-as-executed driveway profile shall be provided to Council if Council is not the Principal Certifying Authority.
56. Prior to occupation a Chartered Professional Engineer shall certify that the stormwater system has been constructed in accordance with the approved plans and as required by Rockdale Technical Specification Stormwater Management. The certificate shall be in the form specified in Rockdale Technical Specification Stormwater Management and include an evaluation of the completed drainage works. A works-as-executed drainage plan shall be prepared by a registered surveyor based on a survey of the completed works. A copy of the certificate and works-as-executed plan(s) shall be supplied to the Principal Certifying Authority. A copy shall be provided to Council if Council is not the Principal Certifying Authority.
57. All absorption trenches must be inspected, and a compliance certificate under Part 4A of the EP&A Act issued prior to back filling and proceeding to subsequent stages of construction. Copies of the certificate are to be maintained by the principal certifying authority and be made available to Council officers upon request.
58. The drainage system shall be constructed in accordance with the approved drainage plans. All stormwater drainage plumbing work shall comply with the NSW Code of Practice: Plumbing and Drainage and Australian Standard AS3500.
59. The owner of the premises is required to comply with the following requirements when installing a rainwater tank:
  - Inform Sydney Water that a Rainwater tank has been installed in accordance with applicable requirements of Sydney Water.
  - The overflow from the rainwater tank shall be directed to the storm water system.
  - All plumbing work proposed for the installation and reuse of rainwater shall comply with the NSW Code of Practice: Plumbing and Drainage and be



installed in accordance with Sydney Water "Guidelines for rainwater tanks on residential properties.

- A first flush device shall be installed to reduce the amount of dust, bird faeces, leaves and other matter entering the rainwater tank.

### **Prior to issue of subdivision certificate**

The following conditions must be complied with prior to the issue of the Subdivision Certificate or the Strata Certificate.

60. A Subdivision Certificate and four (4) copies of the plans for the endorsement of the General Manager shall be submitted to Council prior to lodgment with the Land and Property Information office. If applicable, an original and four (4) copies of the 88B Instrument are to be submitted.
61. The endorsed subdivision certificate shall not be released until completion of the development and the issue of the Final Occupation Certificate.
62. The submission and approval of a subdivision certificate application. In this regard, a fee is payable in accordance with Council's current adopted Fees and Charges.
63. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Coordinator. Please refer to the Building Developing and Plumbing section of the web site [www.sydneywater.com.au](http://www.sydneywater.com.au) then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

The Section 73 Certificate must be submitted to the Principal Certifying Authority prior to release of the Subdivision/Strata Certificate.

64. The new lots created are to be numbered lot 700 and lot 701.
65. All existing and proposed services on the property shall be shown on a plan, and shall be submitted to Council. This includes electricity, gas, water, sewer, stormwater and telephone services. Where any service crosses one lot but benefits another lot, it is to be covered by an easement. The service easement is to be covered by a Section 88B Instrument, which may only be varied or extinguished with the consent of Rockdale City Council. These provisions are to be put into effect prior to the release of the Subdivision/Strata Certificate.
66. A positive covenant shall be provided over the on-site retention system. A Section 88B Instrument and four copies shall be lodged with the Subdivision/Strata Certificate.

### **Roads Act**

67. Construction related activities must not take place on the roadway without Council approval.

Short-term activities (including operating plant, materials delivery) that reduce

parking spaces, affect access to a particular route or prevent or restrict the passage of vehicles along the road must not occur without a valid Temporary Roadside Closure Permit.

Activities involving occupation of the parking lane for durations longer than allowed under a Temporary Roadside Closure Permit require a Construction Zone Permit and must not occur prior to the erection of Works Zone signs by Council's Traffic and Road Safety Section.

Permit application forms should be lodged at Council's Customer Service Centre allowing sufficient time for evaluation. An information package is available on request.

68. The following works will be required to be undertaken in the road reserve at the applicant's expense:
- i) construction of two new fully constructed concrete vehicular entrance/s;
  - ii) removal of the existing concrete vehicular entrance/s, and/or kerb laybacks which will no longer be required;
  - iii) removal of redundant paving;
  - iv) smooth transition with new driveways and footpath areas
69. All footpath, or road and drainage modification and/or improvement works to be undertaken in the road reserve shall be undertaken by Council, or by a Private Licensed Contractor subject to the submission and approval of a Private Contractor Permit, together with payment of all inspection fees. An estimate of the cost to have these works constructed by Council may be obtained by contacting Council. The cost of conducting these works will be deducted from the Footpath Reserve Restoration Deposit, or if this is insufficient the balance of the cost will be due for payment to Council upon completion of the work.
70. This Roads Act approval does not eradicate the need for the Contractor to obtain a Road Opening Permit prior to undertaking excavation in the road or footpath.
71. Any driveway works to be undertaken in the footpath reserve by a private contractor requires an "Application for Consideration by a Private Contractor" to be submitted to Council together with payment of the application fee. Works within the footpath reserve must not start until the application has been approved by Council.
72. Following completion of concrete works in the footpath reserve area, the balance of the area between the fence and the kerb over the full frontage of the proposed development shall be turfed with either buffalo or couch (not kikuyu).

## **Development consent advice**

- a. You are advised to consult with your utility providers (i.e. Energy Aust, Telstra etc) in order to fully understand their requirements before commencement of any work.
- b. *Telstra Advice – Dial Before You Dig*

Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets, please contact Dial before You Dig at [www.1100.com.au](http://www.1100.com.au) or telephone on 1100 before excavating or erecting structures (This is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contacting the Dial before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe

asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial before You Dig service in advance of any construction or planning activities.

c. *Telstra Advice - Telecommunications Act 1997 (Commonwealth)*

Telstra (and its authorised contractors) are the only companies that are permitted to conduct works on Telstra's network and assets. Any person interfering with a facility or installation owned by Telstra is committing an offence under the Criminal Code Act 1995 (Commonwealth) and is liable for prosecution. Furthermore, damage to Telstra's infrastructure may result in interruption to the provision of essential services and significant costs. If you are aware of any works or proposed works which may affect or impact on Telstra's assets in any way, you are required to contact: Telstra's Network Integrity Team on phone number 1800810443.

d. Hazardous and/or intractable wastes arising from the demolition process shall be removed and disposed of in accordance with the requirements of the relevant statutory authorities (NSW WorkCover Authority and the NSW Environment Protection Authority), together with the relevant regulations, including:

- Work Health and Safety Act 2011
- Work Health and Safety Regulation 2011
- Protection of the Environment Operations (Waste) Regulation 2005.

e. Demolition and construction shall minimise the emission of excessive noise and prevent "offensive noise" as defined in the Protection of the Environment Operations Act 1997. Noise reduction measures shall include, but are not limited to the following strategies:

- choosing quiet equipment
- choosing alternatives to noisy activities
- relocating noise sources away from affected neighbours
- educating staff and contractors about quiet work practices
- informing neighbours of potentially noise activities in advance
- equipment, such as de-watering pumps, that are needed to operate on any evening or night between the hours of 8 p.m. and 7 a.m. or on any Sunday or Public Holiday, shall not cause a noise nuisance to neighbours of adjoining or nearby residences. Where the emitted noise exceeds 5 dB(A) [LAeq(15m)] above the background sound level [LA90] at the most affected point on the nearest residential boundary at any time previously stated, the equipment shall be acoustically insulated, isolated or otherwise enclosed so as to achieve the sound level objective.

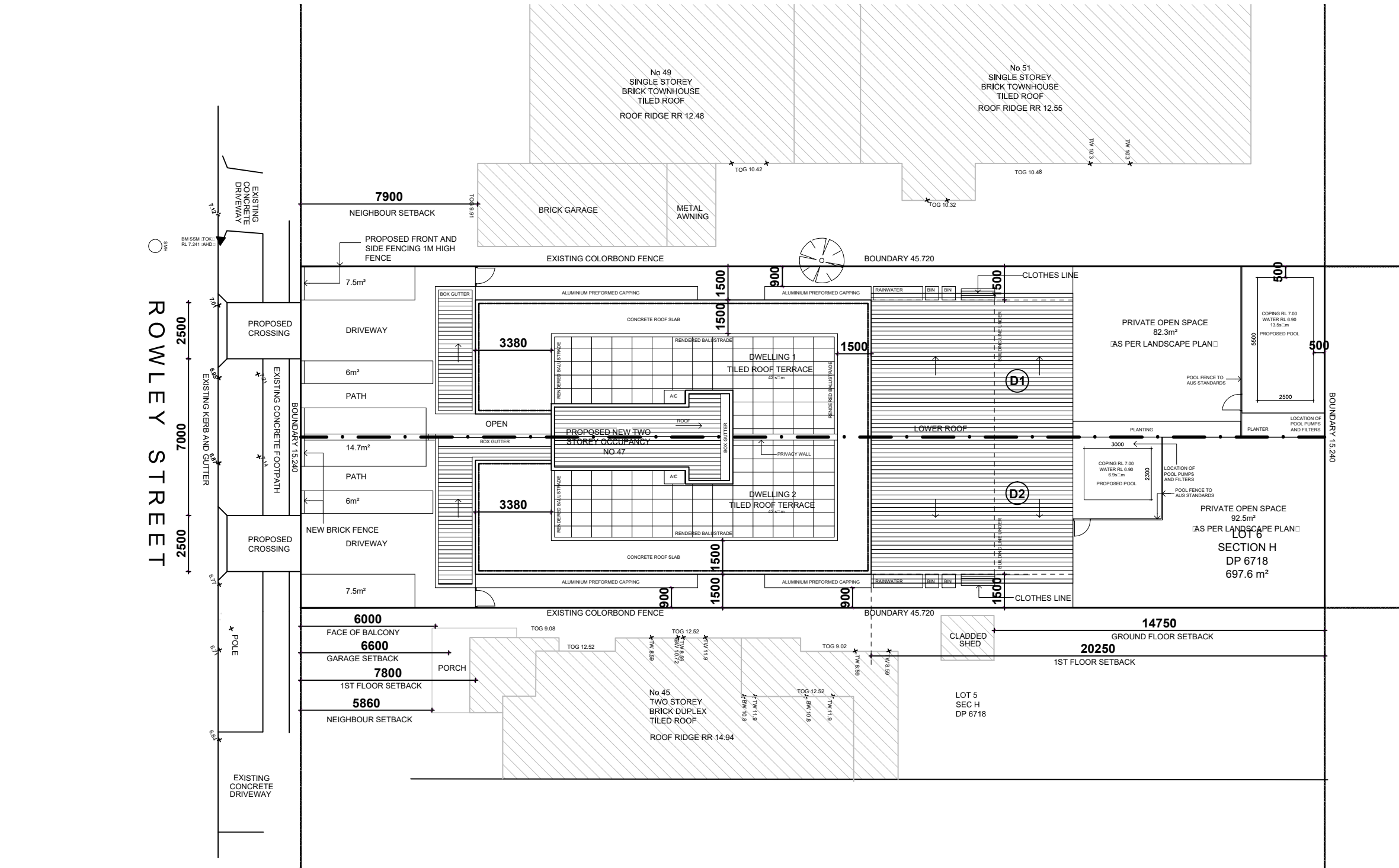
f. The water from the rainwater tank should not be used for drinking, Sydney Water shall be advised of the installation of the rainwater tank.

g. The removal, cleaning and disposal of lead-based paint shall conform with the requirements of the NSW Environment Protection Authority's guideline - "Lead Alert - Painting Your Home".

h. All site works shall comply with the occupational health and safety requirements of

the NSW WorkCover Authority.

- i. In the event of any inconsistency between conditions of this approval and the drawings/documents referred to in condition 2, the conditions of this approval prevail.
- j. Council will not issue the Subdivision Certificate unless the following has been provided to Council :
  - Works-As-Executed Plan for Stormwater Drainage System
  - Engineer's Compliance certificate for Stormwater Drainage System & work as executed drawing
  - Final Occupation Certificate
  - Utility Service Plan
  - Original of Section 73 Compliance Certificate referring to Subdivision – (Sydney Water Act 1994)
  - Landscape certification (if Council not appointed as PCA)
  - Administration Sheet and 88B instruments prepared by a qualified surveyor



<b>CALCULATIONS:</b>	
site area:	697.6 sq.m
allowed FSR area 60%:	348.8 sq.m

<b>DWELLING 1</b>	
Total site DW1:	348.8 sq.m
Total ground floor area:	111 sq.m
Total 1st floor area:	101 sq.m
Total 2nd floor area:	12 sq.m
Total allowed area:	209.28sq.m
Total voids and stairs:	16sq.m
Tota proposed floor area	208sq.m

Garage:	24 sq.m
Private open space:	<b>52sq.m</b>

<b>DWELLING 2</b>	
Total site DW2:	348.8 sq.m
Total ground floor area:	111 sq.m
Total 1st floor area:	101 sq.m
Total 2nd floor area:	12 sq.m
Total allowed area:	209.28sq.m
Total voids and stairs:	16sq.m
Tota proposed floor area	208sq.m

Garage:	24 sq.m
Private open space:	<b>52sq.m</b>
Total floor area	416sqm 59.%

<b>LANDSCAPING</b>	
Total soft landscaping:	174.5 sq.m 25% of the site

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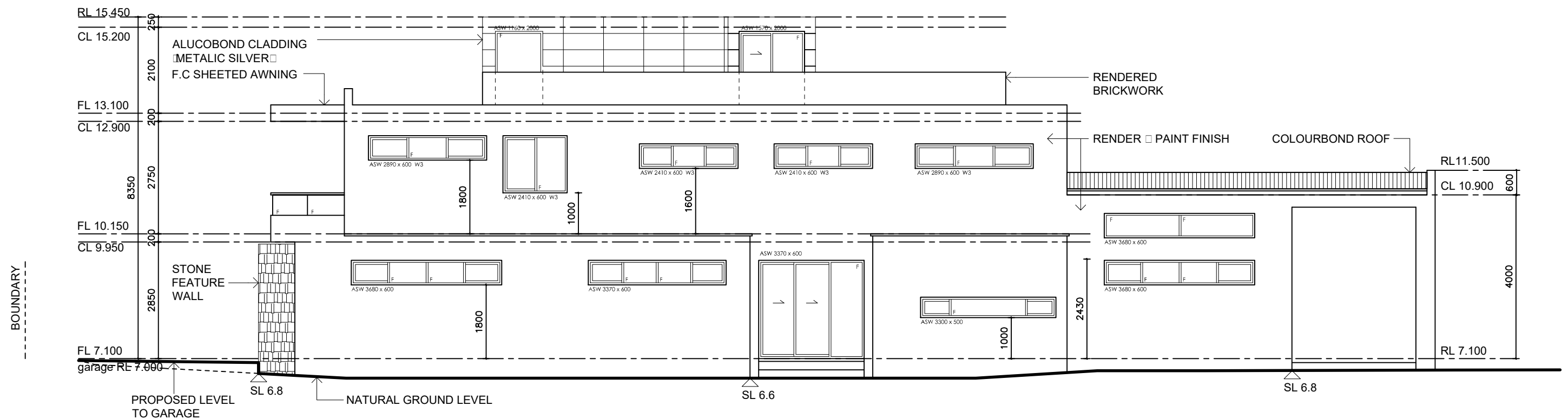
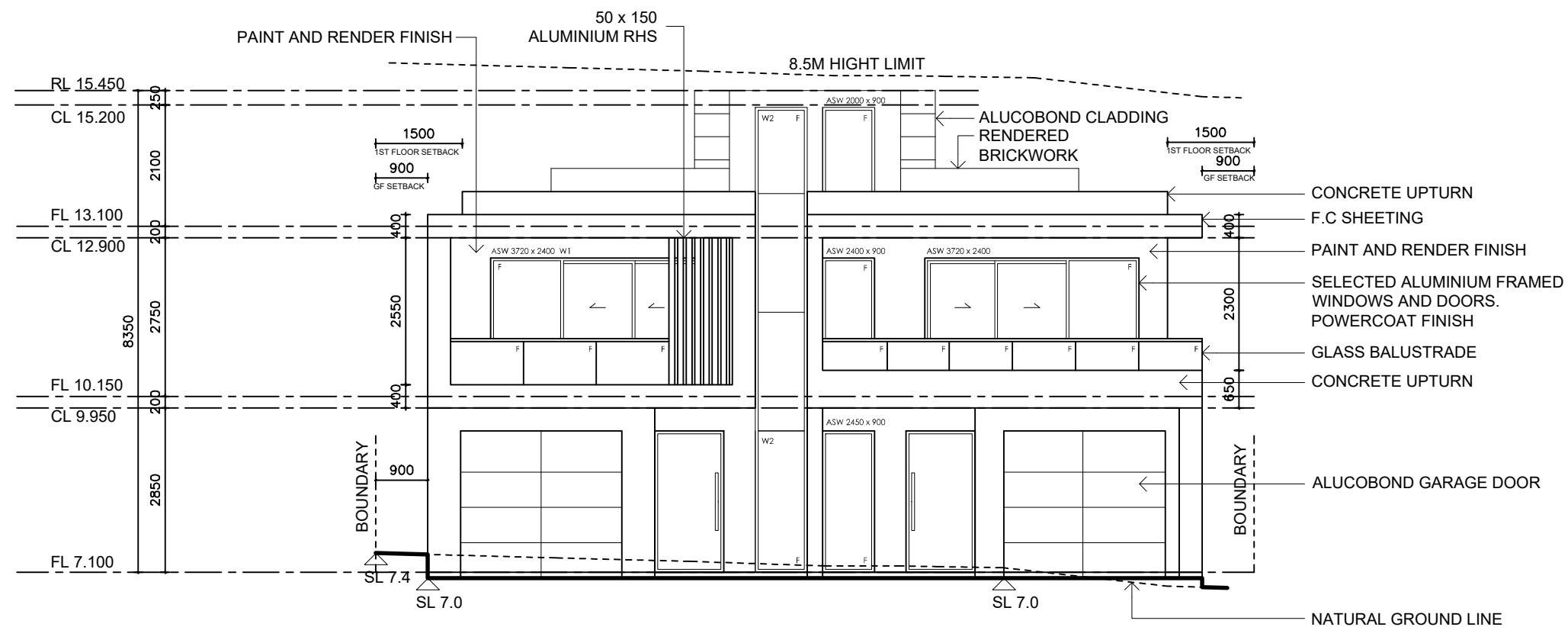
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**ardalic residence**  
47 Rowley Street, Brighton Le Sands

drawing title:  
**SITE PLAN**

job number:  
**D1605**


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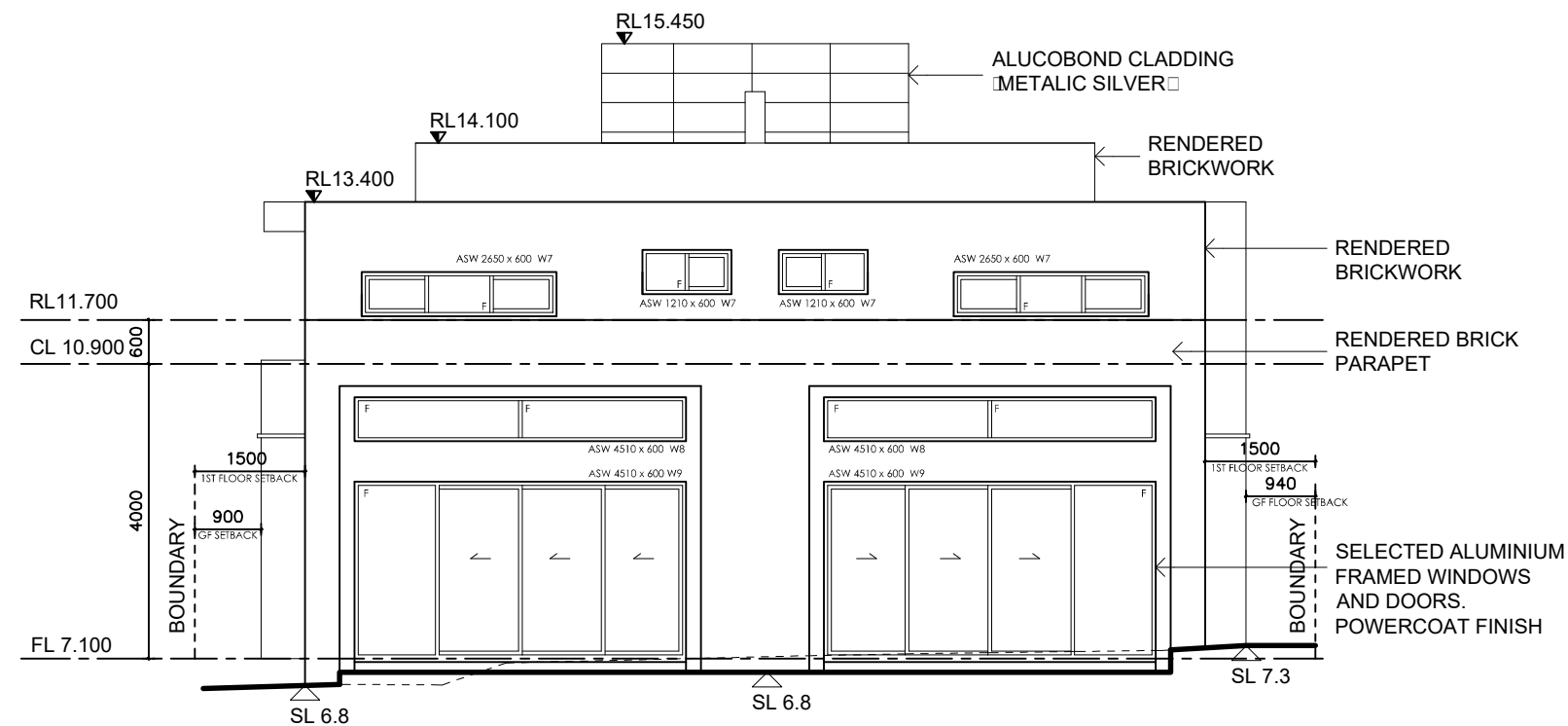
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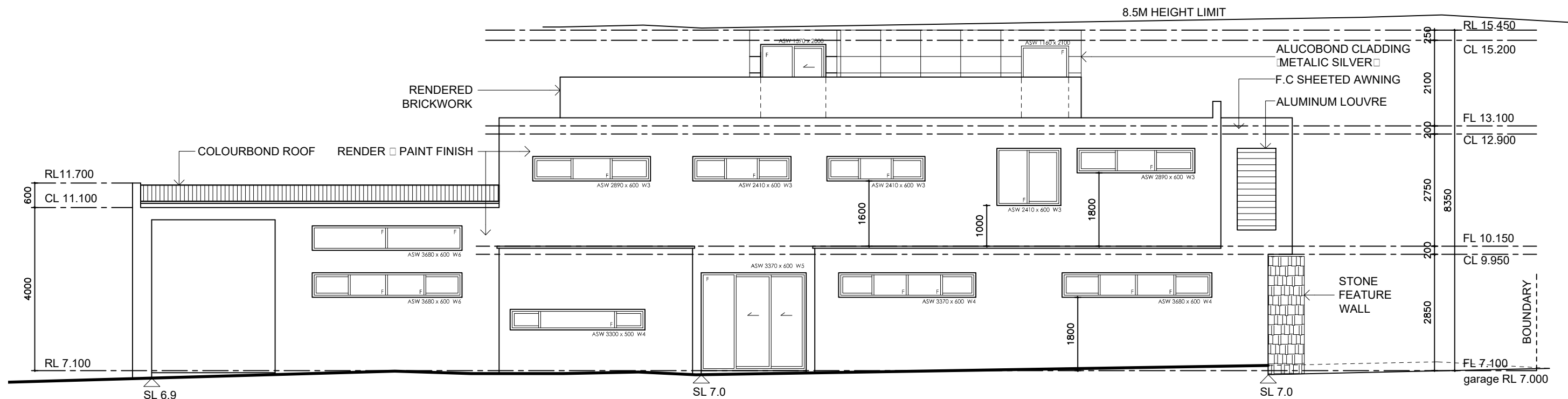
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ISSUE	DESCRIPTIONS	BY	DATE

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	<p>drawing title:</p> <p><b>NORTH-WEST □ SOUTH-WEST ELEVATION</b></p>	<p>scale:</p> <p><b>1:100 @A3</b></p> <p>drawing number:</p> <p><b>03.01</b></p>	



**1**  
**NORTH - EAST ELEVATION**  
**SCALE: 1/100**

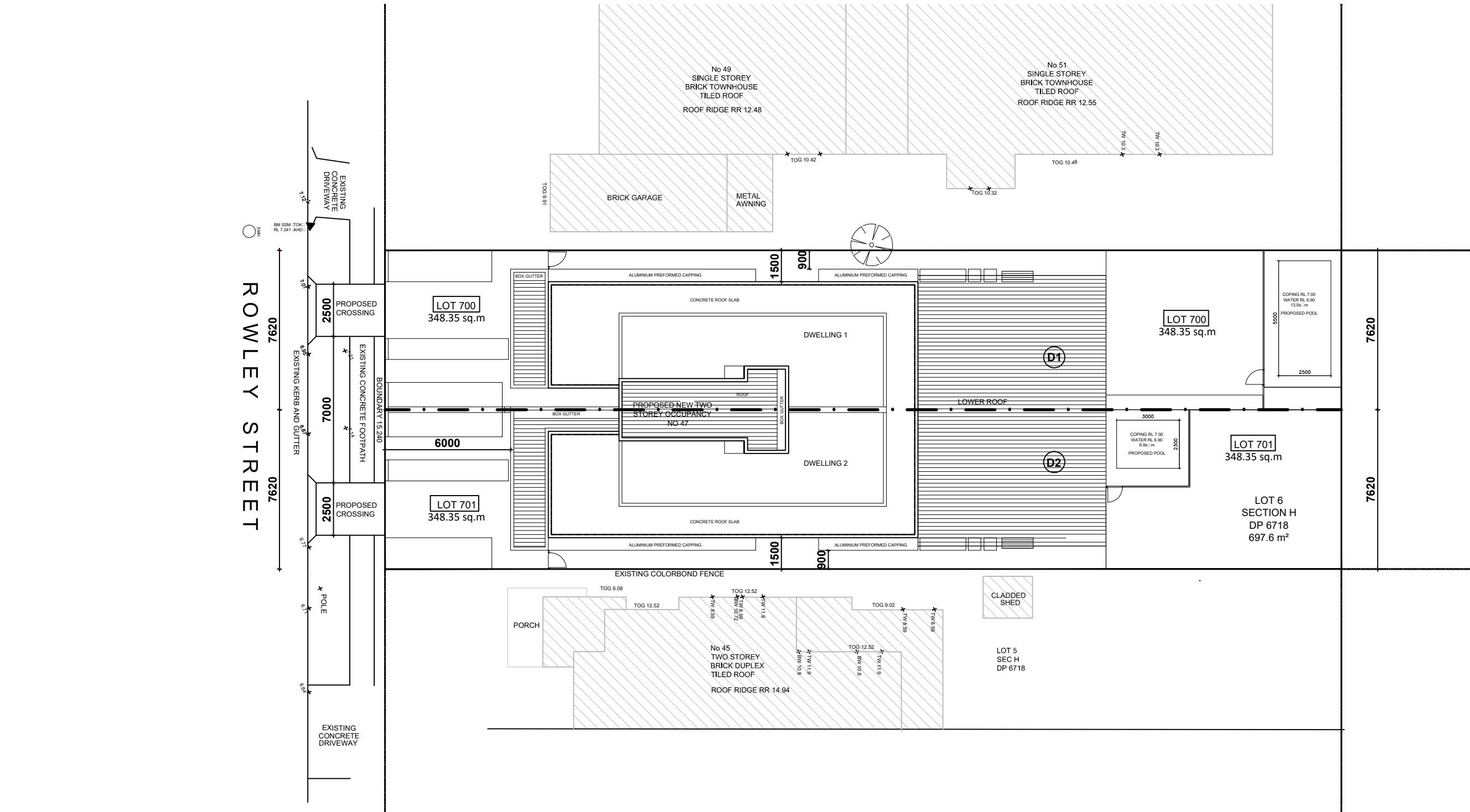


**2**  
**NORTH - WEST ELEVATION**  
**SCALE: 1/100**

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ardalic residence  
47 Rowley Street, Brighton Le Sands

drawing title:  
SUBDIVISION PLAN

job number:  
D1605

scale:  
1:200 @A3

drawing number:  
05.01

### Appendix 3: Application Form to vary a development standard

Written application providing grounds for variation to development standards

To be submitted together with the development application (refer to EP&A Regulation 2000 Schedule 1 Forms).

1. What is the name of the environmental planning instrument that applies to the land?

RLEP 2011 AND ROCKDALE DCP 2011

2. What is the zoning of the land?

R2 LOW DENSITY RESIDENTIAL

3. What are the objectives of the zone?

Subdivision lot size

4. What is the development standard being varied? e.g. FSR, height, lot size

LOT SIZE

5. Under what clause is the development standard listed in the environmental planning instrument?

CLAUSE 4.1 (38)

6. What are the objectives of the development standard?

development standard requires that each new lot as a dual occupancy development must have a minimum area of 350 sqm

7. What is the numeric value of the development standard in the environmental planning instrument?

350 sqm / per lot

8. What is proposed numeric value of the development standard in your development application?

348.8 sqm / per lot

9. What is the percentage variation (between your proposal and the environmental planning instrument)?

1.2m<sup>2</sup> / Lot

The variation to minimum is minimal being 0.03%



10. How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

Clause 4.1 (3B) min lot size as it is felt that it is unreasonable and unnecessary to comply with the standard in full due to the minor nature of the shortfall being only 0.03%. Although the proposal departs from the numerical standard, the proposal satisfies the objectives of the standard and hence there is scope on merit grounds in permitting the numerical departure.

11. How would strict compliance hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Act.

It is considered that strict compliance with the relevant standard will tend to hinder the attainment of the objects of the Act because the overall development is compatible in character, design, height, scale, bulk and built form with existing and proposed built form in the surrounding area and is well located in terms of preserving visual and acoustic privacy.

Note: If more than one development standard is varied, an application will be needed for each variation (eg FSR and height).

12. Is the development standard a performance based control? Give details.

The proposal maintains compliance with the objectives of the development standard. The proposal does not alter the development's compliance with the controls relating to site cover, storey limit, landscaping and parking. The proposal also represents a high level of internal and external amenity for the development.

#### Additional matters to address

As outlined in "Varying Development Standards: A Guide" there are other additional matters that applicants should address when applying to vary a development standard.

13. Would strict compliance with the standard, in your particular case, would be unreasonable or unnecessary? Why?

Strict compliance with the minimum lot size for each lot of the dual occupancy is unreasonable and unnecessary in this particular instance as compliance with the standard would not necessarily achieve a better planning outcome. The minor variation to the lot size will have a negligible impact on the amenity of the dwellings and adjoining properties.

14. Are there sufficient environmental planning grounds to justify contravening the development standard? Give details.

The proposed subdivision lot size represent 0.03% (2.4sqm over the two lots and 1.2sqm for each individual lot). The non compliance is considered relatively minor. Although the subdivision will result in a minor variation to the lot size development standard, this will not alter the overall bulk and scale of the building which is considered acceptable in terms of streetscape character, built form and the relationship of the building in the context of the public domain. The objectives of Clause 4.6 have been satisfied. Council has previously abandoned it's controls relating to minimum subdivision lot size for dual occupancy developments.



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## Council Meeting

**12/10/2016**

Item No	9.11
Property	<b>7-9 Gertrude Street, Wolli Creek</b>
Proposal	Construction of a nine (9) storey residential flat building development comprising thirty six (36) residential units, basement parking and demolition of existing structures
Report by	Luis Melim, Manager Development Services Fiona Prodromou, Senior Assessment Planner
Application No	DA-2016/47

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## Council Resolution

Resolved by the Administrator:

- 1 That Council support the variation to the FSR and Height development standards, as contained in Clause 4.3 – Height of Buildings and Clause 4.4 - FSR of Rockdale LEP 2011, in accordance with the request under Clause 4.6 of RLEP 2011 submitted by the applicant.
  - 2 That the development application DA-2016/47 for the construction of a nine (9) storey residential flat building development comprising thirty six (36) residential units, basement parking and demolition of existing structures at 7-9 Gertrude Street Wolli Creek be APPROVED pursuant to Section 80(1)(a) of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report.
  - 3 That the NSW Department of Planning and Environment be advised of Council's decision.
- 

## Officer Recommendation

- 1 That Council support the variation to the FSR and Height development standards, as contained in Clause 4.3 – Height of Buildings and Clause 4.4 - FSR of Rockdale LEP 2011, in accordance with the request under Clause 4.6 of RLEP 2011 submitted by the applicant.
  - 2 That the development application DA-2016/47 for the construction of a nine (9) storey residential flat building development comprising thirty six (36) residential units, basement parking and demolition of existing structures at 7-9 Gertrude Street Wolli Creek be APPROVED pursuant to Section 80(1)(a) of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report.
  - 3 That the NSW Department of Planning and Environment be advised of Council's decision.
-

## Attachment

- Assessment Report
- Roof & Site Plan
- East Elevation
- North Elevation
- South Elevation
- West Elevation
- Clause 4.6 submission

## Location Plan



# BAYSIDE COUNCIL

## Planning Assessment Report

### Application Details

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<b>Application Number:</b>	DA-2016/47
<b>Date of Receipt:</b>	7 August 2015
<b>Property:</b>	7 Gertrude Street, WOLLI CREEK NSW 2205 Lot 37 DP 4301 Lot 36 DP 4301
<b>Owner:</b>	VP1 Pty Ltd
<b>Applicant:</b>	VP1 Pty Ltd
<b>Proposal:</b>	7-9 Gertrude Street, WOLLI CREEK NSW 2205 - Integrated Development - Construction of a nine (9) storey residential flat building development comprising thirty six (36) residential units, basement parking and demolition of existing structures
<b>Recommendation:</b>	Approved
<b>No. of submissions:</b>	Nil
<b>Author:</b>	Fiona Prodromou
<b>Date of Report:</b>	16 August 2016

### Key Issues

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The subject site is zoned R4 high density residential and is located on the southern side of Gertrude Street in Wolli Creek.

The proposed development seeks to vary the maximum 29.5m height limit for the site by 0.98m (3.3%) - 2.85m (9.6%). A variation is also proposed to the maximum 2.2:1 FSR standard for the site, with the development comprising an FSR of 2.52:1, being 327.6sq/m (14.3%) in excess of that permitted. A Clause 4.6 - Exceptions to Development Standards has been submitted by the applicant and is supported in this instance for the reasons discussed within this report. The overall bulk, scale and massing of the development is deemed to be satisfactory.

The proposal seeks to vary the minimum balcony size requirements of the Apartment Design Guide. Variations proposed have been assessed on their merits and deemed acceptable for the reasons outlined within this report.

The proposal indicates non compliance's with the provisions of DCP 2011 with respect to minimum site frontage, unit mix, car wash dimensions, corridor width, front setback to Gertrude Street and building elements protruding into the articulation zone. These matters have been discussed within the planning report and variations are supported in this instance for the reasons outlined within the report.

The proposal was publicly notified as per the requirements of DCP 2011. Nil submissions were

received.

## Recommendation

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1. That Council support the variation to the FSR and Height development standards, as contained in Clause 4.3 – Height of Buildings and Clause 4.4 - FSR of Rockdale LEP 2011, in accordance with the request under clause 4.6 of RLEP 2011 submitted by the applicant.
2. That the development application DA-2016/47 for the construction of a nine (9) storey residential flat building development comprising thirty six (36) residential units, basement parking and demolition of existing structures at 7-9 Gertrude Street Wolli Creek be APPROVED pursuant to Section 80(1)(a) of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report.
3. That the NSW Department of Planning and Environment be advised of Council's decision.

## Background

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### History

DA-1994/245      Refused 22 December 1994  
9 Storey apartment hotel with 103 suites, parking for 134 cars.

DA-1996/334      Refused 2 July 1997  
Two storey motel, 26 units, managers residence, reception and 27 car spaces.

DA-1996/56      Withdrawn 24 April 1996  
Proposed undercover security valet parking for airport

DA-2010/131      Approved 30 November 2009  
Demolish & remove existing sheds and commence use - temporary valet carpark with associated signage.

### Proposal

The proposal seeks to undertake the demolition of existing structures on site and proposes the construction of a nine (9) storey residential flat building development comprising thirty six (36) residential units (1 x studio / 17 x 1 bed / 12 x 2 bed / 6 x 3 bed) and basement / ground level car parking. The proposal comprises as follows:

#### *Basement*

26 car spaces (4 being accessible), residential storage, plant room, fan room, dual lift core, fire stairs, pedestrian and vehicular circulation and access.

#### *Ground Level*

Vehicular entry, SRV loading dock within front setback of site with tandem vehicular passing bay, terraced planters, planting at ground level, pedestrian entry and associated platform lift, fire exit adjoining eastern boundary of site and 1.5m high impermeable screen along eastern side boundary within front setback.



1 studio dwelling with associated balcony fronting Gertrude Street, rainwater tank beneath planting in front setback, garbage room, residential lobby, letter boxes, substation, hydrant pump room, fire exit adjoining vehicular entry, dual lift core, carparking for 13 vehicles (incorporating 1 car wash bay), 2 motorbike spaces and 5 bicycle spaces. Ramp access to lower level.

Tree planting is proposed along the rear boundary of the site, in a deep soil zone 3.4m - 4.6m in width. Cheese trees capable of growing 5-10m in height are proposed. Access for maintenance is proposed from the rear wall of the car parking area.

#### *Level 1*

Dual lift core, garbage chute with recycling trays, services, common circulation. 4 x residential dwellings (2 x 1 bed / 2 x 2 bed). All units comprise Gertrude Street facing balconies, with the 2 units also benefiting from rear private terrace areas screened from view of the rear podium communal open space area. A communal garden store room is provided adjoining the communal area.

Landscaping within the level 1 communal open space area comprises ground covers and incorporates a range of shrubs and trees, including but not limited to a number of plants with mature heights as follows:

- bamboo 3m-5m / mexican orange blossom 1m-3m / New Zealand Christmas Bush 2m - 3.5m / Tropical blue bamboo 5m - 10m / Lady Palm 3m - 5m.

#### *Level 2 - 6 (per floor)*

Dual lift core, garbage chute with recycling trays, services (gas/water/communications), common circulation. 5 x residential dwellings with associated private open space areas fronting Gertrude Street and/or the rear of the site.

#### *Level 7 - 8 (per floor)*

Dual lift core, garbage chute with recycling trays, services (gas/water/communications), common circulation. 3 x residential dwellings with associated private open space areas fronting Gertrude Street and/or the rear of the site.

The rooftop communal open space area incorporates the following:

- Lift / stair overrun, pergola structure with solar panels, lobby, toilet and services.
- Mass planting to provide a green roof.
- Balustrades to periphery of useable communal area
- Two bbq facilities and communal tables.
- Associated shrub planting to eastern and western sides.
- 2m high impermeable wind amelioration screen along the southern perimeter of the communal roof terrace.

A mix of colours, materials and finishes are proposed to be incorporated within the development, including a grid of white colored concrete slabs, light grey frames to facades, clear glass balustrades, dark aluminium window frames and dark horizontal louvers.

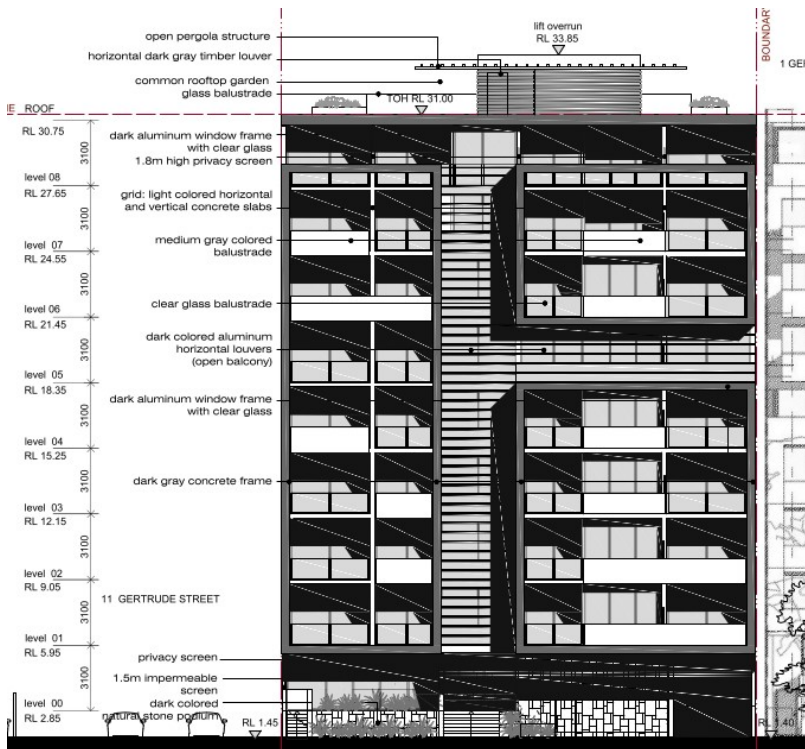


Figure 1 - Gertrude Street facade of proposed development

## Site location and context

The subject site is rectangular and comprises two parcels of land. The site has a frontage of 22.63m to Gertrude Street, a total site area of 1004sq/m and is relatively flat, with a natural ground level of 1.5RL. Along the rear boundary of the site an open box drainage reserve spans the width of the site, this is 1.22m in width. This reserve continues through adjoining properties in an east / west direction. The site is currently occupied by building materials and used as an open air hard stand car parking area. There are 4 trees within the rear of the subject site and existing vehicular access is from Gertrude Street.

The subject site is affected by:

- Potential Contamination
- Class 3 Acid Sulfate Soils
- Flooding
- Obstacle Limitation Surface & 15.24m Building Height Civil Aviation Regulations

The image below details recent approvals of adjoining and nearby properties within close proximity to the subject site.

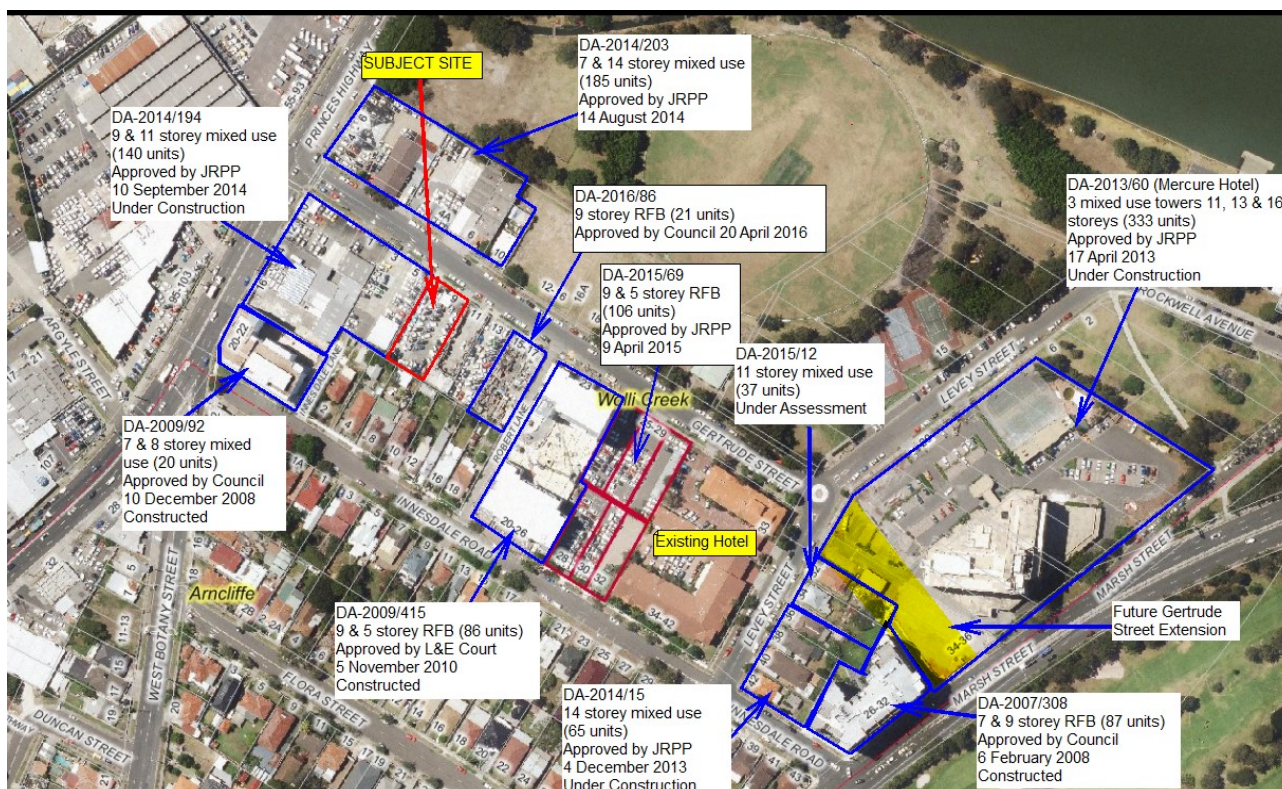


Figure 2 - Context of approvals

## Statutory Considerations

### *Environmental Planning and Assessment Act, 1979*

An assessment of the application has been undertaken pursuant to the provisions of the *Environmental Planning and Assessment Act, 1979*.

#### **S.91A - Development that is Integrated Development**

The proposal includes excavation works for basement car parking on site that will transect the water-table and require temporary dewatering during the construction phase. The proposal is therefore Integrated Development pursuant to Section 91A of the Environmental Planning and Assessment Act 1979, and requires approval from the NSW Office of Water (NOW). The NOW deemed that the construction dewatering proposed for the project would be an 'aquifer interference activity' in accordance with the definition in the Water Management Act 2000, and issued General Terms of Approval (GTA's) appropriate to this activity on 28th October 2015.

#### **S.79C(1) - Matters for Consideration - General**

##### **S.79C(1)(a)(i) - Provisions of Environmental Planning Instruments**

The following Environmental Planning Instruments are relevant to this application:

##### **State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

The applicant has submitted a BASIX Certificate for the proposed development. The Certificate number is 647613M\_04 and the required energy, water and thermal targets have been achieved.

##### **State Environmental Planning Policy No 55—Remediation of Land**

The property is identified in Council's records as being potentially contaminated. Clause 7 of State

Environmental Planning Policy 55 – Remediation of Land requires the consent authority to be satisfied prior to determination that the site is or can be made suitable for the proposed development.

The application was accompanied by a Detailed Site Investigation Report E22573 AA dated 31 July 2015 undertaken by Environmental Investigations. The report Conclusion states *"the site can be made suitable for the proposed multi-storey mixed commercial and residential use with basement car parking through the implementation of the recommendations present in section 12"*, which required the preparation of a Remedial Action Plan.

A Remediation Action Plan (RAP) ref: E22573 AB rev1 dated 22 June 2016, was submitted to Council by the applicant and recommends remediation and validation works required to occur on site.

The proposal has been conditioned to adhere to the recommendations of the above stated reports. The proposal satisfies the requirements of SEPP 55.

### **State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development**

In accordance with clause 28(2) of this policy, the consent authority must take into consideration the following:

#### *a. The advice of the Design Review Panel (DRP)*

The proposal has been referred to the Design Review Panel on 18th September 2015. The DRP raised concerns with respect to the proposed front setback of the development, excessive vehicular crossings to the Gertrude Street frontage, surplus carparking on site, lack of deep soil planting, treatment to street edge, excessive FSR, lack of solar access to level 1 communal open space, poor landscaping and excessive services within front setback, recessed and unsafe lobby design, inappropriate garbage storage on site and non compliant unit mix.

Amended plans to address the above were submitted by the applicant. Amended plans have been discussed below.

#### *b. The design quality of the development when evaluated in accordance with the design quality principles.*

The design quality principles have been considered in the assessment of the proposal and are found to be satisfactory as indicated below.

#### Principle 1 – Context and Neighborhood Character

The DRP noted that *'a number of sites along this street are undergoing redevelopment and there is a need to ensure consistency between new building alignments and the street edge. This is an important consideration that the proposal needs to address'*.

Comment: Revised plans demonstrate that the front setback of the proposed development has increased, with the building appropriately setback from the splayed front property boundary, in order to ensure that any future redevelopment of the adjoining eastern undeveloped properties can be designed to align with the proposed development. The front setbacks as proposed range from 3.67m - 5.3m to

balconies and 4.7m - 8.4m to the building line at level 1 and above. Given the splayed front property boundary and established building alignment of the development at 1-5 Gertrude Street, the aforementioned front setbacks are satisfactory.

The proposal is visually consistent with its established western neighbour at 1-5 Gertrude Street, providing a visually cohesive streetscape response. The proposed building depth on site is parallel to the splayed front boundary, with the rear building alignment continuing the approved, established and stepped rear building line of the directly adjoining western neighbour. The footprint of the proposed development results in a building form on site which is complimentary to building forms established and approved within the subject street block and context of the subject site.

The proposal is satisfactory with respect to this principle.

## Principle 2 – Built Form and Scale

The DRP noted that *"It is imperative that all developments along this side of the street meet the setback requirements at the side boundaries to ensure consistent building alignments along the street. This will assist in transitioning between properties along the angle street boundary"*.

Comment: Revised plans have been amended to illustrate front building line setbacks ranging from 3.67m - 5.3m to balconies and 4.7m - 8.4m to the building line. The proposed front setbacks will enable the future redevelopment of the adjoining eastern undeveloped properties to be designed to align with the proposed development. Front setbacks as proposed are satisfactory.

The DRP noted that *"while the driveway access at ground level is not in accordance with the DCP which recommends rear lane access, it is noted that on this site, driveway access is a necessity from Gertrude Street. The scale of the driveway access should be reduced, and the proposed loading dock should be relocated into the basement landscaping should be expanded in this zone."*

Comment: Revised plans indicate that the scale of the proposed driveway to Gertrude Street has been reduced. A loading bay for a Small Rigid Vehicle (SRV) for the development is now proposed within the front setback of the subject site, along with a tandem passing bay for vehicles to enable safe vehicular movement in and out of the site. This area is proposed to be provided as concrete grass tiles, to delineate this area from the adjoining concrete driveway and ensure an appropriate visual outcome from the public domain.

The DRP stated that *"there are 11 surplus car spaces, which are required to be counted as part of floor space calculations, thus further increasing the noncompliance. Furthermore no deep soil has been provided and Council requires 15% on this site. The basement carpark should be reduced in size and a contiguous deep soil zone should be provided along the rear boundary (6 metres wide)."*

Comment: As the subject site is located within 800m from Wolli Creek Railway Station, the car parking rates stipulated in the Apartment Design Guide apply. Plans have been revised to reduce car parking numbers on site, with the proposal comprising the specified number of carparking spaces on site for residents and visitors as required. As a result of the reduction in excessive car parking numbers on site, and reduction in size of the basement level, a strip of deep soil landscaped area 3.5m - 4.6m in width has been provided along the rear boundary of the subject site. The landscaped area proposed along the rear boundary comprises mass accent grass planting, and a total of six cheese trees to be planted, which have the capacity to grow to a mature height of 5m - 10m. The deep soil zone proposed



is considered to be satisfactory.

The DRP identified that *"at the Gertrude Street frontage high planter walls should be set well back to allow space for on street landscaping. Booster hydrants and substations should be accommodated in the building footprint and not on street frontage."*

Comment: Revised plans indicate the provision of planters within the front setback of the site at natural ground level, with planter walls being a maximum of 0.75m above natural existing ground level. Planters are designed with a natural stone wall finish. Revised plans further detail the incorporation of services including boosters and substations within the building footprint. Revised plans have resolved the aforementioned issue raised by the DRP.

The built form and massing of the development fits appropriately with established and approved developments to the east and west of the subject site. The proposed development is consistent with the scale of existing and emerging contextual development and is generally consistent with the desired bulk and scale of development for the Wolli Creek precinct.

### Principle 3 – Density

The DRP noted that the *'current proposal substantially exceeds the maximum floor space ratio 2.2:1, and seeks the density 2.68:1. The rationale presented for this was unconvincing. A complying development at the permissible height and GFA could satisfy all requirements in relation to context and streetscape.'*

Comment: Revised plans indicate that the proposal comprises an overall FSR of 2.52:1, which is 327.6sq/m (14.3%) in excess of that permitted. The development has been designed to provide a consistent streetscape response to Gertrude Street with the adjoining development nearing completion at 1-5 Gertrude Street. The proposal has been designed with appropriate modulation and building depth which allows for proposed residential units to obtain appropriate solar access and ventilation. The proposed density is capable of being accommodated upon the subject site without resulting in adverse environmental planning impacts within the site or to neighbours. The proposed development has been designed to respond to its existing and emerging context. A Clause 4.6 - Exception to Development Standards was submitted by the applicant and is supported in this instance for the reasons further outlined within this report. The proposal is satisfactory with regards to this principle.

### Principle 4 - Sustainability

The DRP noted that *'deep soil should be provided'* on the subject site.

Comment: Revised plans indicate the provision of 100sq.m of deep soil planting along the rear boundary of the subject site being 3.5m - 4.6m in width. This area is heavily planted with a range of accent grass and six cheese trees capable of growing to a height of 5m - 10m. The proposal is further accompanied by a BASIX certificate which confirms energy efficiency measures proposed in relation to water, energy and thermal massing. The proposal is acceptable with regards to this principle. It is further noted that the proposal incorporates solar panels atop the pergola's at rooftop level.

### Principle 5 – Landscape

The DRP stated that the *"level 1 communal landscape is overshadowed by the*

*adjoining development as well as the proposed building. This provides very poor amenity therefore additional communal open space should be provided at roof top level. This roof top space should accommodate a range of facilities such as BBQ, seating, shade canopy, etc. The level 1 communal space should be redesigned to provide increased planting zones including large trees. Excessive paved areas should be removed".*

Comment: Revised plans have incorporated a rooftop communal open space area on site for future occupants with a range of facilities including a pergola, seating, bbq areas and a toilet as suggested by the DRP. The level 1 communal space has been amended to reduce excessive paving and incorporate substantial mass planting up to a maximum height of 3.5m.

*The DRP further noted that "large trees (at least 3) over 15m at maturity, should be provided in the deep soil zone. This deep soil zone does not require access for residents; maintenance access is sufficient. Fast growing trees such as spotted gums should be incorporated in this zone to provide outlook for residents." and that "streetscape landscaping should be expanded and tree planting provided in the 5.5 metre setback at street level. Excess stairs and circulation space should be removed."*

Comment: It is reiterated that revised plans indicate the provision of 100sq.m of deep soil planting along the rear boundary of the subject site being 3.5m - 4.6m in width. This area is accessed via the ground level car parking area for maintenance only and is heavily planted with a range of accent grass and six cheese trees capable of growing to a height of 5m - 10m. Trees to the proposed heights are not unsatisfactory. Further to the above, revised plans depict additional landscaping and tree planting within the front setback of the site, with modifications to stairs and circulation spaces in order to rationalize access, minimise wasted space and maximize landscaping in this area.

#### Principle 6 – Amenity

*The DRP noted that "communal open space on the roof top with good solar access and outlook to the park and bay should be provided for the amenity of residents. The main entrance lobby should be re-planned to avoid deep unsafe access and increase size of lobby, and enhance the character of the entrance. Relocate the platform lift away from the bedroom outlook. Reconfigure unit 0.02 to avoid bedroom outlook along fire stair. Review garbage room capacity and provide maintenance access from car park. Provide natural light and ventilation to service rooms on the top level".*

Comment: Revised plans indicate the addition of a rooftop communal open space area on site as recommended by the DRP. Further revisions were made to plans in order to address the above issues raised. The main entry lobby was enlarged and relocated to enable clear and direct pedestrian entry, the platform lift was discreetly relocated away from residential units.

Revised plans indicate the deletion of unit 0.01 and reduction of unit 0.02 in size along with this unit being reconfigured. Although the location of the bed within this unit retains outlook to the fire stairs, outlook is also provided to the landscaped area within the front setback of the site. Amenity to this unit has also improved as a larger balcony space is provided along with the provision of a privacy screen along the western side of the balcony.

Further to the above, the proposed garbage room on site has increased in size to ensure appropriate on site waste storage for future occupants and garbage chutes are incorporated into the development.



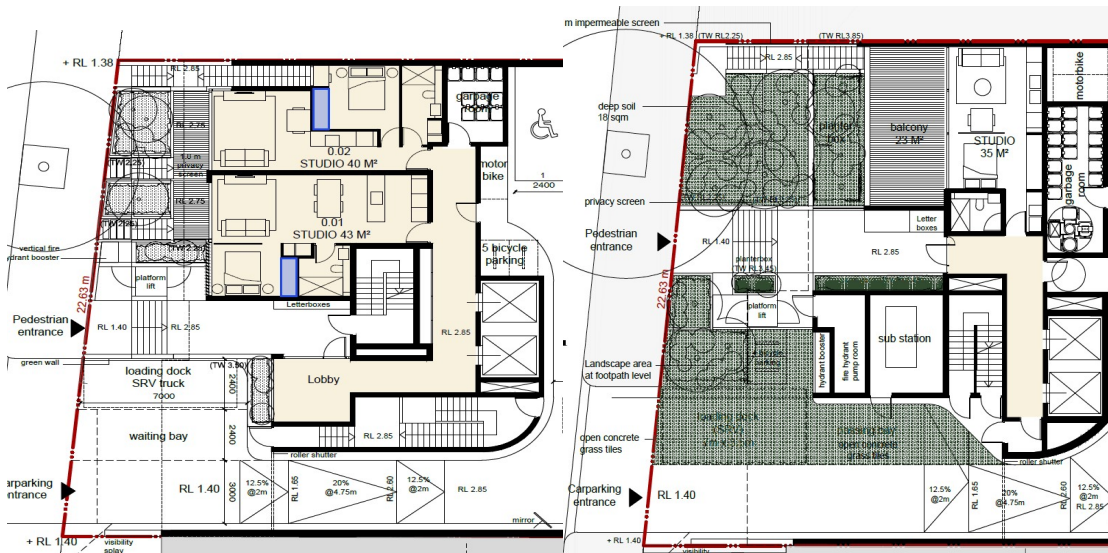


Figure 3 - Original Ground Floor Plan Revised Ground Floor Plan

### Principle 7 - Safety

The DRP noted that the *'recessed entry was unsafe and should be redesigned'*.

Comment: Revised plans have modified the ground floor layout of the development, resulting in a prominent and clearly identifiable building entry to Gertrude Street which comprises direct pedestrian access, a generous lobby and provide a high level of visibility to the street.

Residential apartments, communal open space & car parking areas will be accessible via a secure electronic system. Common areas are proposed to be appropriately lit with clearly defined pathways. The proposal is satisfactory in regards to the requirements of this principle.

### Principle 8 - Housing Diversity and Social Interaction

The DRP noted that the proposed *'unit mix should comply with Council requirements and adaptable units should reflect the unit mix.'*

Comment: The original scheme did not incorporate any 3 bedroom dwellings within the development. Revised plans incorporate a total of 6 x 3 bedroom apartments, which complies with the required number of 3 bedroom apartments required by DCP 2011. The proposal maintains an exceedance of 1 bedroom units within the development and shortfall of the required number of 2 bedroom dwellings, yet the design of the development and proposed unit mix is deemed to provides for varied housing choice and is able to accommodate a variety of household types to suit the local demographics.

The development is designed to provide two appropriate communal facilities at podium and rooftop level with various spaces including bbq and kitchenette facilities, which will encourage and provide opportunities for social interaction between future occupants. The proposal is therefore deemed to be satisfactory with regards to this principle.

### Principle 9 – Aesthetics

The DRP noted that *"planting should be the predominant visual element at ground level"* and that *"consideration be given to protection to glazed areas by way of screening, louvers etc, which could*

*potentially enhance the character of the street façade."*

Comment: Plans have been revised to maximize landscaping within the front setback of the site. Planters are proposed which incorporate a range of shrubs and trees 0.75m - 5m in mature height at the front boundary of the site within 1.15m high planters. The Gertrude Street façade incorporates a range of elements to provide visual interest and provide protection to glazed areas, including the use of aluminium horizontal louvres, solid and glazed balustrades. In general it is noted that a mix of colours, materials and finishes are proposed to be incorporated within the development, including a grid of white colored concrete slabs, light grey frames to facades, clear glass balustrades, dark aluminium window frames and dark horizontal louvres.

### *c. the Apartment Design Guide*

The proposal has been assessed against the Apartment Design Guide (ADG)

The proposed development is considered to have performed adequately in respect to the objectives and design criteria contained within the ADG. The relevant issues are discussed below:

CLAUSE	DESIGN CRITERIA		COMMENTS	COMPLIES
3J - Bicycle and car parking	<i>0 spaces per studio</i> <i>0.6 spaces per 1 bedroom unit (10.2 spaces)</i> <i>0.9 spaces per 2 bedroom unit (10.8 spaces)</i> <i>1.4 spaces per 3 bedroom unit (8.4 spaces)</i> <i>1 space per 5 units (visitor parking) (8 spaces)</i> <i>Total of 30 residential and 8 visitor spaces are required</i>		38 spaces proposed on site with an additional space as a dedicated car wash bay as required by DCP 2011	Yes
4D – Apartment size and layout	<b>Apartment type</b>	<b>Minimum internal area</b>	Studio - min 35sq/m 1 bed - min 50sq/m 2 bed - min 70sq/m 3 bed - min 90sq/m	Yes Yes Yes Yes
	Studio	35sq/m		
	1 bedroom	50sq/m		
	2 bedroom	70sq/m		
	3 bedroom	90sq/m		
4C – Ceiling heights	<b>Minimum ceiling heights:</b>		2.7m / 2.4m	Yes
	Habitable	2.7m		
	Non-habitable	2.4m		

3F Visual Privacy	Building height	Habitable rooms and balconies	Non habitable rooms	Built to party wall of adjoining development. No development to the east. Appropriate 19m rear setback provided to enable sites to rear of property to be redeveloped with sufficient separation.	Yes
	Up to 12m (4 storeys)	6m	3m		
	Up to 25m (5-8 Storeys)	9m	4.5m		
4A – Solar and daylight access	Living rooms + POS of at least 70% (27) of apartments receive min 2hrs direct sunlight b/w 9am & 3 pm mid-winter  Max 15% (6) apartments receive no direct sunlight b/w 9am & 3pm mid-winter			71% (26 of 36) units receive 2 hours solar access in midwinter  14% (5 of 36) units receive nil solar access in midwinter	Yes  Yes
4F – Common circulation and spaces	Max apartments off a circulation core on a single level is eight.			3-5 units per floor	Yes
4E – Private open space and balconies	Dwelling type	Minimum area Primary Balcony	Minimum depth	1 bed units - 8sq/m - 13sq/m 2 bed - 8sq/m / 9sq/m primary balcony with supplementary bedroom balcony minimum 4sq/m 3 bed - 9sq/m / 10sq/m primary balcony with supplementary bedroom balcony 4sq/m / 10sq/m / 15sq/m 2 x podium terraces to units are > 3m in dimension and 17sq/m / 22sq/m in overall area.	1 Bed - Yes <b>2 bed - No - See discussion below</b>  <b>3 bed No - See discussion below.</b>  Podium Terraces - Yes
	Studio	4sq/m	-		
	1 bed	8sq/m	2m		
	2 bed	10sq/m	2m		
	3+ bed	12sq/m	2.4m		
	Ground level, podium or similar -POS provided instead of a balcony: min area 15m² and min depth of 3m.				

4B – Natural ventilation	Min 60% (22) of apartments are naturally cross ventilated in the first nine storeys of the building. Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	61% (23 of 36) units are cross ventilated 17.9m maximum unit depth	Yes Yes								
4G – Storage	<table><tr><th>Dwelling type</th><th>Storage size volume</th></tr><tr><td>Studio - 1 bed</td><td>6M²</td></tr><tr><td>2 bed</td><td>8m²</td></tr><tr><td>3 bed</td><td>10m²</td></tr></table>	Dwelling type	Storage size volume	Studio - 1 bed	6M²	2 bed	8m²	3 bed	10m²	Appropriate inter-unit storage provided, with supplementary storage located within ground and basement parking areas.	Yes
Dwelling type	Storage size volume										
Studio - 1 bed	6M²										
2 bed	8m²										
3 bed	10m²										

#### 4E - Private Open Space and Balconies

The design criteria outlined within the Apartment Design Guide requires that all 2 and 3 bedroom apartments comprise minimum primary balcony areas of 10sq/m and 12sq/m. Proposed 2 and 3 bedroom units within the development comprise primary balconies which are 1sq/m - 3 sq/m deficient of the required criteria. It is noted that secondary supplementary bedroom balconies are provided to these units, being 4sq/m - 15sq/m in size. The minor deficiency to the primary balcony size is not considered likely to result in adverse amenity impacts as primary balconies are of a useable area, with a reasonable outlook and connection via living spaces within units. The deficiency in balcony area is supported in this instance.

#### **Rockdale Local Environmental Plan 2011**

Relevant clauses	Compliance with objectives	Compliance with standard/provision
2.3 Zone R4 High Density Residential	Yes	Yes - see discussion
4.3 Height of buildings	Yes - see discussion	No - see discussion
4.4 Floor space ratio - Residential zones	Yes	No - see discussion
4.6 Exceptions to development standards	Yes	Yes - see discussion
5.9AA Trees or vegetation not prescribed by development control plan	Yes	Yes - see discussion
6.1 Acid Sulfate Soil - Class 3	Yes	Yes - see discussion
6.2 Earthworks	Yes	Yes - see discussion
6.6 Flood Planning Land	Yes	Yes - see discussion
6.7 Stormwater	Yes	Yes - see discussion
6.12 Essential services	Yes	Yes - see discussion

#### 2.3 Zone R4 High Density Residential

The subject site is zoned R4 - High Density Residential under the provisions of Rockdale Local Environmental Plan 2011 (RLEP 2011). The proposal is defined as a residential flat building which constitutes a permissible development only with development consent. The proposed development is

consistent with the objectives of the zone.

#### 4.3 Height of buildings

A maximum height limit of 29.5m applies to the subject site. The proposed development comprises a maximum height as follows:

- 32.35m - Top of lift and stair overrun / Pergola / Lobby / Toilet / Air Conditioning Plant
- 30.48m - Top of rooftop balustrades.
- 29.5m - Parapet of building.
- 29.25m - Roof of building.

As can be seen above, the building up to the parapet complies with the height limit for the site. The proposed balustrades at rooftop level exceed the maximum height limit by 0.98m with the lift and stair overrun, toilet, pergola and lobby exceeding the height limit by 2.85m. This is a proposed variation of 3.3% to 9.6% to the maximum height limit, yet only for a small portion of the proposed development.

The applicant has requested that a variation to the maximum building height requirement. This has been discussed within clause 4.6- Exception to Development Standards, within this report. The proposal is considered to be satisfactory with regards to the objectives of this clause for the reasons outlined within Clause 4.6 of this report.

#### 4.4 Floor space ratio - Residential zones

A maximum FSR of 2.2:1 applies to the subject site, this equates to a maximum gross floor area of 2208.8sq/m. The applicants calculations indicate an FSR of 2.49:1 and overall gross floor area of 2507sq/m. This is an excess of 298.2sq/m of gross floor area, equivalent to a variation of 13.5% to the FSR standard.

Further to the above however it is noted that the applicants calculations do not include the 19sq/m garden store at podium level. This area is not excluded from the gross floor area definition within RLEP 2011 and as such is to be included in calculations of GFA / FSR for the site. Additionally, the proposal will be conditioned to require the doorway to the lobby to be brought forward to provide a more spacious lobby area for future occupants, this results in an additional 9.8sq/m.

Accordingly the proposal has an overall GFA of 2535.86sq/m and overall FSR of 2.52:1, which is 317.2sq/m (14.3%) in excess of that permitted.

The applicant has requested a variation to the maximum FSR standard. This has been discussed within clause 4.6- Exception to Development Standards, within this report. The proposed FSR variation is supported for the reasons discussed within Clause 4.6 of this report.

#### 4.6 Exceptions to development standards

Clause 4.6 allows a variation to a development standard subject to a written request by the applicant justifying the variation by demonstrating:

*(3)(a) that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and*

*(3)(b) that there are sufficient environmental planning grounds to justify the variation.*

In considering the applicant's submission, the consent authority must be satisfied that:

(i) the applicant's written request is satisfactory in regards to addressing subclause (3) above, and  
(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives of the relevant zone.

5(a) The consent authority must also consider whether contravention of the development standard raises any matter of significance for State or Regional environmental planning, and  
5(b) the public benefit of maintaining the development standard.

Variations to height and FSR have been assessed below.

It is noted that the proposal has further been assessed against the principles established by the Land and Environment court judgement *Four2Five v Ashfield Council* [2015] NSWLEC 90. The judgement established that justification was required in order to determine whether the development standard was unreasonable or unnecessary on grounds other than whether the development achieved the objectives of the development standard. Consideration is to be given to the particular site circumstances of the site and development.

### Variation Sought - Height

As noted within Clause 4.3 - Height of Buildings, the proposal seeks to vary the maximum 29.5m height standard applicable to the subject site. The proposed building up to the parapet complies with the height limit for the site. The proposed balustrades at rooftop level exceed the maximum height limit by 0.98m, with the integrated lift and stair overrun, toilet, lobby, air conditioning plant structure and pergola structure exceeding the height limit by 2.85m. This is a proposed variation of 3.3% - 9.6% to a small portion of the development on site.

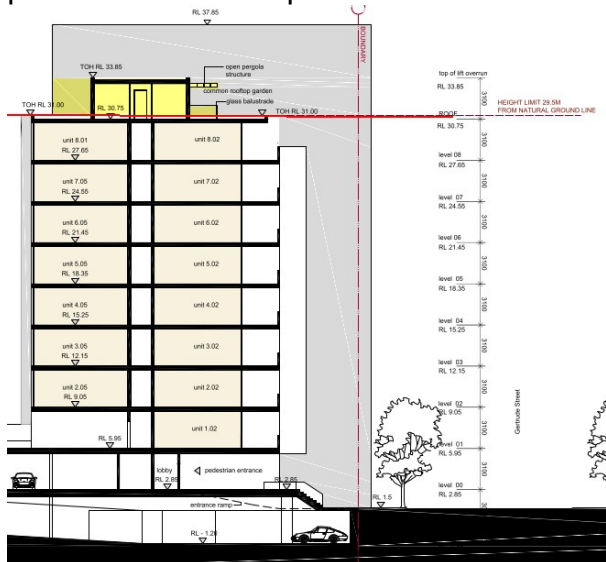


Figure 4 - Proposed height variation

### Applicants Height Justification

A summary of the key arguments of the applicant's clause 4.6 arguments in respect of the height development standard are as follows;

- The proposed height is similar to or less than that existing, approved and/or under construction in the surrounding locality.

- *The predominant building envelope complies with the standard.*
- *Elements exceeding the height limit do not materially add to the buildings height, bulk and scale and account for a limited portion of the building footprint.*
- *All habitable accommodation is contained within the height limit.*
- *The proposal will not result in any material environmental impacts to the adjoining and adjacent properties in terms of overshadowing, aural/visual privacy and natural ventilation.*
- *The height will not set an undue precedent and the development standard has been consistently varied in the surrounding locality.*
- *The proposal satisfies the objectives of the zone and height standard.*

### Height Discussion

The applicants written request is satisfactory in regard to addressing clause 4.6(3). Following a review of the application, it is considered that the height variation as proposed is acceptable for the following reasons:

- The subject site is flood affected and requires the ground floor level of the development to be raised 1.35m above natural ground level. Should the site have not been constrained in this manner, the proposed balustrades at rooftop level would have complied with the maximum height limit for the site. Notwithstanding, the glass balustrades proposed are clear and recessed in from the edge of the building, which ensures they are not visually apparent and do not detract from the overall height of the building as proposed. Additionally the balustrades are required to ensure the safety of users of the rooftop communal open space area and to satisfy the requirements of relevant Building Code of Australia provisions.
- Should a deduction of 1.35m be given due to the aforementioned flooding constraint, the lift and stair overrun, toilet, lobby and pergola structures remain an additional 1.5m over the maximum height limit. Notwithstanding the additional height of these structures is supported in this instance on the basis below.
- The proposed structures are recessed into the design of the development, minimizing their visual bulk and prominence. The proposed structures will not be clearly visible from the public domain at pedestrian level, will not affect the visual perception of the overall built form of the proposed building, nor the land use intensity at the site.
- The proposed structures are directly correlated to the design, function and intended use of the development and rooftop communal open space area which forms an integral part of the proposed development. Structures service the rooftop communal open space area which has been provided to benefit the future occupants of the site.
- The proposed area of height non compliance is not considered to result in a size or scale of development that is incompatible with the desired future character of the locality. The proposal is of a height which is commensurate with approved and emerging residential building heights within the context of the subject site.
- The height of proposed structures is not inconsistent with the aims of the Building Height control as referred to within the Apartment Design Guide.
- The proposal is consistent with the objectives of Clause 4.3 – Height of Buildings of Rockdale



LEP 2011 as it maintains satisfactory sky exposure to nearby buildings and the public domain and does not contribute to adverse overshadowing of living / private open space areas of neighbouring properties.

Given the site and development circumstances as discussed above, the proposed additional height sought by the applicant is not considered to be unreasonable in this instance and is supported.

#### Variation Sought - FSR

The proposal further seeks to vary the FSR standard for the site as noted in Clause 4.4 - FSR. A maximum FSR of 2.2:1 applies to the subject site, this equates to a maximum gross floor area of 2208.8sq/m. The proposal has an overall GFA of 2535.86sq/m and overall FSR of 2.52:1, which is 327.6sq/m (14.3%) in excess of that permitted.

#### Applicants FSR Justification

A summary of the key arguments of the applicant's clause 4.6 arguments in respect of the FSR development standard are as follows;

- *The overall design fits comfortably within the established and likely future built form context of the wolli creek precinct. Previous DCP 62 recommended that development blocks or precincts be broken up (from 2 - 3 buildings) to accommodate taller building forms so that the floor space could be redistributed and which would improve the amenity for all existing and future dwellings and residents.*
- *The proposed built form is not dissimilar to other buildings in the surrounding locality.*
- *The density proposed produces a similar scale (if not less than) and appearance of adjacent development.*
- *The height build and scale of the development will not set an undue precedent as there is only one remaining consolidated site at 11-13 Gertrude Street that is not as yet the subject of a DA. The remainder of Gertrude Street has been redeveloped (approved, built form existing or under construction) and of which the majority depart from the FSR standard.*
- *The proposal will not result in any material environmental impacts to adjoining properties in terms of overshadowing, visual privacy, natural ventilation etc.*
- *The size of the numerical departure does not materially add to the bulk and scale of the built form. The proposed development sits comfortably within the established, approved and likely future locational context and the proposed FSR is comparable to other properties which have undergone redevelopment.*
- *Council would not be setting a precedent by varying the FSR control as proposed as the FSR control has been varied to similar degree on similar development.*
- *Removing the non compliance would not significantly alter the perceived scale or density of the development when viewed from the public domain or surrounding development.*
- *The proposal will improve the visual character of the area.*
- *Proposed built form has been designed to physically and architecturally complement the adjoining development and provides visual interest through consistent vertical modulation.*
- *Landscaped area provided on site exceeds that required.*
- *The site is proportioned to allow the efficient realization and internalization of the impacts of the additional floor space without an adverse visual impact or perceived built form dominance.*

## FSR Discussion

The applicants written request is satisfactory in regard to addressing clause 4.6(3). Following a review of the application, it is considered that the FSR variation as proposed is acceptable for the following reasons:

- The design of the development results in a visually cohesive streetscape response with the adjoining western neighbouring development at 1-5 Gertrude Street which is nearing completion. The proposal provides a development with an appropriate built form, height, intensity and public domain response and contributes to the emerging streetscape character of Gertrude Street.
- The proposed building depth on site has been designed to be parallel to the splayed front property boundary, resulting in the rear building alignment continuing the approved, established and stepped rear building line of the directly adjoining western neighbour. The footprint of the proposed development results in a building form on site which is complimentary to building forms established, approved and emerging within the subject street block and context of the subject site.
- Although the proposal exceeds the maximum density permitted on the subject site the resulting bulk, scale, mass and form of the development as proposed is entirely consistent with the future desired character of area as envisaged by DCP 2011. Furthermore the subject site is of a depth which facilitates and accomodates the proposed building footprint without resulting in adverse amenity impacts on site or to neighbouring properties.
- Apartment layouts as designed maximize solar access, cross ventilation and outlook to optimize internal amenity for future occupants.
- The redevelopment of the site will facilitate a development whose built form which does not result in adverse environmental planning impacts upon adjoining or nearby properties in terms of overshadowing, aural and visual privacy, solar access, natural ventilation and views & vistas.
- The proposed development will not set an undue precedent given the circumstances of the site and development as noted above.
- The proposal is consistent with the following and is in the public interest:
  - a. Objectives of SEPP 65,
  - b. Aims of Part 2D – Floor Space Ratio of the Apartment Design Guide.
  - c. Objectives of the R4 – High Density Residential zone.
  - d. Objectives of Clause 4.4 – FSR

Given the site and development circumstances as discussed above, the proposed additional height and FSR sought by the applicant in this instance are not considered to be unreasonable. Given the above, the proposal provides for a development that facilitates the orderly economic development of the site in an appropriate manner. The particular circumstances of the site are considered to outweigh strict adherence to the numeric standards presented by the Height and FSR standards within RLEP 2011. It is considered that in this instance, there are sufficient environmental planning grounds and site circumstances in which to justify the contravention of the height and FSR standards for the site.

#### 5.9AA Trees or vegetation not prescribed by development control plan

The proposal seeks to remove 4 trees (Mulberry / Large Leafed Privet /2 x Camphor Laurel) along the rear boundary of the subject site. Correspondence submitted with the application from a qualified Arborist states that the aforementioned trees are *"self-sown species not worthy of retention."*

The proposal was reviewed by Council's Tree Preservation Officer who stated that existing site vegetation is exempt under Clause 4.1.7 of DCP 2011 and may be removed as they are either exempt noxious weeds or self sown undesirable trees.

It was further stated that more than adequate tree and landscape compensation is provided in the proposed landscape works on site. The proposal is deemed to be consistent with the requirements and objectives of this clause.

#### 6.1 Acid Sulfate Soil - Class 3

The subject site is affected by Class 3 Acid Sulfate Soils. As per the provisions of Clause 6.1 of Rockdale LEP 2011, works in excess of 1m below natural ground levels may disturb ASS and as such an Acid Sulfate Soils Management Plan is required to be submitted to Council.

A Detailed Site Investigation Report E22573 AA dated 31 July 2015 undertaken by Environmental Investigations was submitted to Council and noted that given the peroxide oxidisable sulphur within the soil on site, an acid sulfate soils an Acid Sulfate Soils Management Plan is required to be prepared.

On 5th April 2016 an Acid Sulfate Soils Management Plan was submitted to Council, which details appropriate management of ASS and methods of disposal. The proposal is consistent with the requirements and objectives of this clause.

#### 6.2 Earthworks

Earthworks including excavation are required on site for basement car parking levels. The objectives and requirements of Clause 6.2 of RLEP 2011 have been considered in the assessment of this application. It is considered that the proposed earthworks and excavation will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land. The proposal meets the objectives of this clause.

#### 6.6 Flood Planning Land

The site is affected by flooding and accordingly, the proposed development will require protection from possible flooding by setting minimum RLs / floor levels. The applicant submitted a Flood Advice Letter with the Development Application, indicating the minimum floor levels required for the proposed development on the subject site. The proposal has been designed to ensure that driveway crossings and floor levels are above the 100 year street flood level at 2.85RL. The proposal is satisfactory in regards to flooding.

#### 6.7 Stormwater

The proposal involves the construction of a storm water system to manage storm water. The proposed storm water system will drain to the easement at the rear of the property. Council's development engineer has recommended standard conditions to be included in the draft Notice of Determination to ensure that the discharge of storm water complies with Rockdale Technical Specification for Stormwater Management with appropriate certification and checklists to be completed and received by Council prior to release of the Construction Certificate.

### 6.12 Essential services

Services will generally be available on the site. Additional conditions have been incorporated in the draft Notice of Determination requiring consultation with relevant utility providers in regards to any specific requirements for the provision of services on the site.

### **S.79C(1)(a)(ii) - Provisions of any Draft EPI's**

No relevant proposed instruments are applicable to this proposal.

### **S79C(1)(a)(iii) - Provisions of any Development Control Plan**

The following Development Control Plan is relevant to this application:

#### **Rockdale Development Control Plan 2011**

The application is subject to Rockdale DCP 2011. A compliance table for the proposed development is provided below:

<b>Relevant clauses</b>	<b>Compliance with objectives</b>	<b>Compliance with standard/provision</b>
4.1.1 Views and Vista	Yes	Yes - see discussion
4.1.3 Water Management	Yes	Yes
4.1.3 Flood Risk Management	Yes	Yes
4.1.3 Groundwater Protection	Yes	Yes
4.1.4 Soil Management	Yes	Yes - see discussion
4.1.5 Contaminated Land	Yes	Yes - see discussion
4.1.7 Tree Preservation	Yes	Yes
4.1.9 Lot size and Site Consolidation - Residential flat buildings	Yes	No - see discussion
4.2 Streetscape and Site Context - General	Yes	Yes - see discussion
4.4.1 Energy Efficiency - Residential	Yes	Yes - see discussion
4.4.4 Glazing - General Controls	Yes	Yes
4.4.5 Visual privacy	Yes	Yes - see discussion
4.4.5 Acoustic privacy	Yes	Yes - see discussion
4.4.7 Wind Impact	Yes	Yes - see discussion
4.5.1 Social Equity - Housing Diversity and Choice	Yes	No - see discussion
4.5.2 Social Equity - Equitable Access	Yes	Yes - see discussion
4.6 Car Park Location and Design	Yes	Yes
4.6 Vehicles Enter and Exit in a Forward Direction	Yes	Yes - see discussion
4.6 Basement Parking - General	Yes	No - see discussion
4.6 Driveway Widths	Yes	Yes - see discussion
4.6 Basement Parking - Residential Flat Buildings	Yes	No - see discussion
4.6 Access to Parking	Yes	Yes
4.6 Design of Loading Facilities	Yes	Yes - see discussion
4.6 Car Wash Facilities	Yes	No - see discussion
4.6 Pedestrian Access and Sustainable Transport	Yes	Yes - see discussion

<b>Relevant clauses</b>	<b>Compliance with objectives</b>	<b>Compliance with standard/provision</b>
4.7 Air Conditioning and Communication Structures	Yes	Yes - see discussion
4.7 Waste Storage and Recycling Facilities	Yes	Yes - see discussion
4.7 Service Lines/Cables	Yes	Yes - see discussion
4.7 Servicing - Wolli Creek and bonar Street	Yes	Yes - see discussion
4.7 Laundry Facilities and Drying Areas	Yes	Yes
4.7 Letterboxes	Yes	Yes
4.7 Hot Water Systems	Yes	Yes - see discussion
5.2 RFB - Lift Size and Access	Yes	No - see discussion
7.1.2 Wolli Creek Vision	Yes	Yes
7.1.3 Wolli Creek Structure Plan	Yes	Yes
7.1.4 Wolli Creek Land Use Strategy	Yes	Yes
7.1.5 Wolli Creek Road Network and Vehicular Access	Yes	No - see discussion
7.1.8 - Wolli Creek Residential Street Frontage	Yes	No - see discussion
7.1.9 Wolli Creek - Environmental Management	Yes	Yes

#### 4.1.1 Views and Vista

The proposed development does not result in adverse view loss impacts.

#### 4.1.4 Soil Management

A Soil & Water Management Plan has been submitted and general erosion and sediment control strategies are proposed to ensure that the potential for impact on adjoining land and surrounding waterways is minimized. Temporary fencing is to be erected along the boundaries of the site. A builders all weather access is required to be provided onto the site. The proposal satisfies the provisions of this clause.

#### 4.1.5 Contaminated Land

The matter of contamination and remediation has been previously discussed within this report.

#### 4.1.9 Lot size and Site Consolidation - Residential flat buildings

As per the requirements of this clause a minimum lot width of 24m is required. The subject site comprises a lot width of 22.63m and does not comply with this requirement, comprising a deficiency of 1.37m.

Notwithstanding the above, the subject site is considered to be of sufficient overall dimensions and area in order to facilitate redevelopment as a stand alone site. The width deficiency does not result in design issues and the site is capable of accommodating the required carparking, vehicular access and landscaping required.

The subject site does not result in the isolation of adjoining properties and given the recent approval upon 15-17 Gertrude Street, the redevelopment of the subject site on its own is supported, as it will facilitate the amalgamation of the two remnant lots fronting Gertrude Street, numbers 11 and 13 as a separate development site.

The proposal is satisfactory with respect to the objectives of this clause.

#### 4.2 Streetscape and Site Context - General

As noted within the SEPP 65 section of this report, the proposal is visually consistent with its established western neighbour fronting Gertrude Street and provides an appropriate streetscape response.

#### 4.4.1 Energy Efficiency - Residential

The applicant has submitted a BASIX Certificate for the proposed development 647613M\_03. The commitments made result in reductions in energy and water consumption, and will achieve the efficiency target set under SEPP BASIX.

#### 4.4.5 Visual privacy

The proposed development provides a building which is built to side boundaries. Balconies fronting Gertrude Street and the rear of the site are provided with blade walls, which ensure overlooking of adjoining properties does not arise.

The development incorporates a 19m building setback to the rear property boundary and as such appropriate building separation can be achieved with the future redevelopment of properties to the rear fronting Innesdale Road.

The proposal is considered to be satisfactory with respect to visual privacy.

#### 4.4.5 Acoustic privacy

The proposal was accompanied by an Acoustic Report prepared by Renzo Tonin & Associates dated 5 August 2015. The report considered aircraft, traffic, plant and internal noise transmission, making recommendations to ensure appropriate internal acoustic amenity is achieved. The proposal is considered to be satisfactory with regard to acoustic amenity and satisfies the objectives of this clause.

#### 4.4.7 Wind Impact

A Pedestrian and Wind Environment Study (WC539-01AF03(REV0) prepared by Wind Tech was submitted with the application. Additionally revised correspondence was submitted on 5th April and 23 June 2016. The submitted documents provide the following recommendations:

1. The inclusion of recommended densely foliating trees capable of growing to a height of 3m with a 3m wide canopy along the north-eastern boundary of the subject development site.
2. The wind conditions can be further enhanced with the inclusion of 1.5m high impermeable screens along the perimeter of the eastern stairway
3. Optional - The inclusion of additional densely foliating vegetation as indicated in the architectural drawings is expected to further enhance the localized wind conditions.
4. The inclusion of densely foliating shrubs, capable of growing to a height of at least 1.5m within and along the perimeter of the Level 1 communal terrace.
5. The inclusion of a densely foliating tree capable of growing to at least 4m high with 4m wide canopy to the north of the common deck area on Level communal terrace.
6. The inclusion of a 2m high impermeable screen along the southern perimeter of the communal roof terrace.
7. The inclusion of the proposed balustrade along the remaining perimeter of the communal roof terrace.
8. The inclusion of additional densely foliating vegetation such as shrubs within the proposed

planter areas along the eastern and western perimeter edge of the communal roof terrace as indicated in the architectural drawings.

The above items will be conditioned and required to be implemented on site to ensure appropriate wind amelioration on site. The proposal is satisfactory with respect to the provisions of this clause.

#### 4.5.1 Social Equity - Housing Diversity and Choice

The proposal indicates the following mix of units on site. Variations are proposed to the number of 1 and 2 bedroom units within the development.

<b><i>DCP Requirement</i></b>	<b><i>Proposed</i></b>	<b><i>Complies</i></b>
Studio / 1 bedroom 10% (4) - 20% (8)	1 studio / 17 x 1 bed (50%)	No
2 bedroom 50% (18) - 75% (27)	12 x 2 bed (33.3%)	No
3 bedroom 10% (4) - 30% (11)	6 x 3 bed 10% (16.7%)	Yes

Notwithstanding the above, the proposal provides for a range of housing within the development to cater to diverse household types. The proposal provides for a range of housing options which will enable changing lifestyle needs and cater to different income groups. The proposal is considered to be consistent with the objectives of this clause. A variation in this instance is deemed satisfactory.

#### 4.5.2 Social Equity - Equitable Access

The requirements of DCP 2011 require the provision of 10% (4) adaptable units within the development with 20% (8) dwellings within the development to comprise barrier free access. The proposal complies with these requirement, providing 4 adaptable dwellings, with barrier free access provided to all units within the development.

#### 4.6 Vehicles Enter and Exit in a Forward Direction

The proposal has been designed with internal maneuvering areas to enable vehicles to enter and exit the site in a forward direction. The location of the proposed car parking areas on site do not dominate or detract from the appearance of the development or the streetscape. The proposal is consistent with the requirements and objectives of this clause.

#### 4.6 Basement Parking - General

It is noted that the proposed basement level on site extends beyond the footprint of the proposed development. Notwithstanding, it is important to note that 100sq/m of deep soil planting has been provided along the rear boundary of the subject site with ample landscaping proposed within this area. Further, appropriate storm water management is proposed on site and as such the protrusion of the basement level beyond the building footprint is not unreasonable in this instance and the proposal satisfies the objectives of this requirement.

#### 4.6 Driveway Widths

A loading bay for a Small Rigid Vehicle (SRV) for the development is proposed within the front setback of the subject site, along with a tandem passing bay for vehicles to enable safe vehicular movement in and out of the site. This area is proposed to be provided as concrete grass tiles, to delineate this area from the adjoining concrete driveway and ensure an appropriate visual outcome from the public domain. The proposal complies with the provisions of this clause.



#### 4.6 Basement Parking - Residential Flat Buildings

DCP 2011 requires that all car parking for residential flat buildings is to be provided within a basement car park, with the exception of any required accessible or visitor parking which may be provided at-grade.

The proposed development incorporates residential car parking at grade in addition to visitor spaces. It is noted however that ground level parking is provided behind the primary active residential frontage and communal lobby areas to Gertrude Street. Given parking areas are obscured from view the provision of residential parking in this location is not unreasonable.

The proposal is considered satisfactory with regard to the objectives of this clause.

#### 4.6 Design of Loading Facilities

A loading bay for a Small Rigid Vehicle (SRV) for the development is proposed within the front setback of the subject site, along with a tandem passing bay for vehicles to enable safe vehicular movement in and out of the site. This area is proposed to be provided as concrete grass tiles, to delineate this area from the adjoining concrete driveway and ensure an appropriate visual outcome from the public domain. The proposal complies with the provisions of this clause.

#### 4.6 Car Wash Facilities

Revised plans depict the provision of a car wash bay within a visitor space at ground level. It is noted however that the car wash bay as proposed does not comply with the required dimensions as Rockdale Technical Specification - Stormwater Management. The proposal has been conditioned to ensure compliance and satisfies the objectives of this clause.

#### 4.6 Pedestrian Access and Sustainable Transport

The proposal incorporates a total of 5 bicycle and 3 motorbike spaces within the development, complying with the requirements of DCP 2011.

#### 4.7 Air Conditioning and Communication Structures

Plans do not depict the location of proposed air conditioning units on site. The proposal has been conditioned appropriately.

#### 4.7 Waste Storage and Recycling Facilities

The proposed development provides for an appropriately sized and dimensioned waste storage room at ground level. The proposed development integrates garbage chutes into the building for ease of waste management for future occupants.

Garbage collection from the site will occur via Gertrude Street, with bins to be returned to on site storage room as promptly as possible by the Building Manager, following collection. The proposal is satisfactory with respect to the provisions of this clause.

#### 4.7 Service Lines/Cables

Plans indicate the provision of services i.e. hydrant booster and substation adjoining the residential entry to the development, yet concealed within the building envelope. The proposed location of these services is satisfactory.

#### 4.7 Servicing - Wolli Creek and Bonar Street

The proposal has been conditioned accordingly to ensure power lines along the frontage of the site to Gertrude Street are under-grounded at the expense of the developer.

#### 4.7 Hot Water Systems

Plans illustrate gas hot water systems built into the sides of unit balconies. The proposal satisfies the requirements of this clause.

#### 5.2 RFB - Lift Size and Access

The requirements of this clause require that each dwelling on a level above the sixth storey is to have access to two lifts. The proposed development incorporates a dual lift core, providing lift access from basement to rooftop levels within the development.

The provisions of this clause further require a minimum corridor width of 2m. The proposal comprises common corridors being 1.5m in width with 1.2m in some areas. This is 0.52m - 0.8m deficient of the 2m corridor width required by DCP 2011. Notwithstanding the proposal has been conditioned to require that the common corridors within the development be provided at 1.5m for their entire length. The provision of a 1.5m wide corridor is considered to be sufficient to enable suitable access and maneuverability, in particular of bulky items within the development. In this regard the variation is supported.

#### 7.1.5 Wolli Creek Road Network and Vehicular Access

The proposal does not comply with the requirements of this clause, in that vehicular access to the subject site is proposed via the Gertrude Street frontage. It is noted that the site is constrained by a drainage easement to the rear of the property, with the development nearing completion at 1-5 Gertrude Street not burdened by any easement to enable vehicular access to the subject site.

A recent approval at 15-17 Gertrude Street incorporates vehicular access via Robert Lane, yet given 11 and 13 Gertrude Streets are not as yet subject to a development proposal, the subject site does not comprise any other alternative means for vehicular access.

Given the above, the provision of vehicular access via Gertrude Street is not considered to be unreasonable in this instance.

#### 7.1.8 - Wolli Creek Residential Street Frontage

The subject site is affected by the 'Residential Street Frontage' to Gertrude Street. Accordingly a 5.5m front setback to Gertrude Street is required, with residential ground floor units accessed from the street and front gardens within the setback area.

The proposal complies with the 5.5m setback requirement, yet the 1 x 1 bedroom unit at ground level is not provided with independent street access or a private front garden.

Plans indicate the provision of a ground level balcony fronting Gertrude Street to unit 0.01, which overlooks and is partially obscured by dense planting within the front setback of the site.

The ground level unit is not provided with independent access given its proximity to the lobby and main front entrance. As such, the aforementioned variations in this instance are not considered to be unreasonable.

### **S.79C(1)(a)(iv) - Provisions of regulations**

All relevant provisions of the Regulations have been taken into account in the assessment of this proposal.

### **S.79C(1)(b) - Likely Impacts of Development**

#### **Safety & Security**

The development provides for a clearly identifiable and legible building entry to Gertrude Street. The residential lobby comprises direct pedestrian access and is glazed to provide a high level of visibility to the street. Residential apartments, communal open space & car parking areas will be accessible via a secure electronic system. Common areas are proposed to be well lit with clearly defined pathways.

The proposal is satisfactory in this regard.

#### **Social Impact**

The proposal includes residential units of adequate size and mix for the demographics of the locality. Proposed residential units have access to good public transport which will assist in the reduction of car use, and the proposal incorporates alternative transportation modes, via the provision of bicycle and motorbike parking. The proposal further provides well designed and located communal areas with facilities which will encourage social interaction between future occupants on site. The proposed development is not considered to result in any adverse social impacts and is satisfactory for the site.

### **S.79C(1)(c) - Suitability of the site**

The relevant matters pertaining to the suitability of the site for the proposed development have been considered in the assessment of the proposal. Additional conditions of consent are proposed to further minimise any impacts on neighbouring properties. There are no known major physical constraints, environmental impacts, natural hazards or exceptional circumstances that would hinder the suitability of the site for the proposed development.

### **S.79C(1)(d) - Public submissions**

The development has been notified in accordance with the provisions of Rockdale DCP 2011. Council did not receive any submissions on this proposal.

### **S.79C(1)(e) - Public interest**

The proposal has been assessed against the relevant planning policies applying to the site having regard to the objectives of the controls. As demonstrated in the assessment of the development application, the proposal will allow the development of the site in accordance with its environmental capacity. The proposed building is a high quality building that will add architectural value to the existing streetscape. Furthermore, the proposal does not create unreasonable impacts on surrounding properties. As such it is considered that the development application is in the public interest.

### **S94 Contribution towards provision or improvement of amenities or services**

S94 Contributions apply to the proposed development given the increase in residential demand to local services and infrastructure. The proposal has been conditioned accordingly.

## **Schedule 1 - Draft Conditions of consent**

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## General Conditions

The following conditions restrict the work to the detail provided in the Development Application and are to ensure that the development is complete.

1. The term of this consent is limited to a period of five (5) years from the date of approval. The consent will lapse if the development does not commence within this time.
2. The development must be implemented substantially in accordance with the plans listed below, the application form and on any supporting information received with the application, except as may be amended in red on the attached plans and by the following conditions.

10/06/2016

<b>Plan/Dwg No.</b>	<b>Drawn by</b>	<b>Dated</b>	<b>Received by Council</b>
Basement 1 DA2.01 Rev E	Marchese Partners Pty Ltd	10/06/2016	18/07/2016
Level 00 Plan DA2.02 Rev F	Marchese Partners Pty Ltd	23/08/2016	24/08/2016
Level 1 Plan DA2.03 Rev F	Marchese Partners Pty Ltd	23/08/2016	24/08/2016
Level 2 Plan DA2.04 Rev E	Marchese Partners Pty Ltd	10/06/2016	18/07/2016
Level 3 Plan DA2.05 Rev E	Marchese Partners Pty Ltd	10/06/2016	18/07/2016
Level 4 Plan DA2.06 Rev E	Marchese Partners Pty Ltd	10/06/2016	18/07/2016
Level 5 Plan DA2.07 Rev E	Marchese Partners Pty Ltd	10/06/2016	18/07/2016
Level 6 Plan DA2.08 Rev E	Marchese Partners Pty Ltd	10/06/2016	18/07/2016
Level 7 Plan DA2.09 Rev E	Marchese Partners Pty Ltd	10/06/2016	18/07/2016
Level 8 Plan DA2.10 Rev E	Marchese Partners Pty Ltd	10/06/2016	18/07/2016
Roof Plan DA2.11 Rev E	Marchese Partners Pty Ltd	10/06/2016	18/07/2016
North Elevation DA3.01 Rev E	Marchese Partners Pty Ltd	10/06/2016	18/07/2016
South Elevation DA3.02 Rev E	Marchese Partners Pty Ltd	10/06/2016	18/07/2016
East Elevation DA3.03 Rev E	Marchese Partners Pty Ltd	10/06/2016	18/07/2016
West Elevation DA3.04 Rev E	Marchese Partners Pty Ltd	10/06/2016	18/07/2016
Section AA DA4.01 Rev E	Marchese Partners Pty Ltd	10/06/2016	18/07/2016
Section Entrance Ramp Rev F	Marchese Partners Pty Ltd	23/08/2016	24/08/2016

3. All new building work must be carried out in accordance with the provisions of the Building Code of Australia (BCA).
4. **A Construction Certificate must be obtained from Council or an Accredited Certifier prior to any building work commencing.**
5. The development must be implemented and all BASIX commitments thereafter maintained in accordance with BASIX Certificate Number 647613M\_04 other than superseded by any further amended consent and BASIX certificate.  
**Note:** Clause 145(1)(a1) of the Environmental Planning & Assessment Regulation 2000 provides: A certifying authority must not issue a construction certificate for building work unless it is satisfied of the following matters: -
  - (a1) that the plans and specifications for the building include such matters as each relevant BASIX certificate requires.**Note:** Clause 154B(2) of the Environmental Planning & Assessment Regulation 2000 provides: "A certifying authority must not issue a final occupation certificate for a BASIX affected building to which this clause applies unless it is satisfied that each of the commitments whose fulfilment it is required to monitor has been fulfilled."  
Note: For further information please see <http://www.basix.nsw.gov.au>.
6. Balconies shall not be enclosed at any future time without prior development consent.
7. This approval is not to be construed as permission to erect any structure on or near a boundary contrary to the provisions of the Dividing Fences Act.
8. The materials and façade details approved under condition 2 and any other relevant condition of this consent shall not be altered or amended at the construction certificate stage without a prior S96 application and approval under the EP&A Act.
9. Mail boxes must be installed along the street frontage of the property boundary in accordance with Australia Post Guidelines. Prominent house numbers are to be displayed, with a minimum number size of 150 mm in height for each number and letter in the alphabet.
10. All works are to be carried out in accordance with the integrated development conditions provided by the NSW Office of Water and listed within this consent.
11. Parking spaces shall be allocated to residential apartments / non-residential units in the development in the following manner and this shall be reflected in any subsequent strata subdivision of the development:

#### **Allocated Spaces**

Studio apartments Nil spaces

1 bedroom apartments 0.6 space per dwelling

2 bedroom apartments 0.9 space per dwelling

3 bedroom apartments 1.4 spaces per dwelling

#### **Non-Allocated Spaces**

Residential Visitor Spaces 1 space per 5 apartments

1 dedicated car wash bay

1 SRV loading / unloading bay

Parking calculations that are not whole numbers must be rounded up to the nearest whole number.

All residential visitor spaces, car wash bays and loading bays shall be labelled as common property on the final strata plan for the site.

Note: This parking allocation condition applies to any Strata Certificate issued with

respect to a Consent issued in accordance with Section 81 (1)(A) of the *Environmental Planning and Assessment Act 1979* or a Complying Development Certificate issued in accordance with Part 6 of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

## **Development specific conditions**

The following conditions are specific to the Development Application proposal.

12. Loading and unloading within the site shall be restricted to commercial vehicles not exceeding the size and mass description of the SRV from AS2890.2:2002. Commercial vehicles greater in size and mass than the SRV are not permitted to enter the site. Loading areas are to be used only for the loading and unloading of goods, materials etc. not for any other purpose.
13. Parking spaces shall not be enclosed without further approval of Council. The enclosure of car spaces is not permitted unless the enclosure complies with the design requirements of AS2890.1.
14. The existing and future owners (Registered Proprietor) of the property will be responsible for the operation and maintenance of the rain tank-pump system. The registered proprietor will:
  - (i) permit stormwater to be temporarily detained by the system;
  - (ii) keep the system clean and free of silt, rubbish and debris;
  - (iii) maintain, renew and repair the whole or parts of the system so that it functions in a safe and efficient manner, and in doing so complete the same within the time and in the manner specified in written notice issued by the Council;
  - (iv) carry out the matters referred to in paragraphs (ii) and (iii) at the proprietor's expense;
  - (v) not make any alterations to the system or elements thereof without prior consent in writing of the Council;
  - (vi) permit the Council or its authorised agents from time to time upon giving reasonable notice (but at any time and without notice in the case of emergency) to enter and inspect the land for compliance with the requirements of this clause;
  - (vii) comply with the terms of any written notice issued by the Council in respect to the requirements of this clause within the time stated in the notice.
15. The rainwater tank shall be routinely de-sludged and all contents from the de-sludging process disposed – solids to the waste disposal and de-sludged liquid to the sewer.
16. The contaminated site shall be remediated in accordance with 'State Environmental Planning Policy No 55 Remediation of Land' (SEPP55). All remediation and validation works shall be carried out in accordance with the Site Remedial Action Plan called – Remediation Action Plan 7-9 Gertrude Street Wolli Creek NSW Report E22573 AB rev2 prepared by Environmental Investigations Australia dated 22 June 2016.
17. The use of the premises, building services, equipment, machinery and, ancillary fittings shall not give rise to an "offensive noise" as defined under the provisions of the Protection of the Environment Operations Act, 1997.
18. The use of mechanical plant including air conditioners, fans, compressors, condensers, freezers, swimming pool or spa pumps (whether commercial or domestic) shall not cause sound pressure levels in excess of the criteria given in the

NSW Industrial Noise Policy – 2000.

19. Residential air conditioners shall not cause 'offensive noise' as defined by the Protection of the Environment Operations Act 1997 or contravene provisions of the Protection of the Environment (Noise Control) Regulation 2008 where emitted noise from a residential air conditioner can be heard within a habitable room in any other residential premises at night.
20. Temporary dewatering of the site to enable the construction of the subsurface structure shall not be carried out unless a permit has been issued pursuant to the Water Management Act 2000, and, in the case where water is to be pumped into the public road, a permit has been issued pursuant to the Roads Act 1993.
21. The visible light reflectivity from building materials used on the façade of the building shall not exceed 20% and shall be designed so as not to result in glare that causes any nuisance or interference to any person or place. A statement demonstrating compliance with these requirements shall be submitted to the satisfaction of the Certifying Authority prior to the issue of a Construction Certificate for the relevant stage of works.
22. The off-street parking areas associated with the subject development shall be designed strictly in accordance with AS2890.1 and AS2890.6.
23. Internal height clearance shall be designed throughout the car park and access driveway in accordance with AS2890.1 and AS2890.6.
24. Commercial vehicle facilities shall be designed strictly in accordance with AS2890.2:2002.
25. All proposed lights shall comply with the Australian Standard AS4282 - 1997 "Control of the Obtrusive Effects of Outdoor Lighting". In this regard, the lighting of the premises shall be directed so as not to cause nuisance to the owners or occupiers of adjacent/adjoining premises or to motorists on adjoining or nearby roads.
26. Hot and cold water hose cocks shall be installed to the garbage room. Services or utility systems shall not be located in the garbage room.
27. The development shall achieve the following minimum equivalent AAAC Star Rating within the below specified areas of the development.
  - 3 Star for tiled areas within kitchens, balconies, bathrooms and laundries. Tiled flooring within corridors, living areas and bedrooms is not permitted.
  - 4 Star for timber flooring in any area.
  - 5 Star for carpet in any area.

The development shall comply with the Building Code of Australia requirement for walls dividing occupancies.

A report shall be submitted to the Principal Certifying Authority for approval prior to the issue of any Construction Certificate. The report is to include BCA requirements and details of floor/ceilings between residential apartments. Floor coverings within apartments shall be identified within the report.

A suitably qualified acoustic engineer with MIE Australia membership or employed by a consulting firm eligible for AAAC membership is to certify that the details provided in the said report satisfy the requirements of this condition, with the certification to be submitted to the Principal Certifying Authority for approval prior to the issue of any Construction Certificate for the relevant stage of works.

28. a) In order to ensure the design quality excellence of the development is retained:
  - i. Marchese Partners Pty Ltd is to have direct involvement in the design



documentation, contract documentation and construction stages of the project;  
ii. The design architect is to have full access to the site and is to be authorized by the applicant to respond directly to the consent authority where information or clarification is required in the resolution of design issues throughout the life of the project;  
iii. Evidence of the design architect's commission is to be provided to the Department prior to release of the Construction Certificate.  
b) The design architect of the project is not to be changed without prior notice and approval of the Council or Department.

29. Where natural ventilation fails to comply with the provisions of the Building Code of Australia, mechanical ventilation shall be provided in accordance with Australian Standard, 1668, Part 2.
30. Any soil disposed of off-site shall be classified in accordance with the procedures in the NSW Environment Protection Authority's Environmental Guidelines: Waste Classification Guidelines (2009).
31. All low voltage street mains in that section of the street/s adjacent to the development shall be placed underground. This shall include any associated services and the installation of underground supplied street lighting columns where necessary. The applicant shall confer with Energy Australia to determine Energy Australia requirements. Written confirmation of Energy Australia's requirements shall be obtained prior to issue of Construction Certificate.
32. Safety & Security

a. Lighting shall be designed to the Australian and New Zealand Lighting Standards. Australia and New Zealand Lighting Standard 1158.1 - Pedestrian, requires lighting engineers and designers to consider crime risk and fear when selecting lamps and lighting levels

b. Where applicable, security mirrors shall be installed within corridors and on blind corners to enable users to see around blind corners

c. A street sign shall be prominently displayed at the front of the development to comply with Local Government Act, 1993, Section 124, Order No 8.

d. Signage shall be erected at entry/exit points and throughout the development to assist users and warn intruders they may be prosecuted.

e. Graffiti resistant materials are to be used to all ground floor external surface areas. Details to be provided prior to the issue of the Construction Certificate.

f. Intercom facilities shall be installed into entry/exit points to enable residents to communicate and identify with people prior to admitting them to the development.

g. Monitored CCTV facilities shall be implemented throughout the development. Areas of focus include the basement car park (including entry and exits), main entry areas to the development and garbage/storage areas. Details to be provided prior to the issue of the Construction Certificate.

33. Landscaping

The following modifications are to be detailed upon podium level landscape and architectural plans prior to the issue of the Construction Certificate.

- a. The garden store room at podium level shall be reduced in size, in order to accommodate an accessible toilet facility in this location.
- b. 1 x 12sq/m pergola structure shall be provided within the accessible podium.
- c. A kitchenette and bbq facility is to be provided within the accessible podium level.
- d. Stormwater and drainage systems are not to be located in, or under those areas shown as landscaped beds, or where proposed trees are located.
- e. Retaining walls used for raised planter beds on concrete slabs shall

accommodate a minimum 800mm of soil/plant mix (over and above any drainage medium).

f. A minimum soil depth of 800mm is required for planted areas (other than turf) on podiums or roof-tops or any other concrete slab.

g. A minimum soil depth of 300mm is required for turfed areas on podiums or roof-tops or any other concrete slab, including the soil above stormwater drainage tanks.

h. The basement carpark shall be screened using a combination of dense planting and mounding.

i. Podium landscaping and paved areas shall be drained into the stormwater drainage system. All waterproofing for planters on slab shall be installed and certified by a licensed waterproofing contractor.

j. All softfall treatments shall satisfy the relevant AS/NZS standards (AS/NZS 4486.1:1997, AS/NZS 4422:1996).

k. All pavements shall comply with AS/NZ 4586:1999 standards Class W (low) for slip resistance on both private and Council property.

The approved completed landscape works shall be maintained for a period not less than 12 months.

On completion of the maintenance period, a Landscape Architect shall provide a report to the certifying authority (with a copy provided to Council if Council is not the principal certifying authority) stating the landscape maintenance has been carried out in accordance with approved landscape plans and designated specifications before release of the nominated landscape bond.

#### 34. INTEGRATED DEVELOPMENT / EXTERNAL AUTHORITIES

The following conditions have been imposed in accordance with Section 91A of the Environmental Planning and Assessment Act 1979.

##### *Sydney Airport Corporation Limited (SACL)*

SACL has approved the maximum height of the proposed building at 38RL relative to Australian Height Datum (AHD). This height is inclusive of all vents, chimneys, aerials, TV antennae and construction cranes etc. No permanent or temporary structure is to exceed this height without further approval from Sydney Airport Corporation Limited.

Note: Under Section 186 of the Airports Act 1996, it is an offence not to give information to the Airport Operator that is relevant to a proposed “controlled activity” and is punishable by a fine of up to 50 penalty units. For further information on Height Restrictions please contact SACL on 9667 9246.

##### NSW OFFICE OF WATER

a. An authorisation shall be obtained for the take of groundwater as part of the activity. Groundwater shall not be pumped or extracted for any purpose other than temporary construction dewatering at the site identified in the development application. The authorisation shall be subject to a currency period of 12 months from the date of issue and will-be limited to the volume of groundwater take identified.

b. The design and construction of the building must prevent any take of groundwater after the authorisation has lapsed by making any below-ground levels that may be impacted by any water table watertight for the anticipated life of the building. Waterproofing of below-ground levels must be sufficiently extensive to incorporate

adequate provision for unforeseen high water table elevations to prevent potential future inundation.

c. Sufficient permanent drainage shall be provided beneath and around the outside of the watertight structure to ensure that natural groundwater flow is not impeded and:

i) any groundwater mounding at the edge of the structure shall be at a level not greater than 10 % above the level to which the water table might naturally rise in the location immediately prior to the construction of the structure; and

ii) any elevated water table is more than 1.0 m below the natural ground surface existent at the location immediately prior to the construction of the structure; and

iii) where the habitable structure is founded in bedrock or impermeable natural soil then the requirement to maintain groundwater flows beneath the structure is not applicable.

d. Construction methods and material used in and for construction shall be designed to account for the likely range of salinity and pollutants which may be dissolved in groundwater, and shall not themselves cause pollution of the groundwater.

e. DPI Water requires documentation (referred to as 'report') comprising measurements, maps, bore logs, calculations, results, discussion and justification for various matters related to the dewatering process. Information will be required at several stages: prior to construction commencing (initial report - which will accompany the application for the authorisation), at any time when an authorisation renewal is required or a significant change in activities occurs (intermediate report); and at the completion of dewatering and related operations (completion report). Reports need to be submitted to DPI Water at Parramatta Office, in a format consistent with electronic retrieval without editing restrictions; raw data should be presented in Excel spreadsheets without editing restrictions.

Prior to excavation

f. The following shall be included in the initial report:

i) measurements of groundwater levels beneath the site from a minimum of three relevant monitoring bores, together with details of the bores used in the assessment including bore logs and three-dimensional identification information.

ii) a map of the site and its immediate environs depicting the water table (baseline conditions) shown relative to the topography and approved construction footprint from the surface level and below. An assessment of the potential variation in the water table during the life of the proposed building together with a discussion of the methodology and information on which this assessment is based.

iii) details of the present and potential groundwater flow paths and hydraulic gradients in and around the site; the latter in response to the final volumetric emplacement of the construction.

iv) a schedule for the ongoing water level monitoring and description of the methodology to be used, from the date of consent until at least two months after the cessation of pumping. [DPI Water prefers that monitoring be undertaken on a continuous basis using automatic loggers in boreholes.

g. The Applicant shall assess the likely impacts of the dewatering activities on other groundwater users or structures or public infrastructure; this assessment will include an appropriate bore, spring or groundwater seep census and considerations relevant to potential subsidence or excessive settlement induced in nearby buildings and property, and be documented together with all calculations and information to support the basis of these in the initial report.

h. Groundwater quality testing of samples taken from outside the footprint of the proposed construction, with the intent of ensuring that as far as possible the natural and contaminant hydrochemistry of the potential dewatered groundwater is understood, shall be conducted on a suitable number of samples and tested by a NATA-certified laboratory. Details of the sampling locations and the protocol used, together with the test results accompanied by laboratory test certificates shall be included in the initial report. An assessment of results must be done by suitably qualified persons with the intent of identifying the presence of any contaminants and comparison of the data against accepted water quality objectives or criteria for the intended dewatering purpose. In the event of adverse quality findings, the Applicant must develop a plan to mitigate the impacts of the hydrochemistry on the dewatered groundwater and present the details of all assessments and plans in the initial report.

i. Groundwater quality testing generally in accordance with Clause 8, shall be undertaken on any anniversary or other renewal or alteration of any dewatering authorisation.

j. A reasonable estimate of the total volume of groundwater to be extracted shall be calculated and included in the initial report; together with details and calculation methods for the parameters and supporting information to confirm their development or measurement (e.g. permeability predicted by slug-testing, pump-testing or other means).

k. A copy of a valid consent for the development shall be provided in the initial report.

l. The method of disposal of pumped water shall be nominated (i.e. reinjection, drainage to the stormwater system or discharge to sewer) and a copy of the written permission from the relevant controlling authority shall be provided in the initial report. The disposal of any contaminated pumped groundwater (sometimes called "tailwater") must comply with the provisions of the Protection of the Environment Operations Act 1997 and any requirements of the relevant controlling authority.

m. Contaminated groundwater (i.e. above appropriate NEPM 2013 thresholds) shall not be reinjected into any aquifer. The reinjection system design and treatment methods to remove contaminants shall be nominated and included in the initial report and any subsequent intermediate report as necessary. The quality of any pumped water that is to be reinjected must be demonstrated to be compatible with, or improve, the intrinsic or ambient groundwater in the vicinity of the reinjection site.

During excavation

n. Engineering measures designed to transfer groundwater around and beneath the basement shall be incorporated into the basement construction to prevent the completed infrastructure from restricting pre-existing groundwater flows.

o. Piping, piling or other structures used in the management of pumped groundwater shall not create a flooding hazard or induce mounding of groundwater. Control of

pumped groundwater is to be maintained at all times during dewatering to prevent unregulated off site discharge.

p. Measurement and monitoring arrangements to the satisfaction of DPI Water are to be implemented. Weekly records of the volumes of all groundwater pumped and the quality of any water discharged are to be kept and a completion report provided after dewatering has ceased. Records of groundwater levels are to be kept and a summary showing daily or weekly levels in all monitoring bores provided in the completion report.

q. Pumped groundwater shall not be allowed to discharge off-site (e.g. adjoining roads, stormwater system, sewerage system, etc.) without the controlling authority's approval and/or owner's consent/s. The pH of discharge water shall be managed to be between 6.5 and 8.5. The requirements of any other approval for the discharge of pumped groundwater shall be complied with.

r. Dewatering shall be undertaken in accordance with groundwater-related management plans applicable to the excavation site. The requirements of any management plan (such as acid sulfate soils management plan or remediation action plan) shall not be compromised by the dewatering activity.

s. The location and construction of groundwater extraction works that are decommissioned are to be recorded in the completion report. The method of decommissioning is to be identified in the documentation.

t. Access to groundwater management works used in the activity is to be provided to permit inspection when required by DPI Water under appropriate safety procedures.

Following excavation

u. Following completion of the dewatering operations, the applicant shall submit to DPI Water, Parramatta Office, the completion report which shall include:

i) detail of the volume of water taken, the precise periods and location of water taken, the details of water level monitoring in all of the relevant bores; and

ii) a water table map depicting the aquifer's settled groundwater condition and a comparison to the baseline conditions; and

iii) a detailed interpreted hydrogeological report identifying all actual resource and third party impacts, including an assessment of altered groundwater flows and an assessment of any subsidence or excessive settlement induced in nearby buildings and property and infrastructure.

iv) The completion report is to be assessed by DPI Water prior to any certifying agency's approval for occupation or use of the completed construction.

35. Access to the planted deep soil zone along the rear boundary of the site is for maintenance purposes only. The doorway within the car parking area at ground level shall be internally signposted "Maintenance Access Only".

### **Prior to issue of the construction certificate**

The following conditions must be completed prior to the issue of the Construction Certificate.

36. The following fees shall be paid to Council prior to the issue of a Construction Certificate. If payment is made after the end of the financial year, the amount shall be adjusted in accordance with Council's adopted fees and charges.
- i. A Footpath Reserve Restoration Deposit of \$9165.15. This is to cover repair of any damages, or other works to be done by Council. This includes construction, removal, or repair as required to: kerb and guttering, existing or new driveways; paved areas and concrete footpaths. The deposit may be lodged with Council in the form of a Bank Guarantee (Any proposed Bank Guarantee must not have an expiry date). The deposit will not be returned by Council until works are completed and all damage is restored and all specified works are completed by Council.
  - ii. An environmental enforcement fee of 0.25% of the cost of the works.
  - iii. A Soil and Water Management Sign of \$17.00.
37. For work costing \$25,000 or more, a Long Service Leave Levy shall be paid. For further information please contact the Long Service Payments Corporation on their Helpline 13 1441.
38. An application for Boundary levels shall be made to Council's Customer Service Centre prior to issue of the Construction Certificate. All boundary works, egress paths, driveways and fences shall comply with this level.  
A fee is payable to Council for the determination of boundary levels. If payment is made after the end of the financial year, the amount shall be adjusted in accordance with Council's adopted fees and charges.
39. A Section 94 contribution of \$616,843.26 shall be paid to Council. Such contributions are only used towards the provision or improvement of the amenities and services identified below. The amount to be paid is adjusted at the time of payment, in accordance with the contribution rates contained in Council's current Adopted Fees and Charges. The contribution is to be paid prior to the issue of any construction certificate for works above the floor level of the ground floor. (Payment of the contribution is not required prior to any separate construction certificates issued only for demolition, site preparation works and the construction of basement levels). The contribution is calculated from Council's adopted Section 94 contributions plan in the following manner:
- Open Space \$344,250.54  
 Town Centre & Streetscape Improvements \$36,889.38  
 Roads, Traffic Management & Public Parking \$132,988.62  
 Flood Mitigation and Stormwater \$56,872.32  
 Pedestrian & Cyclist \$19,048.32  
 Administration and Management \$10,151.94  
 Community Facilities and Services \$16,642.14
- Copies of Council's Section 94 Contribution Plans may be inspected at Council's Customer Service Centre, Administration Building, 2 Bryant Street, Rockdale.
40. Prior to the issue of the Construction Certificate a certificate from a practicing Structural Engineer, registered with NPER, shall be submitted to Council stating that the subsurface structural components located on the boundary of the public road, including but not limited to the slabs, walls and columns, have been designed in accordance with all SAA Codes for the design loading from truck and vehicle loads.
41. In the case of residential building work for which the Home Building Act 1989

requires there to be a contract of insurance or owner builder's permit in force in accordance with Part 6 of that Act, that such a contract or permit is in place.

42. All building materials shall be flood resistant, or flood compatible to a height of 500mm above the 1% AEP flood, or flow level. All internal electrical switches, power points or similar utilities liable to flood damage shall be set at a minimum of 500mm above the 1% AEP flood, or flow level. Details shall be provided and approved prior to the issue of a construction certificate.
43. A suitable qualified engineer is to certify that the structure can withstand the forces of floodwater, scour, debris and buoyancy in a 1% AEP flood event and a PMF event.
44. Where the front fence and or planter boxes are greater than 1200mm in height, the vehicular access area shall be kept clear and the return fences / planter boxes on each side are to be splayed minimum 900mm at an angle of 45 degrees to the boundary. Details of the fence / planter boxes to be included in the documentation accompanying the Construction Certificate.
45. Compliance with Council's Development Control Plan (DCP) 2011 – Requirements for Access. Access in accordance with Australian Standard 4299 must be provided to and within four residential units, and between these units and their allocated carparking spaces. The allocated parking space will be located in close proximity to the access points of the building. Please note that compliance with this condition requires the relevant unit(s) to be constructed to comply with all the essential (Type C) requirements of AS4299.

**Note:** Compliance with Council's Development Control Plan (DCP) 2011 – Requirements for Access and the Building Code of Australia does not necessarily guarantee that the development meets the full requirements of the Disability Discrimination Act (DDA) 1992. It is the responsibility of the applicant to make the necessary enquiries to ensure that all aspects of the DDA legislation are met.

46. The applicant shall confer with Energy Australia to determine if:
  - a. an electricity distribution substation is required.
  - b. installation of electricity conduits in the footway is required.

Written confirmation of Energy Australia's requirements shall be obtained prior to issue Construction Certificate.

47. The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. Plans will be appropriately stamped. For Quick Check agent details please contact Sydney Water.

The consent authority or a private accredited certifier must ensure that a Quick Check agent/Sydney Water has appropriately stamped the plans before issue of any Construction Certificate.

48. Prior to issue of the Construction Certificate, a longitudinal driveway profile shall be submitted to Principal Certifying Authority for assessment and approval. The profile shall start in the centre of the road and be along the critical edge (worst case) of the driveway. Gradients and transitions shall be in accordance with Council's Code. The profile shall be drawn to a scale of 1 to 20 and shall include all relevant levels, grades (%) and lengths.
49. The subsurface structure shall be designed with a waterproof retention system (ie tanking and waterproofing) with adequate provision for future fluctuation of the water



table. The subsurface structure is required to be designed with consideration of uplift due to water pressure and “flotation” (buoyancy) effects. Subsoil drainage around the subsurface structure must allow free movement of groundwater around the structure, but must not be connected to the internal drainage system. The design of subsurface structure, tanking and waterproofing, and subsoil drainage shall be undertaken by a suitably experienced Chartered Professional Engineer(s). Design details and construction specifications shall be included in the documentation accompanying the Construction Certificate.

50. Prior to the issue of the Construction Certificate, amended architectural plans shall be submitted to Principal Certifying Authority PCA for assessment and approval. The amended plans shall incorporate the following;

(a) A visitor parking bay shall accommodate a van loading bay. In addition to the van space to incorporate a SRV loading bay – 3.5m wide and 7m in length in front of the waiting / passing bay in tandem within ground level access open space. The passing bay shall be formed with green porous grass pavers.

(b) A drainage easement 0.875m wide benefitting Council, along the open drainage channel adjoining the rear of the property.

(c) a minimum 1.5m setback from the drainage reserve (measured from the centreline of the channel) for the purposes of an easement to drain water, to enable upgrade to the culvert width and passage of overland flow.

51. Amended stormwater design and plans shall be submitted to the Principal Certifying Authority for assessment prior to the issue of the Construction Certificate. Design certification, in the form specified in Rockdale Technical Specification Stormwater Management, and drainage design calculations are to be submitted with the plans. Council’s Rockdale Technical Specification Stormwater Management sets out the minimum documentation requirements for detailed design plans. Stormwater management requirements for the development site, including the final discharge/end connection point, must comply with Rockdale Technical Specification Stormwater Management.

**Note:** The detailed plans are required to show the basement levels as tanked system.

The amended design plans shall address the following issues:

(a) A rainwater tank is required and the development is required to capture the first 10-20mm of stormwater runoff and detain it for re-use purposes. Refer to 7.1.9 of Rockdale DCP 2011.

The post development stormwater discharge from the site into the Gertrude Street should not exceed the pre development discharge and the discharge must be less than 50 l/s for the combined discharge of the site for the 50 year ARI event.

(b) Stormwater reuse from proposed rain tanks.

The design shall identify, and discuss in detail, the measures put in place to re-use water, maintain groundwater quality, minimise at source generation of water pollutants, and convey stormwater flows through the site

(c) The geotechnical engineer is required to review and comment on proposed stormwater drainage design, mainly the impact on tanked basement / subsoil drains /

permanent dewatering and ground water table.

#### Numerical design standards

- The size of the rainwater storage tank should be sized such that water can be reused without supply from town water for the majority of the year. As a minimum, the storage tank should be capable of storing the first 10-20mm of runoff from the site. Rainwater should be used for landscape irrigation, car washing, and toilet flushing in apartments and general cold water supply at lower levels.
- The rainwater tank should have an overflow at or above the minimum habitable floor level (2.85m AHD).
- The piped drainage within the site should be capable of conveying the 5% AEP flow; and
- Overland flow paths (i.e. situated internally within the building and used when the flow in the piped drainage exceeds the 5% AEP flow) should be capable of conveying the 1% AEP flows.

#### General design standards

- All piped drainage within the development should discharge to the rainwater storage tank; and
- All surface runoff from car park areas should be directed through a proprietary oil treatment system prior to discharge to the rainwater storage tank. NB: Information regarding the treatment system should be supplied including the type of system to be used and the compatibility of the system with regard to the rainwater reuse objective for the development. The proprietary oil treatment system must provide a high quality of water.

#### General controls

- The design should meet water sensitive urban design principles.

52. Prior to the issue of the Construction Certificate a Flood Evacuation Management Plan shall be submitted to Principal Certifying Authority PCA for assessment and approval. The Flood Evacuation Management Plan shall demonstrate whether evacuation provisions are required, and if so how they will be managed. Alternatively, where it is recommended that occupants stay within the building, how is this to be communicated to occupants. In this situation occupants need to escape above the PMF level plus 0.5 m. The plan is also to detail how the flood awareness of owners, residents or occupants, who change through time, can be preserved. The Plan shall be prepared by a suitably qualified and experienced Flood/Hydraulic Engineer.
53. The low level driveway must be designed to prevent inflow of water from the road reserve. The assessment of flows and design of prevention measures shall be in accordance with the requirements of Rockdale Technical Specification Stormwater Management. Details shall be included in the documentation presented with the Construction Certificate application.
54. A dedicated car wash bay is required. A tap shall be provided. A sign shall be fixed saying 'Car Wash Bay'. The runoff shall be directed and treated as per Rockdale Technical Specification Stormwater Management. Details shall be provided with the plans accompanying the Construction Certificate.

The width should be a minimum of 3.5m wide.

55. The plans submitted with the Construction Certificate shall demonstrate compliance with the following prior to the issue of the Construction Certificate:

A). All vertical plumbing, other than roof water heads and down pipes, shall be concealed within the brickwork of the building.

B). All hot water systems/units located on the balcony of a dwelling shall be encased in a recessed box on the balcony with the lid/cover of the box designed to blend in with the building. All associated pipe work is to be concealed.

C). Air conditioning units located upon residential balconies shall not be visible from the public domain.

D). Glass balustrades shall be provided as frosted or opaque.

E). Ceiling heights for habitable areas shall be a minimum of 2.7 metres, and 2.4m for non habitable areas, as measured vertically from finished floor level to the underside of the ceiling.

F). Compliance with the recommendations of the BCA Report dated August 2015 prepared by Steve Watson and Partners. Relevant objectives and design code requirements of the Building Code of Australia 2015 / DDA Premises Standard pertaining to accessible common domain areas and access to all apartments and the Adaptable Housing standard AS4299 for four (4) adaptable units.

G). The following recommendations of the Pedestrian and Wind Environment Study (WC539-01AF03(REV0) prepared by Wind Tech dated 23 June 2016 are to be depicted upon plans and implemented on site.

- The inclusion of recommended densely foliating trees capable of growing to a height of 3m with a 3m wide canopy along the north-eastern boundary of the subject development site.
- The wind conditions can be further enhanced with the inclusion of 1.5m high impermeable screens along the perimeter of the eastern stairway
- The inclusion of additional densely foliating vegetation as indicated in the architectural drawings is expected to further enhance the localized wind conditions.
- The inclusion of densely foliating shrubs, capable of growing to a height of at least 1.5m within and along the perimeter of the Level 1 communal terrace.
- The inclusion of a densely foliating tree capable of growing to at least 4m high with 4m wide canopy to the north of the common deck area on Level communal terrace.
- The inclusion of a 2m high impermeable screen along the southern perimeter of the communal roof terrace.
- The inclusion of the proposed balustrade along the remaining perimeter of the communal roof terrace.
- The inclusion of additional densely foliating vegetation such as shrubs within the proposed planter areas along the eastern and western perimeter edge of the communal roof terrace as indicated in the architectural drawings.

H) A single antenna shall be provided to the building for use of all residents.

I). The eastern elevation (party wall) of the development shall be provided with an alternative treatment / form of relief to alleviate the expanse of blank wall on the boundary until such time that the adjoining properties are redeveloped. Details of three selected finishes and/or treatments proposed for this party wall are to be submitted to Council for approval prior to the issue of the Construction Certificate.

J). The loading / unloading and passing bay on site within the front setback are to comprise concrete grasscrete cells and be delineated from the adjoining vehicular entry.

K). Corridors within the development shall be a minimum of 1.5m in width for their entire length. Services within corridors, including but not limited to electrical cupboards, fire safety equipment etc. shall be moved clear of the corridor and within the unit footprint.

L). The south facing terrace to unit 1.01 adjoining the common boundary with 1-5 Gertrude Street shall be deleted. 1 x 2m deep x 3.25m wide balcony may be retained adjoining the bedroom of unit 1.01 that adjoins the proposed garden store.

M) The door to the residential lobby shall be brought forward to align with the balcony wall of the ground floor studio. Letter boxes shall be relocated to the bottom of the stairs to the pedestrian entrance from Gertrude Street.

## **Prior to commencement of works**

The following conditions must be completed prior to the commencement of works.

56. A dilapidation survey shall be undertaken of all properties and/or Council infrastructure, including but not limited to all footpaths, kerb and gutter, stormwater inlet pits, and road carriageway pavements, in the vicinity which could be potentially affected by the construction of this development. Any damage caused to other properties during construction shall be rectified. A copy of the dilapidation survey and an insurance policy that covers the cost of any rectification works shall be submitted to the Accredited Certifier (AC) or Council prior to Commencement of Works. The insurance cover shall be a minimum of \$10 million.

57. A Soil and Water Management Plan shall be prepared. The Plan must include details of the proposed erosion and sediment controls to be installed on the building site. A copy of the Soil and Water Management Plan must be kept on-site at all times and made available on request.

Soil and sedimentation controls are to be put in place prior to commencement of any work on site. The controls are to be maintained in effective working order during construction.

Council's warning sign for soil and water management must be displayed on the most prominent point on the building site, visible to both the street and site workers. The sign shall be erected prior to commencement of works and shall be displayed throughout construction.

58. A sign must be erected at the front boundary of the property clearly indicating the Development Approval Number, description of work, builder's name, licence number and house number before commencement of work. If owner/builder, the

Owner/Builder Permit Number must be displayed.

59. A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:
- i. stating that unauthorised entry to the work site is prohibited, and
  - ii. showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours. Any such sign is to be removed when the work has been completed. This condition does not apply to:
    - iii. building work carried out inside an existing building or
    - iv. building work carried out on premises that are to be occupied continuously (both during and outside working hours) while the work is being carried out.
60. A Site Health & Safety Plan shall be prepared prior to the commencement of remediation works by a person competent to do so. All works shall be carried out in accordance with this plan. This plan shall include:
- hazard identification and control
  - site security
  - personal protective equipment
  - work zones and decontamination procedures
  - contingency plans and incident reporting
  - environmental monitoring.
61. Where it is necessary to import landfill material onto the site to fill the land to levels shown on the plans forming part of the consent, a certificate, prepared by a suitably qualified and experienced Contaminated Land Consultant, shall be submitted to Council being the Regulatory Authority prior to the commencement of works, certifying that the imported fill is suitable for the land use.
62. The site shall be secured by a 1800 mm (minimum) high temporary fence for the duration of the work. Gates shall be provided at the opening points.
63. Where construction/building works require the use of a public place including a road or footpath, approval under Section 68 of the Local Government act 1993 for a Barricade Permit is to be obtained from Council prior to commencement of work. Details of the barricade construction, area of enclosure and period of work are required to be submitted to the satisfaction of Council.
64. A hoarding or fence shall be erected between the work site and the public place when the work involved in the erection or demolition of a building:
- i) is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or
  - ii) building involves the enclosure of a public place,
- Where the development site adjoins a public thoroughfare, the common boundary between them must be fenced for its full length with a hoarding, unless, the least horizontal distance between the common boundary and the nearest part of the structure is greater than twice the height of the structure. The hoarding must be constructed of solid materials (chain wire or the like is not acceptable) to a height of not less than 1.8m adjacent to the thoroughfare.
- Where a development site adjoins a public thoroughfare with a footpath alongside the common boundary then, in addition to the hoarding required above, the footpath must be covered by an overhead protective structure, type B Hoarding, and the facing facade protected by heavy duty scaffolding unless either:
- (i) the vertical height above footpath level of the structure being demolished is less than 4m; or
  - (ii) the least horizontal distance between footpath and the nearest part of the structure

is greater than half the height of the structure.

The overhead structure must consist of a horizontal platform of solid construction and vertical supports, and the platform must -

(i) extend from the common boundary to 200mm from the edge of the carriageway for the full length of the boundary;

(ii) have a clear height above the footpath of not less than 2.1m;

(iii) terminate not less than 200mm from the edge of the carriageway (clearance to be left to prevent impact from passing vehicles) with a continuous solid upstand projecting not less than 0.5m above the platform surface; and

(iv) together with its supports, be designed for a uniformly distributed live load of not less than 7 kPa

The 'B' Class hoarding is to be lit by fluorescent lamps with anti-vandalism protection grids.

Any such hoarding, fence or awning is to be removed when the work has been completed.

The principal contractor or owner builder must pay all fees and rent associated with the application and occupation and use of the road (footway) for required hoarding or overhead protection.

65. Toilet facilities must be available or provided at the work site before works begin and must be maintained until the works are completed at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site.

## **During demolition / excavation / construction**

The following conditions must be complied with during demolition, excavation and or construction.

66. A copy of the Construction Certificate and the approved plans and specifications must be kept on the site at all times and be available to Council officers upon request.
67. Hours of construction shall be confined to between 7 am and 6.30 pm Mondays to Fridays, inclusive, and between 8 am and 3.30 pm Saturdays with no work being carried out on Sundays and all public holidays.
68. Upon inspection of each stage of construction, the Principal Certifying Authority (or other suitably qualified person on behalf of the Principal Certifying Authority) is also required to ensure that adequate provisions are made for the following measures (as applicable), to ensure compliance with the terms of Council's approval:
- Sediment control measures
  - Provision of perimeter fences or hoardings for public safety and restricted access to building sites.
  - Maintenance of the public place free from unauthorised materials, waste containers or other obstructions.
69. Ground water shall only be pumped or drained to Council's stormwater system if the water is clean and unpolluted. The standard used to determine the acceptability of the quality of the water is the 'Australian and New Zealand Environment and Conservation Council - Australian Water Quality Guidelines for Fresh and Marine Waters 1992'.

Note: Prior treatment and/or filtration of the water may be necessary to achieve acceptable quality, including a non-filterable residue not exceeding 50 milligrams/litre or small quantities may be removed by the services of a Licenced Liquid Waste Transporter. It is an offence under the provisions of the Protection of the Environment

Operations Act 1997 to pollute the stormwater system.

70. Demolition operations shall not be conducted on the roadway or public footway or any other locations, which could lead to the discharge of materials into the stormwater drainage system.
71. All waste generated on site shall be disposed of in accordance with the submitted Waste Management Plan.
72. A Registered Surveyor's check survey certificate or compliance certificate shall be forwarded to the certifying authority detailing compliance with Council's approval at the following stage/s of construction:
  - i. After excavation work for the footings, but prior to pouring of concrete, showing the area of the land, building and boundary setbacks.
  - ii. Prior to construction of each floor level showing the area of the land, building and boundary setbacks and verifying that the building is being constructed at the approved level.
  - iii. Prior to fixing of roof cladding verifying the eave, gutter setback is not less than that approved and that the building has been constructed at the approved levels.
  - iv. On completion of the building showing the area of the land, the position of the building and boundary setbacks and verifying that the building has been constructed at the approved levels.
  - v. On completion of the drainage works (comprising the drainage pipeline, pits, overland flow paths, on-site detention or retention system, and other relevant works) verifying that the drainage has been constructed to the approved levels, accompanied by a plan showing sizes and reduced levels of the elements that comprise the works.
73. All excavation and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards and guarded and protected to prevent them from being dangerous to life or property.

When excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building or an adjoining allotment of land, you shall:

- i. preserve and protect the building from damage and
- ii. underpin and support the building in an approved manner, if necessary and
- iii. give notice of intention to excavate below the level of the base of the footings of a building on an adjoining allotment of land to the owner at least 7 days prior to excavation and furnish particulars of the excavation to the owner of the building being erected or demolished.

Note: The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this conditions allotment of land includes a public road and any other public place.

Works shall not encroach onto or over adjoining properties, including retaining walls, fill material or other similar works. Soil shall not be lost from adjoining sites due to construction techniques employed on the subject site.

74. When soil conditions require it:



- i. retaining walls associated with the erection or demolition of a building or other approved methods of preventing movement of the soil shall be provided, and
  - ii. adequate provision shall be made for drainage.
75. Any new information discovered during remediation, demolition or construction works which has the potential to alter previous conclusions about site contamination, shall be notified to Council being the Regulatory Authority for the management of contaminated land.
76. All contractors shall comply with the following during all stages of demolition and construction:
  - A Waste Container on Public Road Reserve Permit must be obtained prior to the placement of any waste container or skip bin in the road reserve (i.e. road or footpath or nature strip). Where a waste container or skip bin is placed in the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
  - A Road Opening Permit must be obtained prior to any excavation in the road reserve (i.e. road or footpath or nature strip). Where excavation is carried out on the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
  - A Hoarding Permit must be obtained prior to the erection of any hoarding (Class A or Class B) in the road reserve (i.e. road or footpath or nature strip). Where a hoarding is erected in the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
  - A Crane Permit must be obtained from Council prior to the operation of any activity involving the swinging or hoisting of goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway. Permits can be obtained from Council's Customer Service Centre.
  - A Permit to Dewater or Pump Out a site must be obtained prior to the discharge of pumped water into the road reserve, which includes Council stormwater pits and the kerb and gutter. Permits can be obtained from Council's Customer Service Centre.
77. All demolition work shall be carried out in accordance with AS2601 – 2001: The Demolition of Structures and with the requirements of the WorkCover Authority of NSW.
78. Adopt and implement all recommendations contained in the Acid Sulfate Soil Management Plan prepared by Environmental Investigations Australia Report No. E228573 AC dated the 5 February 2016.
79. The following conditions are necessary to ensure minimal impacts during construction:
  - i. Building, demolition and construction works not to cause stormwater pollution and being carried out in accordance with Section 2.8 of Council's Stormwater Pollution Control Code 1993. Pollutants such as concrete slurry, clay and soil shall not be washed from vehicles onto roadways, footways or into the stormwater system. Drains, gutters, roadways and access ways shall be maintained free of sediment. Where required, gutters

and roadways shall be swept regularly to maintain them free from sediment.

- ii. Stormwater from roof areas shall be linked via a temporary downpipe to an approved stormwater disposal system immediately after completion of the roof area.
- iii. All disturbed areas shall be stabilised against erosion within 14 days of completion, and prior to removal of sediment controls.
- iv. Building and demolition operations such as brickcutting, washing tools or paint brushes, and mixing mortar shall not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.
- v. Stockpiles are not permitted to be stored on Council property (including nature strip) unless prior approval has been granted. In addition stockpiles of topsoil, sand, aggregate, soil or other material shall be stored clear of any drainage line or easement, natural watercourse, kerb or road surface.
- vi. Wind blown dust from stockpile and construction activities shall be minimised by one or more of the following methods:
  - a) spraying water in dry windy weather
  - b) cover stockpiles
  - c) fabric fences
- vii. Access to the site shall be restricted to no more than two 3m driveways. Council's footpath shall be protected at all times. Within the site, provision of a minimum of 100mm coarse crushed rock is to be provided for a minimum length of 2 metres to remove mud from the tyres of construction vehicles.

An all weather drive system or a vehicle wheel wash, cattle grid, wheel shaker or other appropriate device, shall be installed prior to commencement of any site works or activities, to prevent mud and dirt leaving the site and being deposited on the street. Vehicular access is to be controlled so as to prevent tracking of sediment onto adjoining roadways, particularly during wet weather or when the site is muddy. Where any sediment is deposited on roadways it is to be removed by means other than washing and disposed of appropriately.

In addition builders / demolishers are required to erect a 1.5m high fence along the whole of the street alignment other than at the two openings. Such protection work, including fences, is to be constructed, positioned and maintained in a safe condition to the satisfaction of the Principal Certifying Authority, prior to the demolition of the existing structures and commencement of building operations.

- viii. Any noise generated during construction of the development shall not exceed limits specified in any relevant noise management policy prepared pursuant to the Protection of the Environment Operations Act, 1997 or exceed approved noise limits for the site.

- 80. Council's warning sign for soil and water management must be displayed on the most prominent point on the building site, visible to both the street and site workers. The sign must be displayed throughout construction. A copy of the sign is available from Council.
- 81. Trees located within adjoining properties shall not be removed or pruned without the written consent of Council in the form of a Permit issued under Council's

Development Control Plan 2011. Any pruning of branches or roots of trees growing from within adjoining properties requires the prior written consent of the tree's owners and the prior written consent of Council in the form of a Permit issued under Council's Development Control Plan 2011. The work must be carried out in accordance with AS4373:2007 by an experienced Arborist with minimum AQF Level 2 qualifications in Arboriculture.

82. Hazardous and/or intractable wastes arising from the demolition process shall be removed and disposed of in accordance with the requirements of the relevant statutory authorities (NSW WorkCover Authority and the NSW Environment Protection Authority), together with the relevant regulations, including:
- Work Health and Safety Act 2011
  - Work Health and Safety Regulation 2011
  - Protection of the Environment Operations (Waste) Regulation 2005.

### **Prior to issue of occupation certificate or commencement of use**

The following conditions must be complied with prior to issue of the Occupation Certificate or Commencement of Use.

83. An Occupation Certificate shall be obtained in relation to the approved works prior to any use or occupation of the building.
84. Where Council's park/reserve is damaged as a result of building work or vehicular building traffic, this area shall be restored by Council at the applicant's expense. Repairs shall be completed prior to the issue of the Occupation Certificate.
85. All excess excavated material, demolition material, vegetative matter and builder's rubbish shall be removed to the Waste Disposal Depot or the Regional Tip prior to final inspection.  
Note: Burning on site is prohibited.
86. A by-law shall be registered and maintained for the life of the development, which requires that :
- (a) balconies are not to be used as clothes drying areas, storage of household goods and air-conditioning units that would be visible from the public domain;
  - (b) an owner of a lot must ensure that all floor space within the lot complies with the acoustic conditions for floors specified in this consent;
  - (c) Notwithstanding subclause (b), in the event that a floor covering in the lot is removed, the newly installed floor covering shall have a weighted standardized impact sound pressure level not greater than L'nT,w 45 measured in accordance with AS ISO 140.7 and AS ISO 717.2, A test report from a qualified acoustic engineer employed by a firm eligible to membership of the Association of Australian Acoustical Consultants shall be submitted to the Owners Corporation within 14 days of the installation of the new floor covering demonstrating compliance with that standard. In the event that the standard is not complied with, the floor covering shall be removed and replaced with a floor covering that conforms to that standard in accordance with any directions given by the Owners Corporation.

Proof of registration of the By Law shall be submitted to Council prior to the issue of the Occupation Certificate.

87. Lot 37 DP 4301 and Lot 36 DP 4301 shall be consolidated into one allotment. Council requires proof of lodgement of the plan of consolidation with the Land and Property Information Office prior to occupation.
88. All landscape works are to be carried out in accordance with the approved

landscape plans. The landscaping is to be maintained to the approved standard at all times.

89. All works within the road reserve, which are subject to approval pursuant to Section 138 of the Roads Act 1993, shall be completed and accepted by council.
90. The underground placement of all low voltage street mains in that section of the street/s adjacent to the development, and associated services and the installation of underground supplied street lighting columns, shall be carried out at the applicant's expense. The works shall be completed and Ausgrid's requirements shall be met prior to issue of the Occupation Certificate.
91. Where an electricity substation is required by Ausgrid, a final film survey plan shall be endorsed with an area having the required dimensions as agreed with Ausgrid over the location of the proposed electricity distribution substation site. The substation must be located within the boundary of the development site, or within the building, subject to compliance with the BCA. The substation site shall be dedicated to Council as public roadway, or as otherwise agreed with Ausgrid. Ausgrid's requirements shall be met prior to release of the issue of the Occupation Certificate.
92. Vehicles shall enter and exit the site in a forward direction at all times. A plaque with minimum dimensions 300mm x 200mm shall be permanently fixed to the inside skin of the front fence, or where there is no front fence a prominent place approved by the Principal Certifying Authority, stating the following: "Vehicle shall enter and exit the site in a forward direction at all times".
93. Prior to completion of the building works, a full width vehicular entry is to be constructed to service the property. Any obsolete vehicular entries are to be removed and reconstructed with kerb and gutter. This work may be done using either a Council quote or a private contractor. There are specific requirements for approval of private contractors.
94. A convex mirror is to be installed at change of direction in ramps to provide increased sight distance for vehicles.
95. The roller gate for the basement shall be located in order to permit the queuing of two (2) vehicles when waiting to enter the basement garage. The control mechanism for the gate shall be arranged such that access to the basement garage for residence and visitors.
96. A drainage easement 0.875m wide along the rear boundary of the subject site is to be provided in favour of Rockdale Council and covered by a Section 88B Instrument, which may only be varied or extinguished with the consent of Rockdale City Council. A restriction to user preventing building works within the easement is also required.

These provisions are to be put into effect prior to release of the Occupation Certificate. Council requires proof of lodgement of the signed Linen Plan and 88B Instrument with the Land Titles Office.

97. Suitable vehicular bollards shall be provided outside the exit doors that adjoin the vehicle circulation area or other exit door(s) that may be blocked by parked vehicles.
98. 38 off-street car spaces shall be provided in accordance with the submitted plan and shall be sealed and linemarked to Council's satisfaction. The pavement of all car parking spaces, maneuvering areas and internal driveways shall comply with Australian Standard AS3727 – Guide to Residential Pavements.
99. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation. Application must be made through an authorised Water Servicing Coordinator.

Please refer to the Building Developing and Plumbing section of the web site [www.sydneywater.com.au](http://www.sydneywater.com.au) then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

The Section 73 Certificate must be submitted to the Principal Certifying Authority prior to occupation of the development.

100. Prior to occupation, a registered surveyor shall certify that the driveway(s) over the footpath and within the property have been constructed in accordance with the approved driveway profile(s). The certification shall be based on a survey of the completed works. A copy of the certificate and a works-as-executed driveway profile shall be provided to Council if Council is not the Principal Certifying Authority.
101. Where the installation of electricity conduits is required in the footway, the builder shall install the conduits within the footway across the frontage/s of the development site, to Ausgrid's specifications. Ausgrid will supply the conduits at no charge. A Road Opening Permit must be obtained from Council prior to the installation of the conduits. The builder is responsible for compaction of the trench and restoration of the footway in accordance with Council direction. A Compliance Certificate from Ausgrid shall be obtained prior to the issue of the Occupation Certificate.
102. Prior to issue of Occupation Certificate the applicant shall submit to the Principal Certifying Authority (PCA) an Certificate of Compliance to verify that the measures stated in the 'Acoustic Assessment for Development Application 7-9 Gertrude Street Wolli Creek by Renzo Tonin & Associates – Doc Reference; TH496-01F02 Acoustic Report For DA (r1) dated the 5 August 2015' and all other noise mitigation measures associated with the mechanical plants (ventilation systems, exhaust fans, ventilation fans and condenser units) and equipment including air-conditioners have been carried out and certify that the construction meets the above requirements. If Council is not the PCA, a copy shall be submitted to Council concurrently. The certificate of compliance shall be prepared by a suitably qualified and experienced acoustic engineer (who is a member of either the Australian Acoustical Society or the Association of Australian Acoustical Consultants).
103. A certificate is to be provided to Council that all wet areas have been effectively waterproofed (prior to tiling) in accordance with AS3740 and the product manufacturer's recommendations.
104. A Landscape Architect shall provide a report to the certifying authority (with a copy provided to Council, if Council is not the principal certifying authority) stating that the landscape works have been carried out in accordance with the approved plans and documentation.
105. Prior to occupation or use of the premises, a qualified mechanical engineer shall certify that the mechanical ventilation/air conditioning system complies in all respects with the requirements of Australian Standard 1668, Part 1 & 2.
106. An accredited auditor under the Contaminated Land Management Act 1997 shall review the Validation Report prepared by the contaminated land consultant and issue a Site Audit Statement. The accredited auditor shall provide Council being the Regulatory Authority for the management of contaminated land, with a copy of the Site Audit Report and Site Audit Statement, prior to issue of the Occupation Certificate.
107. A Site Audit Statement (SAS) shall be submitted to Council being the Regulatory Authority for the management of contaminated land, prior to the issue of Occupation Certificate, clearly demonstrating that the site is suitable for the intended use.

Conditions imposed on the SAS shall form part of this consent. In circumstances where the SAS conditions (if applicable) are not consistent with the consent, the consent shall prevail to the extent of inconsistency and a S96 application pursuant to the Environmental Planning & Assessment Act 1979 will be required.

108. Prior to occupation, a chartered professional engineer shall certify that the tanking and waterproofing has been constructed in accordance with the approved design and specification. A copy shall be provided to Council if council is not the Principal Certifying Authority.
109. A certificate from a Registered Surveyor shall be provided to the Principal Certifying Authority (PCA) certifying that the habitable/commercial floor level is constructed a minimum of 500mm above the 1% Annual Exceedance Probability (A.E.P) Flood Level. A copy of the certificate shall be provided to Council where Council is not the Principal Certifying Authority.
110. Prior to occupation a Chartered Professional Engineer shall certify that the stormwater system has been constructed in accordance with the approved plans and as required by Rockdale Technical Specification Stormwater Management. The certificate shall be in the form specified in Rockdale Technical Specification Stormwater Management and include an evaluation of the completed drainage works. A works-as-executed drainage plan shall be prepared by a registered surveyor based on a survey of the completed works. A copy of the certificate and works-as-executed plan(s) shall be supplied to the Principal Certifying Authority. A copy shall be provided to Council if Council is not the Principal Certifying Authority.
111. A benchmark shall be established adjacent to the site to Australian Height Datum to enable comparison to the flood standard.
112. The underground garage shall be floodproofed to a minimum of 500mm above the 1% Annual Exceedance Probability flood level. The levels shall be certified by a registered surveyor prior to construction of the driveway or other openings.
113. The development shall comply with Rockdale Development Control Plan (DCP) 2011, and the Planning Considerations and Development Controls listed in the Flood Advice letter, referenced FA-71/2015, dated 28 May 2015.
114. A positive covenant pursuant to the Conveyancing Act 1919 shall be created on the title of the lots that contain the stormwater facility to provide for the maintenance of the rain tank / pump facility.
115. The drainage system shall be constructed in accordance with the approved drainage plans and any amendments in red. All stormwater drainage plumbing work shall comply with the NSW Code of Practice: Plumbing and Drainage and Australian Standard AS3500.

Drainage grates shall be provided at the boundary. Width of the drainage grates shall be in accordance with Rockdale Technical Specification Stormwater Management.

A silt/litter arrestor pit as detailed in Rockdale Technical Specification Stormwater Management shall be provided prior to discharge of stormwater from the site.

116. Signs shall be displayed adjacent to all stormwater drains on the premises, clearly indicating "Clean water only - No waste".
117. The owner of the premises is required to comply with the following requirements when installing a rainwater tank:
  - Inform Sydney Water that a Rainwater tank has been installed in accordance with applicable requirements of Sydney Water.

- The overflow from the rainwater tank shall be directed to the storm water system.
- All plumbing work proposed for the installation and reuse of rainwater shall comply with the NSW Code of Practice: Plumbing and Drainage and be installed in accordance with Sydney Water “Guidelines for rainwater tanks on residential properties.
- A first flush device shall be installed to reduce the amount of dust, bird faeces, leaves and other matter entering the rainwater tank.

## Roads Act

118. Construction related activities must not take place on the roadway without Council approval.

Short-term activities (including operating plant, materials delivery) that reduce parking spaces, affect access to a particular route or prevent or restrict the passage of vehicles along the road must not occur without a valid Temporary Roadside Closure Permit.

Activities involving occupation of the parking lane for durations longer than allowed under a Temporary Roadside Closure Permit require a Construction Zone Permit and must not occur prior to the erection of Works Zone signs by Council’s Traffic and Road Safety Section.

Permit application forms should be lodged at Council's Customer Service Centre allowing sufficient time for evaluation. An information package is available on request.

119. Where applicable, the following works will be required to be undertaken in the road reserve at the applicant's expense:

- i) construction of a concrete footpath along the frontage of the development site;
- ii) construction of a new fully constructed concrete vehicular entrance/s;
- iii) removal of the existing concrete vehicular entrance/s, and/or kerb laybacks which will no longer be required;
- iv) reconstruction of selected areas of the existing concrete Footpath/vehicular entrances and/or kerb and gutter;
- v) construction of paving between the boundary and the kerb;
- vi) removal of redundant paving;
- vii) construction of kerb and gutter.

120. All footpath, or road and drainage modification and/or improvement works to be undertaken in the road reserve shall be undertaken by Council, or by a Private Licensed Contractor subject to the submission and approval of a Private Contractor Permit, together with payment of all inspection fees. An estimate of the cost to have these works constructed by Council may be obtained by contacting Council. The cost of conducting these works will be deducted from the Footpath Reserve Restoration Deposit, or if this is insufficient the balance of the cost will be due for payment to Council upon completion of the work.

121. All driveway, footpath, or road and drainage modification and/or improvement works to be undertaken in the road reserve shall be undertaken in accordance with Council’s Subdivision and Civil Works Construction Specification (AUS-SPEC 1). Amendment to the works specification shall only apply where approved by Council.



Where a conflict exists between design documentation or design notes and AUS-SPEC 1, the provisions of AUS-SPEC 1 shall apply unless otherwise approved by Council.

122. This Roads Act approval does not eradicate the need for the Contractor to obtain a Road Opening Permit prior to undertaking excavation in the road or footpath.
123. Any driveway works to be undertaken in the footpath reserve by a private contractor requires an "Application for Consideration by a Private Contractor" to be submitted to Council together with payment of the application fee. Works within the footpath reserve must not start until the application has been approved by Council.
124. Following completion of concrete works in the footpath reserve area, the balance of the area between the fence and the kerb over the full frontage of the proposed development shall be turfed with either buffalo or couch (not kikuyu) or landscaped.

## Development consent advice

- a. A street/shop number shall be prominently displayed at the front of the development. The street number shall be a minimum of 120 mm in height to assist emergency services and visitors to locate the property. The numbering shall be erected prior to commencement of operations.
- b. You are advised to consult with your utility providers (i.e. Energy Aust, Telstra etc) in order to fully understand their requirements before commencement of any work.
- c. *Telstra Advice – Dial Before You Dig*

Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets, please contact Dial before You Dig at [www.1100.com.au](http://www.1100.com.au) or telephone on 1100 before excavating or erecting structures (This is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contacting the Dial before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial before You Dig service in advance of any construction or planning activities.

- d. *Telstra Advice - Telecommunications Act 1997 (Commonwealth)*

Telstra (and its authorised contractors) are the only companies that are permitted to conduct works on Telstra's network and assets. Any person interfering with a facility or installation owned by Telstra is committing an offence under the Criminal Code Act 1995 (Commonwealth) and is liable for prosecution. Furthermore, damage to Telstra's infrastructure may result in interruption to the provision of essential services and significant costs. If you are aware of any works or proposed works which may affect or impact on Telstra's assets in any way, you are required to contact: Telstra's Network Integrity Team on phone number 1800810443.

- e. All asbestos fibre demolition material and asbestos dust shall be handled, stored and removed in accordance with the relevant legislation and guidelines including:
  - Work Health and Safety Act 2011
  - Work Health and Safety Regulation 2011
  - Code of Practice for the Safe Removal of Asbestos [NOHSC: 2002 (2005)]
  - Code of Practice for the Management and Control of Asbestos in Workplaces

[NOHSC: 2018 (2005)]

- Protection of the Environment Operations (Waste) Regulation 2005

All work procedures shall be devised to minimise the release of dust and fibres. A checklist of safety precautions when working with asbestos is available in Health & Safety Guidelines prepared by the WorkCover Authority of NSW. Collection, storage and transportation is subject to the Protection of the Environment Operations (Waste) Regulation 2005.

- f. Hazardous and/or intractable wastes arising from the demolition process shall be removed and disposed of in accordance with the requirements of the relevant statutory authorities (NSW WorkCover Authority and the NSW Environment Protection Authority), together with the relevant regulations, including:
- Work Health and Safety Act 2011
  - Work Health and Safety Regulation 2011
  - Protection of the Environment Operations (Waste) Regulation 2005.
- g. Demolition and construction shall minimise the emission of excessive noise and prevent “offensive noise” as defined in the Protection of the Environment Operations Act 1997. Noise reduction measures shall include, but are not limited to the following strategies:
- choosing quiet equipment
  - choosing alternatives to noisy activities
  - relocating noise sources away from affected neighbours
  - educating staff and contractors about quiet work practices
  - informing neighbours of potentially noise activities in advance
  - equipment, such as de-watering pumps, that are needed to operate on any evening or night between the hours of 8 p.m. and 7 a.m. or on any Sunday or Public Holiday, shall not cause a noise nuisance to neighbours of adjoining or nearby residences. Where the emitted noise exceeds 5 dB(A) [LAeq(15m)] above the background sound level [LA90] at the most affected point on the nearest residential boundary at any time previously stated, the equipment shall be acoustically insulated, isolated or otherwise enclosed so as to achieve the sound level objective.
- h. The water from the rainwater tank should not be used for drinking, Sydney Water shall be advised of the installation of the rainwater tank.
- i. All site works shall comply with the occupational health and safety requirements of the NSW WorkCover Authority.
- j. In the event of any inconsistency between conditions of this approval and the drawings/documents referred to in condition 2, the conditions of this approval prevail.

# BAYSIDE COUNCIL

## Planning Assessment Report

### Application Details

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<b>Application Number:</b>	DA-2016/47
<b>Date of Receipt:</b>	7 August 2015
<b>Property:</b>	7 Gertrude Street, WOLLI CREEK NSW 2205 Lot 37 DP 4301 Lot 36 DP 4301
<b>Owner:</b>	VP1 Pty Ltd
<b>Applicant:</b>	VP1 Pty Ltd
<b>Proposal:</b>	7-9 Gertrude Street, WOLLI CREEK NSW 2205 - Integrated Development - Construction of a nine (9) storey residential flat building development comprising thirty six (36) residential units, basement parking and demolition of existing structures
<b>Recommendation:</b>	Approved
<b>No. of submissions:</b>	Nil
<b>Author:</b>	Fiona Prodromou
<b>Date of Report:</b>	16 August 2016

### Key Issues

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The subject site is zoned R4 high density residential and is located on the southern side of Gertrude Street in Wolli Creek.

The proposed development seeks to vary the maximum 29.5m height limit for the site by 0.98m (3.3%) - 2.85m (9.6%). A variation is also proposed to the maximum 2.2:1 FSR standard for the site, with the development comprising an FSR of 2.52:1, being 327.6sq/m (14.3%) in excess of that permitted. A Clause 4.6 - Exceptions to Development Standards has been submitted by the applicant and is supported in this instance for the reasons discussed within this report. The overall bulk, scale and massing of the development is deemed to be satisfactory.

The proposal seeks to vary the minimum balcony size requirements of the Apartment Design Guide. Variations proposed have been assessed on their merits and deemed acceptable for the reasons outlined within this report.

The proposal indicates non compliance's with the provisions of DCP 2011 with respect to minimum site frontage, unit mix, car wash dimensions, corridor width, front setback to Gertrude Street and building elements protruding into the articulation zone. These matters have been discussed within the planning report and variations are supported in this instance for the reasons outlined within the report.

The proposal was publicly notified as per the requirements of DCP 2011. Nil submissions were

received.

## Recommendation

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1. That Council support the variation to the FSR and Height development standards, as contained in Clause 4.3 – Height of Buildings and Clause 4.4 - FSR of Rockdale LEP 2011, in accordance with the request under clause 4.6 of RLEP 2011 submitted by the applicant.
2. That the development application DA-2016/47 for the construction of a nine (9) storey residential flat building development comprising thirty six (36) residential units, basement parking and demolition of existing structures at 7-9 Gertrude Street Wolli Creek be APPROVED pursuant to Section 80(1)(a) of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report.
3. That the NSW Department of Planning and Environment be advised of Council's decision.

## Background

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### History

DA-1994/245      Refused 22 December 1994  
9 Storey apartment hotel with 103 suites, parking for 134 cars.

DA-1996/334      Refused 2 July 1997  
Two storey motel, 26 units, managers residence, reception and 27 car spaces.

DA-1996/56      Withdrawn 24 April 1996  
Proposed undercover security valet parking for airport

DA-2010/131      Approved 30 November 2009  
Demolish & remove existing sheds and commence use - temporary valet carpark with associated signage.

### Proposal

The proposal seeks to undertake the demolition of existing structures on site and proposes the construction of a nine (9) storey residential flat building development comprising thirty six (36) residential units (1 x studio / 17 x 1 bed / 12 x 2 bed / 6 x 3 bed) and basement / ground level car parking. The proposal comprises as follows:

#### *Basement*

26 car spaces (4 being accessible), residential storage, plant room, fan room, dual lift core, fire stairs, pedestrian and vehicular circulation and access.

#### *Ground Level*

Vehicular entry, SRV loading dock within front setback of site with tandem vehicular passing bay, terraced planters, planting at ground level, pedestrian entry and associated platform lift, fire exit adjoining eastern boundary of site and 1.5m high impermeable screen along eastern side boundary within front setback.

1 studio dwelling with associated balcony fronting Gertrude Street, rainwater tank beneath planting in front setback, garbage room, residential lobby, letter boxes, substation, hydrant pump room, fire exit adjoining vehicular entry, dual lift core, carparking for 13 vehicles (incorporating 1 car wash bay), 2 motorbike spaces and 5 bicycle spaces. Ramp access to lower level.

Tree planting is proposed along the rear boundary of the site, in a deep soil zone 3.4m - 4.6m in width. Cheese trees capable of growing 5-10m in height are proposed. Access for maintenance is proposed from the rear wall of the car parking area.

#### *Level 1*

Dual lift core, garbage chute with recycling trays, services, common circulation. 4 x residential dwellings (2 x 1 bed / 2 x 2 bed). All units comprise Gertrude Street facing balconies, with the 2 units also benefiting from rear private terrace areas screened from view of the rear podium communal open space area. A communal garden store room is provided adjoining the communal area.

Landscaping within the level 1 communal open space area comprises ground covers and incorporates a range of shrubs and trees, including but not limited to a number of plants with mature heights as follows:

- bamboo 3m-5m / mexican orange blossom 1m-3m / New Zealand Christmas Bush 2m - 3.5m / Tropical blue bamboo 5m - 10m / Lady Palm 3m - 5m.

#### *Level 2 - 6 (per floor)*

Dual lift core, garbage chute with recycling trays, services (gas/water/communications), common circulation. 5 x residential dwellings with associated private open space areas fronting Gertrude Street and/or the rear of the site.

#### *Level 7 - 8 (per floor)*

Dual lift core, garbage chute with recycling trays, services (gas/water/communications), common circulation. 3 x residential dwellings with associated private open space areas fronting Gertrude Street and/or the rear of the site.

The rooftop communal open space area incorporates the following:

- Lift / stair overrun, pergola structure with solar panels, lobby, toilet and services.
- Mass planting to provide a green roof.
- Balustrades to periphery of useable communal area
- Two bbq facilities and communal tables.
- Associated shrub planting to eastern and western sides.
- 2m high impermeable wind amelioration screen along the southern perimeter of the communal roof terrace.

A mix of colours, materials and finishes are proposed to be incorporated within the development, including a grid of white colored concrete slabs, light grey frames to facades, clear glass balustrades, dark aluminium window frames and dark horizontal louvers.

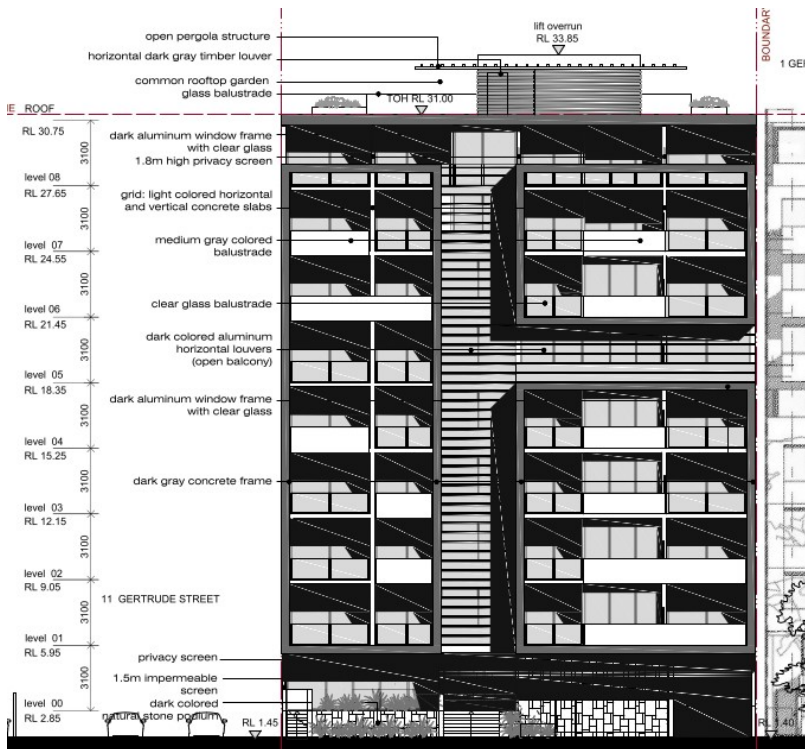


Figure 1 - Gertrude Street facade of proposed development

## Site location and context

The subject site is rectangular and comprises two parcels of land. The site has a frontage of 22.63m to Gertrude Street, a total site area of 1004sq/m and is relatively flat, with a natural ground level of 1.5RL. Along the rear boundary of the site an open box drainage reserve spans the width of the site, this is 1.22m in width. This reserve continues through adjoining properties in an east / west direction. The site is currently occupied by building materials and used as an open air hard stand car parking area. There are 4 trees within the rear of the subject site and existing vehicular access is from Gertrude Street.

The subject site is affected by:

- Potential Contamination
- Class 3 Acid Sulfate Soils
- Flooding
- Obstacle Limitation Surface & 15.24m Building Height Civil Aviation Regulations

The image below details recent approvals of adjoining and nearby properties within close proximity to the subject site.



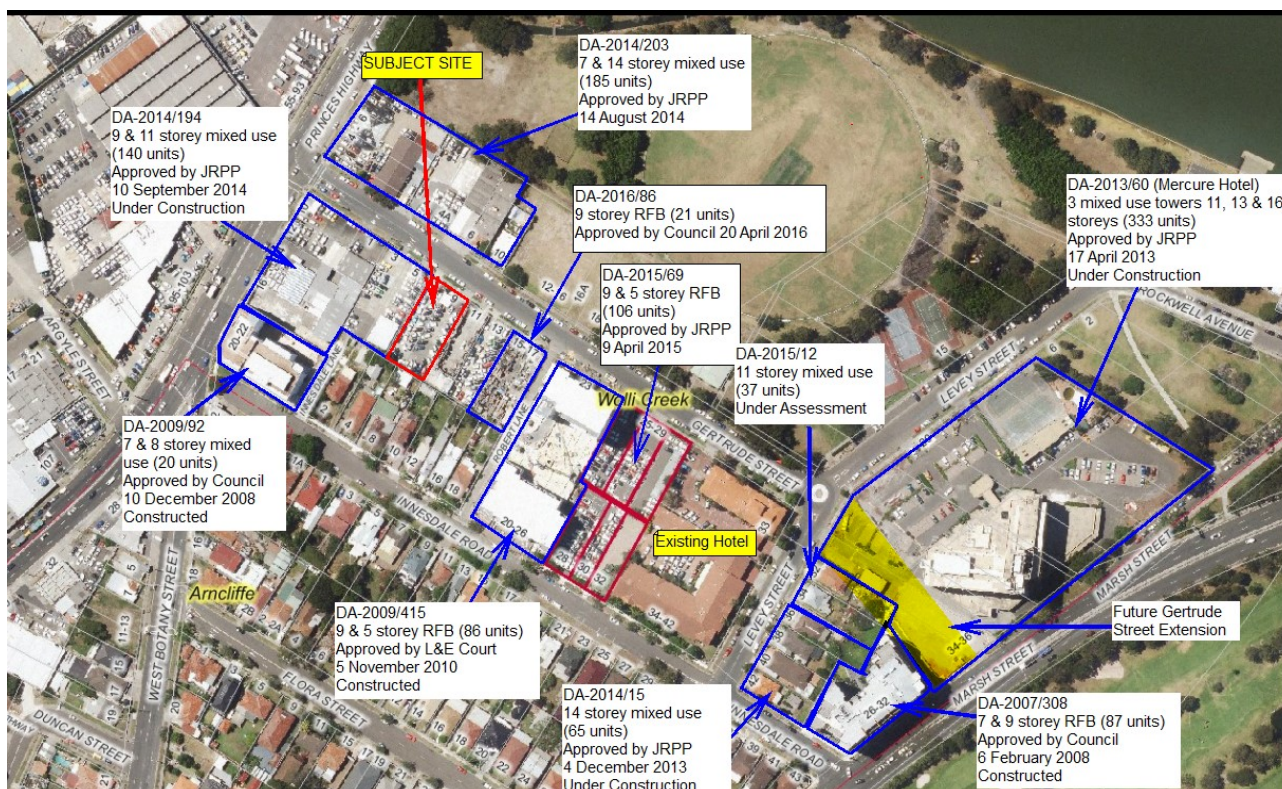


Figure 2 - Context of approvals

## Statutory Considerations

### *Environmental Planning and Assessment Act, 1979*

An assessment of the application has been undertaken pursuant to the provisions of the *Environmental Planning and Assessment Act, 1979*.

#### **S.91A - Development that is Integrated Development**

The proposal includes excavation works for basement car parking on site that will transect the water-table and require temporary dewatering during the construction phase. The proposal is therefore Integrated Development pursuant to Section 91A of the Environmental Planning and Assessment Act 1979, and requires approval from the NSW Office of Water (NOW). The NOW deemed that the construction dewatering proposed for the project would be an 'aquifer interference activity' in accordance with the definition in the Water Management Act 2000, and issued General Terms of Approval (GTA's) appropriate to this activity on 28th October 2015.

#### **S.79C(1) - Matters for Consideration - General**

##### **S.79C(1)(a)(i) - Provisions of Environmental Planning Instruments**

The following Environmental Planning Instruments are relevant to this application:

##### **State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

The applicant has submitted a BASIX Certificate for the proposed development. The Certificate number is 647613M\_04 and the required energy, water and thermal targets have been achieved.

##### **State Environmental Planning Policy No 55—Remediation of Land**

The property is identified in Council's records as being potentially contaminated. Clause 7 of State



Environmental Planning Policy 55 – Remediation of Land requires the consent authority to be satisfied prior to determination that the site is or can be made suitable for the proposed development.

The application was accompanied by a Detailed Site Investigation Report E22573 AA dated 31 July 2015 undertaken by Environmental Investigations. The report Conclusion states *"the site can be made suitable for the proposed multi-storey mixed commercial and residential use with basement car parking through the implementation of the recommendations present in section 12"*, which required the preparation of a Remedial Action Plan.

A Remediation Action Plan (RAP) ref: E22573 AB rev1 dated 22 June 2016, was submitted to Council by the applicant and recommends remediation and validation works required to occur on site.

The proposal has been conditioned to adhere to the recommendations of the above stated reports. The proposal satisfies the requirements of SEPP 55.

### **State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development**

In accordance with clause 28(2) of this policy, the consent authority must take into consideration the following:

#### *a. The advice of the Design Review Panel (DRP)*

The proposal has been referred to the Design Review Panel on 18th September 2015. The DRP raised concerns with respect to the proposed front setback of the development, excessive vehicular crossings to the Gertrude Street frontage, surplus carparking on site, lack of deep soil planting, treatment to street edge, excessive FSR, lack of solar access to level 1 communal open space, poor landscaping and excessive services within front setback, recessed and unsafe lobby design, inappropriate garbage storage on site and non compliant unit mix.

Amended plans to address the above were submitted by the applicant. Amended plans have been discussed below.

#### *b. The design quality of the development when evaluated in accordance with the design quality principles.*

The design quality principles have been considered in the assessment of the proposal and are found to be satisfactory as indicated below.

#### Principle 1 – Context and Neighborhood Character

The DRP noted that *'a number of sites along this street are undergoing redevelopment and there is a need to ensure consistency between new building alignments and the street edge. This is an important consideration that the proposal needs to address'*.

Comment: Revised plans demonstrate that the front setback of the proposed development has increased, with the building appropriately setback from the splayed front property boundary, in order to ensure that any future redevelopment of the adjoining eastern undeveloped properties can be designed to align with the proposed development. The front setbacks as proposed range from 3.67m - 5.3m to

balconies and 4.7m - 8.4m to the building line at level 1 and above. Given the splayed front property boundary and established building alignment of the development at 1-5 Gertrude Street, the aforementioned front setbacks are satisfactory.

The proposal is visually consistent with its established western neighbour at 1-5 Gertrude Street, providing a visually cohesive streetscape response. The proposed building depth on site is parallel to the splayed front boundary, with the rear building alignment continuing the approved, established and stepped rear building line of the directly adjoining western neighbour. The footprint of the proposed development results in a building form on site which is complimentary to building forms established and approved within the subject street block and context of the subject site.

The proposal is satisfactory with respect to this principle.

## Principle 2 – Built Form and Scale

The DRP noted that *"It is imperative that all developments along this side of the street meet the setback requirements at the side boundaries to ensure consistent building alignments along the street. This will assist in transitioning between properties along the angle street boundary"*.

Comment: Revised plans have been amended to illustrate front building line setbacks ranging from 3.67m - 5.3m to balconies and 4.7m - 8.4m to the building line. The proposed front setbacks will enable the future redevelopment of the adjoining eastern undeveloped properties to be designed to align with the proposed development. Front setbacks as proposed are satisfactory.

The DRP noted that *"while the driveway access at ground level is not in accordance with the DCP which recommends rear lane access, it is noted that on this site, driveway access is a necessity from Gertrude Street. The scale of the driveway access should be reduced, and the proposed loading dock should be relocated into the basement landscaping should be expanded in this zone."*

Comment: Revised plans indicate that the scale of the proposed driveway to Gertrude Street has been reduced. A loading bay for a Small Rigid Vehicle (SRV) for the development is now proposed within the front setback of the subject site, along with a tandem passing bay for vehicles to enable safe vehicular movement in and out of the site. This area is proposed to be provided as concrete grass tiles, to delineate this area from the adjoining concrete driveway and ensure an appropriate visual outcome from the public domain.

The DRP stated that *"there are 11 surplus car spaces, which are required to be counted as part of floor space calculations, thus further increasing the noncompliance. Furthermore no deep soil has been provided and Council requires 15% on this site. The basement carpark should be reduced in size and a contiguous deep soil zone should be provided along the rear boundary (6 metres wide)."*

Comment: As the subject site is located within 800m from Wolli Creek Railway Station, the car parking rates stipulated in the Apartment Design Guide apply. Plans have been revised to reduce car parking numbers on site, with the proposal comprising the specified number of carparking spaces on site for residents and visitors as required. As a result of the reduction in excessive car parking numbers on site, and reduction in size of the basement level, a strip of deep soil landscaped area 3.5m - 4.6m in width has been provided along the rear boundary of the subject site. The landscaped area proposed along the rear boundary comprises mass accent grass planting, and a total of six cheese trees to be planted, which have the capacity to grow to a mature height of 5m - 10m. The deep soil zone proposed

is considered to be satisfactory.

The DRP identified that *"at the Gertrude Street frontage high planter walls should be set well back to allow space for on street landscaping. Booster hydrants and substations should be accommodated in the building footprint and not on street frontage."*

Comment: Revised plans indicate the provision of planters within the front setback of the site at natural ground level, with planter walls being a maximum of 0.75m above natural existing ground level. Planters are designed with a natural stone wall finish. Revised plans further detail the incorporation of services including boosters and substations within the building footprint. Revised plans have resolved the aforementioned issue raised by the DRP.

The built form and massing of the development fits appropriately with established and approved developments to the east and west of the subject site. The proposed development is consistent with the scale of existing and emerging contextual development and is generally consistent with the desired bulk and scale of development for the Wolli Creek precinct.

### Principle 3 – Density

The DRP noted that the *'current proposal substantially exceeds the maximum floor space ratio 2.2:1, and seeks the density 2.68:1. The rationale presented for this was unconvincing. A complying development at the permissible height and GFA could satisfy all requirements in relation to context and streetscape.'*

Comment: Revised plans indicate that the proposal comprises an overall FSR of 2.52:1, which is 327.6sq/m (14.3%) in excess of that permitted. The development has been designed to provide a consistent streetscape response to Gertrude Street with the adjoining development nearing completion at 1-5 Gertrude Street. The proposal has been designed with appropriate modulation and building depth which allows for proposed residential units to obtain appropriate solar access and ventilation. The proposed density is capable of being accommodated upon the subject site without resulting in adverse environmental planning impacts within the site or to neighbours. The proposed development has been designed to respond to its existing and emerging context. A Clause 4.6 - Exception to Development Standards was submitted by the applicant and is supported in this instance for the reasons further outlined within this report. The proposal is satisfactory with regards to this principle.

### Principle 4 - Sustainability

The DRP noted that *'deep soil should be provided'* on the subject site.

Comment: Revised plans indicate the provision of 100sq.m of deep soil planting along the rear boundary of the subject site being 3.5m - 4.6m in width. This area is heavily planted with a range of accent grass and six cheese trees capable of growing to a height of 5m - 10m. The proposal is further accompanied by a BASIX certificate which confirms energy efficiency measures proposed in relation to water, energy and thermal massing. The proposal is acceptable with regards to this principle. It is further noted that the proposal incorporates solar panels atop the pergola's at rooftop level.

### Principle 5 – Landscape

The DRP stated that the *"level 1 communal landscape is overshadowed by the*

*adjoining development as well as the proposed building. This provides very poor amenity therefore additional communal open space should be provided at roof top level. This roof top space should accommodate a range of facilities such as BBQ, seating, shade canopy, etc. The level 1 communal space should be redesigned to provide increased planting zones including large trees. Excessive paved areas should be removed".*

Comment: Revised plans have incorporated a rooftop communal open space area on site for future occupants with a range of facilities including a pergola, seating, bbq areas and a toilet as suggested by the DRP. The level 1 communal space has been amended to reduce excessive paving and incorporate substantial mass planting up to a maximum height of 3.5m.

*The DRP further noted that "large trees (at least 3) over 15m at maturity, should be provided in the deep soil zone. This deep soil zone does not require access for residents; maintenance access is sufficient. Fast growing trees such as spotted gums should be incorporated in this zone to provide outlook for residents." and that "streetscape landscaping should be expanded and tree planting provided in the 5.5 metre setback at street level. Excess stairs and circulation space should be removed."*

Comment: It is reiterated that revised plans indicate the provision of 100sq.m of deep soil planting along the rear boundary of the subject site being 3.5m - 4.6m in width. This area is accessed via the ground level car parking area for maintenance only and is heavily planted with a range of accent grass and six cheese trees capable of growing to a height of 5m - 10m. Trees to the proposed heights are not unsatisfactory. Further to the above, revised plans depict additional landscaping and tree planting within the front setback of the site, with modifications to stairs and circulation spaces in order to rationalize access, minimise wasted space and maximize landscaping in this area.

#### Principle 6 – Amenity

*The DRP noted that "communal open space on the roof top with good solar access and outlook to the park and bay should be provided for the amenity of residents. The main entrance lobby should be re-planned to avoid deep unsafe access and increase size of lobby, and enhance the character of the entrance. Relocate the platform lift away from the bedroom outlook. Reconfigure unit 0.02 to avoid bedroom outlook along fire stair. Review garbage room capacity and provide maintenance access from car park. Provide natural light and ventilation to service rooms on the top level".*

Comment: Revised plans indicate the addition of a rooftop communal open space area on site as recommended by the DRP. Further revisions were made to plans in order to address the above issues raised. The main entry lobby was enlarged and relocated to enable clear and direct pedestrian entry, the platform lift was discreetly relocated away from residential units.

Revised plans indicate the deletion of unit 0.01 and reduction of unit 0.02 in size along with this unit being reconfigured. Although the location of the bed within this unit retains outlook to the fire stairs, outlook is also provided to the landscaped area within the front setback of the site. Amenity to this unit has also improved as a larger balcony space is provided along with the provision of a privacy screen along the western side of the balcony.

Further to the above, the proposed garbage room on site has increased in size to ensure appropriate on site waste storage for future occupants and garbage chutes are incorporated into the development.

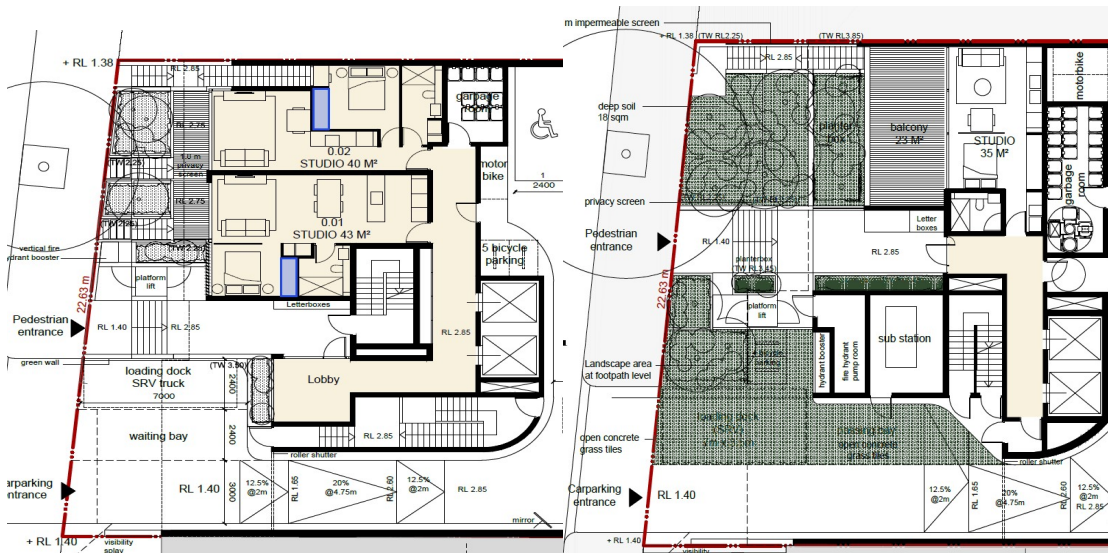


Figure 3 - Original Ground Floor Plan Revised Ground Floor Plan

### Principle 7 - Safety

The DRP noted that the *'recessed entry was unsafe and should be redesigned'*.

Comment: Revised plans have modified the ground floor layout of the development, resulting in a prominent and clearly identifiable building entry to Gertrude Street which comprises direct pedestrian access, a generous lobby and provide a high level of visibility to the street.

Residential apartments, communal open space & car parking areas will be accessible via a secure electronic system. Common areas are proposed to be appropriately lit with clearly defined pathways. The proposal is satisfactory in regards to the requirements of this principle.

### Principle 8 - Housing Diversity and Social Interaction

The DRP noted that the proposed *'unit mix should comply with Council requirements and adaptable units should reflect the unit mix.'*

Comment: The original scheme did not incorporate any 3 bedroom dwellings within the development. Revised plans incorporate a total of 6 x 3 bedroom apartments, which complies with the required number of 3 bedroom apartments required by DCP 2011. The proposal maintains an exceedance of 1 bedroom units within the development and shortfall of the required number of 2 bedroom dwellings, yet the design of the development and proposed unit mix is deemed to provides for varied housing choice and is able to accommodate a variety of household types to suit the local demographics.

The development is designed to provide two appropriate communal facilities at podium and rooftop level with various spaces including bbq and kitchenette facilities, which will encourage and provide opportunities for social interaction between future occupants. The proposal is therefore deemed to be satisfactory with regards to this principle.

### Principle 9 – Aesthetics

The DRP noted that *"planting should be the predominant visual element at ground level"* and that *"consideration be given to protection to glazed areas by way of screening, louvers etc, which could*

*potentially enhance the character of the street façade."*

Comment: Plans have been revised to maximize landscaping within the front setback of the site. Planters are proposed which incorporate a range of shrubs and trees 0.75m - 5m in mature height at the front boundary of the site within 1.15m high planters. The Gertrude Street façade incorporates a range of elements to provide visual interest and provide protection to glazed areas, including the use of aluminium horizontal louvres, solid and glazed balustrades. In general it is noted that a mix of colours, materials and finishes are proposed to be incorporated within the development, including a grid of white colored concrete slabs, light grey frames to facades, clear glass balustrades, dark aluminium window frames and dark horizontal louvres.

### *c. the Apartment Design Guide*

The proposal has been assessed against the Apartment Design Guide (ADG)

The proposed development is considered to have performed adequately in respect to the objectives and design criteria contained within the ADG. The relevant issues are discussed below:

CLAUSE	DESIGN CRITERIA		COMMENTS	COMPLIES
3J - Bicycle and car parking	<i>0 spaces per studio</i> <i>0.6 spaces per 1 bedroom unit (10.2 spaces)</i> <i>0.9 spaces per 2 bedroom unit (10.8 spaces)</i> <i>1.4 spaces per 3 bedroom unit (8.4 spaces)</i> <i>1 space per 5 units (visitor parking) (8 spaces)</i> <i>Total of 30 residential and 8 visitor spaces are required</i>		38 spaces proposed on site with an additional space as a dedicated car wash bay as required by DCP 2011	Yes
4D – Apartment size and layout	<b>Apartment type</b>	<b>Minimum internal area</b>	Studio - min 35sq/m 1 bed - min 50sq/m 2 bed - min 70sq/m 3 bed - min 90sq/m	Yes Yes Yes Yes
	Studio	35sq/m		
	1 bedroom	50sq/m		
	2 bedroom	70sq/m		
	3 bedroom	90sq/m		
4C – Ceiling heights	<b>Minimum ceiling heights:</b>		2.7m / 2.4m	Yes
	Habitable	2.7m		
	Non-habitable	2.4m		

3F Visual Privacy	Building height	Habitable rooms and balconies	Non habitable rooms	Built to party wall of adjoining development. No development to the east. Appropriate 19m rear setback provided to enable sites to rear of property to be redeveloped with sufficient separation.	Yes
	Up to 12m (4 storeys)	6m	3m		
	Up to 25m (5-8 Storeys)	9m	4.5m		
4A – Solar and daylight access	Living rooms + POS of at least 70% (27) of apartments receive min 2hrs direct sunlight b/w 9am & 3 pm mid-winter  Max 15% (6) apartments receive no direct sunlight b/w 9am & 3pm mid-winter			71% (26 of 36) units receive 2 hours solar access in midwinter  14% (5 of 36) units receive nil solar access in midwinter	Yes  Yes
4F – Common circulation and spaces	Max apartments off a circulation core on a single level is eight.			3-5 units per floor	Yes
4E – Private open space and balconies	Dwelling type	Minimum area Primary Balcony	Minimum depth	1 bed units - 8sq/m - 13sq/m 2 bed - 8sq/m / 9sq/m primary balcony with supplementary bedroom balcony minimum 4sq/m 3 bed - 9sq/m / 10sq/m primary balcony with supplementary bedroom balcony 4sq/m / 10sq/m / 15sq/m 2 x podium terraces to units are > 3m in dimension and 17sq/m / 22sq/m in overall area.	1 Bed - Yes <b>2 bed - No - See discussion below</b>  <b>3 bed No - See discussion below.</b>  Podium Terraces - Yes
	Studio	4sq/m	-		
	1 bed	8sq/m	2m		
	2 bed	10sq/m	2m		
	3+ bed	12sq/m	2.4m		
	Ground level, podium or similar -POS provided instead of a balcony: min area 15m <sup>2</sup> and min depth of 3m.				



4B – Natural ventilation	Min 60% (22) of apartments are naturally cross ventilated in the first nine storeys of the building. Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.		61% (23 of 36) units are cross ventilated 17.9m maximum unit depth	Yes Yes
4G – Storage	<b>Dwelling type</b>	<b>Storage size volume</b>	Appropriate inter-unit storage provided, with supplementary storage located within ground and basement parking areas.	Yes
	Studio - 1 bed	6M²		
	2 bed	8m²		
	3 bed	10m²		

#### 4E - Private Open Space and Balconies

The design criteria outlined within the Apartment Design Guide requires that all 2 and 3 bedroom apartments comprise minimum primary balcony areas of 10sq/m and 12sq/m. Proposed 2 and 3 bedroom units within the development comprise primary balconies which are 1sq/m - 3 sq/m deficient of the required criteria. It is noted that secondary supplementary bedroom balconies are provided to these units, being 4sq/m - 15sq/m in size. The minor deficiency to the primary balcony size is not considered likely to result in adverse amenity impacts as primary balconies are of a useable area, with a reasonable outlook and connection via living spaces within units. The deficiency in balcony area is supported in this instance.

#### **Rockdale Local Environmental Plan 2011**

Relevant clauses	Compliance with objectives	Compliance with standard/provision
2.3 Zone R4 High Density Residential	Yes	Yes - see discussion
4.3 Height of buildings	Yes - see discussion	No - see discussion
4.4 Floor space ratio - Residential zones	Yes	No - see discussion
4.6 Exceptions to development standards	Yes	Yes - see discussion
5.9AA Trees or vegetation not prescribed by development control plan	Yes	Yes - see discussion
6.1 Acid Sulfate Soil - Class 3	Yes	Yes - see discussion
6.2 Earthworks	Yes	Yes - see discussion
6.6 Flood Planning Land	Yes	Yes - see discussion
6.7 Stormwater	Yes	Yes - see discussion
6.12 Essential services	Yes	Yes - see discussion

#### 2.3 Zone R4 High Density Residential

The subject site is zoned R4 - High Density Residential under the provisions of Rockdale Local Environmental Plan 2011 (RLEP 2011). The proposal is defined as a residential flat building which constitutes a permissible development only with development consent. The proposed development is

consistent with the objectives of the zone.

#### 4.3 Height of buildings

A maximum height limit of 29.5m applies to the subject site. The proposed development comprises a maximum height as follows:

- 32.35m - Top of lift and stair overrun / Pergola / Lobby / Toilet / Air Conditioning Plant
- 30.48m - Top of rooftop balustrades.
- 29.5m - Parapet of building.
- 29.25m - Roof of building.

As can be seen above, the building up to the parapet complies with the height limit for the site. The proposed balustrades at rooftop level exceed the maximum height limit by 0.98m with the lift and stair overrun, toilet, pergola and lobby exceeding the height limit by 2.85m. This is a proposed variation of 3.3% to 9.6% to the maximum height limit, yet only for a small portion of the proposed development.

The applicant has requested that a variation to the maximum building height requirement. This has been discussed within clause 4.6- Exception to Development Standards, within this report. The proposal is considered to be satisfactory with regards to the objectives of this clause for the reasons outlined within Clause 4.6 of this report.

#### 4.4 Floor space ratio - Residential zones

A maximum FSR of 2.2:1 applies to the subject site, this equates to a maximum gross floor area of 2208.8sq/m. The applicants calculations indicate an FSR of 2.49:1 and overall gross floor area of 2507sq/m. This is an excess of 298.2sq/m of gross floor area, equivalent to a variation of 13.5% to the FSR standard.

Further to the above however it is noted that the applicants calculations do not include the 19sq/m garden store at podium level. This area is not excluded from the gross floor area definition within RLEP 2011 and as such is to be included in calculations of GFA / FSR for the site. Additionally, the proposal will be conditioned to require the doorway to the lobby to be brought forward to provide a more spacious lobby area for future occupants, this results in an additional 9.8sq/m.

Accordingly the proposal has an overall GFA of 2535.86sq/m and overall FSR of 2.52:1, which is 317.2sq/m (14.3%) in excess of that permitted.

The applicant has requested a variation to the maximum FSR standard. This has been discussed within clause 4.6- Exception to Development Standards, within this report. The proposed FSR variation is supported for the reasons discussed within Clause 4.6 of this report.

#### 4.6 Exceptions to development standards

Clause 4.6 allows a variation to a development standard subject to a written request by the applicant justifying the variation by demonstrating:

*(3)(a) that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and*

*(3)(b) that there are sufficient environmental planning grounds to justify the variation.*

In considering the applicant's submission, the consent authority must be satisfied that:

(i) the applicant's written request is satisfactory in regards to addressing subclause (3) above, and  
(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives of the relevant zone.

5(a) The consent authority must also consider whether contravention of the development standard raises any matter of significance for State or Regional environmental planning, and  
5(b) the public benefit of maintaining the development standard.

Variations to height and FSR have been assessed below.

It is noted that the proposal has further been assessed against the principles established by the Land and Environment court judgement *Four2Five v Ashfield Council* [2015] NSWLEC 90. The judgement established that justification was required in order to determine whether the development standard was unreasonable or unnecessary on grounds other than whether the development achieved the objectives of the development standard. Consideration is to be given to the particular site circumstances of the site and development.

### Variation Sought - Height

As noted within Clause 4.3 - Height of Buildings, the proposal seeks to vary the maximum 29.5m height standard applicable to the subject site. The proposed building up to the parapet complies with the height limit for the site. The proposed balustrades at rooftop level exceed the maximum height limit by 0.98m, with the integrated lift and stair overrun, toilet, lobby, air conditioning plant structure and pergola structure exceeding the height limit by 2.85m. This is a proposed variation of 3.3% - 9.6% to a small portion of the development on site.

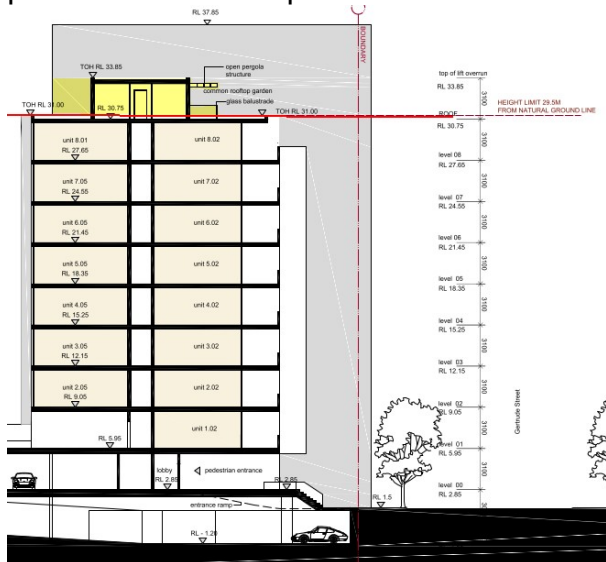


Figure 4 - Proposed height variation

### Applicants Height Justification

A summary of the key arguments of the applicant's clause 4.6 arguments in respect of the height development standard are as follows;

- The proposed height is similar to or less than that existing, approved and/or under construction in the surrounding locality.

- *The predominant building envelope complies with the standard.*
- *Elements exceeding the height limit do not materially add to the buildings height, bulk and scale and account for a limited portion of the building footprint.*
- *All habitable accommodation is contained within the height limit.*
- *The proposal will not result in any material environmental impacts to the adjoining and adjacent properties in terms of overshadowing, aural/visual privacy and natural ventilation.*
- *The height will not set an undue precedent and the development standard has been consistently varied in the surrounding locality.*
- *The proposal satisfies the objectives of the zone and height standard.*

### Height Discussion

The applicants written request is satisfactory in regard to addressing clause 4.6(3). Following a review of the application, it is considered that the height variation as proposed is acceptable for the following reasons:

- The subject site is flood affected and requires the ground floor level of the development to be raised 1.35m above natural ground level. Should the site have not been constrained in this manner, the proposed balustrades at rooftop level would have complied with the maximum height limit for the site. Notwithstanding, the glass balustrades proposed are clear and recessed in from the edge of the building, which ensures they are not visually apparent and do not detract from the overall height of the building as proposed. Additionally the balustrades are required to ensure the safety of users of the rooftop communal open space area and to satisfy the requirements of relevant Building Code of Australia provisions.
- Should a deduction of 1.35m be given due to the aforementioned flooding constraint, the lift and stair overrun, toilet, lobby and pergola structures remain an additional 1.5m over the maximum height limit. Notwithstanding the additional height of these structures is supported in this instance on the basis below.
- The proposed structures are recessed into the design of the development, minimizing their visual bulk and prominence. The proposed structures will not be clearly visible from the public domain at pedestrian level, will not affect the visual perception of the overall built form of the proposed building, nor the land use intensity at the site.
- The proposed structures are directly correlated to the design, function and intended use of the development and rooftop communal open space area which forms an integral part of the proposed development. Structures service the rooftop communal open space area which has been provided to benefit the future occupants of the site.
- The proposed area of height non compliance is not considered to result in a size or scale of development that is incompatible with the desired future character of the locality. The proposal is of a height which is commensurate with approved and emerging residential building heights within the context of the subject site.
- The height of proposed structures is not inconsistent with the aims of the Building Height control as referred to within the Apartment Design Guide.
- The proposal is consistent with the objectives of Clause 4.3 – Height of Buildings of Rockdale

LEP 2011 as it maintains satisfactory sky exposure to nearby buildings and the public domain and does not contribute to adverse overshadowing of living / private open space areas of neighbouring properties.

Given the site and development circumstances as discussed above, the proposed additional height sought by the applicant is not considered to be unreasonable in this instance and is supported.

#### Variation Sought - FSR

The proposal further seeks to vary the FSR standard for the site as noted in Clause 4.4 - FSR. A maximum FSR of 2.2:1 applies to the subject site, this equates to a maximum gross floor area of 2208.8sq/m. The proposal has an overall GFA of 2535.86sq/m and overall FSR of 2.52:1, which is 327.6sq/m (14.3%) in excess of that permitted.

#### Applicants FSR Justification

A summary of the key arguments of the applicant's clause 4.6 arguments in respect of the FSR development standard are as follows;

- *The overall design fits comfortably within the established and likely future built form context of the wolli creek precinct. Previous DCP 62 recommended that development blocks or precincts be broken up (from 2 - 3 buildings) to accommodate taller building forms so that the floor space could be redistributed and which would improve the amenity for all existing and future dwellings and residents.*
- *The proposed built form is not dissimilar to other buildings in the surrounding locality.*
- *The density proposed produces a similar scale (if not less than) and appearance of adjacent development.*
- *The height build and scale of the development will not set an undue precedent as there is only one remaining consolidated site at 11-13 Gertrude Street that is not as yet the subject of a DA. The remainder of Gertrude Street has been redeveloped (approved, built form existing or under construction) and of which the majority depart from the FSR standard.*
- *The proposal will not result in any material environmental impacts to adjoining properties in terms of overshadowing, visual privacy, natural ventilation etc.*
- *The size of the numerical departure does not materially add to the bulk and scale of the built form. The proposed development sits comfortably within the established, approved and likely future locational context and the proposed FSR is comparable to other properties which have undergone redevelopment.*
- *Council would not be setting a precedent by varying the FSR control as proposed as the FSR control has been varied to similar degree on similar development.*
- *Removing the non compliance would not significantly alter the perceived scale or density of the development when viewed from the public domain or surrounding development.*
- *The proposal will improve the visual character of the area.*
- *Proposed built form has been designed to physically and architecturally complement the adjoining development and provides visual interest through consistent vertical modulation.*
- *Landscaped area provided on site exceeds that required.*
- *The site is proportioned to allow the efficient realization and internalization of the impacts of the additional floor space without an adverse visual impact or perceived built form dominance.*

## FSR Discussion

The applicants written request is satisfactory in regard to addressing clause 4.6(3). Following a review of the application, it is considered that the FSR variation as proposed is acceptable for the following reasons:

- The design of the development results in a visually cohesive streetscape response with the adjoining western neighbouring development at 1-5 Gertrude Street which is nearing completion. The proposal provides a development with an appropriate built form, height, intensity and public domain response and contributes to the emerging streetscape character of Gertrude Street.
- The proposed building depth on site has been designed to be parallel to the splayed front property boundary, resulting in the rear building alignment continuing the approved, established and stepped rear building line of the directly adjoining western neighbour. The footprint of the proposed development results in a building form on site which is complimentary to building forms established, approved and emerging within the subject street block and context of the subject site.
- Although the proposal exceeds the maximum density permitted on the subject site the resulting bulk, scale, mass and form of the development as proposed is entirely consistent with the future desired character of area as envisaged by DCP 2011. Furthermore the subject site is of a depth which facilitates and accomodates the proposed building footprint without resulting in adverse amenity impacts on site or to neighbouring properties.
- Apartment layouts as designed maximize solar access, cross ventilation and outlook to optimize internal amenity for future occupants.
- The redevelopment of the site will facilitate a development whose built form which does not result in adverse environmental planning impacts upon adjoining or nearby properties in terms of overshadowing, aural and visual privacy, solar access, natural ventilation and views & vistas.
- The proposed development will not set an undue precedent given the circumstances of the site and development as noted above.
- The proposal is consistent with the following and is in the public interest:
  - a. Objectives of SEPP 65,
  - b. Aims of Part 2D – Floor Space Ratio of the Apartment Design Guide.
  - c. Objectives of the R4 – High Density Residential zone.
  - d. Objectives of Clause 4.4 – FSR

Given the site and development circumstances as discussed above, the proposed additional height and FSR sought by the applicant in this instance are not considered to be unreasonable. Given the above, the proposal provides for a development that facilitates the orderly economic development of the site in an appropriate manner. The particular circumstances of the site are considered to outweigh strict adherence to the numeric standards presented by the Height and FSR standards within RLEP 2011. It is considered that in this instance, there are sufficient environmental planning grounds and site circumstances in which to justify the contravention of the height and FSR standards for the site.

#### 5.9AA Trees or vegetation not prescribed by development control plan

The proposal seeks to remove 4 trees (Mulberry / Large Leafed Privet /2 x Camphor Laurel) along the rear boundary of the subject site. Correspondence submitted with the application from a qualified Arborist states that the aforementioned trees are *"self-sown species not worthy of retention."*

The proposal was reviewed by Council's Tree Preservation Officer who stated that existing site vegetation is exempt under Clause 4.1.7 of DCP 2011 and may be removed as they are either exempt noxious weeds or self sown undesirable trees.

It was further stated that more than adequate tree and landscape compensation is provided in the proposed landscape works on site. The proposal is deemed to be consistent with the requirements and objectives of this clause.

#### 6.1 Acid Sulfate Soil - Class 3

The subject site is affected by Class 3 Acid Sulfate Soils. As per the provisions of Clause 6.1 of Rockdale LEP 2011, works in excess of 1m below natural ground levels may disturb ASS and as such an Acid Sulfate Soils Management Plan is required to be submitted to Council.

A Detailed Site Investigation Report E22573 AA dated 31 July 2015 undertaken by Environmental Investigations was submitted to Council and noted that given the peroxide oxidisable sulphur within the soil on site, an acid sulfate soils an Acid Sulfate Soils Management Plan is required to be prepared.

On 5th April 2016 an Acid Sulfate Soils Management Plan was submitted to Council, which details appropriate management of ASS and methods of disposal. The proposal is consistent with the requirements and objectives of this clause.

#### 6.2 Earthworks

Earthworks including excavation are required on site for basement car parking levels. The objectives and requirements of Clause 6.2 of RLEP 2011 have been considered in the assessment of this application. It is considered that the proposed earthworks and excavation will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land. The proposal meets the objectives of this clause.

#### 6.6 Flood Planning Land

The site is affected by flooding and accordingly, the proposed development will require protection from possible flooding by setting minimum RLs / floor levels. The applicant submitted a Flood Advice Letter with the Development Application, indicating the minimum floor levels required for the proposed development on the subject site. The proposal has been designed to ensure that driveway crossings and floor levels are above the 100 year street flood level at 2.85RL. The proposal is satisfactory in regards to flooding.

#### 6.7 Stormwater

The proposal involves the construction of a storm water system to manage storm water. The proposed storm water system will drain to the easement at the rear of the property. Council's development engineer has recommended standard conditions to be included in the draft Notice of Determination to ensure that the discharge of storm water complies with Rockdale Technical Specification for Stormwater Management with appropriate certification and checklists to be completed and received by Council prior to release of the Construction Certificate.



### 6.12 Essential services

Services will generally be available on the site. Additional conditions have been incorporated in the draft Notice of Determination requiring consultation with relevant utility providers in regards to any specific requirements for the provision of services on the site.

### **S.79C(1)(a)(ii) - Provisions of any Draft EPI's**

No relevant proposed instruments are applicable to this proposal.

### **S79C(1)(a)(iii) - Provisions of any Development Control Plan**

The following Development Control Plan is relevant to this application:

#### **Rockdale Development Control Plan 2011**

The application is subject to Rockdale DCP 2011. A compliance table for the proposed development is provided below:

<b>Relevant clauses</b>	<b>Compliance with objectives</b>	<b>Compliance with standard/provision</b>
4.1.1 Views and Vista	Yes	Yes - see discussion
4.1.3 Water Management	Yes	Yes
4.1.3 Flood Risk Management	Yes	Yes
4.1.3 Groundwater Protection	Yes	Yes
4.1.4 Soil Management	Yes	Yes - see discussion
4.1.5 Contaminated Land	Yes	Yes - see discussion
4.1.7 Tree Preservation	Yes	Yes
4.1.9 Lot size and Site Consolidation - Residential flat buildings	Yes	No - see discussion
4.2 Streetscape and Site Context - General	Yes	Yes - see discussion
4.4.1 Energy Efficiency - Residential	Yes	Yes - see discussion
4.4.4 Glazing - General Controls	Yes	Yes
4.4.5 Visual privacy	Yes	Yes - see discussion
4.4.5 Acoustic privacy	Yes	Yes - see discussion
4.4.7 Wind Impact	Yes	Yes - see discussion
4.5.1 Social Equity - Housing Diversity and Choice	Yes	No - see discussion
4.5.2 Social Equity - Equitable Access	Yes	Yes - see discussion
4.6 Car Park Location and Design	Yes	Yes
4.6 Vehicles Enter and Exit in a Forward Direction	Yes	Yes - see discussion
4.6 Basement Parking - General	Yes	No - see discussion
4.6 Driveway Widths	Yes	Yes - see discussion
4.6 Basement Parking - Residential Flat Buildings	Yes	No - see discussion
4.6 Access to Parking	Yes	Yes
4.6 Design of Loading Facilities	Yes	Yes - see discussion
4.6 Car Wash Facilities	Yes	No - see discussion
4.6 Pedestrian Access and Sustainable Transport	Yes	Yes - see discussion

<b>Relevant clauses</b>	<b>Compliance with objectives</b>	<b>Compliance with standard/provision</b>
4.7 Air Conditioning and Communication Structures	Yes	Yes - see discussion
4.7 Waste Storage and Recycling Facilities	Yes	Yes - see discussion
4.7 Service Lines/Cables	Yes	Yes - see discussion
4.7 Servicing - Wolli Creek and bonar Street	Yes	Yes - see discussion
4.7 Laundry Facilities and Drying Areas	Yes	Yes
4.7 Letterboxes	Yes	Yes
4.7 Hot Water Systems	Yes	Yes - see discussion
5.2 RFB - Lift Size and Access	Yes	No - see discussion
7.1.2 Wolli Creek Vision	Yes	Yes
7.1.3 Wolli Creek Structure Plan	Yes	Yes
7.1.4 Wolli Creek Land Use Strategy	Yes	Yes
7.1.5 Wolli Creek Road Network and Vehicular Access	Yes	No - see discussion
7.1.8 - Wolli Creek Residential Street Frontage	Yes	No - see discussion
7.1.9 Wolli Creek - Environmental Management	Yes	Yes

#### 4.1.1 Views and Vista

The proposed development does not result in adverse view loss impacts.

#### 4.1.4 Soil Management

A Soil & Water Management Plan has been submitted and general erosion and sediment control strategies are proposed to ensure that the potential for impact on adjoining land and surrounding waterways is minimized. Temporary fencing is to be erected along the boundaries of the site. A builders all weather access is required to be provided onto the site. The proposal satisfies the provisions of this clause.

#### 4.1.5 Contaminated Land

The matter of contamination and remediation has been previously discussed within this report.

#### 4.1.9 Lot size and Site Consolidation - Residential flat buildings

As per the requirements of this clause a minimum lot width of 24m is required. The subject site comprises a lot width of 22.63m and does not comply with this requirement, comprising a deficiency of 1.37m.

Notwithstanding the above, the subject site is considered to be of sufficient overall dimensions and area in order to facilitate redevelopment as a stand alone site. The width deficiency does not result in design issues and the site is capable of accommodating the required carparking, vehicular access and landscaping required.

The subject site does not result in the isolation of adjoining properties and given the recent approval upon 15-17 Gertrude Street, the redevelopment of the subject site on its own is supported, as it will facilitate the amalgamation of the two remnant lots fronting Gertrude Street, numbers 11 and 13 as a separate development site.

The proposal is satisfactory with respect to the objectives of this clause.

#### 4.2 Streetscape and Site Context - General

As noted within the SEPP 65 section of this report, the proposal is visually consistent with its established western neighbour fronting Gertrude Street and provides an appropriate streetscape response.

#### 4.4.1 Energy Efficiency - Residential

The applicant has submitted a BASIX Certificate for the proposed development 647613M\_03. The commitments made result in reductions in energy and water consumption, and will achieve the efficiency target set under SEPP BASIX.

#### 4.4.5 Visual privacy

The proposed development provides a building which is built to side boundaries. Balconies fronting Gertrude Street and the rear of the site are provided with blade walls, which ensure overlooking of adjoining properties does not arise.

The development incorporates a 19m building setback to the rear property boundary and as such appropriate building separation can be achieved with the future redevelopment of properties to the rear fronting Innesdale Road.

The proposal is considered to be satisfactory with respect to visual privacy.

#### 4.4.5 Acoustic privacy

The proposal was accompanied by an Acoustic Report prepared by Renzo Tonin & Associates dated 5 August 2015. The report considered aircraft, traffic, plant and internal noise transmission, making recommendations to ensure appropriate internal acoustic amenity is achieved. The proposal is considered to be satisfactory with regard to acoustic amenity and satisfies the objectives of this clause.

#### 4.4.7 Wind Impact

A Pedestrian and Wind Environment Study (WC539-01AF03(REV0) prepared by Wind Tech was submitted with the application. Additionally revised correspondence was submitted on 5th April and 23 June 2016. The submitted documents provide the following recommendations:

1. The inclusion of recommended densely foliating trees capable of growing to a height of 3m with a 3m wide canopy along the north-eastern boundary of the subject development site.
2. The wind conditions can be further enhanced with the inclusion of 1.5m high impermeable screens along the perimeter of the eastern stairway
3. Optional - The inclusion of additional densely foliating vegetation as indicated in the architectural drawings is expected to further enhance the localized wind conditions.
4. The inclusion of densely foliating shrubs, capable of growing to a height of at least 1.5m within and along the perimeter of the Level 1 communal terrace.
5. The inclusion of a densely foliating tree capable of growing to at least 4m high with 4m wide canopy to the north of the common deck area on Level communal terrace.
6. The inclusion of a 2m high impermeable screen along the southern perimeter of the communal roof terrace.
7. The inclusion of the proposed balustrade along the remaining perimeter of the communal roof terrace.
8. The inclusion of additional densely foliating vegetation such as shrubs within the proposed

planter areas along the eastern and western perimeter edge of the communal roof terrace as indicated in the architectural drawings.

The above items will be conditioned and required to be implemented on site to ensure appropriate wind amelioration on site. The proposal is satisfactory with respect to the provisions of this clause.

#### 4.5.1 Social Equity - Housing Diversity and Choice

The proposal indicates the following mix of units on site. Variations are proposed to the number of 1 and 2 bedroom units within the development.

<b>DCP Requirement</b>	<b>Proposed</b>	<b>Complies</b>
Studio / 1 bedroom 10% (4) - 20% (8)	1 studio / 17 x 1 bed (50%)	No
2 bedroom 50% (18) - 75% (27)	12 x 2 bed (33.3%)	No
3 bedroom 10% (4) - 30% (11)	6 x 3 bed 10% (16.7%)	Yes

Notwithstanding the above, the proposal provides for a range of housing within the development to cater to diverse household types. The proposal provides for a range of housing options which will enable changing lifestyle needs and cater to different income groups. The proposal is considered to be consistent with the objectives of this clause. A variation in this instance is deemed satisfactory.

#### 4.5.2 Social Equity - Equitable Access

The requirements of DCP 2011 require the provision of 10% (4) adaptable units within the development with 20% (8) dwellings within the development to comprise barrier free access. The proposal complies with these requirement, providing 4 adaptable dwellings, with barrier free access provided to all units within the development.

#### 4.6 Vehicles Enter and Exit in a Forward Direction

The proposal has been designed with internal maneuvering areas to enable vehicles to enter and exit the site in a forward direction. The location of the proposed car parking areas on site do not dominate or detract from the appearance of the development or the streetscape. The proposal is consistent with the requirements and objectives of this clause.

#### 4.6 Basement Parking - General

It is noted that the proposed basement level on site extends beyond the footprint of the proposed development. Notwithstanding, it is important to note that 100sq/m of deep soil planting has been provided along the rear boundary of the subject site with ample landscaping proposed within this area. Further, appropriate storm water management is proposed on site and as such the protrusion of the basement level beyond the building footprint is not unreasonable in this instance and the proposal satisfies the objectives of this requirement.

#### 4.6 Driveway Widths

A loading bay for a Small Rigid Vehicle (SRV) for the development is proposed within the front setback of the subject site, along with a tandem passing bay for vehicles to enable safe vehicular movement in and out of the site. This area is proposed to be provided as concrete grass tiles, to delineate this area from the adjoining concrete driveway and ensure an appropriate visual outcome from the public domain. The proposal complies with the provisions of this clause.

#### 4.6 Basement Parking - Residential Flat Buildings

DCP 2011 requires that all car parking for residential flat buildings is to be provided within a basement car park, with the exception of any required accessible or visitor parking which may be provided at-grade.

The proposed development incorporates residential car parking at grade in addition to visitor spaces. It is noted however that ground level parking is provided behind the primary active residential frontage and communal lobby areas to Gertrude Street. Given parking areas are obscured from view the provision of residential parking in this location is not unreasonable.

The proposal is considered satisfactory with regard to the objectives of this clause.

#### 4.6 Design of Loading Facilities

A loading bay for a Small Rigid Vehicle (SRV) for the development is proposed within the front setback of the subject site, along with a tandem passing bay for vehicles to enable safe vehicular movement in and out of the site. This area is proposed to be provided as concrete grass tiles, to delineate this area from the adjoining concrete driveway and ensure an appropriate visual outcome from the public domain. The proposal complies with the provisions of this clause.

#### 4.6 Car Wash Facilities

Revised plans depict the provision of a car wash bay within a visitor space at ground level. It is noted however that the car wash bay as proposed does not comply with the required dimensions as Rockdale Technical Specification - Stormwater Management. The proposal has been conditioned to ensure compliance and satisfies the objectives of this clause.

#### 4.6 Pedestrian Access and Sustainable Transport

The proposal incorporates a total of 5 bicycle and 3 motorbike spaces within the development, complying with the requirements of DCP 2011.

#### 4.7 Air Conditioning and Communication Structures

Plans do not depict the location of proposed air conditioning units on site. The proposal has been conditioned appropriately.

#### 4.7 Waste Storage and Recycling Facilities

The proposed development provides for an appropriately sized and dimensioned waste storage room at ground level. The proposed development integrates garbage chutes into the building for ease of waste management for future occupants.

Garbage collection from the site will occur via Gertrude Street, with bins to be returned to on site storage room as promptly as possible by the Building Manager, following collection. The proposal is satisfactory with respect to the provisions of this clause.

#### 4.7 Service Lines/Cables

Plans indicate the provision of services i.e. hydrant booster and substation adjoining the residential entry to the development, yet concealed within the building envelope. The proposed location of these services is satisfactory.

#### 4.7 Servicing - Wolli Creek and Bonar Street

The proposal has been conditioned accordingly to ensure power lines along the frontage of the site to Gertrude Street are under-grounded at the expense of the developer.

#### 4.7 Hot Water Systems

Plans illustrate gas hot water systems built into the sides of unit balconies. The proposal satisfies the requirements of this clause.

#### 5.2 RFB - Lift Size and Access

The requirements of this clause require that each dwelling on a level above the sixth storey is to have access to two lifts. The proposed development incorporates a dual lift core, providing lift access from basement to rooftop levels within the development.

The provisions of this clause further require a minimum corridor width of 2m. The proposal comprises common corridors being 1.5m in width with 1.2m in some areas. This is 0.52m - 0.8m deficient of the 2m corridor width required by DCP 2011. Notwithstanding the proposal has been conditioned to require that the common corridors within the development be provided at 1.5m for their entire length. The provision of a 1.5m wide corridor is considered to be sufficient to enable suitable access and maneuverability, in particular of bulky items within the development. In this regard the variation is supported.

#### 7.1.5 Wolli Creek Road Network and Vehicular Access

The proposal does not comply with the requirements of this clause, in that vehicular access to the subject site is proposed via the Gertrude Street frontage. It is noted that the site is constrained by a drainage easement to the rear of the property, with the development nearing completion at 1-5 Gertrude Street not burdened by any easement to enable vehicular access to the subject site.

A recent approval at 15-17 Gertrude Street incorporates vehicular access via Robert Lane, yet given 11 and 13 Gertrude Streets are not as yet subject to a development proposal, the subject site does not comprise any other alternative means for vehicular access.

Given the above, the provision of vehicular access via Gertrude Street is not considered to be unreasonable in this instance.

#### 7.1.8 - Wolli Creek Residential Street Frontage

The subject site is affected by the 'Residential Street Frontage' to Gertrude Street. Accordingly a 5.5m front setback to Gertrude Street is required, with residential ground floor units accessed from the street and front gardens within the setback area.

The proposal complies with the 5.5m setback requirement, yet the 1 x 1 bedroom unit at ground level is not provided with independent street access or a private front garden.

Plans indicate the provision of a ground level balcony fronting Gertrude Street to unit 0.01, which overlooks and is partially obscured by dense planting within the front setback of the site.

The ground level unit is not provided with independent access given its proximity to the lobby and main front entrance. As such, the aforementioned variations in this instance are not considered to be unreasonable.

### **S.79C(1)(a)(iv) - Provisions of regulations**

All relevant provisions of the Regulations have been taken into account in the assessment of this proposal.

### **S.79C(1)(b) - Likely Impacts of Development**

#### *Safety & Security*

The development provides for a clearly identifiable and legible building entry to Gertrude Street. The residential lobby comprises direct pedestrian access and is glazed to provide a high level of visibility to the street. Residential apartments, communal open space & car parking areas will be accessible via a secure electronic system. Common areas are proposed to be well lit with clearly defined pathways.

The proposal is satisfactory in this regard.

#### *Social Impact*

The proposal includes residential units of adequate size and mix for the demographics of the locality. Proposed residential units have access to good public transport which will assist in the reduction of car use, and the proposal incorporates alternative transportation modes, via the provision of bicycle and motorbike parking. The proposal further provides well designed and located communal areas with facilities which will encourage social interaction between future occupants on site. The proposed development is not considered to result in any adverse social impacts and is satisfactory for the site.

### **S.79C(1)(c) - Suitability of the site**

The relevant matters pertaining to the suitability of the site for the proposed development have been considered in the assessment of the proposal. Additional conditions of consent are proposed to further minimise any impacts on neighbouring properties. There are no known major physical constraints, environmental impacts, natural hazards or exceptional circumstances that would hinder the suitability of the site for the proposed development.

### **S.79C(1)(d) - Public submissions**

The development has been notified in accordance with the provisions of Rockdale DCP 2011. Council did not receive any submissions on this proposal.

### **S.79C(1)(e) - Public interest**

The proposal has been assessed against the relevant planning policies applying to the site having regard to the objectives of the controls. As demonstrated in the assessment of the development application, the proposal will allow the development of the site in accordance with its environmental capacity. The proposed building is a high quality building that will add architectural value to the existing streetscape. Furthermore, the proposal does not create unreasonable impacts on surrounding properties. As such it is considered that the development application is in the public interest.

### **S94 Contribution towards provision or improvement of amenities or services**

S94 Contributions apply to the proposed development given the increase in residential demand to local services and infrastructure. The proposal has been conditioned accordingly.

## **Schedule 1 - Draft Conditions of consent**

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## General Conditions

The following conditions restrict the work to the detail provided in the Development Application and are to ensure that the development is complete.

1. The term of this consent is limited to a period of five (5) years from the date of approval. The consent will lapse if the development does not commence within this time.
2. The development must be implemented substantially in accordance with the plans listed below, the application form and on any supporting information received with the application, except as may be amended in red on the attached plans and by the following conditions.

10/06/2016

<b>Plan/Dwg No.</b>	<b>Drawn by</b>	<b>Dated</b>	<b>Received by Council</b>
Basement 1 DA2.01 Rev E	Marchese Partners Pty Ltd	10/06/2016	18/07/2016
Level 00 Plan DA2.02 Rev F	Marchese Partners Pty Ltd	23/08/2016	24/08/2016
Level 1 Plan DA2.03 Rev F	Marchese Partners Pty Ltd	23/08/2016	24/08/2016
Level 2 Plan DA2.04 Rev E	Marchese Partners Pty Ltd	10/06/2016	18/07/2016
Level 3 Plan DA2.05 Rev E	Marchese Partners Pty Ltd	10/06/2016	18/07/2016
Level 4 Plan DA2.06 Rev E	Marchese Partners Pty Ltd	10/06/2016	18/07/2016
Level 5 Plan DA2.07 Rev E	Marchese Partners Pty Ltd	10/06/2016	18/07/2016
Level 6 Plan DA2.08 Rev E	Marchese Partners Pty Ltd	10/06/2016	18/07/2016
Level 7 Plan DA2.09 Rev E	Marchese Partners Pty Ltd	10/06/2016	18/07/2016
Level 8 Plan DA2.10 Rev E	Marchese Partners Pty Ltd	10/06/2016	18/07/2016
Roof Plan DA2.11 Rev E	Marchese Partners Pty Ltd	10/06/2016	18/07/2016
North Elevation DA3.01 Rev E	Marchese Partners Pty Ltd	10/06/2016	18/07/2016
South Elevation DA3.02 Rev E	Marchese Partners Pty Ltd	10/06/2016	18/07/2016
East Elevation DA3.03 Rev E	Marchese Partners Pty Ltd	10/06/2016	18/07/2016
West Elevation DA3.04 Rev E	Marchese Partners Pty Ltd	10/06/2016	18/07/2016
Section AA DA4.01 Rev E	Marchese Partners Pty Ltd	10/06/2016	18/07/2016
Section Entrance Ramp Rev F	Marchese Partners Pty Ltd	23/08/2016	24/08/2016

3. All new building work must be carried out in accordance with the provisions of the Building Code of Australia (BCA).
4. **A Construction Certificate must be obtained from Council or an Accredited Certifier prior to any building work commencing.**
5. The development must be implemented and all BASIX commitments thereafter maintained in accordance with BASIX Certificate Number 647613M\_04 other than superseded by any further amended consent and BASIX certificate.  
**Note:** Clause 145(1)(a1) of the Environmental Planning & Assessment Regulation 2000 provides: A certifying authority must not issue a construction certificate for building work unless it is satisfied of the following matters: -
  - (a1) that the plans and specifications for the building include such matters as each relevant BASIX certificate requires.**Note:** Clause 154B(2) of the Environmental Planning & Assessment Regulation 2000 provides: "A certifying authority must not issue a final occupation certificate for a BASIX affected building to which this clause applies unless it is satisfied that each of the commitments whose fulfilment it is required to monitor has been fulfilled."  
Note: For further information please see <http://www.basix.nsw.gov.au>.
6. Balconies shall not be enclosed at any future time without prior development consent.
7. This approval is not to be construed as permission to erect any structure on or near a boundary contrary to the provisions of the Dividing Fences Act.
8. The materials and façade details approved under condition 2 and any other relevant condition of this consent shall not be altered or amended at the construction certificate stage without a prior S96 application and approval under the EP&A Act.
9. Mail boxes must be installed along the street frontage of the property boundary in accordance with Australia Post Guidelines. Prominent house numbers are to be displayed, with a minimum number size of 150 mm in height for each number and letter in the alphabet.
10. All works are to be carried out in accordance with the integrated development conditions provided by the NSW Office of Water and listed within this consent.
11. Parking spaces shall be allocated to residential apartments / non-residential units in the development in the following manner and this shall be reflected in any subsequent strata subdivision of the development:

#### **Allocated Spaces**

Studio apartments Nil spaces

1 bedroom apartments 0.6 space per dwelling

2 bedroom apartments 0.9 space per dwelling

3 bedroom apartments 1.4 spaces per dwelling

#### **Non-Allocated Spaces**

Residential Visitor Spaces 1 space per 5 apartments

1 dedicated car wash bay

1 SRV loading / unloading bay

Parking calculations that are not whole numbers must be rounded up to the nearest whole number.

All residential visitor spaces, car wash bays and loading bays shall be labelled as common property on the final strata plan for the site.

Note: This parking allocation condition applies to any Strata Certificate issued with

respect to a Consent issued in accordance with Section 81 (1)(A) of the *Environmental Planning and Assessment Act 1979* or a Complying Development Certificate issued in accordance with Part 6 of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

## **Development specific conditions**

The following conditions are specific to the Development Application proposal.

12. Loading and unloading within the site shall be restricted to commercial vehicles not exceeding the size and mass description of the SRV from AS2890.2:2002. Commercial vehicles greater in size and mass than the SRV are not permitted to enter the site. Loading areas are to be used only for the loading and unloading of goods, materials etc. not for any other purpose.
13. Parking spaces shall not be enclosed without further approval of Council. The enclosure of car spaces is not permitted unless the enclosure complies with the design requirements of AS2890.1.
14. The existing and future owners (Registered Proprietor) of the property will be responsible for the operation and maintenance of the rain tank-pump system. The registered proprietor will:
  - (i) permit stormwater to be temporarily detained by the system;
  - (ii) keep the system clean and free of silt, rubbish and debris;
  - (iii) maintain, renew and repair the whole or parts of the system so that it functions in a safe and efficient manner, and in doing so complete the same within the time and in the manner specified in written notice issued by the Council;
  - (iv) carry out the matters referred to in paragraphs (ii) and (iii) at the proprietor's expense;
  - (v) not make any alterations to the system or elements thereof without prior consent in writing of the Council;
  - (vi) permit the Council or its authorised agents from time to time upon giving reasonable notice (but at any time and without notice in the case of emergency) to enter and inspect the land for compliance with the requirements of this clause;
  - (vii) comply with the terms of any written notice issued by the Council in respect to the requirements of this clause within the time stated in the notice.
15. The rainwater tank shall be routinely de-sludged and all contents from the de-sludging process disposed – solids to the waste disposal and de-sludged liquid to the sewer.
16. The contaminated site shall be remediated in accordance with 'State Environmental Planning Policy No 55 Remediation of Land' (SEPP55). All remediation and validation works shall be carried out in accordance with the Site Remedial Action Plan called – Remediation Action Plan 7-9 Gertrude Street Wolli Creek NSW Report E22573 AB rev2 prepared by Environmental Investigations Australia dated 22 June 2016.
17. The use of the premises, building services, equipment, machinery and, ancillary fittings shall not give rise to an "offensive noise" as defined under the provisions of the Protection of the Environment Operations Act, 1997.
18. The use of mechanical plant including air conditioners, fans, compressors, condensers, freezers, swimming pool or spa pumps (whether commercial or domestic) shall not cause sound pressure levels in excess of the criteria given in the

NSW Industrial Noise Policy – 2000.

19. Residential air conditioners shall not cause 'offensive noise' as defined by the Protection of the Environment Operations Act 1997 or contravene provisions of the Protection of the Environment (Noise Control) Regulation 2008 where emitted noise from a residential air conditioner can be heard within a habitable room in any other residential premises at night.
20. Temporary dewatering of the site to enable the construction of the subsurface structure shall not be carried out unless a permit has been issued pursuant to the Water Management Act 2000, and, in the case where water is to be pumped into the public road, a permit has been issued pursuant to the Roads Act 1993.
21. The visible light reflectivity from building materials used on the façade of the building shall not exceed 20% and shall be designed so as not to result in glare that causes any nuisance or interference to any person or place. A statement demonstrating compliance with these requirements shall be submitted to the satisfaction of the Certifying Authority prior to the issue of a Construction Certificate for the relevant stage of works.
22. The off-street parking areas associated with the subject development shall be designed strictly in accordance with AS2890.1 and AS2890.6.
23. Internal height clearance shall be designed throughout the car park and access driveway in accordance with AS2890.1 and AS2890.6.
24. Commercial vehicle facilities shall be designed strictly in accordance with AS2890.2:2002.
25. All proposed lights shall comply with the Australian Standard AS4282 - 1997 "Control of the Obtrusive Effects of Outdoor Lighting". In this regard, the lighting of the premises shall be directed so as not to cause nuisance to the owners or occupiers of adjacent/adjoining premises or to motorists on adjoining or nearby roads.
26. Hot and cold water hose cocks shall be installed to the garbage room. Services or utility systems shall not be located in the garbage room.
27. The development shall achieve the following minimum equivalent AAAC Star Rating within the below specified areas of the development.
  - 3 Star for tiled areas within kitchens, balconies, bathrooms and laundries. Tiled flooring within corridors, living areas and bedrooms is not permitted.
  - 4 Star for timber flooring in any area.
  - 5 Star for carpet in any area.

The development shall comply with the Building Code of Australia requirement for walls dividing occupancies.

A report shall be submitted to the Principal Certifying Authority for approval prior to the issue of any Construction Certificate. The report is to include BCA requirements and details of floor/ceilings between residential apartments. Floor coverings within apartments shall be identified within the report.

A suitably qualified acoustic engineer with MIE Australia membership or employed by a consulting firm eligible for AAAC membership is to certify that the details provided in the said report satisfy the requirements of this condition, with the certification to be submitted to the Principal Certifying Authority for approval prior to the issue of any Construction Certificate for the relevant stage of works.

28. a) In order to ensure the design quality excellence of the development is retained:
  - i. Marchese Partners Pty Ltd is to have direct involvement in the design

documentation, contract documentation and construction stages of the project;  
ii. The design architect is to have full access to the site and is to be authorized by the applicant to respond directly to the consent authority where information or clarification is required in the resolution of design issues throughout the life of the project;  
iii. Evidence of the design architect's commission is to be provided to the Department prior to release of the Construction Certificate.  
b) The design architect of the project is not to be changed without prior notice and approval of the Council or Department.

29. Where natural ventilation fails to comply with the provisions of the Building Code of Australia, mechanical ventilation shall be provided in accordance with Australian Standard, 1668, Part 2.
30. Any soil disposed of off-site shall be classified in accordance with the procedures in the NSW Environment Protection Authority's Environmental Guidelines: Waste Classification Guidelines (2009).
31. All low voltage street mains in that section of the street/s adjacent to the development shall be placed underground. This shall include any associated services and the installation of underground supplied street lighting columns where necessary. The applicant shall confer with Energy Australia to determine Energy Australia requirements. Written confirmation of Energy Australia's requirements shall be obtained prior to issue of Construction Certificate.
32. Safety & Security

a. Lighting shall be designed to the Australian and New Zealand Lighting Standards. Australia and New Zealand Lighting Standard 1158.1 - Pedestrian, requires lighting engineers and designers to consider crime risk and fear when selecting lamps and lighting levels

b. Where applicable, security mirrors shall be installed within corridors and on blind corners to enable users to see around blind corners

c. A street sign shall be prominently displayed at the front of the development to comply with Local Government Act, 1993, Section 124, Order No 8.

d. Signage shall be erected at entry/exit points and throughout the development to assist users and warn intruders they may be prosecuted.

e. Graffiti resistant materials are to be used to all ground floor external surface areas. Details to be provided prior to the issue of the Construction Certificate.

f. Intercom facilities shall be installed into entry/exit points to enable residents to communicate and identify with people prior to admitting them to the development.

g. Monitored CCTV facilities shall be implemented throughout the development. Areas of focus include the basement car park (including entry and exits), main entry areas to the development and garbage/storage areas. Details to be provided prior to the issue of the Construction Certificate.

33. Landscaping

The following modifications are to be detailed upon podium level landscape and architectural plans prior to the issue of the Construction Certificate.

- a. The garden store room at podium level shall be reduced in size, in order to accommodate an accessible toilet facility in this location.
- b. 1 x 12sq/m pergola structure shall be provided within the accessible podium.
- c. A kitchenette and bbq facility is to be provided within the accessible podium level.
- d. Stormwater and drainage systems are not to be located in, or under those areas shown as landscaped beds, or where proposed trees are located.
- e. Retaining walls used for raised planter beds on concrete slabs shall

accommodate a minimum 800mm of soil/plant mix (over and above any drainage medium).

f. A minimum soil depth of 800mm is required for planted areas (other than turf) on podiums or roof-tops or any other concrete slab.

g. A minimum soil depth of 300mm is required for turfed areas on podiums or roof-tops or any other concrete slab, including the soil above stormwater drainage tanks.

h. The basement carpark shall be screened using a combination of dense planting and mounding.

i. Podium landscaping and paved areas shall be drained into the stormwater drainage system. All waterproofing for planters on slab shall be installed and certified by a licensed waterproofing contractor.

j. All softfall treatments shall satisfy the relevant AS/NZS standards (AS/NZS 4486.1:1997, AS/NZS 4422:1996).

k. All pavements shall comply with AS/NZ 4586:1999 standards Class W (low) for slip resistance on both private and Council property.

The approved completed landscape works shall be maintained for a period not less than 12 months.

On completion of the maintenance period, a Landscape Architect shall provide a report to the certifying authority (with a copy provided to Council if Council is not the principal certifying authority) stating the landscape maintenance has been carried out in accordance with approved landscape plans and designated specifications before release of the nominated landscape bond.

#### 34. INTEGRATED DEVELOPMENT / EXTERNAL AUTHORITIES

The following conditions have been imposed in accordance with Section 91A of the Environmental Planning and Assessment Act 1979.

##### *Sydney Airport Corporation Limited (SACL)*

SACL has approved the maximum height of the proposed building at 38RL relative to Australian Height Datum (AHD). This height is inclusive of all vents, chimneys, aerials, TV antennae and construction cranes etc. No permanent or temporary structure is to exceed this height without further approval from Sydney Airport Corporation Limited.

Note: Under Section 186 of the Airports Act 1996, it is an offence not to give information to the Airport Operator that is relevant to a proposed “controlled activity” and is punishable by a fine of up to 50 penalty units. For further information on Height Restrictions please contact SACL on 9667 9246.

##### NSW OFFICE OF WATER

a. An authorisation shall be obtained for the take of groundwater as part of the activity. Groundwater shall not be pumped or extracted for any purpose other than temporary construction dewatering at the site identified in the development application. The authorisation shall be subject to a currency period of 12 months from the date of issue and will-be limited to the volume of groundwater take identified.

b. The design and construction of the building must prevent any take of groundwater after the authorisation has lapsed by making any below-ground levels that may be impacted by any water table watertight for the anticipated life of the building. Waterproofing of below-ground levels must be sufficiently extensive to incorporate

adequate provision for unforeseen high water table elevations to prevent potential future inundation.

c. Sufficient permanent drainage shall be provided beneath and around the outside of the watertight structure to ensure that natural groundwater flow is not impeded and:

i) any groundwater mounding at the edge of the structure shall be at a level not greater than 10 % above the level to which the water table might naturally rise in the location immediately prior to the construction of the structure; and

ii) any elevated water table is more than 1.0 m below the natural ground surface existent at the location immediately prior to the construction of the structure; and

iii) where the habitable structure is founded in bedrock or impermeable natural soil then the requirement to maintain groundwater flows beneath the structure is not applicable.

d. Construction methods and material used in and for construction shall be designed to account for the likely range of salinity and pollutants which may be dissolved in groundwater, and shall not themselves cause pollution of the groundwater.

e. DPI Water requires documentation (referred to as 'report') comprising measurements, maps, bore logs, calculations, results, discussion and justification for various matters related to the dewatering process. Information will be required at several stages: prior to construction commencing (initial report - which will accompany the application for the authorisation), at any time when an authorisation renewal is required or a significant change in activities occurs (intermediate report); and at the completion of dewatering and related operations (completion report). Reports need to be submitted to DPI Water at Parramatta Office, in a format consistent with electronic retrieval without editing restrictions; raw data should be presented in Excel spreadsheets without editing restrictions.

Prior to excavation

f. The following shall be included in the initial report:

i) measurements of groundwater levels beneath the site from a minimum of three relevant monitoring bores, together with details of the bores used in the assessment including bore logs and three-dimensional identification information.

ii) a map of the site and its immediate environs depicting the water table (baseline conditions) shown relative to the topography and approved construction footprint from the surface level and below. An assessment of the potential variation in the water table during the life of the proposed building together with a discussion of the methodology and information on which this assessment is based.

iii) details of the present and potential groundwater flow paths and hydraulic gradients in and around the site; the latter in response to the final volumetric emplacement of the construction.

iv) a schedule for the ongoing water level monitoring and description of the methodology to be used, from the date of consent until at least two months after the cessation of pumping. [DPI Water prefers that monitoring be undertaken on a continuous basis using automatic loggers in boreholes.



g. The Applicant shall assess the likely impacts of the dewatering activities on other groundwater users or structures or public infrastructure; this assessment will include an appropriate bore, spring or groundwater seep census and considerations relevant to potential subsidence or excessive settlement induced in nearby buildings and property, and be documented together with all calculations and information to support the basis of these in the initial report.

h. Groundwater quality testing of samples taken from outside the footprint of the proposed construction, with the intent of ensuring that as far as possible the natural and contaminant hydrochemistry of the potential dewatered groundwater is understood, shall be conducted on a suitable number of samples and tested by a NATA-certified laboratory. Details of the sampling locations and the protocol used, together with the test results accompanied by laboratory test certificates shall be included in the initial report. An assessment of results must be done by suitably qualified persons with the intent of identifying the presence of any contaminants and comparison of the data against accepted water quality objectives or criteria for the intended dewatering purpose. In the event of adverse quality findings, the Applicant must develop a plan to mitigate the impacts of the hydrochemistry on the dewatered groundwater and present the details of all assessments and plans in the initial report.

i. Groundwater quality testing generally in accordance with Clause 8, shall be undertaken on any anniversary or other renewal or alteration of any dewatering authorisation.

j. A reasonable estimate of the total volume of groundwater to be extracted shall be calculated and included in the initial report; together with details and calculation methods for the parameters and supporting information to confirm their development or measurement (e.g. permeability predicted by slug-testing, pump-testing or other means).

k. A copy of a valid consent for the development shall be provided in the initial report.

l. The method of disposal of pumped water shall be nominated (i.e. reinjection, drainage to the stormwater system or discharge to sewer) and a copy of the written permission from the relevant controlling authority shall be provided in the initial report. The disposal of any contaminated pumped groundwater (sometimes called "tailwater") must comply with the provisions of the Protection of the Environment Operations Act 1997 and any requirements of the relevant controlling authority.

m. Contaminated groundwater (i.e. above appropriate NEPM 2013 thresholds) shall not be reinjected into any aquifer. The reinjection system design and treatment methods to remove contaminants shall be nominated and included in the initial report and any subsequent intermediate report as necessary. The quality of any pumped water that is to be reinjected must be demonstrated to be compatible with, or improve, the intrinsic or ambient groundwater in the vicinity of the reinjection site.

During excavation

n. Engineering measures designed to transfer groundwater around and beneath the basement shall be incorporated into the basement construction to prevent the completed infrastructure from restricting pre-existing groundwater flows.

o. Piping, piling or other structures used in the management of pumped groundwater shall not create a flooding hazard or induce mounding of groundwater. Control of

pumped groundwater is to be maintained at all times during dewatering to prevent unregulated off site discharge.

p. Measurement and monitoring arrangements to the satisfaction of DPI Water are to be implemented. Weekly records of the volumes of all groundwater pumped and the quality of any water discharged are to be kept and a completion report provided after dewatering has ceased. Records of groundwater levels are to be kept and a summary showing daily or weekly levels in all monitoring bores provided in the completion report.

q. Pumped groundwater shall not be allowed to discharge off-site (e.g. adjoining roads, stormwater system, sewerage system, etc.) without the controlling authority's approval and/or owner's consent/s. The pH of discharge water shall be managed to be between 6.5 and 8.5. The requirements of any other approval for the discharge of pumped groundwater shall be complied with.

r. Dewatering shall be undertaken in accordance with groundwater-related management plans applicable to the excavation site. The requirements of any management plan (such as acid sulfate soils management plan or remediation action plan) shall not be compromised by the dewatering activity.

s. The location and construction of groundwater extraction works that are decommissioned are to be recorded in the completion report. The method of decommissioning is to be identified in the documentation.

t. Access to groundwater management works used in the activity is to be provided to permit inspection when required by DPI Water under appropriate safety procedures.

Following excavation

u. Following completion of the dewatering operations, the applicant shall submit to DPI Water, Parramatta Office, the completion report which shall include:

i) detail of the volume of water taken, the precise periods and location of water taken, the details of water level monitoring in all of the relevant bores; and

ii) a water table map depicting the aquifer's settled groundwater condition and a comparison to the baseline conditions; and

iii) a detailed interpreted hydrogeological report identifying all actual resource and third party impacts, including an assessment of altered groundwater flows and an assessment of any subsidence or excessive settlement induced in nearby buildings and property and infrastructure.

iv) The completion report is to be assessed by DPI Water prior to any certifying agency's approval for occupation or use of the completed construction.

35. Access to the planted deep soil zone along the rear boundary of the site is for maintenance purposes only. The doorway within the car parking area at ground level shall be internally signposted "Maintenance Access Only".

### **Prior to issue of the construction certificate**

The following conditions must be completed prior to the issue of the Construction Certificate.

36. The following fees shall be paid to Council prior to the issue of a Construction Certificate. If payment is made after the end of the financial year, the amount shall be adjusted in accordance with Council's adopted fees and charges.
- i. A Footpath Reserve Restoration Deposit of \$9165.15. This is to cover repair of any damages, or other works to be done by Council. This includes construction, removal, or repair as required to: kerb and guttering, existing or new driveways; paved areas and concrete footpaths. The deposit may be lodged with Council in the form of a Bank Guarantee (Any proposed Bank Guarantee must not have an expiry date). The deposit will not be returned by Council until works are completed and all damage is restored and all specified works are completed by Council.
  - ii. An environmental enforcement fee of 0.25% of the cost of the works.
  - iii. A Soil and Water Management Sign of \$17.00.
37. For work costing \$25,000 or more, a Long Service Leave Levy shall be paid. For further information please contact the Long Service Payments Corporation on their Helpline 13 1441.
38. An application for Boundary levels shall be made to Council's Customer Service Centre prior to issue of the Construction Certificate. All boundary works, egress paths, driveways and fences shall comply with this level.  
A fee is payable to Council for the determination of boundary levels. If payment is made after the end of the financial year, the amount shall be adjusted in accordance with Council's adopted fees and charges.
39. A Section 94 contribution of \$616,843.26 shall be paid to Council. Such contributions are only used towards the provision or improvement of the amenities and services identified below. The amount to be paid is adjusted at the time of payment, in accordance with the contribution rates contained in Council's current Adopted Fees and Charges. The contribution is to be paid prior to the issue of any construction certificate for works above the floor level of the ground floor. (Payment of the contribution is not required prior to any separate construction certificates issued only for demolition, site preparation works and the construction of basement levels). The contribution is calculated from Council's adopted Section 94 contributions plan in the following manner:
- Open Space \$344,250.54  
Town Centre & Streetscape Improvements \$36,889.38  
Roads, Traffic Management & Public Parking \$132,988.62  
Flood Mitigation and Stormwater \$56,872.32  
Pedestrian & Cyclist \$19,048.32  
Administration and Management \$10,151.94  
Community Facilities and Services \$16,642.14
- Copies of Council's Section 94 Contribution Plans may be inspected at Council's Customer Service Centre, Administration Building, 2 Bryant Street, Rockdale.
40. Prior to the issue of the Construction Certificate a certificate from a practicing Structural Engineer, registered with NPER, shall be submitted to Council stating that the subsurface structural components located on the boundary of the public road, including but not limited to the slabs, walls and columns, have been designed in accordance with all SAA Codes for the design loading from truck and vehicle loads.
41. In the case of residential building work for which the Home Building Act 1989

requires there to be a contract of insurance or owner builder's permit in force in accordance with Part 6 of that Act, that such a contract or permit is in place.

42. All building materials shall be flood resistant, or flood compatible to a height of 500mm above the 1% AEP flood, or flow level. All internal electrical switches, power points or similar utilities liable to flood damage shall be set at a minimum of 500mm above the 1% AEP flood, or flow level. Details shall be provided and approved prior to the issue of a construction certificate.
43. A suitable qualified engineer is to certify that the structure can withstand the forces of floodwater, scour, debris and buoyancy in a 1% AEP flood event and a PMF event.
44. Where the front fence and or planter boxes are greater than 1200mm in height, the vehicular access area shall be kept clear and the return fences / planter boxes on each side are to be splayed minimum 900mm at an angle of 45 degrees to the boundary. Details of the fence / planter boxes to be included in the documentation accompanying the Construction Certificate.
45. Compliance with Council's Development Control Plan (DCP) 2011 – Requirements for Access. Access in accordance with Australian Standard 4299 must be provided to and within four residential units, and between these units and their allocated carparking spaces. The allocated parking space will be located in close proximity to the access points of the building. Please note that compliance with this condition requires the relevant unit(s) to be constructed to comply with all the essential (Type C) requirements of AS4299.

**Note:** Compliance with Council's Development Control Plan (DCP) 2011 – Requirements for Access and the Building Code of Australia does not necessarily guarantee that the development meets the full requirements of the Disability Discrimination Act (DDA) 1992. It is the responsibility of the applicant to make the necessary enquiries to ensure that all aspects of the DDA legislation are met.

46. The applicant shall confer with Energy Australia to determine if:
  - a. an electricity distribution substation is required.
  - b. installation of electricity conduits in the footway is required.

Written confirmation of Energy Australia's requirements shall be obtained prior to issue Construction Certificate.

47. The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. Plans will be appropriately stamped. For Quick Check agent details please contact Sydney Water.

The consent authority or a private accredited certifier must ensure that a Quick Check agent/Sydney Water has appropriately stamped the plans before issue of any Construction Certificate.

48. Prior to issue of the Construction Certificate, a longitudinal driveway profile shall be submitted to Principal Certifying Authority for assessment and approval. The profile shall start in the centre of the road and be along the critical edge (worst case) of the driveway. Gradients and transitions shall be in accordance with Council's Code. The profile shall be drawn to a scale of 1 to 20 and shall include all relevant levels, grades (%) and lengths.
49. The subsurface structure shall be designed with a waterproof retention system (ie tanking and waterproofing) with adequate provision for future fluctuation of the water

table. The subsurface structure is required to be designed with consideration of uplift due to water pressure and “flotation” (buoyancy) effects. Subsoil drainage around the subsurface structure must allow free movement of groundwater around the structure, but must not be connected to the internal drainage system. The design of subsurface structure, tanking and waterproofing, and subsoil drainage shall be undertaken by a suitably experienced Chartered Professional Engineer(s). Design details and construction specifications shall be included in the documentation accompanying the Construction Certificate.

50. Prior to the issue of the Construction Certificate, amended architectural plans shall be submitted to Principal Certifying Authority PCA for assessment and approval. The amended plans shall incorporate the following;

(a) A visitor parking bay shall accommodate a van loading bay. In addition to the van space to incorporate a SRV loading bay – 3.5m wide and 7m in length in front of the waiting / passing bay in tandem within ground level access open space. The passing bay shall be formed with green porous grass pavers.

(b) A drainage easement 0.875m wide benefitting Council, along the open drainage channel adjoining the rear of the property.

(c) a minimum 1.5m setback from the drainage reserve (measured from the centreline of the channel) for the purposes of an easement to drain water, to enable upgrade to the culvert width and passage of overland flow.

51. Amended stormwater design and plans shall be submitted to the Principal Certifying Authority for assessment prior to the issue of the Construction Certificate. Design certification, in the form specified in Rockdale Technical Specification Stormwater Management, and drainage design calculations are to be submitted with the plans. Council’s Rockdale Technical Specification Stormwater Management sets out the minimum documentation requirements for detailed design plans. Stormwater management requirements for the development site, including the final discharge/end connection point, must comply with Rockdale Technical Specification Stormwater Management.

**Note:** The detailed plans are required to show the basement levels as tanked system.

The amended design plans shall address the following issues:

(a) A rainwater tank is required and the development is required to capture the first 10-20mm of stormwater runoff and detain it for re-use purposes. Refer to 7.1.9 of Rockdale DCP 2011.

The post development stormwater discharge from the site into the Gertrude Street should not exceed the pre development discharge and the discharge must be less than 50 l/s for the combined discharge of the site for the 50 year ARI event.

(b) Stormwater reuse from proposed rain tanks.

The design shall identify, and discuss in detail, the measures put in place to re-use water, maintain groundwater quality, minimise at source generation of water pollutants, and convey stormwater flows through the site

(c) The geotechnical engineer is required to review and comment on proposed stormwater drainage design, mainly the impact on tanked basement / subsoil drains /

permanent dewatering and ground water table.

#### Numerical design standards

- The size of the rainwater storage tank should be sized such that water can be reused without supply from town water for the majority of the year. As a minimum, the storage tank should be capable of storing the first 10-20mm of runoff from the site. Rainwater should be used for landscape irrigation, car washing, and toilet flushing in apartments and general cold water supply at lower levels.
- The rainwater tank should have an overflow at or above the minimum habitable floor level (2.85m AHD).
- The piped drainage within the site should be capable of conveying the 5% AEP flow; and
- Overland flow paths (i.e. situated internally within the building and used when the flow in the piped drainage exceeds the 5% AEP flow) should be capable of conveying the 1% AEP flows.

#### General design standards

- All piped drainage within the development should discharge to the rainwater storage tank; and
- All surface runoff from car park areas should be directed through a proprietary oil treatment system prior to discharge to the rainwater storage tank. NB: Information regarding the treatment system should be supplied including the type of system to be used and the compatibility of the system with regard to the rainwater reuse objective for the development. The proprietary oil treatment system must provide a high quality of water.

#### General controls

- The design should meet water sensitive urban design principles.

52. Prior to the issue of the Construction Certificate a Flood Evacuation Management Plan shall be submitted to Principal Certifying Authority PCA for assessment and approval. The Flood Evacuation Management Plan shall demonstrate whether evacuation provisions are required, and if so how they will be managed. Alternatively, where it is recommended that occupants stay within the building, how is this to be communicated to occupants. In this situation occupants need to escape above the PMF level plus 0.5 m. The plan is also to detail how the flood awareness of owners, residents or occupants, who change through time, can be preserved. The Plan shall be prepared by a suitably qualified and experienced Flood/Hydraulic Engineer.
53. The low level driveway must be designed to prevent inflow of water from the road reserve. The assessment of flows and design of prevention measures shall be in accordance with the requirements of Rockdale Technical Specification Stormwater Management. Details shall be included in the documentation presented with the Construction Certificate application.
54. A dedicated car wash bay is required. A tap shall be provided. A sign shall be fixed saying 'Car Wash Bay'. The runoff shall be directed and treated as per Rockdale Technical Specification Stormwater Management. Details shall be provided with the plans accompanying the Construction Certificate.

The width should be a minimum of 3.5m wide.

55. The plans submitted with the Construction Certificate shall demonstrate compliance with the following prior to the issue of the Construction Certificate:

A). All vertical plumbing, other than roof water heads and down pipes, shall be concealed within the brickwork of the building.

B). All hot water systems/units located on the balcony of a dwelling shall be encased in a recessed box on the balcony with the lid/cover of the box designed to blend in with the building. All associated pipe work is to be concealed.

C). Air conditioning units located upon residential balconies shall not be visible from the public domain.

D). Glass balustrades shall be provided as frosted or opaque.

E). Ceiling heights for habitable areas shall be a minimum of 2.7 metres, and 2.4m for non habitable areas, as measured vertically from finished floor level to the underside of the ceiling.

F). Compliance with the recommendations of the BCA Report dated August 2015 prepared by Steve Watson and Partners. Relevant objectives and design code requirements of the Building Code of Australia 2015 / DDA Premises Standard pertaining to accessible common domain areas and access to all apartments and the Adaptable Housing standard AS4299 for four (4) adaptable units.

G). The following recommendations of the Pedestrian and Wind Environment Study (WC539-01AF03(REV0) prepared by Wind Tech dated 23 June 2016 are to be depicted upon plans and implemented on site.

- The inclusion of recommended densely foliating trees capable of growing to a height of 3m with a 3m wide canopy along the north-eastern boundary of the subject development site.
- The wind conditions can be further enhanced with the inclusion of 1.5m high impermeable screens along the perimeter of the eastern stairway
- The inclusion of additional densely foliating vegetation as indicated in the architectural drawings is expected to further enhance the localized wind conditions.
- The inclusion of densely foliating shrubs, capable of growing to a height of at least 1.5m within and along the perimeter of the Level 1 communal terrace.
- The inclusion of a densely foliating tree capable of growing to at least 4m high with 4m wide canopy to the north of the common deck area on Level communal terrace.
- The inclusion of a 2m high impermeable screen along the southern perimeter of the communal roof terrace.
- The inclusion of the proposed balustrade along the remaining perimeter of the communal roof terrace.
- The inclusion of additional densely foliating vegetation such as shrubs within the proposed planter areas along the eastern and western perimeter edge of the communal roof terrace as indicated in the architectural drawings.

H) A single antenna shall be provided to the building for use of all residents.



I). The eastern elevation (party wall) of the development shall be provided with an alternative treatment / form of relief to alleviate the expanse of blank wall on the boundary until such time that the adjoining properties are redeveloped. Details of three selected finishes and/or treatments proposed for this party wall are to be submitted to Council for approval prior to the issue of the Construction Certificate.

J). The loading / unloading and passing bay on site within the front setback are to comprise concrete grasscrete cells and be delineated from the adjoining vehicular entry.

K). Corridors within the development shall be a minimum of 1.5m in width for their entire length. Services within corridors, including but not limited to electrical cupboards, fire safety equipment etc. shall be moved clear of the corridor and within the unit footprint.

L). The south facing terrace to unit 1.01 adjoining the common boundary with 1-5 Gertrude Street shall be deleted. 1 x 2m deep x 3.25m wide balcony may be retained adjoining the bedroom of unit 1.01 that adjoins the proposed garden store.

M) The door to the residential lobby shall be brought forward to align with the balcony wall of the ground floor studio. Letter boxes shall be relocated to the bottom of the stairs to the pedestrian entrance from Gertrude Street.

## **Prior to commencement of works**

The following conditions must be completed prior to the commencement of works.

56. A dilapidation survey shall be undertaken of all properties and/or Council infrastructure, including but not limited to all footpaths, kerb and gutter, stormwater inlet pits, and road carriageway pavements, in the vicinity which could be potentially affected by the construction of this development. Any damage caused to other properties during construction shall be rectified. A copy of the dilapidation survey and an insurance policy that covers the cost of any rectification works shall be submitted to the Accredited Certifier (AC) or Council prior to Commencement of Works. The insurance cover shall be a minimum of \$10 million.

57. A Soil and Water Management Plan shall be prepared. The Plan must include details of the proposed erosion and sediment controls to be installed on the building site. A copy of the Soil and Water Management Plan must be kept on-site at all times and made available on request.

Soil and sedimentation controls are to be put in place prior to commencement of any work on site. The controls are to be maintained in effective working order during construction.

Council's warning sign for soil and water management must be displayed on the most prominent point on the building site, visible to both the street and site workers. The sign shall be erected prior to commencement of works and shall be displayed throughout construction.

58. A sign must be erected at the front boundary of the property clearly indicating the Development Approval Number, description of work, builder's name, licence number and house number before commencement of work. If owner/builder, the

Owner/Builder Permit Number must be displayed.

59. A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:
- i. stating that unauthorised entry to the work site is prohibited, and
  - ii. showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours. Any such sign is to be removed when the work has been completed. This condition does not apply to:
    - iii. building work carried out inside an existing building or
    - iv. building work carried out on premises that are to be occupied continuously (both during and outside working hours) while the work is being carried out.
60. A Site Health & Safety Plan shall be prepared prior to the commencement of remediation works by a person competent to do so. All works shall be carried out in accordance with this plan. This plan shall include:
- hazard identification and control
  - site security
  - personal protective equipment
  - work zones and decontamination procedures
  - contingency plans and incident reporting
  - environmental monitoring.
61. Where it is necessary to import landfill material onto the site to fill the land to levels shown on the plans forming part of the consent, a certificate, prepared by a suitably qualified and experienced Contaminated Land Consultant, shall be submitted to Council being the Regulatory Authority prior to the commencement of works, certifying that the imported fill is suitable for the land use.
62. The site shall be secured by a 1800 mm (minimum) high temporary fence for the duration of the work. Gates shall be provided at the opening points.
63. Where construction/building works require the use of a public place including a road or footpath, approval under Section 68 of the Local Government act 1993 for a Barricade Permit is to be obtained from Council prior to commencement of work. Details of the barricade construction, area of enclosure and period of work are required to be submitted to the satisfaction of Council.
64. A hoarding or fence shall be erected between the work site and the public place when the work involved in the erection or demolition of a building:
- i) is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or
  - ii) building involves the enclosure of a public place,
- Where the development site adjoins a public thoroughfare, the common boundary between them must be fenced for its full length with a hoarding, unless, the least horizontal distance between the common boundary and the nearest part of the structure is greater than twice the height of the structure. The hoarding must be constructed of solid materials (chain wire or the like is not acceptable) to a height of not less than 1.8m adjacent to the thoroughfare.
- Where a development site adjoins a public thoroughfare with a footpath alongside the common boundary then, in addition to the hoarding required above, the footpath must be covered by an overhead protective structure, type B Hoarding, and the facing facade protected by heavy duty scaffolding unless either:
- (i) the vertical height above footpath level of the structure being demolished is less than 4m; or
  - (ii) the least horizontal distance between footpath and the nearest part of the structure

is greater than half the height of the structure.

The overhead structure must consist of a horizontal platform of solid construction and vertical supports, and the platform must -

(i) extend from the common boundary to 200mm from the edge of the carriageway for the full length of the boundary;

(ii) have a clear height above the footpath of not less than 2.1m;

(iii) terminate not less than 200mm from the edge of the carriageway (clearance to be left to prevent impact from passing vehicles) with a continuous solid upstand projecting not less than 0.5m above the platform surface; and

(iv) together with its supports, be designed for a uniformly distributed live load of not less than 7 kPa

The 'B' Class hoarding is to be lit by fluorescent lamps with anti-vandalism protection grids.

Any such hoarding, fence or awning is to be removed when the work has been completed.

The principal contractor or owner builder must pay all fees and rent associated with the application and occupation and use of the road (footway) for required hoarding or overhead protection.

65. Toilet facilities must be available or provided at the work site before works begin and must be maintained until the works are completed at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site.

## **During demolition / excavation / construction**

The following conditions must be complied with during demolition, excavation and or construction.

66. A copy of the Construction Certificate and the approved plans and specifications must be kept on the site at all times and be available to Council officers upon request.
67. Hours of construction shall be confined to between 7 am and 6.30 pm Mondays to Fridays, inclusive, and between 8 am and 3.30 pm Saturdays with no work being carried out on Sundays and all public holidays.
68. Upon inspection of each stage of construction, the Principal Certifying Authority (or other suitably qualified person on behalf of the Principal Certifying Authority) is also required to ensure that adequate provisions are made for the following measures (as applicable), to ensure compliance with the terms of Council's approval:
- Sediment control measures
  - Provision of perimeter fences or hoardings for public safety and restricted access to building sites.
  - Maintenance of the public place free from unauthorised materials, waste containers or other obstructions.
69. Ground water shall only be pumped or drained to Council's stormwater system if the water is clean and unpolluted. The standard used to determine the acceptability of the quality of the water is the 'Australian and New Zealand Environment and Conservation Council - Australian Water Quality Guidelines for Fresh and Marine Waters 1992'.

Note: Prior treatment and/or filtration of the water may be necessary to achieve acceptable quality, including a non-filterable residue not exceeding 50 milligrams/litre or small quantities may be removed by the services of a Licenced Liquid Waste Transporter. It is an offence under the provisions of the Protection of the Environment

Operations Act 1997 to pollute the stormwater system.

70. Demolition operations shall not be conducted on the roadway or public footway or any other locations, which could lead to the discharge of materials into the stormwater drainage system.
71. All waste generated on site shall be disposed of in accordance with the submitted Waste Management Plan.
72. A Registered Surveyor's check survey certificate or compliance certificate shall be forwarded to the certifying authority detailing compliance with Council's approval at the following stage/s of construction:
  - i. After excavation work for the footings, but prior to pouring of concrete, showing the area of the land, building and boundary setbacks.
  - ii. Prior to construction of each floor level showing the area of the land, building and boundary setbacks and verifying that the building is being constructed at the approved level.
  - iii. Prior to fixing of roof cladding verifying the eave, gutter setback is not less than that approved and that the building has been constructed at the approved levels.
  - iv. On completion of the building showing the area of the land, the position of the building and boundary setbacks and verifying that the building has been constructed at the approved levels.
  - v. On completion of the drainage works (comprising the drainage pipeline, pits, overland flow paths, on-site detention or retention system, and other relevant works) verifying that the drainage has been constructed to the approved levels, accompanied by a plan showing sizes and reduced levels of the elements that comprise the works.
73. All excavation and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards and guarded and protected to prevent them from being dangerous to life or property.

When excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building or an adjoining allotment of land, you shall:

- i. preserve and protect the building from damage and
- ii. underpin and support the building in an approved manner, if necessary and
- iii. give notice of intention to excavate below the level of the base of the footings of a building on an adjoining allotment of land to the owner at least 7 days prior to excavation and furnish particulars of the excavation to the owner of the building being erected or demolished.

Note: The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this conditions allotment of land includes a public road and any other public place.

Works shall not encroach onto or over adjoining properties, including retaining walls, fill material or other similar works. Soil shall not be lost from adjoining sites due to construction techniques employed on the subject site.

74. When soil conditions require it:

- i. retaining walls associated with the erection or demolition of a building or other approved methods of preventing movement of the soil shall be provided, and
  - ii. adequate provision shall be made for drainage.
75. Any new information discovered during remediation, demolition or construction works which has the potential to alter previous conclusions about site contamination, shall be notified to Council being the Regulatory Authority for the management of contaminated land.
76. All contractors shall comply with the following during all stages of demolition and construction:
  - A Waste Container on Public Road Reserve Permit must be obtained prior to the placement of any waste container or skip bin in the road reserve (i.e. road or footpath or nature strip). Where a waste container or skip bin is placed in the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
  - A Road Opening Permit must be obtained prior to any excavation in the road reserve (i.e. road or footpath or nature strip). Where excavation is carried out on the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
  - A Hoarding Permit must be obtained prior to the erection of any hoarding (Class A or Class B) in the road reserve (i.e. road or footpath or nature strip). Where a hoarding is erected in the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
  - A Crane Permit must be obtained from Council prior to the operation of any activity involving the swinging or hoisting of goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway. Permits can be obtained from Council's Customer Service Centre.
  - A Permit to Dewater or Pump Out a site must be obtained prior to the discharge of pumped water into the road reserve, which includes Council stormwater pits and the kerb and gutter. Permits can be obtained from Council's Customer Service Centre.
77. All demolition work shall be carried out in accordance with AS2601 – 2001: The Demolition of Structures and with the requirements of the WorkCover Authority of NSW.
78. Adopt and implement all recommendations contained in the Acid Sulfate Soil Management Plan prepared by Environmental Investigations Australia Report No. E228573 AC dated the 5 February 2016.
79. The following conditions are necessary to ensure minimal impacts during construction:
  - i. Building, demolition and construction works not to cause stormwater pollution and being carried out in accordance with Section 2.8 of Council's Stormwater Pollution Control Code 1993. Pollutants such as concrete slurry, clay and soil shall not be washed from vehicles onto roadways, footways or into the stormwater system. Drains, gutters, roadways and access ways shall be maintained free of sediment. Where required, gutters

and roadways shall be swept regularly to maintain them free from sediment.

- ii. Stormwater from roof areas shall be linked via a temporary downpipe to an approved stormwater disposal system immediately after completion of the roof area.
- iii. All disturbed areas shall be stabilised against erosion within 14 days of completion, and prior to removal of sediment controls.
- iv. Building and demolition operations such as brickcutting, washing tools or paint brushes, and mixing mortar shall not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.
- v. Stockpiles are not permitted to be stored on Council property (including nature strip) unless prior approval has been granted. In addition stockpiles of topsoil, sand, aggregate, soil or other material shall be stored clear of any drainage line or easement, natural watercourse, kerb or road surface.
- vi. Wind blown dust from stockpile and construction activities shall be minimised by one or more of the following methods:
  - a) spraying water in dry windy weather
  - b) cover stockpiles
  - c) fabric fences
- vii. Access to the site shall be restricted to no more than two 3m driveways. Council's footpath shall be protected at all times. Within the site, provision of a minimum of 100mm coarse crushed rock is to be provided for a minimum length of 2 metres to remove mud from the tyres of construction vehicles.

An all weather drive system or a vehicle wheel wash, cattle grid, wheel shaker or other appropriate device, shall be installed prior to commencement of any site works or activities, to prevent mud and dirt leaving the site and being deposited on the street. Vehicular access is to be controlled so as to prevent tracking of sediment onto adjoining roadways, particularly during wet weather or when the site is muddy. Where any sediment is deposited on roadways it is to be removed by means other than washing and disposed of appropriately.

In addition builders / demolishers are required to erect a 1.5m high fence along the whole of the street alignment other than at the two openings. Such protection work, including fences, is to be constructed, positioned and maintained in a safe condition to the satisfaction of the Principal Certifying Authority, prior to the demolition of the existing structures and commencement of building operations.

- viii. Any noise generated during construction of the development shall not exceed limits specified in any relevant noise management policy prepared pursuant to the Protection of the Environment Operations Act, 1997 or exceed approved noise limits for the site.

- 80. Council's warning sign for soil and water management must be displayed on the most prominent point on the building site, visible to both the street and site workers. The sign must be displayed throughout construction. A copy of the sign is available from Council.
- 81. Trees located within adjoining properties shall not be removed or pruned without the written consent of Council in the form of a Permit issued under Council's

Development Control Plan 2011. Any pruning of branches or roots of trees growing from within adjoining properties requires the prior written consent of the tree's owners and the prior written consent of Council in the form of a Permit issued under Council's Development Control Plan 2011. The work must be carried out in accordance with AS4373:2007 by an experienced Arborist with minimum AQF Level 2 qualifications in Arboriculture.

82. Hazardous and/or intractable wastes arising from the demolition process shall be removed and disposed of in accordance with the requirements of the relevant statutory authorities (NSW WorkCover Authority and the NSW Environment Protection Authority), together with the relevant regulations, including:
- Work Health and Safety Act 2011
  - Work Health and Safety Regulation 2011
  - Protection of the Environment Operations (Waste) Regulation 2005.

### **Prior to issue of occupation certificate or commencement of use**

The following conditions must be complied with prior to issue of the Occupation Certificate or Commencement of Use.

83. An Occupation Certificate shall be obtained in relation to the approved works prior to any use or occupation of the building.
84. Where Council's park/reserve is damaged as a result of building work or vehicular building traffic, this area shall be restored by Council at the applicant's expense. Repairs shall be completed prior to the issue of the Occupation Certificate.
85. All excess excavated material, demolition material, vegetative matter and builder's rubbish shall be removed to the Waste Disposal Depot or the Regional Tip prior to final inspection.  
Note: Burning on site is prohibited.
86. A by-law shall be registered and maintained for the life of the development, which requires that :
- (a) balconies are not to be used as clothes drying areas, storage of household goods and air-conditioning units that would be visible from the public domain;
  - (b) an owner of a lot must ensure that all floor space within the lot complies with the acoustic conditions for floors specified in this consent;
  - (c) Notwithstanding subclause (b), in the event that a floor covering in the lot is removed, the newly installed floor covering shall have a weighted standardized impact sound pressure level not greater than L'nT,w 45 measured in accordance with AS ISO 140.7 and AS ISO 717.2, A test report from a qualified acoustic engineer employed by a firm eligible to membership of the Association of Australian Acoustical Consultants shall be submitted to the Owners Corporation within 14 days of the installation of the new floor covering demonstrating compliance with that standard. In the event that the standard is not complied with, the floor covering shall be removed and replaced with a floor covering that conforms to that standard in accordance with any directions given by the Owners Corporation.

Proof of registration of the By Law shall be submitted to Council prior to the issue of the Occupation Certificate.

87. Lot 37 DP 4301 and Lot 36 DP 4301 shall be consolidated into one allotment. Council requires proof of lodgement of the plan of consolidation with the Land and Property Information Office prior to occupation.
88. All landscape works are to be carried out in accordance with the approved



landscape plans. The landscaping is to be maintained to the approved standard at all times.

89. All works within the road reserve, which are subject to approval pursuant to Section 138 of the Roads Act 1993, shall be completed and accepted by council.
90. The underground placement of all low voltage street mains in that section of the street/s adjacent to the development, and associated services and the installation of underground supplied street lighting columns, shall be carried out at the applicant's expense. The works shall be completed and Ausgrid's requirements shall be met prior to issue of the Occupation Certificate.
91. Where an electricity substation is required by Ausgrid, a final film survey plan shall be endorsed with an area having the required dimensions as agreed with Ausgrid over the location of the proposed electricity distribution substation site. The substation must be located within the boundary of the development site, or within the building, subject to compliance with the BCA. The substation site shall be dedicated to Council as public roadway, or as otherwise agreed with Ausgrid. Ausgrid's requirements shall be met prior to release of the issue of the Occupation Certificate.
92. Vehicles shall enter and exit the site in a forward direction at all times. A plaque with minimum dimensions 300mm x 200mm shall be permanently fixed to the inside skin of the front fence, or where there is no front fence a prominent place approved by the Principal Certifying Authority, stating the following: "Vehicle shall enter and exit the site in a forward direction at all times".
93. Prior to completion of the building works, a full width vehicular entry is to be constructed to service the property. Any obsolete vehicular entries are to be removed and reconstructed with kerb and gutter. This work may be done using either a Council quote or a private contractor. There are specific requirements for approval of private contractors.
94. A convex mirror is to be installed at change of direction in ramps to provide increased sight distance for vehicles.
95. The roller gate for the basement shall be located in order to permit the queuing of two (2) vehicles when waiting to enter the basement garage. The control mechanism for the gate shall be arranged such that access to the basement garage for residence and visitors.
96. A drainage easement 0.875m wide along the rear boundary of the subject site is to be provided in favour of Rockdale Council and covered by a Section 88B Instrument, which may only be varied or extinguished with the consent of Rockdale City Council. A restriction to user preventing building works within the easement is also required.

These provisions are to be put into effect prior to release of the Occupation Certificate. Council requires proof of lodgement of the signed Linen Plan and 88B Instrument with the Land Titles Office.

97. Suitable vehicular bollards shall be provided outside the exit doors that adjoin the vehicle circulation area or other exit door(s) that may be blocked by parked vehicles.
98. 38 off-street car spaces shall be provided in accordance with the submitted plan and shall be sealed and linemarked to Council's satisfaction. The pavement of all car parking spaces, maneuvering areas and internal driveways shall comply with Australian Standard AS3727 – Guide to Residential Pavements.
99. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation. Application must be made through an authorised Water Servicing Coordinator.

Please refer to the Building Developing and Plumbing section of the web site [www.sydneywater.com.au](http://www.sydneywater.com.au) then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

The Section 73 Certificate must be submitted to the Principal Certifying Authority prior to occupation of the development.

100. Prior to occupation, a registered surveyor shall certify that the driveway(s) over the footpath and within the property have been constructed in accordance with the approved driveway profile(s). The certification shall be based on a survey of the completed works. A copy of the certificate and a works-as-executed driveway profile shall be provided to Council if Council is not the Principal Certifying Authority.
101. Where the installation of electricity conduits is required in the footway, the builder shall install the conduits within the footway across the frontage/s of the development site, to Ausgrid's specifications. Ausgrid will supply the conduits at no charge. A Road Opening Permit must be obtained from Council prior to the installation of the conduits. The builder is responsible for compaction of the trench and restoration of the footway in accordance with Council direction. A Compliance Certificate from Ausgrid shall be obtained prior to the issue of the Occupation Certificate.
102. Prior to issue of Occupation Certificate the applicant shall submit to the Principal Certifying Authority (PCA) an Certificate of Compliance to verify that the measures stated in the 'Acoustic Assessment for Development Application 7-9 Gertrude Street Wolli Creek by Renzo Tonin & Associates – Doc Reference; TH496-01F02 Acoustic Report For DA (r1) dated the 5 August 2015' and all other noise mitigation measures associated with the mechanical plants (ventilation systems, exhaust fans, ventilation fans and condenser units) and equipment including air-conditioners have been carried out and certify that the construction meets the above requirements. If Council is not the PCA, a copy shall be submitted to Council concurrently. The certificate of compliance shall be prepared by a suitably qualified and experienced acoustic engineer (who is a member of either the Australian Acoustical Society or the Association of Australian Acoustical Consultants).
103. A certificate is to be provided to Council that all wet areas have been effectively waterproofed (prior to tiling) in accordance with AS3740 and the product manufacturer's recommendations.
104. A Landscape Architect shall provide a report to the certifying authority (with a copy provided to Council, if Council is not the principal certifying authority) stating that the landscape works have been carried out in accordance with the approved plans and documentation.
105. Prior to occupation or use of the premises, a qualified mechanical engineer shall certify that the mechanical ventilation/air conditioning system complies in all respects with the requirements of Australian Standard 1668, Part 1 & 2.
106. An accredited auditor under the Contaminated Land Management Act 1997 shall review the Validation Report prepared by the contaminated land consultant and issue a Site Audit Statement. The accredited auditor shall provide Council being the Regulatory Authority for the management of contaminated land, with a copy of the Site Audit Report and Site Audit Statement, prior to issue of the Occupation Certificate.
107. A Site Audit Statement (SAS) shall be submitted to Council being the Regulatory Authority for the management of contaminated land, prior to the issue of Occupation Certificate, clearly demonstrating that the site is suitable for the intended use.

Conditions imposed on the SAS shall form part of this consent. In circumstances where the SAS conditions (if applicable) are not consistent with the consent, the consent shall prevail to the extent of inconsistency and a S96 application pursuant to the Environmental Planning & Assessment Act 1979 will be required.

108. Prior to occupation, a chartered professional engineer shall certify that the tanking and waterproofing has been constructed in accordance with the approved design and specification. A copy shall be provided to Council if council is not the Principal Certifying Authority.
109. A certificate from a Registered Surveyor shall be provided to the Principal Certifying Authority (PCA) certifying that the habitable/commercial floor level is constructed a minimum of 500mm above the 1% Annual Exceedance Probability (A.E.P) Flood Level. A copy of the certificate shall be provided to Council where Council is not the Principal Certifying Authority.
110. Prior to occupation a Chartered Professional Engineer shall certify that the stormwater system has been constructed in accordance with the approved plans and as required by Rockdale Technical Specification Stormwater Management. The certificate shall be in the form specified in Rockdale Technical Specification Stormwater Management and include an evaluation of the completed drainage works. A works-as-executed drainage plan shall be prepared by a registered surveyor based on a survey of the completed works. A copy of the certificate and works-as-executed plan(s) shall be supplied to the Principal Certifying Authority. A copy shall be provided to Council if Council is not the Principal Certifying Authority.
111. A benchmark shall be established adjacent to the site to Australian Height Datum to enable comparison to the flood standard.
112. The underground garage shall be floodproofed to a minimum of 500mm above the 1% Annual Exceedance Probability flood level. The levels shall be certified by a registered surveyor prior to construction of the driveway or other openings.
113. The development shall comply with Rockdale Development Control Plan (DCP) 2011, and the Planning Considerations and Development Controls listed in the Flood Advice letter, referenced FA-71/2015, dated 28 May 2015.
114. A positive covenant pursuant to the Conveyancing Act 1919 shall be created on the title of the lots that contain the stormwater facility to provide for the maintenance of the rain tank / pump facility.
115. The drainage system shall be constructed in accordance with the approved drainage plans and any amendments in red. All stormwater drainage plumbing work shall comply with the NSW Code of Practice: Plumbing and Drainage and Australian Standard AS3500.

Drainage grates shall be provided at the boundary. Width of the drainage grates shall be in accordance with Rockdale Technical Specification Stormwater Management.

A silt/litter arrestor pit as detailed in Rockdale Technical Specification Stormwater Management shall be provided prior to discharge of stormwater from the site.

116. Signs shall be displayed adjacent to all stormwater drains on the premises, clearly indicating "Clean water only - No waste".
117. The owner of the premises is required to comply with the following requirements when installing a rainwater tank:
  - Inform Sydney Water that a Rainwater tank has been installed in accordance with applicable requirements of Sydney Water.

- The overflow from the rainwater tank shall be directed to the storm water system.
- All plumbing work proposed for the installation and reuse of rainwater shall comply with the NSW Code of Practice: Plumbing and Drainage and be installed in accordance with Sydney Water “Guidelines for rainwater tanks on residential properties.
- A first flush device shall be installed to reduce the amount of dust, bird faeces, leaves and other matter entering the rainwater tank.

## Roads Act

118. Construction related activities must not take place on the roadway without Council approval.

Short-term activities (including operating plant, materials delivery) that reduce parking spaces, affect access to a particular route or prevent or restrict the passage of vehicles along the road must not occur without a valid Temporary Roadside Closure Permit.

Activities involving occupation of the parking lane for durations longer than allowed under a Temporary Roadside Closure Permit require a Construction Zone Permit and must not occur prior to the erection of Works Zone signs by Council’s Traffic and Road Safety Section.

Permit application forms should be lodged at Council's Customer Service Centre allowing sufficient time for evaluation. An information package is available on request.

119. Where applicable, the following works will be required to be undertaken in the road reserve at the applicant's expense:

- i) construction of a concrete footpath along the frontage of the development site;
- ii) construction of a new fully constructed concrete vehicular entrance/s;
- iii) removal of the existing concrete vehicular entrance/s, and/or kerb laybacks which will no longer be required;
- iv) reconstruction of selected areas of the existing concrete Footpath/vehicular entrances and/or kerb and gutter;
- v) construction of paving between the boundary and the kerb;
- vi) removal of redundant paving;
- vii) construction of kerb and gutter.

120. All footpath, or road and drainage modification and/or improvement works to be undertaken in the road reserve shall be undertaken by Council, or by a Private Licensed Contractor subject to the submission and approval of a Private Contractor Permit, together with payment of all inspection fees. An estimate of the cost to have these works constructed by Council may be obtained by contacting Council. The cost of conducting these works will be deducted from the Footpath Reserve Restoration Deposit, or if this is insufficient the balance of the cost will be due for payment to Council upon completion of the work.

121. All driveway, footpath, or road and drainage modification and/or improvement works to be undertaken in the road reserve shall be undertaken in accordance with Council’s Subdivision and Civil Works Construction Specification (AUS-SPEC 1). Amendment to the works specification shall only apply where approved by Council.

Where a conflict exists between design documentation or design notes and AUS-SPEC 1, the provisions of AUS-SPEC 1 shall apply unless otherwise approved by Council.

122. This Roads Act approval does not eradicate the need for the Contractor to obtain a Road Opening Permit prior to undertaking excavation in the road or footpath.
123. Any driveway works to be undertaken in the footpath reserve by a private contractor requires an "Application for Consideration by a Private Contractor" to be submitted to Council together with payment of the application fee. Works within the footpath reserve must not start until the application has been approved by Council.
124. Following completion of concrete works in the footpath reserve area, the balance of the area between the fence and the kerb over the full frontage of the proposed development shall be turfed with either buffalo or couch (not kikuyu) or landscaped.

## Development consent advice

- a. A street/shop number shall be prominently displayed at the front of the development. The street number shall be a minimum of 120 mm in height to assist emergency services and visitors to locate the property. The numbering shall be erected prior to commencement of operations.
- b. You are advised to consult with your utility providers (i.e. Energy Aust, Telstra etc) in order to fully understand their requirements before commencement of any work.
- c. *Telstra Advice – Dial Before You Dig*

Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets, please contact Dial before You Dig at [www.1100.com.au](http://www.1100.com.au) or telephone on 1100 before excavating or erecting structures (This is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contacting the Dial before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial before You Dig service in advance of any construction or planning activities.

- d. *Telstra Advice - Telecommunications Act 1997 (Commonwealth)*

Telstra (and its authorised contractors) are the only companies that are permitted to conduct works on Telstra's network and assets. Any person interfering with a facility or installation owned by Telstra is committing an offence under the Criminal Code Act 1995 (Commonwealth) and is liable for prosecution. Furthermore, damage to Telstra's infrastructure may result in interruption to the provision of essential services and significant costs. If you are aware of any works or proposed works which may affect or impact on Telstra's assets in any way, you are required to contact: Telstra's Network Integrity Team on phone number 1800810443.

- e. All asbestos fibre demolition material and asbestos dust shall be handled, stored and removed in accordance with the relevant legislation and guidelines including:
  - Work Health and Safety Act 2011
  - Work Health and Safety Regulation 2011
  - Code of Practice for the Safe Removal of Asbestos [NOHSC: 2002 (2005)]
  - Code of Practice for the Management and Control of Asbestos in Workplaces

[NOHSC: 2018 (2005)]

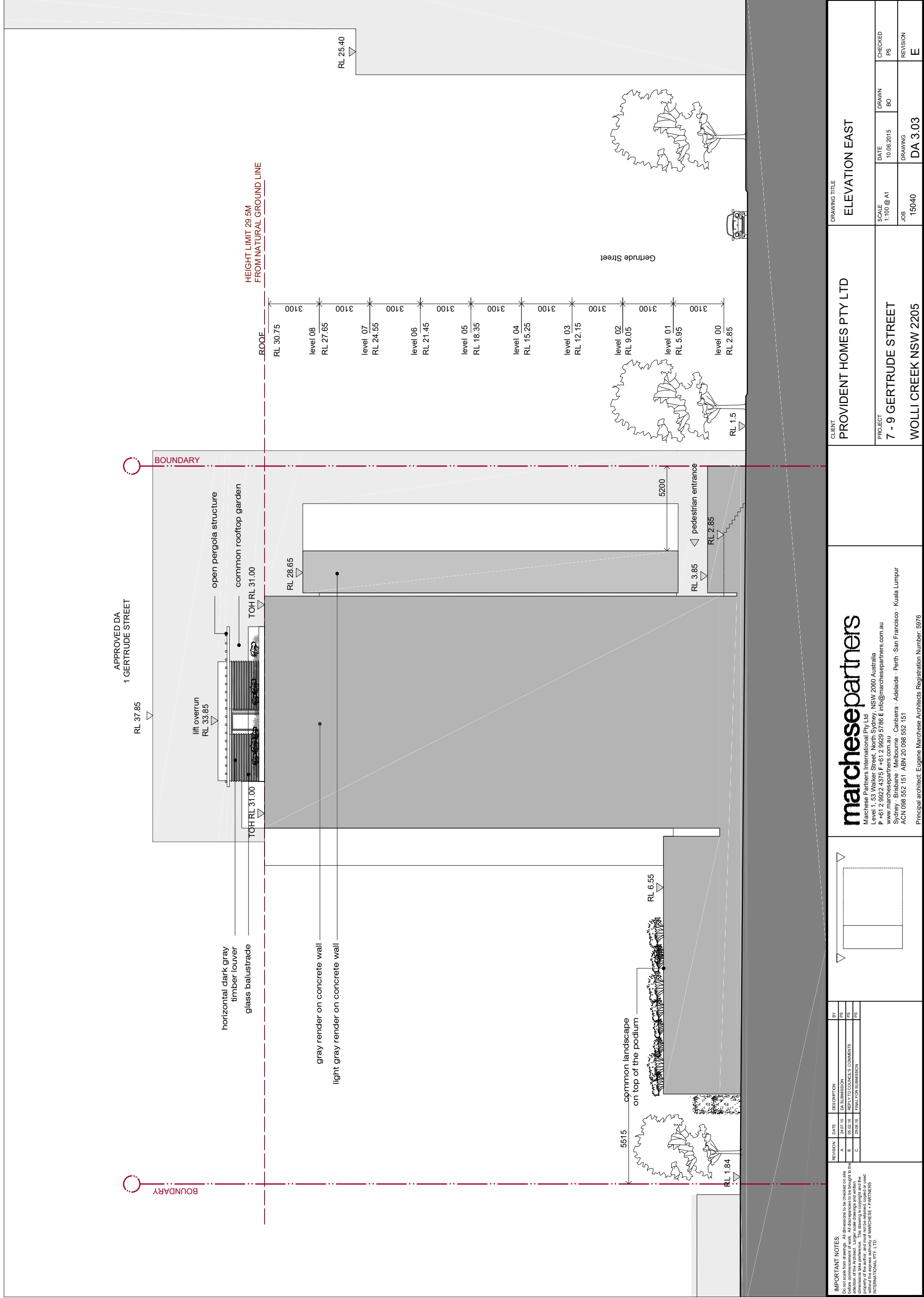
- Protection of the Environment Operations (Waste) Regulation 2005

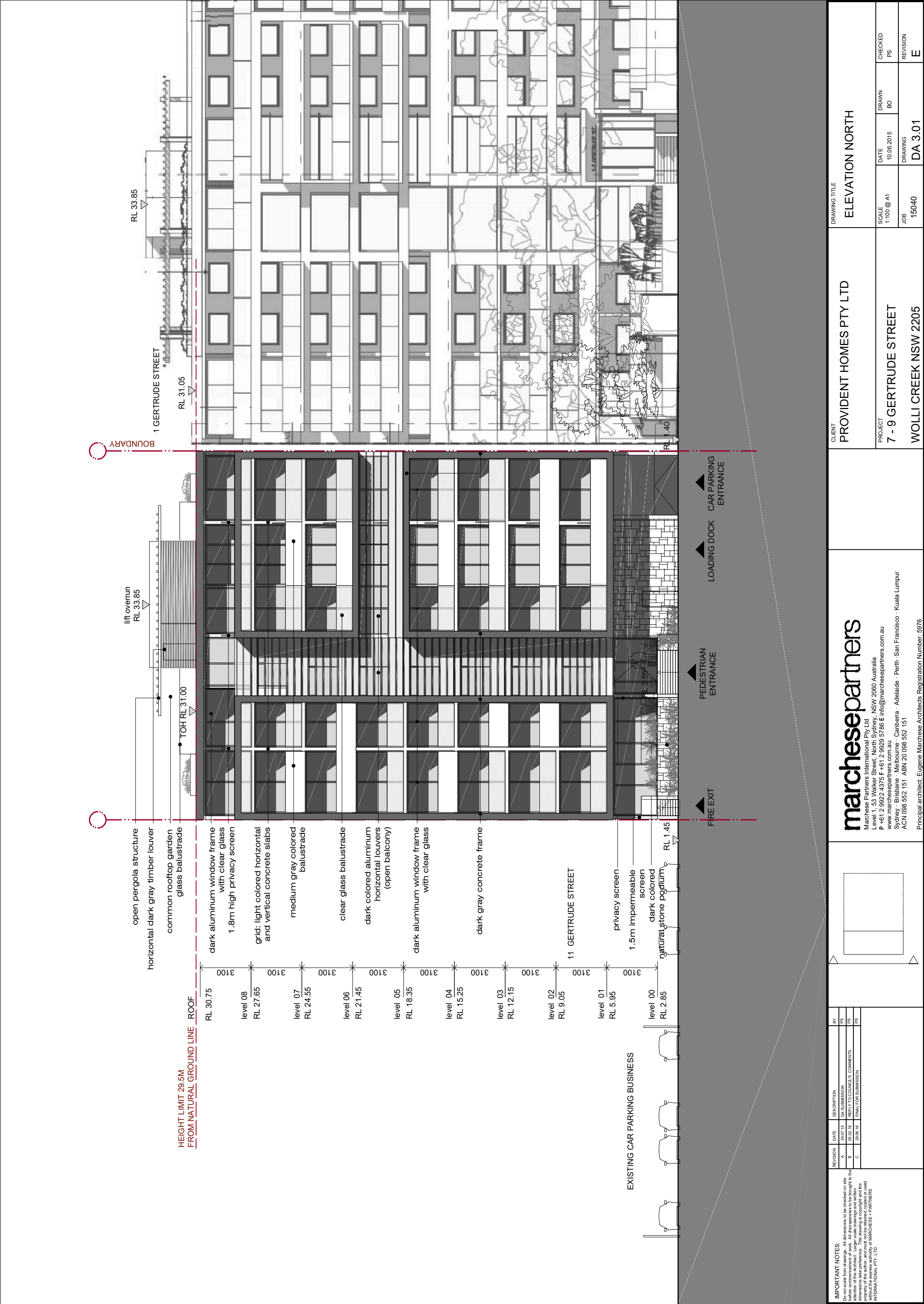
All work procedures shall be devised to minimise the release of dust and fibres. A checklist of safety precautions when working with asbestos is available in Health & Safety Guidelines prepared by the WorkCover Authority of NSW. Collection, storage and transportation is subject to the Protection of the Environment Operations (Waste) Regulation 2005.

- f. Hazardous and/or intractable wastes arising from the demolition process shall be removed and disposed of in accordance with the requirements of the relevant statutory authorities (NSW WorkCover Authority and the NSW Environment Protection Authority), together with the relevant regulations, including:
- Work Health and Safety Act 2011
  - Work Health and Safety Regulation 2011
  - Protection of the Environment Operations (Waste) Regulation 2005.
- g. Demolition and construction shall minimise the emission of excessive noise and prevent “offensive noise” as defined in the Protection of the Environment Operations Act 1997. Noise reduction measures shall include, but are not limited to the following strategies:
- choosing quiet equipment
  - choosing alternatives to noisy activities
  - relocating noise sources away from affected neighbours
  - educating staff and contractors about quiet work practices
  - informing neighbours of potentially noise activities in advance
  - equipment, such as de-watering pumps, that are needed to operate on any evening or night between the hours of 8 p.m. and 7 a.m. or on any Sunday or Public Holiday, shall not cause a noise nuisance to neighbours of adjoining or nearby residences. Where the emitted noise exceeds 5 dB(A) [LAeq(15m)] above the background sound level [LA90] at the most affected point on the nearest residential boundary at any time previously stated, the equipment shall be acoustically insulated, isolated or otherwise enclosed so as to achieve the sound level objective.
- h. The water from the rainwater tank should not be used for drinking, Sydney Water shall be advised of the installation of the rainwater tank.
- i. All site works shall comply with the occupational health and safety requirements of the NSW WorkCover Authority.
- j. In the event of any inconsistency between conditions of this approval and the drawings/documents referred to in condition 2, the conditions of this approval prevail.









APPROVED  
1 GERTRUDE STREET

RL 33.85

open pergola structure

common rooftop garden

RL 31.05

lift overrun

RL 33.85

TOH RL 31.00

horizontal dark gray  
timber louver  
glass balustrade

TOH RL 31.00

HEIGHT LIMIT 29.5M  
FROM NATURAL GROUND LINE

ROOF  
RL 30.75  
level 08  
RL 27.65  
level 07  
RL 24.55  
level 06  
RL 21.45  
level 05  
RL 18.35  
level 04  
RL 15.25  
level 03  
RL 12.15  
level 02  
RL 9.05  
level 01  
RL 5.95  
level 00  
RL 2.85

medium gray color render  
spandrel  
light gray spandrel  
light gray balustrade  
light gray render concrete  
blade  
dark colored aluminum  
horizontal louvers  
dark aluminum window frame  
with clear glass  
medium gray color render  
balustrade  
planterbox  
concrete wall with light gray  
render and vertical pattern

11 GERTRUDE STREET

RL 1.83

1 GERTRUDE STREET

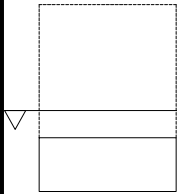
TOP OF PODIUM  
RL 6.35

TOH RL 6.35

EXISTING CAR PARKING BUSINESS

IMPORTANT NOTES:  
Do not scale from drawings. All dimensions to be checked on site before commencement of work. All discrepancies to be brought to the attention of the Architect. Larger scale drawings and written instructions shall be the property of the author, and must not be retained, copied or used without the express authority of MARCHESE + PARTNERS INTERNATIONAL PTY LTD.

REVISION	DATE	DESCRIPTION	BY
A	24/07/15	DA SUBMISSION	PS
B	05/02/16	REPLY TO COUNCIL'S COMMENTS	PS
C	20/05/16	FINAL FOR SUBMISSION	PS



**marchesepartners**

Marchese Partners International Pty Ltd  
Level 1, 53 Walker Street, North Sydney, NSW 2060 Australia  
P +61 2 9922 4375 F +61 2 9923 5786 E info@marchesepartners.com.au  
www.marchesepartners.com.au  
Sydney · Brisbane · Melbourne · Canberra · Adelaide · Perth · San Francisco · Kuala Lumpur  
ACN 098 552 151 ABN 20 098 552 151

Principal architect: Eugene Marchese Architects Registration Number: 5976

CLIENT

PROVIDENT HOMES PTY LTD

PROJECT

7 - 9 GERTRUDE STREET

WOLLI CREEK NSW 2205

DRAWING TITLE

ELEVATION SOUTH

SCALE

1:100 @ A1

DATE

10.06.2015

DRAWN

BO

CHECKED

PS

JOB

15040

DRAWING

DA 3.02

REVISION

E



## Exception to Development Standards Submission

This amended Exception to Development Standards Submission accompanies a Development Application (DA 47/2016) proposing the construction of a residential flat building at 7-9 Gertrude Street, Wolli Creek (the **site**).

Calculations in this amended submission are based on plans and information provided by Marchese Partners (which are in accordance with the relevant definitions) and should be read in conjunction with the detailed Statement of Environmental Effects (**SEE**), prepared by LPDS and other supporting technical documentation including amended plans submissions.

As noted in **Table 4** the originally submitted development departed from the FSR development standard at Clause 4.4(2) of Rockdale Local Environmental Plan 2011 (**LEP 2011**). Following negotiations with Council officers, the FSR has principally been reduced from that originally lodged as follows:

- revised front and rear building alignment to be consistent with adjacent property at 1-5 Gertrude Street;
- redesign to allow for cross-ventilation to southern-most units;
- reduction in number of apartments to 36 and change in the proposed mix (1 x studio, 17 x 1 bed, 12 x 2 bed and 6 x 3 bed);
- all two bedroom apartments have been reduced to 70m<sup>2</sup>;
- conversion of 1 bedroom apartment to a studio apartment at the ground floor level; and
- reduction in GFA at both the roof top terrace and level 01 communal landscaped area.

However and notwithstanding, as required pursuant to Clause 4.6(3) of LEP 2011, **this amended submission provides a written request to Council that seeks to justify the amended proposal's departure from the FSR development standard** is acceptable from an environmental planning point of view and that compliance with the standard is both unreasonable and unnecessary given the circumstances of the case.

This application has been prepared in accordance with the NSW Department of Planning and Infrastructure guideline Varying development standards: *A Guide, August 2011*, and has incorporated as relevant principles identified in the following judgements:

- Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46
- Wehbe v Pittwater Council [2007] NSWLEC 827; and
- Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90.

## 1.1 Clause 4.4 of LEP 2011 - FSR

### **Description of the planning instrument, development standard and proposed variation**

#### ***What is the name of the environmental planning instrument that applies to the land?***

Rockdale Local Environmental Plan 2011.

#### ***What is the zoning of the land?***

The land is zoned R4 High Density Residential.

#### ***What are the objectives of the zone?***

The objectives of the R4 High Density Residential zone are:

- *to provide for the housing needs of the community within a high density residential environment.*
- *to provide a variety of housing types within a high density residential environment.*
- *to enable other land uses that provide facilities or services to meet the day to day needs of residents.*

#### ***What is the development standard being varied?***

The development standard being varied is the FSR development standard.

#### ***Is the development standard a performance based control? Give details.***

No.

#### ***Under what clause is the development standard listed in the environmental planning instrument?***

The development standard is listed under Clause 4.4 of LEP 2011.

#### ***What are the objectives of the development standard?***

The objectives of the development standard are expressly stated at Clause 4.4(1) of LEP 2011 and are:

- (a) *to establish the maximum development density and intensity of land use, accounting for the availability of infrastructure and generation of vehicular and pedestrian traffic, in order to achieve the desired future character of Rockdale,*
- (b) *to minimise adverse environmental effects on the use or enjoyment of adjoining properties,*
- (c) *to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing or likely to undergo a substantial transformation.*

#### ***What is the numeric value of the development standard in the environmental planning instrument?***

Clause 4.4(2) of LEP 2011 establishes a maximum FSR of 2.2:1 for the site. This equates to a GFA of 2,208.8m<sup>2</sup>.

#### ***What is the proposed numeric value of the development standard in the development application?***

The proposed residential flat building results in an FSR of 2.497:1 which equates to a GFA of 2507m<sup>2</sup>.

#### ***What is the percentage variation (between the proposal and the environmental planning instrument)?***

The percentage variation is 13.5%.

## Assessment of the proposed variation

Clause 4.6 Exceptions to development standards establishes the framework for varying development standards applying under a local environmental plan.

Objectives to clause 4.6 at 4.6(1) are as follows:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Clause 4.6(3)(a) and 4.6(3)(b) require that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

Clause 4.6(4)(a)(i) and (ii) require that development consent must not be granted to a development that contravenes a development standard unless the:

- (a) the consent authority is satisfied that:*
  - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
  - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

Clause 4.6(4)(b) requires that the concurrence of the Secretary be obtained and Clause 4.6(5) requires the Secretary in deciding whether to grant concurrence must consider:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) the public benefit of maintaining the development standard, and*
- (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.*

## Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

*Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?*

A development that strictly complies with the 2.2:1 FSR standard is unreasonable or unnecessary in the circumstances of 7-9 Gertrude Street, Wolli Creek for the following reasons:

- the overall design sits appropriately within the established and likely future built form context of the Wolli Creek redevelopment precinct. Furthermore Council previously as part of a formal amendment



to DCP 62: Wolli Creek (the DCP previously applying to the precinct and see **Figures 1 and 2**) recommended that development blocks or precincts be broken up (from two to three buildings) to accommodate taller building forms so that the floorspace could be redistributed and which would improve the amenity for all existing and future dwellings and residents. The proposed development as amended is entirely consistent with this redevelopment approach;

- the proposed built form is not dissimilar (or less than) to other buildings in the surrounding locality. The proposed FSR in this regard is similar to or less than that existing, approved, under construction. Refer to Section 3 of the originally submitted SEE for further information;
- the density proposed produces a building of similar scale (if not less than) and appearance (improved architectural quality) of adjacent development;
- the proposed front and rear building alignment is consistent with that at 1-5 Gertrude Street. This promotes a consistent streetscape appearance and also maintains separation to future built form at the site's rear (south);
- the height, bulk and scale of the apartment building will not set an undue precedent as there is only one remaining consolidated site at 11-13 Gertrude Street that is yet the subject of a DA. The remainder of Gertrude Street has been redeveloped (approved, built form existing or under construction) and of which the majority depart from the FSR standard;
- it has been demonstrated that the proposal will not result in any material environmental impacts to the adjoining and adjacent properties, particularly in terms of overshadowing, aural and visual privacy, solar access and natural ventilation, and views and vistas;
- it will permit the redevelopment of the site to facilitate a use which is predominantly in accordance with the adopted planning controls for the site and consistent with that already approved and constructed as well as community expectations for the area; and
- approval of the FSR as proposed on the site for a building envelope that has a more than acceptable environmental performance but which at the same time exceeds that prescribed for the locality in LEP 2011 will not set a precedent for other non-conforming applications.

Business Paper authored by Manager - Urban Strategy & Design (Erika Roka) on 05/0... Page 1 of 4

**ROCKDALE CITY COUNCIL**

**General Report for Council Meeting**  
03/02/2010

**INNESDALE F.S.R**

[Back](#) [Print](#)

Document Navigation

**Public - General Report Details**

Item Number: ORD08

Subject: PROPOSED AMENDMENTS TO DCP 62 - WOLLI CREEK

File Number: F10/7

Report by: Manager - Urban Strategy & Design (Erika Roka)

Community Engagement: Yes - Consult

Financial Implications:

**Precis**

DCP 62- Wolli Creek came into force in August 2006. It contains the strategic directions for future development particularly in terms of movement, the public domain and detailed built form controls for the different precincts within the area. The built form controls nominate maximum building heights and floor space ratios, required setbacks, minimum building separation and deep soil zones.

A review of DCP 62 has been undertaken that indicates that its development controls are not always facilitating good development outcomes or design excellence. However, as the draft Rockdale City LEP and DCP will address these issues, it is considered that at this point in time, only minor amendments should be made to DCP 62 for those areas where it is likely that development applications may be lodged in the near future and the present controls will lead to particularly poor development outcomes. This area is the block between Gertrude Street and Innesdale Road and the Mercure Hotel site.

The proposed amendments do not increase the current floor space ratio. The amendments reduce the number of new buildings from 3 rows to 2 in order to increase solar access to the future dwellings and their communal open spaces. In order to maintain the allowable floor space ratio, the heights of the buildings are proposed to be increased. Shadow diagrams illustrate that the increased height will have a minor and not unreasonable impact on existing dwellings on the south side of Innesdale Road. The redistribution of floor space into taller buildings will improve the amenity of future dwellings in the precinct.

**Council Resolution**

RESOLVED on the motion of Councillors Bellamy and Awada

That the recommendations of the Committee-of-the-Whole held on 3 February 2010 be adopted.

**Recommendations**

**Committee Recommendation**

NOTE:

Councillors Moselmane had previously declared a non-pecuniary interest in this item and left the Chamber for discussion and voting.

Councillor Nagi was absent for voting on this item.

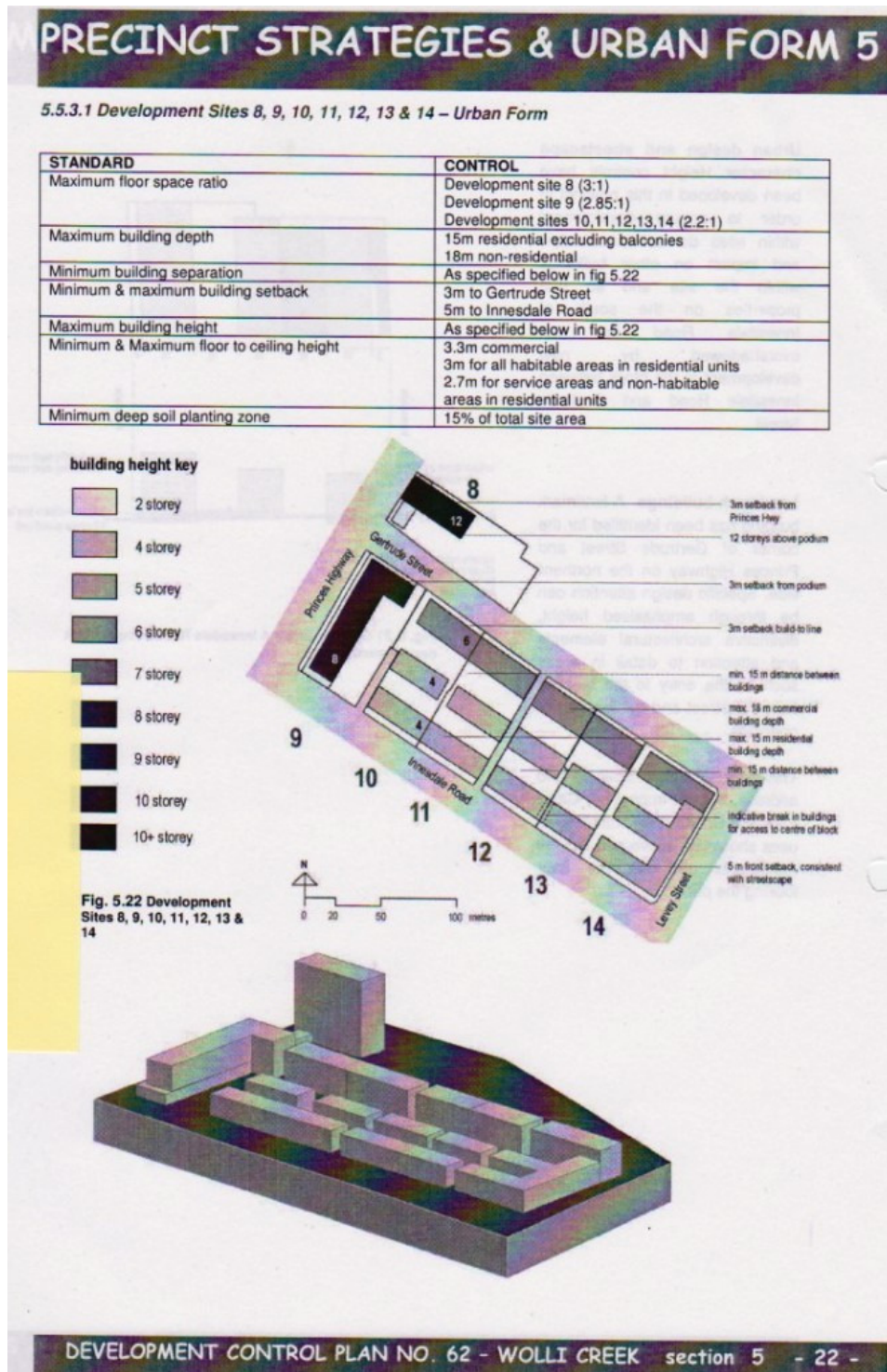
MOTION moved by Councillors de Leau and Feeney

1 That the report on proposed amendments to DCP 62 Wolli Creek be received and noted.

2 That Council seek community comment by placing the draft amendment to DCP 62 Wolli Creek as outlined in

[http://203.20.148.66/RBP/CBP.nsf/\(vwUnid\)/AE5FCD5F3B779BF24A2576C1001A8...](http://203.20.148.66/RBP/CBP.nsf/(vwUnid)/AE5FCD5F3B779BF24A2576C1001A8...) 3/03/2010

Figure 1 – Council report 3 February 2010



**Figure 2 – Amended development blocks under DCP 62**

**Would the underlying objective or purpose of the standard be defeated or thwarted if compliance was required?**

Compliance with the underlying objective of the 2.2:1 FSR standard would be thwarted if strict compliance with the standard was required in the circumstances as the quality of the residential outcome would be compromised for no sound planning reason, particularly given the number of existing development's within the precinct which have been permitted to depart from the FSR standard.

The height, bulk and scale of the apartment building will not set an undue precedent as there is only one remaining consolidated site at 11-13 Gertrude Street that is yet the subject of a DA. The remainder of Gertrude Street has been redeveloped (approved, built form existing, under construction or assessment [DA2016/86]) and of which the majority depart from the FSR standard.

***Has the development standard been virtually abandoned or destroyed by the Council's own actions in departing from the standard?***

The development standard cannot said to be abandoned, rather varied consistently subject to environmental performance. It is very arguable (and known) that a number of built form (existing, approved, under construction in the surrounding locality already depart from the FSR standard.

Council, the JRPP and the NSW Land and Environment Court has consistently approved the redevelopment of properties within the Wolli Creek locality which unquestionably depart from the FSR (and others) standard. This has been more than adequately demonstrated at Section 3 of the originally lodged SEE.

***Is the zoning of the land unreasonable or inappropriate?***

The zoning of the land is reasonable and appropriate given the site's location.

**Are there sufficient environmental planning grounds to justify contravening the development standard?**

In the circumstances of the case, there are sufficient environmental planning grounds to justify contravening the development standard being:

- A rigid and inflexible strictly compliance based approach to the FSR standard is inconsistent with the provisions of Section 79C(3A)(b) of the Act as it forgoes the opportunity to provide a benchmark architectural, urban and landscape design solution for the site or alternatively a reasonable alternative solution that still meets the intent of the standard. The proposal is clearly consistent with this performance based approach permitted by Section 79C(3A) of the Act;
- the proposal satisfies the objectives of the R4 High Density Residential zone;
- the proposal satisfies the objectives of the FSR development standard;
- the amended proposal and resultant built form addresses issues raised by Council during the assessment of the proposal. The proposed front and rear building alignment is consistent with that at 1-5 Gertrude Street. This promotes a consistent streetscape appearance and also maintains separation to future built form at the site's rear (south) with the continuation of a useable landscaped 'belt' at the rear of each property;
- the amended proposal is entirely consistent with the provisions of SEPP 65 and the ADG. The future built form will therefore provide more than satisfactory amenity to the future occupants and undoubtedly results in an appropriate planning outcome;
- the site is located in an identified urban redevelopment precinct. It has excellent access to all required services, amenities and facilities, including a range of public transport options. The site is ideally located to accommodate additional FSR;
- the size of the numerical departure (299m<sup>2</sup> GFA) is inconsequential from a planning perspective as it does not materially add to the bulk and scale of the built form. The proposed apartment building sits comfortably within its established, approved and likely future locational context. The proposed FSR is



comparable to other properties which have undergone redevelopment or are in the process of redevelopment;

- the quantum of additional floor space (above the FSR standard) is arranged on the site (1,004m<sup>2</sup> in area) in a manner that is unlikely to result in significant adverse impacts upon adjacent properties or the public realm by way of overshadowing, visual massing or visual privacy;
- the visual catchment contains a number of buildings that will present a similar or greater bulk and scale and which will set the character to a large degree. Consequently, the non-compliance with the standard does not result in a scale of building that is out of character with the surrounding development and the emerging character;
- the proposal will achieve a positive urban design outcome and will improve the streetscape through contemporary architecture styling as opposed to the numerous large non-descript built forms that contain little or no aesthetic significance or involve reproduction in design;
- within this context the site is capable of accommodating the FSR proposed and the development is of an intensity and scale commensurate with the evolving character and the prevailing urban conditions and capacity of the locality.
- Council would not be setting a precedent by varying the FSR control as proposed. It is known that Council has varied the FSR controls to similar degrees on similar development;
- removing the non-compliance would not significantly alter the perceived scale and density of the proposed development when viewed from the public domain or surrounding development; and
- the development as proposed is consistent with the provisions of orderly and economic development of land.

**Is the proposed development in the public interest because it is consistent with the objectives of the particular standard and the objectives for development in the zone?**

***Objectives of the FSR standard***

As each FSR objective is considered to be similar, a complete and combined analysis of the proposal's compliance with all of the objectives follows below. The proposal and its departure from the FSR standard is nonetheless consistent with the height of buildings objectives for the following reasons:

- essentially, the objective of an FSR control is to ensure that the intensity of development respects and reflects the overall built form of a locality and does not detrimentally affect the amenity of the area. The maximum FSR that a site can achieve is determined by its environmental constraints, in particular overshadowing, privacy, streetscape, parking, landscaping, visual impact and views and the capacity of the community infrastructure. In terms of these performance criteria, the proposal clearly meets or exceeds these criteria as detailed previously. The proposal has been designed to minimise impacts and has had particular regard to site users and neighbours in terms of visual appearance, overshadowing, traffic generation, parking and streetscape;
- the proposed density of development is regulated to an acceptable level within the context of the site's locational characteristics and proximity to public transport. It will not generate an unacceptable level of pedestrian or vehicular traffic that cannot be accommodated within existing infrastructure;

- the site is well located to provide additional floorspace above that technically permitted. It is within walking distance of existing infrastructure (public transport, shops, parks, amenities and facilities) which will be able to cope with the increased demand. In particular the Traffic and Parking Assessment Report (submitted under separate cover) clearly demonstrates that the proposal will not result in any adverse traffic generation impact that would lead to the unacceptable performance of the surrounding road network or infrastructure;
- resulting from its high quality urban and architectural design solution, the apartment building will improve the visual character of the site and locality in general (which contains a number of non-descript built forms and elements). The site is located in an area within an existing urban environment that contains a history of varied land uses, building envelopes, heights, types, densities and indeed architectural merit. The development fits within the desired form, scale and character of the locality as anticipated through the redevelopment of surrounding properties within the Wolli Creek precinct;
- the resulting built form is comparable to existing buildings in the surrounding locality (see Section 3 for further information);
- the proposed built form provides a consistent vertical modulation that has been established within the Wolli Creek precinct. As demonstrated at Section 3 (refer to the originally lodged SEE) the proposed height, bulk and scale of the building sits comfortably within its immediate established (and approved) built form context;
- the apartment building has been designed to physically and architecturally complement Gertrude Street in accordance with sound urban design principles. The resultant built form provides a positive visual interest through a consistent vertical modulation that has been established within the Wolli Creek redevelopment precinct;
- with regard to the size of the numerical departure (299m<sup>2</sup> GFA), it is inconsequential from a planning perspective as the additional GFA does not add to the perceived height (complying other than for the lift overrun and rooftop pergola structures), bulk and scale of the proposed built form when assessed in its existing and likely future locational context. The proposed FSR is comparable to other properties which have undergone redevelopment or are in the process of redevelopment;
- the proposed FSR is less than that already approved on adjacent properties with a Gertrude Street address (see Section 3 of the originally lodged SEE for further information)
- landscaped area is provided well in excess of that required. This further reduces any perception of built form dominance;
- a similar (if not smaller) building footprint is proposed as compared to that existing on adjacent properties;
- approval of an FSR on the site that relates to the existing (approved, built and under construction) character of the area, but exceeds the LEP 2011 standard, will not set a precedent for other non complying applications;
- the proposal provides a high quality modern, contemporary and architecturally designed apartment building on the site which is consistent with the R4 high density residential built form character of the area;
- it develops a built form that defines and addresses the street character and positively contributes to the quality (enhancement) of the public domain;

- it provides a built form that is appropriate to its locational context as a basis for innovative and imaginative design notwithstanding the site's natural constraints (floodprone);
- the site is proportioned to allow the efficient realisation and internalisation of the impacts of the additional floorspace without an adverse visual impact or perceived built form dominance;
- the proposal supports the principles of ecological sustainable development;
- consideration has been given in the design to minimising environmental impacts to adjoining and surrounding properties particularly in relation to aural and visual privacy, overshadowing, visual, solar access, access to natural daylight and ventilation, traffic generation/capacity; views and streetscape (including bulk and scale);
- the expression of the built form is adjusted to respond to:
  - the site's locational context;
  - the site's topography and flooding constraints (minimum habitable floor levels match that required throughout the precinct and the floor levels of each building are consistent with that already established);
  - the design and built form character of the adjoining and adjacent development;
  - solar access and the site's orientation; and
  - internal and external amenity for the future occupants.

### ***Objectives of the zone***

As previously demonstrated at Clause 2.3 at **Table 4** (within the originally submitted SEE), the proposed development despite its departure from the FSR development standard is consistent with the stated objectives of the R4 High Density Residential zone and is therefore considered to be a suitable and appropriate redevelopment of the site.

### **Whether contravention of the development standard raises any matter of significance for the State or regional Environmental Planning?**

The contravention of the development standard in this case does not raise an issue of State or regional planning significance as it relates to local and contextual conditions. The variation sought is responding to the broad brush nature of the control applied across an area that supports a variety of built forms that are reflective of different zones and are a function of their use.

The proposed FSR is typical of similar type development throughout the Wolli Creek locality (see Section 3 of the originally lodged SEE for further information). The proposed development supports State Government Policies of urban consolidation and centres policy. It is also consistent with the Metro Strategy by increasing residential densities and thereby improving the viability and vibrancy of local government areas. The proposal achieves the aforementioned as it is located in a built form precinct which is greater than that permitted by the planning controls and has excellent access to services, facilities and amenities.

The proposed development and variation from the development standards does not raise any matters of significance for State or regional environmental planning, nor does it conflict with any State planning policies or Ministerial directives.



## **How would strict compliance hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Act?**

The objects of the Act as specified in Section 5(a) (i) and (ii), are in our opinion, achieved by the proposed development in that:

- it constitutes *“proper management, development and conservation of natural and man-made resources”*;
- it promotes *“the social and economic welfare of the community and a better environment”* by better utilising the existing resources and infrastructure of the community; and
- it would result in *“the promotion and co-ordination of the orderly and economic use and development of land”*.

A strictly complying development would result in a poorer urban design response to the overall site and the area generally and in that sense it may be said that compliance with the standard would hinder the attainment of the objects of section 5(a)(i) and (ii) of the Act.

The development as proposed is consistent with the provisions of orderly and economic development and would not hinder the objects of the Act in Section 5(a)(i) and (ii).

In addition to the above, compliance with the FSR development standard would hinder the attainment of the objects of the Act as:

- the proposed FSR across the site supports high quality residential flat building development that responds to demand for high quality residential accommodation in locations with good access to public transport, services, amenities and other facilities;
- it would preclude redevelopment of the site in the manner proposed and which would not offer the level of amenity currently expected;
- it would preclude the design and siting of the proposal from being consistent with and becoming a positive contribution to the prevailing character of the immediate and surrounding locality;
- it would compromise the character/consistency of the existing streetscape of the immediate locality;
- it doesn't constitute the orderly, economic and sympathetic redevelopment of land; and
- the departure from the standard does not result in any adverse impacts to the adjoining and adjacent properties and the surrounding public domain.

## **Is there public benefit in maintaining the development standard?**

Generally speaking, there is public benefit in maintaining standards. However, there is public interest in maintaining a degree of flexibility in specific circumstances. In the current case, strict compliance with the FSR standard would serve no other purpose than to impose numerical inflexibility that would achieve no planning purpose.

Council, the JRPP and the NSW Land and Environment Court in the past has consistently considered applications favourably which depart from the FSR standard (and others) subject to a satisfactory environmental performance (see Section 3 of the originally lodged SEE for further information). As previously demonstrated the proposed development is entirely consistent with this principle. There are no other reasons as to why the proposal is not in the public interest and refusal of the proposal based on the

departure from the FSR standard is not warranted. Therefore it is argued that there is no public benefit in maintaining the adopted planning control, specifically relating to FSR.

On balance the variation to the FSR standard is considered to be an appropriate use of the provisions of Clause 4.6. Accordingly there is in the specific circumstances of the case, no public benefit in strictly maintaining the development standard.

### **Is the objection well founded?**

For the reasons outlined in previous sections, it is considered that the objection is well founded in this instance and granting an exception to the development can be supported in the circumstances of the case.

The particular circumstance will mean that the proposed development will be consistent with the built form outcomes envisaged in the zoning and policy framework.

A development that strictly complied would result in a lesser development form that would not be compatible with the context and scale of surrounding development.

The development does not contravene the objects specified with 5(a)(i) and (ii) of the Act.

### **Conclusion**

The proposed variation is based on the reasons contained within this formal request for an exception to the standard. The amended development will not result in unacceptable impacts with regard to the amenity of adjoining properties and there are sufficient environmental planning grounds in which to support the site's redevelopment as proposed.

A development strictly complying with the numerical standard would not significantly improve the amenity of surrounding land uses. In the context of the locality it would be unreasonable for strict compliance to be enforced.

The non-compliance is not considered to result in any precedents for future development within the LGA given the site considerations and surrounding pattern of development, and the combination of zoning and differentiated controls applying to the whole of the precinct.

It is concluded that the objection is well founded as compliance with the standard is both unnecessary and unreasonable and an appropriate planning and environmental outcome is provided, a desired result.

---

## Council Meeting

12/10/2016

Item No	9.12
Property	<b>588 and 592 Princes Highway, Rockdale</b>
Proposal	Application of Clause 6.14 – Design Excellence in Rockdale Local Environmental Plan 2011 (RLEP 2011) for the Construction of a Fourteen (14) Storey Mixed Use Development Comprising 140 Residential Units, Three (3) Commercial Units, Rooftop Communal Open Space, Basement Carparking and Demolition of Existing Buildings
Report by	Luis Melim - Manager Development Services and Marta Gonzalez-Valdes – Coordinator Major Assessments
Application No	DA-2016/352

---

## Council Resolution

Resolved by the Administrator:

- 1 That the justification provided by the applicant for development application DA-2016/352 at 588-592 Princes Highway Rockdale seeking an exemption to clause 6.14(3) - Design Excellence in RLEP 2011 based on clause 6.14(4) not be accepted and the applicant be requested to undertake a design excellence competition as required by clause 6.14(3) in RLEP 2011. The requirement under clause 6.14(3) of RLEP2011 to undertake a design excellence competition in this case is considered to be reasonable and necessary for the following reasons:
  - a Council has consistently applied the design excellence competition to other sites in the Rockdale Town Centre. Not applying the clause in this case would set an undesirable precedent.
  - b There was no formal PreDA submitted for this proposal. However, the applicant was advised, prior to lodgement of the DA, that the proposal was subject to the requirements and objectives of Clause 6.14 and that the design excellence competition had to be carried out.
  - c As a design competition has not been carried out for this site, Council cannot be satisfied that the proposal is of the highest standard of architectural, urban and landscape design as required by Clause 6.14.
- 2 That the Joint Regional Planning Panel (JRPP), being the determining authority in this case, be advised of Council's resolution.
- 3 That to assist in dealing with future similar matters officers investigate the removal of clause 6.14(4) and report back to Council.

*The Administrator emphasised the importance of a further report by Council officers investigating the possibility of the removal of Clause 6.14(4).*

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## Officer Recommendation

- 1 That the justification provided by the applicant for development application DA-2016/352 at 588-592 Princes Highway Rockdale seeking an exemption to clause 6.14(3) - Design Excellence in RLEP 2011 based on clause 6.14(4) not be accepted and the applicant be requested to undertake a design excellence competition as required by clause 6.14(3) in RLEP 2011. The requirement under clause 6.14(3) of RLEP2011 to undertake a design excellence competition in this case is considered to be reasonable and necessary for the following reasons:
    - a Council has consistently applied the design excellence competition to other sites in the Rockdale Town Centre. Not applying the clause in this case would set an undesirable precedent.
    - b There was no formal PreDA submitted for this proposal. However, the applicant was advised, prior to lodgement of the DA, that the proposal was subject to the requirements and objectives of Clause 6.14 and that the design excellence competition had to be carried out.
    - c As a design competition has not been carried out for this site, Council cannot be satisfied that the proposal is of the highest standard of architectural, urban and landscape design as required by Clause 6.14.
  - 2 That the Joint Regional Planning Panel (JRPP), being the determining authority in this case, be advised of Council's resolution.
  - 3 That to assist in dealing with future similar matters officers investigate the removal of clause 6.14(4) and report back to Council.
- 

## Background

At its meeting on 6 July 2016 (ORD 12), Council resolved:

*That this item be deferred until the Voluntary Planning Agreement (VPA) arrangement is finalised. Council is to enter into a meaningful negotiation in order to establish an appropriate VPA that relates to the community benefits resulting from the dedication as part of the applicant's land to Council for improved pedestrian access.*

Council officers met with the applicant on 18 July 2016 to begin negotiations on a Voluntary Planning Agreement (VPA). At this meeting, it was agreed that the scope of the VPA would include the road widening on Lister Ave and the probable construction of the subsequent public domain works. To determine the lost gross floor area (GFA) from the road widening, it was agreed that Council would engage an architect to undertake a massing study of the site. The results of the massing study showed that there is significant difference between the base height control, the design excellence control and the proposed height submitted with the development application.

To proceed further with the VPA, clarification is required as to whether the development application meets the design excellence requirements and therefore, whether it is eligible for the increase in the height control. As such clause 6.14 is still applicable to the proposed development.

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## Location Plan

- 
- The map displays a residential neighborhood with the following features:
- Streets:** Chapel Street, Lister Avenue, Highway 1, and a Subway Road.
  - Highlighted Area:** A yellow strip along Lister Avenue and a red-outlined lot at 588 and 592.
  - Addresses:** Various lot numbers and addresses are visible, including 588, 592, 594, 596, 598, 600, 602, 606, 610, 589, 570, 572, 580, 586, 551-553, 555, 575, 577-589, 591-597, 19-21A, 21-23, 27, 22, 24, 26, 28, 30, 11-13, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.
  - Other Features:** A green shaded area, a hatched area, and a yellow highlighted area.

# Council Meeting

Meeting Date 06/07/2016

## Public

### Report Header

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<b>Item Number:</b>	ORD12
<b>Property:</b>	588-592 PRINCES HIGHWAY, ROCKDALE
<b>Subject:</b>	APPLICATION OF CLAUSE 6.14 - DESIGN EXCELLENCE IN ROCKDALE LOCAL ENVIRONMENTAL PLAN 2011 (RLEP 2011) FOR THE CONSTRUCTION OF A FOURTEEN (14) STOREY MIXED USE DEVELOPMENT COMPRISING 140 RESIDENTIAL UNITS, 3 COMMERCIAL UNITS, ROOF TOP COMMUNAL OPEN SPACE, BASEMENT CAR PARKING AND DEMOLITION OF EXISTING BUILDINGS
<b>File Number:</b>	DA-2016/352
<b>Owner:</b>	MOWENO PTY LTD AND PERFORMINA PTY LTD
<b>Applicant:</b>	MOWENO PTY LTD
<b>Developer:</b>	UNKNOWN
<b>Location:</b>	EASTERN SIDE OF PRINCES HIGHWAY ON THE CORNER WITH LISTER AVENUE
<b>Date of Receipt:</b>	11/04/2016
<b>Date of Receipt:</b>	11/04/2016
<b>No. of Submissions:</b>	2
<b>Previous Report to Council:</b>	Nil
<b>Report by:</b>	Manager - Development Services (Luis Melim)
<b>Contributors:</b>	Coordinator Major Assessments (Marta Gonzalez-Valdes)
<b>Community Engagement:</b>	Yes
<b>Financial Implications:</b>	No

### Precis

---

Council is in receipt of a development application for the construction of a mixed use development at the above address. The proposed building is 14 storeys high and contains 140 residential apartments, 818.2 sq.m. retail gross floor area (GFA), 4 levels of basement car parking containing 209 car parking spaces and a rooftop communal area.

The subject site is located on the eastern side of Princes Highway on the corner with Lister Avenue. The site is zoned B4 under Rockdale Local Environmental Plan 2011 (RLEP2011). The proposal is defined as a residential flat building and commercial premises. The proposal is permissible with the consent of Council.

The proposal does not comply with clause 4.3 - Building Height in RLEP 2011. The maximum permissible height across the site is 22 metres. The proposed development relies on the building height incentive in clause 4.3 (2A) of the LEP. Clause 4.3(2A) allows an additional 12 metres for lots in Area H (as noted in the LEP) if the lot area is at least 2000sq.m. and an additional 9 metres for lots in Area J with an area of at least 2000sq.m. The proposed development relates to two lots. The lot known as 588 Princes Highway (northern lot) is located in Area H and the lot known as 592 Princes Highway

(southern lot) is located in Area J.

The combined amalgamated site area, as proposed under this development application is 2077sq.m. The permissible height applicable to the site, taking into account the bonus height is 34 metres for the northern lot and 31 metres for the southern lot. The proposed development is for a building on the northern lot with a height of 44.6m (10.6m above permissible bonus height) and on the southern lot with a height of 40.51m (9.51m above permissible bonus height).

The applicant has submitted a Cl4.6 justification to the building height standard. However, Cl 4.6(8)(ca) excludes varying cl 4.3(2A) unless the proposed variation is for a demonstrable public interest such as pedestrian links. The applicant has not addressed this clause. There is no apparent specific public interest to allow a variation to this development standard.

The proposal is subject to clause 6.14 in the LEP, which requires a design excellence competition to be undertaken. The applicant was advised prior to lodgement of the development application that the proposal was required to go through the design excellence competition process. As an alternative, the applicant has provided an assessment against the Rockdale Design Excellence Guidelines (Refer to attached Statement of Environmental Effects). The applicant argues that the design competition is unreasonable as the proposal displays design excellence as demonstrated in the assessment against the Guidelines. This is not considered acceptable and does not demonstrate compliance with the requirements and objectives of the clause.

The site is subject to a road dedication along Lister Avenue. The land to be dedicated has an area of 124sq.m. The total site area without the land dedication is 1953sq.m. The applicant has provided a letter and argues that this land dedication is a 'substantial public benefit' and 'will improve vehicular circulation within the locality and assist in accommodating the estimated traffic generation of the proposal'. The applicant is proposing to enter into a VPA or works in kind agreement with Council. This has been discussed with Council's Strategic Asset team and no agreement to VPA or works in kind has been reached.

The development application has been notified in accordance with Council's Development Control Plan 2011 and two letters of objection have been received. The issues raised by the residents relate to overdevelopment of the site and non compliances with SEPP 65 and height controls.

## **REPORT BACKGROUND**

### **Background to the introduction of clause 6.14**

The Rockdale Town Centre draft Planning Proposal and draft Development Control Plan (DCP) were publicly exhibited from 19 May 2014 to 16 June 2014. The main changes involved the provision of additional height opportunities and the removal of FSR controls for properties within the Rockdale Town Centre. To achieve a high quality design outcome, the Planning Proposal identified specific sites within the town centre i.e. Chapel Street, which would be subject to a Design Excellence Competition.

A revised Planning Proposal - RLEP 2011 Rockdale Town Centre was considered by Council at its meeting on 15 October 2014. The revised Planning Proposal included, amongst other changes, an amendment to the RLEP 2011 to extend the requirement for a design excellence competition to all properties within the town centre which benefit from the height bonus. The height bonus applies to sites identified in the Height of Buildings Map within Area A having an area of at least 1500 sq.m, Area G having an area of at least 1000sq.m., Area H having an area of at least 2000sq.m., Area I having an area of at least 1000sq.m. and Area J having an area of at least 2000sq.m. (Refer to



attached map showing the area subject to the bonus height). The revised Planning Proposal was voted by Council unanimously.

The RLEP Amendment was notified on 5 June 2015. The Rockdale DCP 2011 Amendment No.3 - Rockdale Town Centre, came into effect on this day. The Rockdale Design Excellence Guidelines were endorsed by Council at its meeting on 6 May 2015.

Consistent with Council's resolution and the revised Planning Proposal, the amended RLEP introduced clause 6.14, which reads:

#### 6.14 Design excellence

- (1) The objective of this clause is to deliver the highest standard of architectural, urban and landscape design.
- (2) This clause applies to the following development:
  - (a) development that is the erection of a new building on land bounded by a heavy black line on the Design Excellence Map,
  - (b) development that is the subject of a development application that relies on clause 4.3 (2A) (a), (f), (g), (h) or (i).
- (3) Development consent must not be granted to development to which this clause applies unless:
  - (a) an architectural design competition that is consistent with the Design Excellence Guidelines has been held in relation to the development, and
  - (b) the consent authority considers that the development exhibits design excellence.
- (4) An architectural design competition is not required under subclause (3) if the consent authority is satisfied that such a process would be unreasonable or unnecessary in the circumstances.
- (5) In deciding whether to grant development consent to development to which this clause applies, the consent authority must take into consideration the results of the architectural design competition.

#### **Background to the application of clause 6.14**

Council considered at a Council meeting on 4 November 2015 a justification for not undertaking a design excellence competition provided by the applicants in the following development applications:

- DA-2015/322 - Integrated Development - Construction of a twelve (12) storey mixed use development, including eighty-eight (88) residential units, three (3) commercial units, basement parking, rooftop terrace and demolition of existing structures at 433-439 Princes Highway Rockdale - lodged 10/3/15.
- DA-2016/30 - Integrated Development - Construction of eleven (11) storey mixed use development comprising 100 residential units, three (3) commercial units, basement parking and demolition of existing structures at 397 Princes Highway Rockdale - lodged 22/7/15.
- DA-2012/293/E - Section 96 application - Addition of two (2) levels to Block A fronting Princes Highway and one (1) level to Block B fronting Chapel Lane providing a total of 20 additional residential units and alterations to the building at 564 Princes Highway Rockdale - lodged 16/9/15. (The original application was approved on 12 July 2012).
- DA-2016/102 - Construction of a part four (4) and part ten (10) storey residential flat building comprising 113 residential units basement parking and demolition of existing structures at 594-600 Princes Highway Rockdale lodged 17/9/15.

Council resolved not to accept the applicants' justification and further requested that, DA-2015/322 and DA-2012/293/E be reviewed by an independent urban designer to assess the design outcomes of the development and confirm the development met the objective of clause 6.14 in RLEP 2011. These applications were reviewed by an independent Urban Designer and have been approved by the JRPP.

In the case of DA-2016/30 and DA-2016/102, Council resolved to reject the applicants' justification and requested that the design excellence competition take place. These DAs have since been withdrawn and have gone through the design competition process.

Even more recently, Council at its meeting on 18 May 2016 considered a request by the developer of 591-597 Princes Highway, Rockdale (Toyota Site) to be exempted from the design excellence clause 6.14. Council resolved that this application be subject to the design competition principles as per Clause 6.14.(3) - Design Excellence in RLEP 2011.

#### **Application of Clause 6.14(4)**

Since the introduction of Clause 6.14 in RLEP 2011, many developers have attempted to argue that the design excellence competition is unreasonable and unnecessary, under Clause 6.14(4).

Council has held a firm and consistent view on the application of design excellence and the requirement for a design competition. Accordingly, it is recommended that officers investigate the removal of Cl 6.14(4) and this be reported back to Council.

### **Council Resolution**

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#### **NOTE:**

The Mayor, Councillor Saravinovski, vacated the Chair and left the Chamber having previously declared a Significant Non-Pecuniary Interest in this item on the basis that his family owns property in the Rockdale Town Centre. The Deputy Mayor, Councillor Nagi, assumed the Chair.

Messrs David Cullen (architect), Paul Walter (urban designer) and Tristan Kell (applicant) addressed the Council.

MOTION moved by Councillors Tsounis and P Sedrak

That this item be deferred until the Voluntary Planning Agreement (VPA) arrangement is finalised. Council is to enter into a meaningful negotiation in order to establish an appropriate VPA that relates to the community benefits resulting from the dedication as part of the applicant's land to Council for improved pedestrian access.

#### **DIVISION**

DIVISION on the MOTION called for by Councillors Tsounis and P Sedrak

#### **FOR THE MOTION**

Councillors P Sedrak, Awada, L Sedrak, Nagi, Mickovski and Tsounis

#### **AGAINST THE MOTION**

Councillors Macdonald, Barlow, Ibrahim and Hanna

The MOTION was ADOPTED 6 votes to 4.

## Officer Recommendation

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That voting on this matter be by way of a Division.

1 That the justification provided by the applicant for development application DA-2016/352 at 588-592 Princes Highway Rockdale seeking an exemption to clause 6.14(3) - Design Excellence in RLEP 2011 based on clause 6.14(4) not be accepted and the applicant be requested to undertake a design excellence competition as required by clause 6.14(3) in RLEP 2011. The requirement under clause 6.14(3) of RLEP2011 to undertake a design excellence competition in this case is considered to be reasonable and necessary for the following reasons:

a Council has consistently applied the design excellence competition to other sites in the Rockdale Town Centre. Not applying the clause in this case would set an undesirable precedent.

b There was no formal PreDA submitted for this proposal. However, the applicant was advised, prior to lodgement of the DA, that the proposal was subject to the requirements and objectives of Clause 6.14 and that the design excellence competition had to be carried out.

c As a design competition has not been carried out for this site, Council can not be satisfied that the proposal is of the highest standard of architectural, urban and landscape design as required by Clause 6.14.

2 That the Joint Regional Planning Panel (JRPP), being the determining authority in this case, be advised of Council's resolution.

3 That to assist in dealing with future similar matters officers investigate the removal of clause 6.14(4) and report back to Council.

## Report Background

---

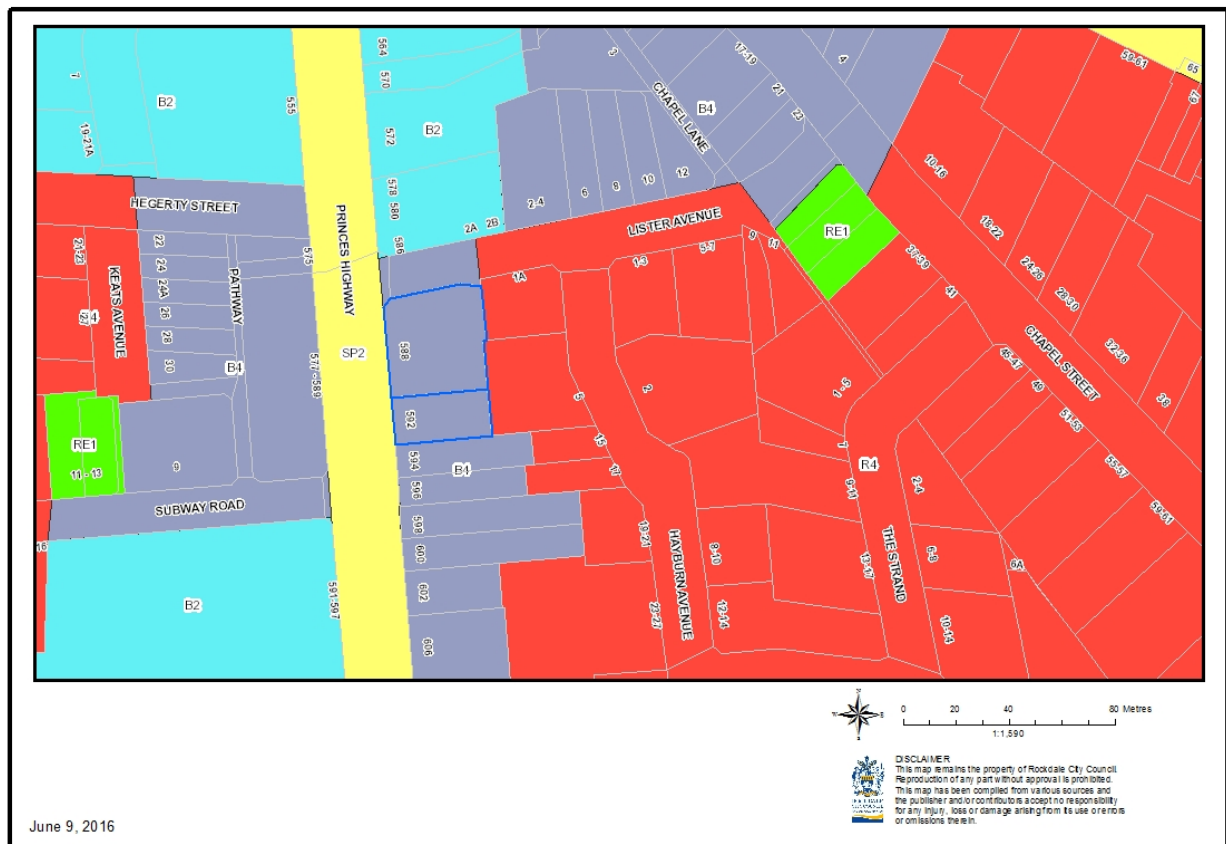
### REASON FOR REFERRAL TO COUNCIL

This development application is referred to Council as Council is required to review the applicant's justification under Cl 6.14 in RLEP 2011 to enable consideration by the Joint Regional Planning Panel.

### DEVELOPMENT ASSESSMENT REPORT

There is no planning report applicable.

### ZONING MAP



## Community Engagement

The development application was publicly notified in accordance with the requirements of the Rockdale Development Control Plan 2011.

## Rockdale City Plan

Outcome:	Outcome 2 - Rockdale is a City with a high quality natural and built environment and valued heritage in liveable neighbourhoods . A City that is easy to get around and has good links and connections to other parts of Sydney and beyond.
Objective:	Objective 2.2 - Our City has a well managed and sustainable built environment, quality and diverse development with effective housing choice in liveable neighbourhoods
Strategy:	2.2.2 - Promote high quality, well designed and sustainable development and places that enhances the City
Delivery Program:	2.2.2.B - Demonstrate leadership and commitment in the management of development that enhances the City (DCPD)
Operational Plan:	2.2.2.B.2 - Undertake annual Development Applications customer satisfaction survey (MDS)

### Additional Comments:

## Financial Implications

### Additional Comments

There are no financial implications applicable to this report.

## Supporting Information

---

Action From Resolution

File Attachments

[Action raised by Anne Suann on 07/07/2016](#)



- Site Plan - 588 & 592 Princes Highway Rockdale - Moweno Pty Ltd.PDF



- Photomontage 8 - 588 & 592 Princes Highway Rockdale - Moweno Pty Ltd.PDF



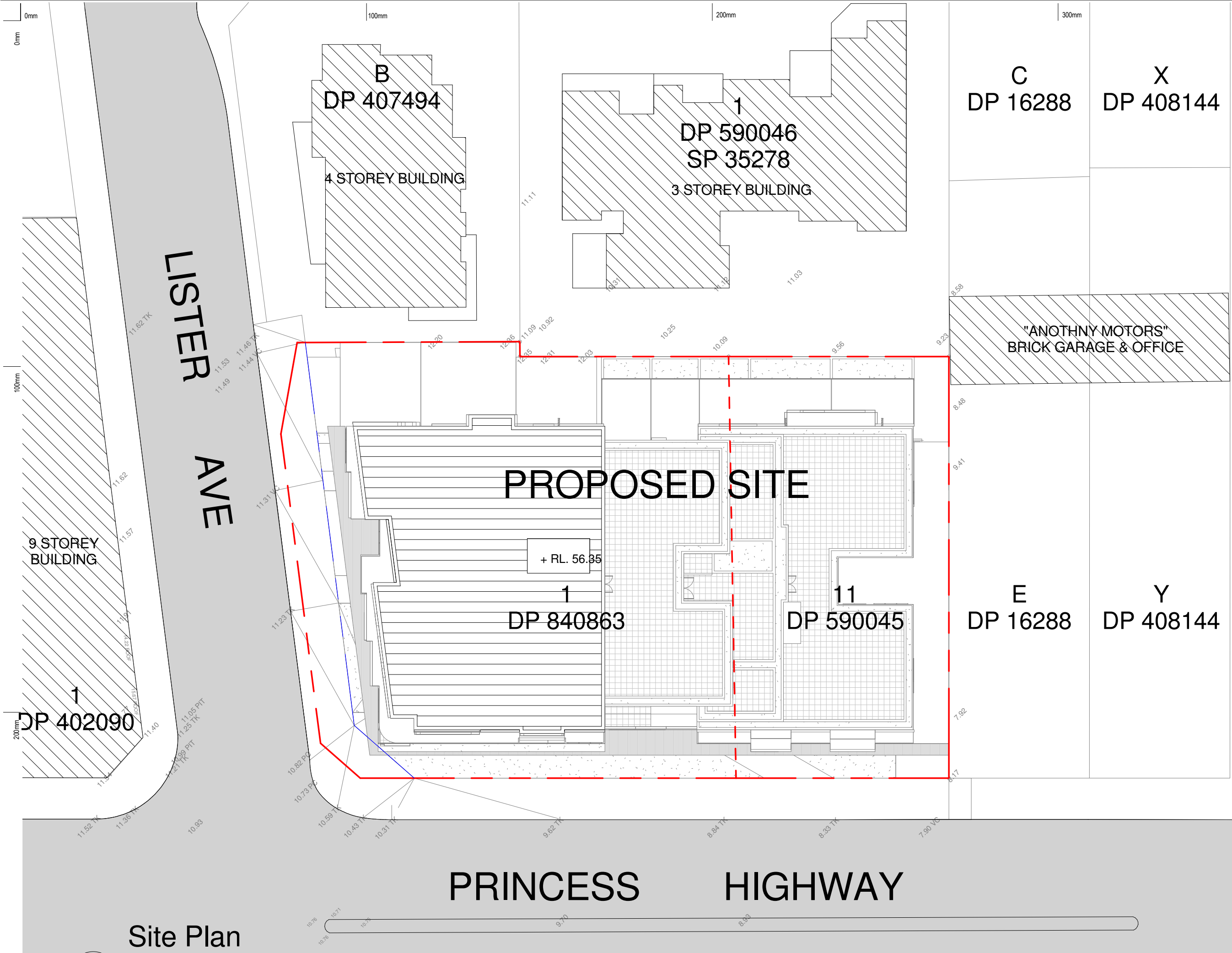
- Photomontage 7 - 588 & 592 Princes Highway Rockdale - Moweno Pty Ltd.PDF



- Statement of Environmental Effects - 588 & 592 Princes Highway Rockdale - Moweno Pty Ltd.PDF



- Clause 4.6 Application - 588 & 592 Princes Highway Rockdale - Moweno Pty Ltd.PDF



3	11.04.16	DA ISSUE
rev	date	amendment

Project Title  
**588-592 PRINCES  
HIGHWAY**  
588 PRINCES HWY ROCKDALE NSW 2216  
AT LOT 1 IN DP 840863 & LOT 11 IN DP 590046

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**ANTHONY VAVAYIS & ASSOCIATES**  
ARCHITECTS DESIGNERS PLANNERS  
24 LIME STREET KING STREET WHARF SYDNEY NSW 2000  
E: admin@avaarchitects.com.au T: 02 9290 1810 F: 02 9290 1860  
W: www.avaarchitects.com.au  
P: 20/26A LIME STREET, KING STREET WHARF,  
SYDNEY, NSW 2000  
ANTHONY VAVAYIS & ASSOCIATES PTY LTD. ACN 069 737 935  
NOMINATED ARCHITECT - ANTHONY VAVAYIS NO. 5243

Title:  
**SITE PLAN**

Project no: **15041** Scale @ A3:

Date: 04/11/16

Drawing no: **DA0004**

Rev: **3**





1	18.03.16	DA ISSUE
rev	date	amendment

Project Title  
**588-592 PRINCES  
HIGHWAY**  
588 PRINCES HWY ROCKDALE NSW 2216  
AT LOT 1 IN DP 840863 & LOT 11 IN DP 590046

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**ANTHONY VAVAYIS & ASSOCIATES**  
ARCHITECTS DESIGNERS PLANNERS  
24 LIME STREET KING STREET WHARF SYDNEY NSW 2000  
E: admin@avaarchitects.com.au T: 02 9290 1810 F: 02 9290 1860  
W: www.avaarchitects.com.au  
P: 20/26A LIME STREET, KING STREET WHARF,  
SYDNEY, NSW 2000  
ANTHONY VAVAYIS & ASSOCIATES PTY LTD. ACN 069 737 935  
NOMINATED ARCHITECT - ANTHONY VAVAYIS NO. 5243

Title:  
**PERSPECTIVE 7**

Project no: **15041** Scale @ A3:

Date: 18 MAR 16

Drawing no: **DA1034**

Rev: **1**





1	18.03.16	DA ISSUE
rev	date	amendment

Project Title  
**588-592 PRINCES  
HIGHWAY**  
588 PRINCES HWY ROCKDALE NSW 2216  
AT LOT 1 IN DP 840863 & LOT 11 IN DP 590046

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**ANTHONY VAVAYIS & ASSOCIATES**  
ARCHITECTS DESIGNERS PLANNERS  
24 LIME STREET KING STREET WHARF SYDNEY NSW 2000  
E: admin@avaarchitects.com.au T: 02 9290 1810 F: 02 9290 1860  
W: www.avaarchitects.com.au  
P: 20/26A LIME STREET, KING STREET WHARF,  
SYDNEY, NSW 2000  
ANTHONY VAVAYIS & ASSOCIATES PTY LTD. ACN 069 737 935  
NOMINATED ARCHITECT - ANTHONY VAVAYIS NO. 5243

Title:  
**PERSPECTIVE 8**

Project no: **15041** Scale @ A3:

Date:18 MAR 16

Drawing no: **DA1035**

Rev: **1**



# 588-592 Princes Highway

ROCKDALE

Shop Top Housing

## Statement of Environmental Effects

April 2016

Prepared by:

**ae** design partnership  
architecture urban design planning

Prepared for:

**AVA Architects**

t: 02 9519 4994 f: 02 9519 4995  
http:\\www.aedesignstudio.com.au  
23 Barr St Camperdown NSW 2050  
Nom Architect N. R. Dickson 7061

Project:	588-592 Princes Highway Rockdale		
Document:	Statement of Environmental Effects		
Revision:	Date:	Authored By:	Approved By:
		Lucy Donnelly Tristan Kell	

M:\Templates and Logos\Templates\Statement of Environmental Effects.docx

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# Executive Summary

This Statement of Environmental Effects has been prepared as part of a Development Application for the demolition of existing structures at 588-592 Princes Highway Rockdale (Lot 1 DP 840863 and Lot 11 DP 590046) and construction shop top housing with maximum height 14 storeys comprising:

- 5 levels of basement car parking.
- Retail Gross Floor Area of approximately 818.2m<sup>2</sup> over 2 levels.
- 140 residential units.
- Rooftop communal open space.

The proposed development is suitable for the following reasons:

- It is consistent with current patterns of redevelopment along Princes Highway towards higher density.
- Lower Ground and Ground Floor retail premises will activate the streetscape and generate employment opportunities.
- It is harmonious with the desired future character of the locality.
- The stepped building design is sympathetic to the site topography.
- It does not preclude the development of surrounding sites.
- Sustainable performance is exceptional.
- Passive façade design achieves above standard thermal comfort levels within.
- A development of distinctive character crafted specifically for this site and Rockdale.
- **Achieves the intended outcomes of the design excellence competition.**
- Innovative design solution have been achieved.
- Introduces high quality 'civic fauna' to enhance the pedestrian experience along the Princes Highway.
- Enhanced setbacks achieve greater public amenity by ground level.
- Deep soil zones introduced at boundaries with planting to activate Rockdale City Council's vision for long landscaped street vistas along the Princes Highway.
- Building design characterised by a crafted exterior of appropriate scale and elegance.
- Innovative 'street level narrative' added to the Princes Highway.
- Sustainable advantages of the innovative 'urban marker' feature, it decomposes toxic Nitrogen Oxide particles (harmful toxics found in car emissions).

# 1.0 Introduction

This Statement of Environmental Effects has been prepared as part of a Development Application for the demolition of all existing structures and construction of 14 storey structure for the purposes of retail/commercial activities and shop top housing at 588-592 Princes Highway Rockdale (Lot 1 DP 840863 and Lot 11 DP 590046).

Documents included in this application are listed in Table 1 below.

Table 1: Documents

DOCUMENT	PREPARED BY
Statement of Environmental Effects	ae design partnership
Architectural Plans & Materials Schedule	Anthony Vavayis + Associates
Landscape Plans	Site Image
Construction Cost Estimate	Heymann Cohen
Disability Access Report	Cheung Access
Geotechnical Assessment	JK Geotechnics
Pedestrian Wind Environment Study	Windtech
Stormwater Management Report	enstruct
BCA Assessment Report	BCA Logic
Energy & Water Efficiency Report	BCA Energy
Traffic Noise, NCC Assessment, Construction Noise & Vibration Management Plan	Rodney Stevens Acoustics



## 2.0 Legislation

### 2.1 Overview

This section outlines the relevant state and local environmental planning controls applicable to this development.

### 2.2 State Planning Controls

#### State Environmental Planning Policy No. 55 – Remediation of Land

Geotechnical Assessment prepared by JK Geotechnics states that:

*"If contamination is encountered, then substantial further testing (and associated delays) should be expected. We strongly recommend that this issue is addressed prior to the commencement of excavation on site"* (Geotechnical Report, p. 8).

#### State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development

The 140 apartments proposed within this development comply with ADG Design Criteria. A SEPP 65 Design Verification Statement prepared by Anthony Vavayis + Associates forms part of this proposal.

#### State Environmental Planning Policy (Infrastructure) 2007

As the proposed development is to occur with frontage to a classified road (Princes Highway) Clause 101 of SEPP (Infrastructure) 2007 applies. This SEPP requires that the traffic impacts of the proposal on the classified road be considered. A Traffic and Parking Impact Study has been prepared by NK Traffic. In regards to the predicted traffic generation the report states:

*"This impact is negligible and is not expected to generate any adverse impact on the intersection of Lister Ave and Princes Highway nor the surrounding road network"* (Traffic and Parking Impact Study, p26).

### 2.3 Local Planning Controls

Key planning controls pertaining to the site are contained within Rockdale LEP 2011 and Rockdale DCP 2011.

The following clauses within the LEP are addressed in Section 6 of this SEE and the accompanying Clause 4.6 Application:

- Clause 2.3 Zone Objectives and Land Use Table – B4 Mixed Use.
- Clause 4.3 Height of Buildings
- Clause 4.6 Exceptions to development standards
- Clause 6.2 Earthworks
- Clause 6.12 Essential Services
- Clause 6.14 Design excellence

## 3.0 Context

### 3.1 Site Context



Figure 1: Context Map.

Subject site is located at 588-592 Princes Highway Rockdale, within Rockdale Town Centre as identified in Rockdale DCP 2011. The site is within walking distance to a wide selection of shops and services as well as local parks and recreational areas.

As seen in Figure 1, the subject site is located within walking distance (800 metres) of:

- Public Transport:
  - Site 400 metres from Rockdale Train Station with frequent services along the Eastern Suburbs and Illawarra Line.
- Educational establishments:
  - Rockdale Public School.
  - St George Girls High School.
  - Kogarah High School.
  - Kogarah Public School.
- Commercial/retail:
  - Rockdale Plaza.
  - Ground floor retail development along Princes Highway (north of subject site).
- Public Open Space:

- McCarthy Reserve and Rockdale within walking distance of site.
  - Smaller parks within Rockdale Town Centre.
- Community Uses:
  - Rockdale Library.
  - Rockdale City Council.
  - Rockdale Town Hall.

## 3.2 Site Analysis

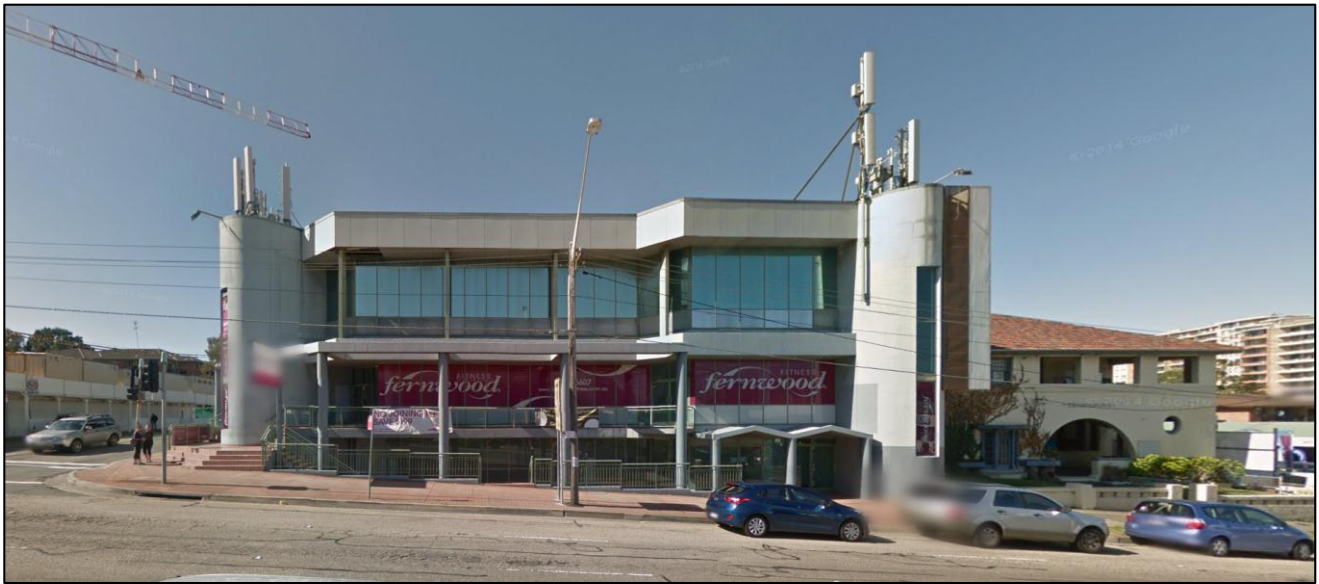


Figure 2: Western frontage of subject site viewed from Princes Highway.

Subject site is described as follows (see Figure 2):

- Total Site Area: 2,088m<sup>2</sup>.
  - 124m<sup>2</sup> of land along northern boundary of 588 Princes Highway is zoned Local Road (R4) on the Rockdale LEP 2011 Land Reservation Acquisition Map.
- Rectangular in shape.
- Northern frontage to Lister Avenue and western frontage to Princes Highway.
- Site slopes down from north to south.
- A pedestrian footpath runs along the northern and western boundary of the site.

### 588 Princes Highway:

- Currently occupied by part two storey and part three storey retail/commercial development comprising a gym and function centre.
  - Vehicular access to basement car park via Lister Avenue.
  - Proposal does not successfully activate the streetscape as:
    - High proportion of signage obscures glazing.
    - Pedestrian access to Ground Floor uses is impeded by fencing and poor circulation.
  - No landscape or deep soil planting located on the site.

592 Princes Highway:

- Currently occupied by two storey detached residential dwelling with pitched roof.
- Approximate 4-5 metre setback from front boundary comprising lawn.
- Low wall along front boundary

## 4.0 The Proposal

The proposal is for the demolition of all existing structures and the construction of shop top housing with a maximum height of 14 storeys.

### 4.1 Demolition

Demolition of all existing structures is proposed which includes:

- Two and three storey commercial building at 588 Princes Highway.
- Two storey detached residential dwelling located at 592 Princes Highway.

### 4.2 Cut and Fill

Development proposes 4 levels of basement car parking which extends to the eastern and southern boundaries and will be offset 2 and 3 metres from the northern and western boundaries respectively. Excavation is to occur to a depth of approximately RL-4/82.

Waste management plan estimates 6000m<sup>2</sup> of material is to be excavated during construction of the development. This material is to be disposed of according to Council requirements.

### 4.3 Proposed Development

A 14 storey mixed-use development is proposed to be constructed on the subject site. The development proposes the following:

- 4 levels of basement car parking providing 209 car parking spaces.
- 818.2m<sup>2</sup> retail GFA on Lower Ground Floor and Ground Floor.
- 140 residential apartments on Level 1 to Level 13:
  - 51 one-bedroom apartments (36.4%).
  - 73 two-bedroom apartments (52.1%).
  - 16 three-bedroom apartments (11.4%).
- High quality rooftop communal open space.

Proposed building is massed towards the north and steps down towards the south in response to the sloping topography of the site.



## 5.0 Environmental Considerations

### 5.1 Context and Compatibility

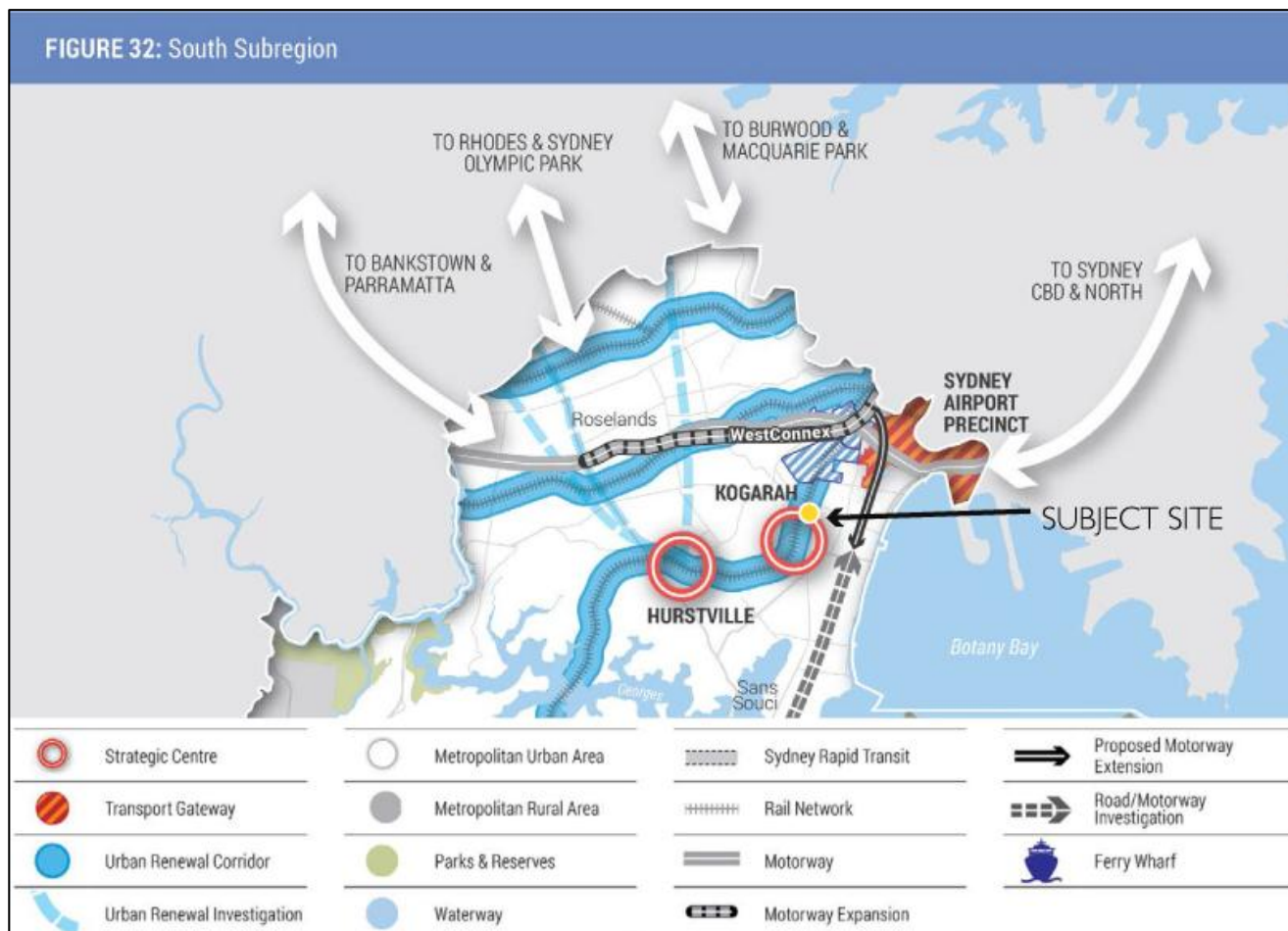


Figure 3: South Subregion (A Plan for Growing Sydney, p.133).

The proposed shop top housing at 588-592 Princes Highway is compatible with its context:

- Located within a corridor of higher density development along Princes Highway within walking distance to Rockdale Station.
- This site is located within the urban renewal corridor within the South Subregion, which incorporates land along the rail corridor from the West Connex interchange at St Peters to Sutherland (see Figure 3).
- Site located within Kogarah Strategic Centre as seen in Figure 3. A Plan for Growing Sydney states that a priority for Kogarah Strategic Centre is to:

*“Work with council to provide capacity for additional mixed-use development in Kogarah including offices, health, education, retail, services and housing” (A Plan for Growing Sydney, p.134).*

- This priority indicates that a desire for increased density with a preference for mixed use developments.



Figure 4: Ten storey shop top housing located at 555 Princes Highway.

- Rockdale Town Centre is undergoing transition with recent development replacing bulky goods and large retail buildings with mixed use development incorporating high density residential.
  - Along the Princes Hwy within the Rockdale Town Centre has seen several new mixed use developments that incorporate taller buildings.
- Desirable elements of the recent development in the area is the urban form within the town centre.
  - Activation of streets with higher proportions of glazing at the ground level.
  - New development with a distinctive form, such as a top, middle and bottom, which addresses the street.
  - Improvement to the street and improved permeability for pedestrians.
- The proposed development will improve the relationship with Princess Highway with an additional setback from the road, which will enable deep soil planting and large street trees.
- The design of the building is a better example of recent development within the area, providing architectural features at the roof, a modulated middle that is articulated façade and a bottom two levels that address the street.

Project Venture v Pittwater Council [2005] NSWLEC 191

In order to test whether a proposal is compatible with its context, two questions should be asked:

*Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.*

1. The proposed development is compatible with the desired future character of the Rockdale Town Centre and in line with the B4 Mixed Use zone objectives and provisions of the Rockdale LEP 2012. This is illustrated in Figures 1 and 2, and the aforementioned analysis.
2. The physical constraints do not preclude the redevelopment of land to the south of the sites. The additional shadows from the height do not have an unreasonable impact on the east of the site, which are zoned high density residential development.



*Is the proposal's appearance in harmony with the buildings around it and the character of the street?*

3. The proposal is in harmony with the future character of the area:
  - a. Consistent with recent development along Princes Hwy.
  - b. Responds to the precedent set by the approved development application within the Rockdale Town Centre.
  - c. Provides improved deep soil planting along Princes Hwy with deep soil enabling large trees and improved pedestrian permeability.

Seaside Property Developments Pty Ltd v Wyong Shire Council [2004] NSWLEC 117

The following issues are addressed as the subject site is on the interface between B4 Mixed Use and R4 High Density Residential.

*At a zone interface as exists here, any development proposal in one zone needs to recognise and take into account the form of existing development and/or development likely to occur in an adjoining different zone.*

Current development to the east of the subject site comprises 3-4 storey residential flat buildings:

- 1A Lister Avenue: Approved 4 storey residential flat building (under construction: DA-2013/173).
- 1-3 Lister Avenue: 3 storey residential flat building.
- 5-7 Lister Avenue: 4 storey residential flat building.

Existing residential flat buildings within R4 High Density zone are unlikely to change due to strata subdivision of these developments.

Rockdale LEP Height Controls envisions a significant height difference between Princes Highway corridor development and development within R4 High Density Zones. Subject site has a permissible height of 34 metres (11 storeys) and 1A Lister Avenue has permissible height of 14.5 metres (4 storeys). The desired future character for the locality envisions an abrupt height difference of at least 7 storeys, not a gradual transition.

The proposal is consistent with this desired future character and takes into account development in the R4 High Density zone by:

- Providing a well-articulated eastern façade.
- Providing 5 metre setback from Level 2 and above to ensure visual and acoustic privacy to adjacent 1A Lister Avenue.

Summary

Contextually the proposal it is acceptable for the following reasons:

- Is consistent with the desired future character of the area, being within the urban renewal corridor and a locality, which is undergoing transition to a more intensive form of development.
- The proposal satisfies the zone objectives and relevant provisions of the Rockdale LEP.
- The proposal is compatible with surrounding development utilising Project Venture v Pittwater Council 2005 NSWLEC 191.
- The controls of the Rockdale LEP 2011 and DCP 2011 envisage a change in built form and character for the locality, which this proposal facilitates.
- The design of the building, which has a defined base, middle and top, utilises varied building elements to provide a building, which contributes to the quality of the area.

# 5.2 Height, Bulk and Scale

## 5.2.1 Height



Figure 5: Rockdale LEP 2011 permissible heights.

The maximum permissible heights and proposed heights are illustrated in Table 2 below. The proposed development exceeds LEP height controls by a maximum of 10.66m.

Table 2: Height controls and proposed height.

	Rockdale LEP 2011	Proposed Height	LEP Non-Compliance
588 PRINCES HIGHWAY (Lot I DP 840863)	34 metres.	44.66m	10.66m
592 PRINCES HIGHWAY (Lot II DP 590046)	31 metres.	40.51.	9.51m

Figure 5 illustrates that:

- Greatest building heights are located along Princes Highway with Rockdale Town Centre.



- Subject site is envisioned as a prominent corner as it has greater permissible height than lots to the east and to the south. This represents an opportunity to define the street corner with a landmark building.

## 5.2.2 Bulk and Scale



Figure 6: Perspective of proposed development facing south down Princes Highway. Produced by Anthony Vavayis + Associates (Drawing DA1035).

- The proposed development provides an appropriate scale in terms of bulk and height along Princes Highway and Lister Avenue.
- The proposal responds to the existing development east of the site, which is high density residential flat buildings. A four storey residential flat building is currently under construction at 1A Lister Avenue this area is unlikely to change in the short to medium term and the taller component of the building is separated from these buildings.
- The tallest component of the building provides an appropriate form at the corner of Lister Avenue and Princes Hwy.
- The southern portion of the site is lower, which provides an appropriate transition from the core of the town centre.
- When the development is viewed from Princess Hwy it is consistent with the urban form and character along Princess Street as illustrated in Figure 6.

Veloshin v Randwick Council [2007] NSW LEC428

In order to test whether the proposal has an appropriate height and bulk we have used the questions within the Land Environment Court Planning Principle for height, bulk and scale.

*Are the impacts consistent with impacts that may be reasonably expected under the controls?*

- There is no additional visual impact, particularly when viewed from Princes Street as illustrated from Figure 6.
- The visual impact when viewed from the residential area to the east is negligible as it is a similar scale to development to the immediate north of the site.
- The site to the south is not additionally impacted from the additional height in relation to solar access.
- The additional shadow does not impact the residential areas to the east. This area is zoned High Density Residential and is already impacted by buildings of a similar scale to the north:
  - 582-586 Princes Highway: 9 storeys.

The impacts from the proposed developed are reasonable and do not burden surrounding development.

*Does the area have a predominant existing character and are the planning controls likely to maintain it?*

*Does the proposal fit into the existing character of the area?*

- The area is undergoing transition. The development is consistent with recent development along the Princes Hwy.
- Recent development as illustrated is compatible with what is proposed.
- The surrounding locality is high density residential the proposed development is compatible with development to the east.
- A reasonable separation is provided to development to the east.

*Is the proposal consistent with the bulk and character intended by the planning controls?*

- The proposal breaches the height intended for this site by a maximum of 10.66 metres. However, the proposal is consistent with the bulk and character intended by the planning controls.
- The intended character of the site area is taller buildings with an active ground level and residential accommodation incorporated in taller buildings.
- The building exhibits design excellence consistent with high levels of sustainability and internal amenity.

*Does the proposal look appropriate in its context?*

- Is consistent with the desired future character of the area, being within the urban renewal corridor and a locality, which is undergoing transition to a more intensive form of development.
- The proposal is compatible with surrounding development utilising Project Venture v Pittwater Council 2005 NSWLEC 191.
- The controls envisage a change in built form and character for the locality, which this proposal facilitates.

Summary:

- The bulk and scale of the proposal is compatible with its context.
- The impacts on surrounding properties are reasonable.
- Additional building height does not have any unreasonable impacts.

## 5.3 Overshadowing Impacts

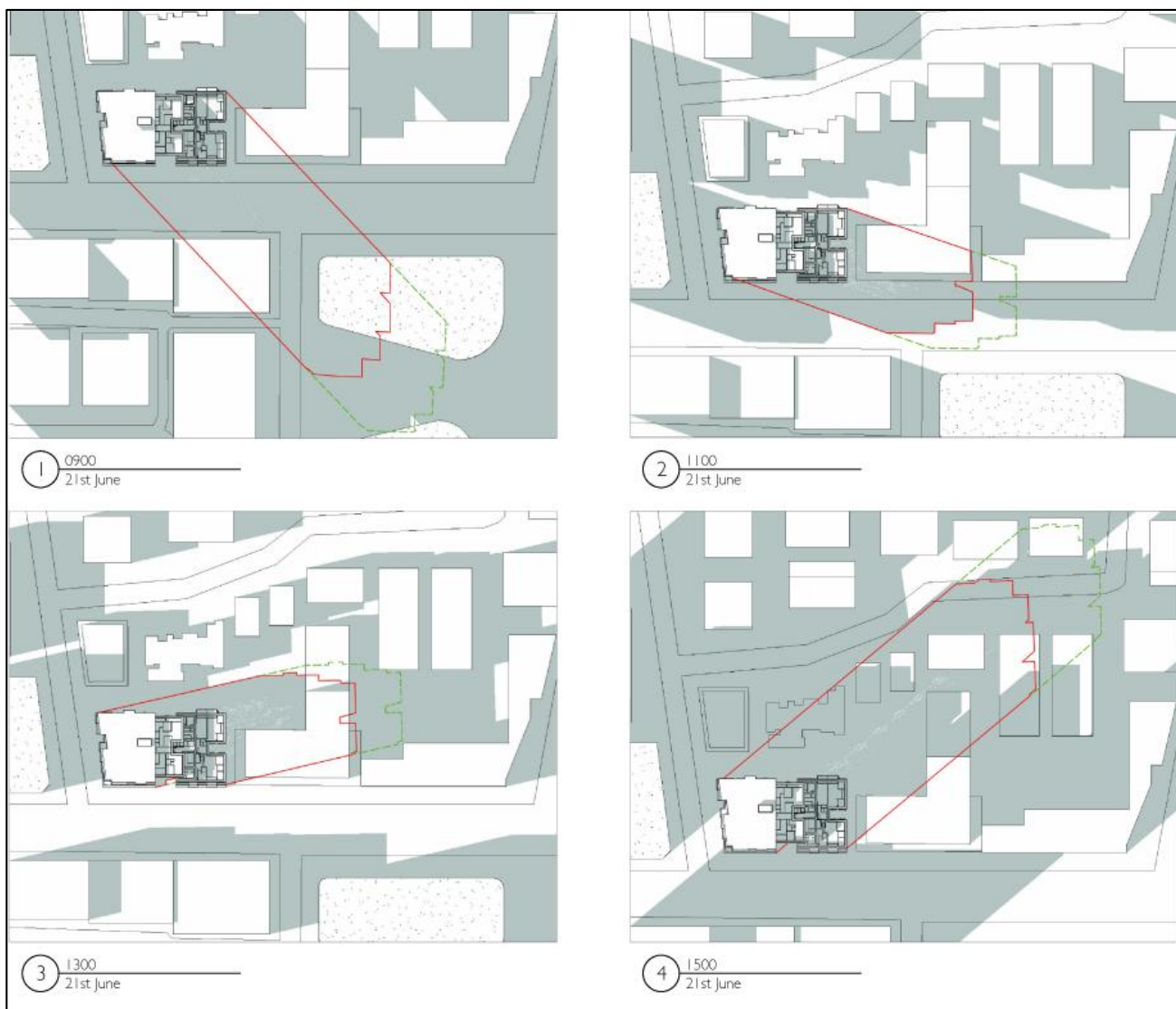


Figure 7: Overshadowing Impacts of proposal.

As shown in Figure 6, the additional height of the proposed development will have increased overshadowing impacts. However, we are of the opinion that these impacts are acceptable on the following grounds:

- Does not preclude solar access to any habitable rooms or private or communal open spaces associated with dwellings in the locality to less than 2 hours in mid-winter, consistent with the Apartment Design Guide; and
- Does not impact any valuable elements of public domain, i.e. public open spaces

## 5.4 Internal Amenity

### Solar Access

92% of all apartments receive a minimum of 2 hours of direct sunlight between 9 am and 3 pm at mid-winter June 21st.

8% of the apartments receive no direct sunlight between 9 am and 3 pm at mid-winter, however each of these apartment has a second balcony accessible from a corridor that received 2 hours of direct sunlight

#### Cross Ventilation

Cross ventilation is achieved in 103 of the 140 apartment units. (73.5%)

#### Apartment Size

All units comply with minimum internal areas according to ADG controls.

Majority of units comply within minimum external areas according to ADG controls. 28 apartments do not reach minimum sizes by 0.1-0.5m<sup>2</sup>. This is considered a minor non-compliance and all units still receive adequate solar access.

## 5.5 Geotechnical

Geotechnical Assessment prepared by JK Geotechnics states that:

*“Overall, we consider that the site is suitable for the proposed development and will be similar to other developments constructed within nearby properties”* (Geotechnical Assessment, p.4).

## 5.6 Traffic and Parking

A total of 209 off-street parking spaces are provided, comprising:

- 156 residential spaces.
- 28 visitor spaces.
- 25 retail spaces.
- 1 car wash bay.
- 14 accessible parking spaces.

Car parking provided complies with Rockdale DCP 2011 requirements.

A Traffic and Parking Impact Study has been prepared by NK Traffic. In regards to the predicted traffic generation the report states:

*“This impact is negligible and is not expected to generate any adverse impact on the intersection of Lister Ave and Princes Highway nor the surrounding road network”* (Traffic and Parking Impact Study, p26).

The report states that the proposed car parking facilities and loading bay comply with the relevant Australian Standards in terms of parking bay dimensions, aisle widths, ramps, gradients, turning paths and swept paths (Traffic and Parking Impact Study, p27)

## 5.7 Access

The Disability Access Report Prepared by Cheung Access states that:

*“On the basis of our assessment, we confirm that the Development Application plans for 588 - 592 Princes Highway, Rockdale has the capacity to meet 10% of adaptable housing Class C requirements and Performance Requirements of the Disability (Access to Premises-Buildings) Standards 2010 and*

*Part D3 and E3.6 of the Building Code of Australia (BCA) (2015) through the deemed-to-satisfy provisions"* (Disability Access Report, p. 35).

## 5.8 Waste

A Waste Management Plan prepared by Moweno Pty Ltd forms part of this proposal. Waste Management Plan addresses predicted waste caused by demolition of existing structures and predicted waste cause by future development.

## 5.9 Wind

The Pedestrian Wind Environment Study prepared by Windtech states that:

*"The results of the study indicate that some treatments are necessary to be implemented to achieve the desired wind conditions for certain outdoor trafficable locations. In-principal treatments have been suggested to be incorporated into the final design of the development that is expected to be effective in mitigating the adverse wind conditions... With the inclusion of the abovementioned treatment to the final design, the results of this study indicate that wind conditions for all outdoor trafficable areas within and around the development will be suitable for their intended uses."* (Pedestrian Wind Environment Study, p. 27).

Refer to report for details of the recommended treatments.

## 5.10 Stormwater

The site is not flood affected according to Rockdale LEP 2011 Flood Planning Area Map and so is not subject to Councils' flood related development controls.

The Stormwater Management Report prepared by entruct group Pty Ltd identifies the measures and treatment methods required for the development to meet the requirements of Rockdale Council's Stormwater Management Technical Specification.

## 5.11 BCA

BCA Assessment Report prepared by BCA Logic identifies the matters to be addressed at Construction Certificate stage. Refer to report for details.

## 5.12 Energy and Water Efficiency

An Energy and Water Efficiency Report was prepared by BCA Energy states that:

*"The development complies with Section J DTS requirements"* (Energy and Water Efficiency Report, p. 12).

Refer to the report for details.

## 5.13 Acoustic

A 'Traffic Noise, NCC Assessment, Construction Noise & Vibration Management Plan' has been prepared by Rodney Stevens Acoustics. The report states:



*"It is therefore recommended that planning approval be granted for the proposed development on the basis of acoustics"* (Traffic Noise, NCC Assessment, Construction Noise & Vibration Management Plan, p. 46).

Refer to the report for details on recommended work practices and best practice methods utilised on construction and demolition sites to manage any adverse noise throughout the work activities for the proposed site.

## 5.14 Conclusion of Environmental Considerations

- Subject site located within an Urban Renewal corridor as identified by A Plan for Growing Sydney. Proposal satisfies objective for increased density with a preference for mixed use development.
- The proposed development is compatible with the desired future character of the Rockdale Town Centre and in line with the B4 Mixed Use zone objectives and provisions of the Rockdale LEP 2012.
- The physical constraints do not preclude the redevelopment of land to the south of the sites. The additional shadows from the height do not have an unreasonable impact on the east of the site, which are zoned high density residential development
- Proposal is consistent with the desired bulk and scale of Rockdale Town Centre.
- Proposed units comply with ADG design criteria in terms of solar access, cross ventilation and apartment sizes.

## 6.0 Environmental Planning Assessment

### 6.1 Rockdale LEP 2011

Clause 2.3 Zone objectives and Land Use Table – B4 Mixed Use		
Objectives	Comment	Compliance
To provide a mixture of compatible land uses.	The proposed development incorporates compatible land uses including ground floor retail and an upper level residential component with separate entries.	✓
To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.	The shop top housing development incorporating ground floor retail premises and upper level residential uses is suitable to its location, being within the centre of Leppington Strategic Centre and no more than 250 metres from the newly constructed Leppington Station on the South West Rail Link.	✓
Clause 4.3 Height of buildings		
Objectives	Comment	Compliance
(I) The objectives of this clause are as follows:		
(a) to establish the maximum limit within which buildings can be designed and floor space can be achieved,	A Clause 4.6 Application forms part of this proposal.	✓
(b) to permit building heights that encourage high quality urban form,		
(c) to provide building heights that maintain satisfactory sky exposure and daylight to buildings, key areas and the public domain,		
(d) to nominate heights that will provide an appropriate transition in built form and land use intensity.		
Clause 4.6 Exceptions to development standards		
Objectives	Comment	Compliance

(I) The objectives of this clause are as follows:		
(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,	A Clause 4.6 Application forms part of this proposal.	✓
(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.		

#### Clause 6.2 Earthworks

Objectives	Comment	Compliance
(I) The objectives of this clause are as follows:		
(a) to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land,	Geotechnical Assessment prepared by JK Geotechnics identifies measures to manage excavation including methods of extraction and classification of excavated material. Refer to Geotechnical Report and Civil Plans for further information.	✓
(b) to allow earthworks of a minor nature without requiring separate development consent.		

N/A

#### Clause 6.7 Stormwater

Objectives	Comment	Compliance
(I) The objective of this clause is to minimise the impacts of urban stormwater on any of the following:	Stormwater report prepared by enstruct identifies requirements of development to comply with Rockdale Councils' Stormwater Management Technical Specification. Refer to Stormwater Management Report for further details.	✓
(a) land on which development is carried out,		
(b) properties adjoining that land,		
(c) native bushland,		
(d) receiving waters.		

#### Clause 6.12 Essential services

Provision	Comment	Compliance
Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the proposed development are available or that	Subject site has existing access to all required essential services.	✓

adequate arrangements have been made to make them available when required:

- (a) the supply of water,
- (b) the supply of electricity,
- (c) the disposal and management of sewage,
- (d) stormwater drainage or on-site conservation,
- (e) suitable road access.

#### Clause 6.14 Design Excellence

Provision	Comment	Compliance
(1) The objective of this clause is to deliver the highest standard of architectural, urban and landscape design.		
(2) This clause applies to the following development:  (b) development that is the subject of a development application that relies on clause 4.3 (2A) (a), (f), (g), (h) or (i).	Clause 4.3 (2A)(h) applies to 500 Princes Highway.	✓
(3) Development consent must not be granted to development to which this clause applies unless:  (a) an architectural design competition that is consistent with the Design Excellence Guidelines has been held in relation to the development, and	An architectural design competition is unreasonable and unnecessary for the reasons stated in Clause (4) below.	N/A
(b) the consent authority considers that the development exhibits design excellence.	The development displays design excellence in accordance with 'Rockdale Design Excellence Guidelines'. All guidelines and criteria are addressed in a separate table which accompanies this application.	✓
(4) An architectural design competition is not required under subclause (3) if the consent authority is satisfied that such a process would be unreasonable or unnecessary in the circumstances.	A design competition is unreasonable and unnecessary as the development in its current forms displays design excellence and satisfies the criteria of the 'Rockdale Design Excellence Guidelines'. Responses to the criteria are listed in 6.2 Rockdale Design Excellence Guidelines below.	✓
(5) In deciding whether to grant development consent to development to which this clause applies,		N/A

the consent authority must take into consideration the results of the architectural design competition.

## 6.2 Rockdale Design Excellence Guidelines

Prepared by Atlas Urban Design & Strategy Pty Ltd – Paul Walter.

DESIGN EXCELLENCE CRITERIA		
Key Principles	Comment	Compliance
Innovation	This building of Civic Delight has unseen features that add significantly to the quality of the amenity spaces: Acoustic engineered input for public realm with organic sound baffles. This redevelopment incorporates more generous setbacks landscaped buffers specifically to create reduced noise pollution from the busy Princes Highway.	✓
Context, Place and Environs	The crafted buildings design demonstrates attention to detail, scale and proportion aligned with many of the successful buildings on Princes Highway. The project will replace the existing building and transform the site into a new 15 storey commercial and residential address that defines the gateway to the developing Rockdale Centre.	✓
Site Planning	The proposal defines the street edge with built form, creating activation at ground level though publicly accessible spaces and attractive retail space, increasing passive surveillance.	✓
Building form and scale	<p>Clarity of glazed retail base with intermediate framed podium over and kinetic residential façade above that embodies the past and present character of the surrounding precinct with and elegant and crafted exterior.</p> <p>The façade responds to the history and architectural traditions of the surrounding buildings, both past, present and imagined future character. Combining in a contemporary identity within its growing contextual location.</p> <p>The building massing and facades are each articulated into 3 elements to create projection and recesses. By raising the building height at the Lister Avenue/Princes Highway junction, the corner is enhanced as a significant urban marker with character and scale.</p> <p>The combination of its simple form and kinetic façade will be a unique addition to the Rockdale skyline.</p>	✓

Character and expression	A uniquely crafted landmark building which adds add vitality and quality to the mix of buildings in the Rockdale Area/Princes Highway corridor. Kinetic solar screens detailed to exaggerate their potential for rearrangement and personalisation to express occupation. A myriad of permutations throughout the day.	✓
Public Realm and Landscape	<p>"Functional necessity in the form of Civic delight."</p> <p>Incorporated at street level and skyline profile there is added landscape to create 'Civic fauna' to enhance the street realm. The building becomes a functionally necessary backdrop to a blossoming public pedestrian experience.</p> <p>Non-residential land uses at ground floor level that generate high levels of pedestrian activity such as shops, and cafés have been incorporated into the proposals to support Urban Design social economic activation.</p>	✓
Interior layout	Internal layouts are social, functionally resolved and arranged to create homely apartment living retreats for high density city living with oversized outdoor amenity spaces.	✓
Sustainability	<p>The corner feature is made of green ceramic tile Titanium Dioxide coated ceramic tile. Strategically located on the north facing façade as the tile activates when it is exposed to direct sunlight: The tile decomposes toxic Nitrogen Oxide particles in the immediate atmosphere (harmful toxics found in car emissions.)</p> <p>The building is clad in approximately 135m2 of the Titanium Dioxide coated ceramic tile cladding. This means the buildings corner feature not only acts as an urban marker but purifies nitrogen dioxide at a rate equal to 894m2 of forest/24hours.)</p>	✓
Key Criteria	Comment	Compliance
Capacity to transform existing character and activity within and beyond its context	This project ensures that overall architectural quality is achieved that contributes positively to living quality in the City.	✓
Creative integration of design and technical requirements	TBC	
Communication of lateral responses to current planning controls and guidelines	Lateral responses to Planning Controls regarding height limitation and considered capable of height rising to the Object Limitation Surface for the following reasons:	✓

	<ul style="list-style-type: none"> <li>• It lies between areas of greater absolute height Rockdale town centre &amp; Rockdale Plaza (Height 45m, AHD 52.09m).</li> <li>• It lies along the Princess Highway Corridor.</li> <li>• It lies in an area well serviced by both public transport and major retail centres.</li> </ul>	
Contribution to amenity and place making through the development of a proposal that is presented as a cohesive place, contributing to civic quality, public realm, systems and paths of movement and activity	<p>The proposal negates the current lack of visual interest to the passing motorist and pedestrian through high design quality by creating a landmark opportunity at the corner of Princes Highway and Lister Avenue, to enhance the journey of both pedestrians and vehicles alike.</p> <p>The proposal creates an attractive pedestrian environment with street planting, high quality materials, and engaging retail with driveway crossovers on consolidated on Lister Avenue.</p> <p>The proposal defines the street edge with built form, creating activation at ground level through publicly accessible spaces and attractive retail space, increasing passive surveillance.</p>	✓
Comprehensive appreciation of environmental features	TBC	✓
New public spaces, frontages to public and communal areas that generate high levels of activation and encourage social interaction	TBC	✓
Scale, character, form and siting complement surrounding urban qualities and likely future development	<p>This vision is supported by a series of identified urban design opportunities with possible justification for an amendment to height with variation to the current controls for the precinct.</p> <p>The Princes Highway Corridor will receive a facelift with attractive retail on the lower level/levels and driveway crossovers consolidated to Lister Ave.</p> <p>(Refer to Urban Design Report prepared by Urban Atlas.)</p>	✓
An appropriate balance between resilient materials, embodied energy and resource consumption and dependence	<p>Resilience and robustness yet a materiality with civic delight is achieved with sensible finishes selections of Australian products and Australian manufacture. Locally manufactured not only means reduced procurement time scales but just as importantly reduced embodied energy and reduced transport emissions.</p> <p>Locally manufactured pre cast concrete</p>	✓



	<p>Materials manufactured overseas have been selected based on their sustainable necessity and light weight criteria.</p> <p>(Example: the Titanium dioxide coated high pressure ceramic cladding for the TOXIC EMISSIONS absorbing 'Art Decoesque' corner feature.)</p>	
Land uses, activity, building configuration and occupancies that may be adapted in future.	<p>Alternative adaptive reuses could include high density student living.</p> <p>Structural load bearing reinforcement would be required to be ensure the proposed structure could be adaptable for commercial uses on the upper levels.</p>	✓

## 6.3 Rockdale DCP 2011

### 4.5 SOCIAL EQUITY

#### 4.5.1 Housing Diversity and Choice

##### Controls:

1. Residential flat buildings and shop top housing are to comply with the following dwelling mix:

The following dwelling mix is proposed:



Dwelling type	Of total dwellings
3 bedroom and/or more	10-20%
2 bedroom	50%-75%
1 bedroom	10%-30%

- 3 bedroom: 11.4%
- 2 bedroom: 52.1%
- 1 bedroom: 36.4%

Provision of 2 and 3 bedroom units comply and provision of 1 bedroom units slightly exceeds maximum. This is considered reasonable as the noncompliance is negligible.

### 4.7 SITE FACILITIES

##### Controls:

##### Letterboxes

10. Letterbox points are to be integrated with building design and are preferably to be located in a covered area attached to or within the building.

Letterboxes are proposed to be located in each residential lobby to ensure convenient and secure access for residents.



## PART 5 BUILDING TYPES

### 5.2 RESIDENTIAL FLAT BUILDINGS

##### Controls:

##### Comment

##### Compliance

##### Site Coverage

1. Building footprints for residential flat buildings are limited to 35% of the site area. The building footprint fits within the front, side and rear setback requirements and responds to site features, privacy, solar access and outdoor space design principles. Exceptions to this requirement may be considered in flood prone areas where podium development is warranted.

Proposal has site coverage of 47% of total site area (984m<sup>2</sup>). this is acceptable as:



- It is a dense urban site.
- Deep soil planting is provided along northern and western boundaries.

##### Development Setbacks

Development proposes 2 metre and 3 metre setbacks from Lister Avenue and Princes Highway respectively.



2. The building footprint of residential flat buildings is established in accordance with the following building setbacks:

Setback	Requirement
Street Setbacks	to be consistent with the prevailing setback along the street within the range of 3-9m
	secondary street/lane 3-5m
Side Setback	min 3m for buildings up to three storeys
	min 4.5m for all levels for buildings more than three storeys
Rear Setback	min of 12m or 15% length of site, whichever is the greater

The street wall is consistent with approximately 2-3 metre setback of 1A Lister Avenue to the east and provides a setback for development further south to follow.

Development proposes the following setbacks from 1A Lister Avenue:

- 2 metre setback up to Level 2.
- 3.2 metre setback from Level 3.

Development proposes the following setbacks from 594 Princes Highway:

- Nil setback for Lower Ground and Ground Floors.
- 3 metre setback from Level 1 and above.

3. Balconies that are not enclosed, and do not adversely affect adjoining properties in terms of privacy or overshadowing, may encroach on the side setback by up to 300mm.

Noted



## Apartment Size

4. Buildings are to be designed in accordance with the following apartment size standards as recommended by the Residential Flat Design Code:

Apartment Type	Area	m <sup>2</sup>
Studio	internal area	38.5
	external area	6
One bedroom, cross through	internal area	50
	external area	8
One bedroom, maisonette/loft	internal area	62
	external area	9.4
One bedroom, single aspect	internal area	63.4
	external area	10
Two bedroom, corner	internal area	80
	external area	11
Two bedroom, cross through	internal area	89
	external area	21
Two bedroom, cross over	internal area	90
	external area	16
Two bedroom, corner with study	internal area	121
	external area	33
Three Bedroom	internal area	124
	external area	24

All units comply with minimum internal areas according to ADG controls.

Majority of units comply within minimum external areas according to ADG controls. 28 apartments do not reach minimum sizes by 0.1-0.5m<sup>2</sup>. This is considered a minor non-compliance and all units still receive adequate solar access.

Apartment A13.02 does not achieve minimum balcony size by 1.6m<sup>2</sup>. This is acceptable as the apartment receives adequate solar access and a secondary private open space of 5.8m<sup>2</sup> is provided.

<p>5. The apartment must meet the following minimum room size requirements:</p> <ul style="list-style-type: none"> <li>a. the size of the bedroom in a one bedroom apartment and of the main bedroom in a two or more bedroom apartment must be a minimum of 13m<sup>2</sup> in area with a minimum dimension of 3m;</li> <li>b. the floor area of the second and all other bedrooms must be a minimum 9m<sup>2</sup> with a minimum dimension of 2.7m;</li> <li>c. the floor area of living rooms must be a minimum 16m<sup>2</sup> with a least dimension of 3m, and the area must be increased by 4.6m where the living and dining areas are combined;</li> <li>d. the size of all other habitable rooms must be a minimum 6.5m<sup>2</sup> in area with a minimum dimension of 2.4m;</li> <li>e. A main bathroom must have a minimum area of 4.5m<sup>2</sup>, and are to be increased by 0.7m<sup>2</sup> with a toilet, 0.7m<sup>2</sup> with a washing machine, and 1.1m<sup>2</sup> with a washing machine and tub.</li> </ul>	<p>All apartments are consistent with ADG requirements.</p> <p>✓</p>
<p><b>Building Design</b></p> <p>6. Facade design must respond to environmental conditions such as orientation, noise, breezes, privacy and views, through the use of appropriate sun shading devices, noise barriers, privacy screens, and the careful location of balconies, terraces and loggias.</p>	<p>Façade is modulated breaking the building into three distinct elements.</p> <p>✓</p> <p>The façade has glass balustrades, operable louvres, and glazing to mitigate acoustic, solar and wind. These also add design interest to the building.</p>
<p>7. Strengthen the relationship of the building with the street through the use of entry lobbies, entry porches, loggias, balconies, bay windows.</p>	<p>High proportion of glazing at ground level. Lobbies are glazed and visible from street to increase passive surveillance.</p> <p>✓</p>
<p>8. Solid balustrading should be included in the facade design to provide screening of clothes line and other paraphernalia.</p>	<p>Solid glass balustrades at lower level as well as operable screens, which can be utilised to screen private open spaces.</p> <p>✓</p>
<p>9. The design should consider expressing a hierarchy of floor levels by defining a base, middle, and top to the building, including podium and penthouse expression.</p>	<p>The building has a clear base, which is predominantly glazed and interacts with Princes Hwy and Lister Avenue.</p> <p>✓</p> <p>The middle portion of the building is modulated and incorporates features, which break up the façade.</p>

	The top portion of the building is setback and includes communal open space, incorporating a green roof.	
10. Large expanses of blank walls are to be avoided through the use of architectural design features, modelling and fenestration.	Complies	✓
11. The building line of a street wall building should generally be parallel with the street boundary alignment.	The street wall is consistent with approximately 2-3 metre setback of 1A Lister Avenue to the east and provides a setback for development further south to follow.	✓
12. Private open space elements such as balconies should be predominantly north, east and west facing and should be designed to ensure visual and acoustic privacy.	There are no south facing balconies. All units are provided with balconies and private open space.  Visual and acoustic privacy are mitigated through operable screens.	✓
13. Express important corners by giving visual prominence to parts of the façade through a change in building articulation, material, colour, roof expression or increased height.	The corner of Lister and Princes Hwy is a feature of the development. A prominent corner is provided through cladding corner element in Titanium Dioxide coated ceramic tiles. This will allow the building to act as an 'urban marker'.  The increase in height and bulk of the building is positioned to add visual interest and a consistent urban form to Rockdale town centre.	✓
14. Existing residential flat buildings with no existing balcony enclosures are not permitted to enclose any balcony. Applications for balcony enclosures may only be considered when the enclosures are: a. integrated with a design for the entire building; and b. improve internal amenity through environmental control.	Operable louvers are provided as part of the development application. No balconies are proposed to be enclosed permanently.	✓
15. All external plumbing must be recessed or concealed and all internal plumbing must be ducted or concealed. Copper pipes must be exclusively used between the meter and service points.	Complies.	✓

16. All proposed staircases to the upper levels of buildings must be internal.	Complies	✓
17. Façade fixtures such as sun shading devices and blade walls should not be the only means of façade modelling, and must instead be integrated with the overall facade composition to add another layer of detail and interest.	<p>The building is modulated and articulated, consisting of several elements and a defined base, middle and top.</p> <p>The louvres and balustrades add visual interest to the building.</p>	✓
18. The selection and mix of building materials must complement the overall composition and emphasise the scale, proportion and rhythm of the façade. Heavy materials such as brick, stone and concrete can provide a solid building base or express key elements, whilst lighter materials such as glazing, cladding and lightly coloured rendered surfaces reduce perceived bulk and add relief to the façade.	<p>A materials schedule forms part of this proposal. Proposed materials include:</p> <ul style="list-style-type: none"> <li>• Render.</li> <li>• Precast concrete.</li> <li>• Aluminium louvres.</li> <li>• Glass Balustrades.</li> </ul> <p>Heavier materials are located at the base of the building and glass balustrades reduce the apparent bulk of the structure.</p>	✓
19. The floor level of the upper most storey must be at least 3.5m below the maximum permitted height to achieve a variety of roof forms.	<p>Proposal exceeds maximum height as identified in Rockdale LEP 2011 by a maximum of 10.66 metres. A Clause 4.6 Application forms part of this proposal which details how the proposed building is compatible with the desired future character of Rockdale Town Centre and is in the public interest.</p> <p>A variety of roof forms are achieved due to the stepped roof levels and the provision of roof top communal open space.</p>	✓
20. Use the roof level for communal purposes or articulate the upper storeys, with differentiated roof forms, maisonettes or mezzanine penthouses and the like	Roof top communal open space is provided. Upper stories articulated through stepped roof form.	✓
21. Plant rooms, lift overruns and mechanical ventilation rooms must not be located on the roof of a building where they can be visible from a public place. Such services must be integrated into the design of the building, or alternatively located in the basement of the building.	Lift overrun on roof integrated in building form and it will not increase apparent bulk of building when viewed from the street.	✓

22. The profile and silhouette of parapets, eaves and roof top elements must be considered in roof design.	Roof design is well articulated and utilised as communal open space to provide residents with passive recreation and opportunities for interaction.	✓
23. The roof design must be sympathetic to the existing streetscape, and have regard to existing parapet and roof lines of adjoining properties that are of a similar building height.	Roof design steps down in height from north to south, providing a transition from Rockdale Town Centre.	✓
<b>Building Entry</b>		
24. The entry is to be designed so that it is a clearly identifiable element of the building in the street.	Block A Residential Entry located on northern façade and is clearly visible from Lister Avenue.  Block B Residential Entry located on Princes Highway and is visible from public footpath.	✓
25. Utilise multiple entries – main entry plus private ground floor apartment entries to activate the street edge. At least 50% of ground floor dwellings are to have individual gates and direct access off the street.	Proposal does not contain ground floor apartments.	N/A
26. Provide as direct a physical and visual connection as possible between the street and the entry.	Block A Residential Entry has direct access from Lister Avenue and Block B Residential Entry has direct access from Princes Highway footpath down a walkway with gradient max. 1:20.	✓
27. At least one main entry with convenient, barrier-free access must be provided in all new development.	Complies.	✓
28. Provide separate entries from the street for: <ul style="list-style-type: none"> <li>• pedestrians and cars; and</li> <li>• different users, for example, for residential and commercial users in a mixed use development.</li> </ul>	Pedestrian and vehicular entries are separated.	✓
29. Design entries and associated circulation space of an adequate size to allow movement of furniture between public and private spaces.	Residential entries provide adequate circulation space.	✓
30. Pedestrian entries should be located on primary frontages.	Lister Avenue and Princes Highway are primary frontage of development and are where residential entries are located.	✓



<b>Lift Size and Access</b>  31. Lifts are to be provided in all residential flat buildings. Multiple stairlift cores should be provided to encourage multiple street entries and ease of access to apartments. Where units are arranged off a double-loaded corridor, the number of units accessible from a single core/corridor should be limited to 8.	Block A and Block B are provided with separate stairlift cores with a dual-lift and stairwell configuration. A separate lift for retail premises is provided.  Units accessible from a single stairlift core does not exceed 8.	✓
32. Lift cars are to have minimal internal dimensions of 2.1m x 1.5m, capable of carrying stretchers, with lift door openings wide enough to enable bulky goods (white goods, furniture etc) to be easily transported.	Complies.	✓
33. Lifts are to be accessible from all levels of the building, including all basement levels. Level access to the lift from all basement levels must be provided.	Complies.	✓
34. Each dwelling on a level above the sixth storey is to have access to two lifts.	All units within development have access to two lifts.	✓
35. All common corridors are to have a minimum width of 2 metres to enable bulky goods (white goods, furniture etc) to be easily transported through the building.	Adequate circulation space provided.	✓
36. All common corridors are to be provided with natural light and ventilation where feasible.	Lift lobbies provided with natural light and ventilation where available.	✓

### 5.3 Mixed Use

Controls:	Comment	Compliance
<b>Front Setbacks</b>  1. Front setbacks must define a coherent alignment to the public domain and accentuate street corners.	Development proposes: <ul style="list-style-type: none"> <li>• 2 metre setback from Lister Avenue, and</li> <li>• 3 metre setback from Princes Highway.</li> </ul> <p>The street wall is consistent with approximately 2-3 metre setback of 1A Lister Avenue to the east and provides a setback for development further south to follow.</p> <p>The architectural form is designed to emphasise the street corner of Lister Avenue and Princes Highway. Street</p>	✓

	corner is accentuated through use of setbacks, deep soil planting and increased building height along northern boundary.	
2. Development is to be built to the street alignment with a zero setback. The uppermost floor level may be set back. If there is a predominant parapet line in the street, a setback from this line may be required to achieve a cohesive streetscape.	Development proposes 2 and 3 metre setbacks from Lister Avenue and Princes Highway respectively. The stepped roof form allows for more common open space for residents away from the street.	✓
3. Development on a busy road is to have a zero setback for at least the first three levels. A setback may be provided above the third level to ameliorate the impact of traffic noise and pollution.	Development proposes setbacks from both Lister Avenue and Princess Highway.	✓
<b>Side and rear setbacks</b>	Setback requirements as identified in Section 5.2 Residential Flat Buildings of this DCP are addressed	✓
4. For minimum side and rear setbacks for shop top housing refer to 5.2 Residential flat buildings of this DCP.		
5. At the street frontage a zero side setback is required to achieve a street wall building.	Zero side setback is proposed for Lower Ground and Ground Floor along the southern boundary of the site. This will enable the continuation of a consistent street wall when adjacent lots to the south are developed.	✓
6. Generally the lower levels of buildings are to be built to side and rear boundaries or be set back no less than 3m. For development on a site immediately adjoining an allotment zoned residential or public open space, the development provides: <ol style="list-style-type: none"> <li>a minimum side setback of 1.5m where the side boundary immediately adjoins the residential zoned allotment;</li> <li>a minimum rear setback of 4.5m at the ground and first floor of a building.</li> </ol>	Development proposes following setbacks to 1A Lister Avenue (zoned R4 High Density Residential): <ul style="list-style-type: none"> <li>6.3 metre setback up to Level 2, (7.335m to wall) and</li> <li>6.3 metre setback from Level 3.</li> </ul> Proposed setbacks are acceptable as: <ul style="list-style-type: none"> <li>Development does not preclude future development of 1A Lister Avenue due to overshadowing concerns.</li> </ul>	✓

	<ul style="list-style-type: none"> <li>Visual and acoustic privacy issues are mitigated through use of louvres.</li> </ul>	
7. For development on a site with rear lane access, development facing the lane should be built to the boundary.	Proposal does not involve rear lane access. Access to basement car parking levels is proposed via Lister Avenue.	N/A
<b>Ground Level Uses</b>		
8. Building uses fronting the public domain at ground level are to be active uses wherever possible.	Retail premises on Lower Ground and Ground Floor will activate the Lister Avenue and Princes Highway streetscapes.	✓
9. Residential uses are prohibited on the ground floor with the exception of access to upper level residential uses.	Lower Ground and Ground Floor uses do not comprise residential uses except for access to upper levels.	✓
10. Access to upper level uses does not occupy more than 20% of the ground floor frontage.	Complies.	✓
11. Development on a site that has a sloping frontage is to be designed to step with the longitudinal grade of the street.	Development proposes stepped Lower Ground and Ground Floors to respond to sloping topography of site.	✓
12. Where non-active uses, including building services and loading docks, are located on ground level, they must be 'wrapped' in retail or commercial uses at the street frontage.	Complies.	✓
13. Any development which contains above ground car parking must 'wrap' the car parking with active building uses on any street frontage. All above ground car parking must be internal to the building; no at-grade car parking is permitted.	Above ground car parking is not proposed.	N/A
<b>Retail</b>		
14. A minimum of 10% of the gross floor area of a mixed use development is to be for retail and/or commercial uses.	Total of 818.2m <sup>2</sup> retail floor space is proposed (6.7% of total GFA). This is acceptable as the provision of two levels of retail split over Lower Ground and Ground Floors responds to the topography of the site. Additional retail above the Ground Floor would not be easily accessible by pedestrians.	✓
15. Retail premises are to be regularly shaped with minimal intrusions from building services and circulation. All retail premises must have internal access to the loading dock if provided.	Complies.	✓

16. Retail premises of less than 200m <sup>2</sup> must have a depth to width ratio between 1:1 and 3:1.	Complies.	✓
<b>Commercial</b>		
17. Upper level commercial uses are encouraged in all centres, particularly fronting classified roads and higher order retail streets. Commercial spaces are designed for maximum flexibility of use and adaptability through co-location of services and regular floor plans.	Development proposes Lower Ground and Ground Floor as retail tenancies.	N/A
18. Commercial premises over 200sqm must provide staff toilets and showering facilities within the premises to encourage bicycle usage as well as amenity for staff.	LGI and GI retail premises exceed 200sqm and provide bathroom facilities for staff.	✓
19. Commercial premises under 200sqm must have internal access to staff toilets and showering facilities and such facilities may be shared with other tenancies.	G2 retail premises can access bathroom facilities of GI retail premises.	✓
20. Consideration is to be given to horizontal as well as vertical separation of uses in larger developments. Design solutions include separate commercial and residential towers with separate street address.	Provision of two levels of retail space reflects pattern of lower level retail along Princes Highway.	✓
21. In buildings which contain more than three floors of commercial or retail space, separate access and circulation to commercial and residential spaces is required, including the separation of residential and commercial car parking where possible.	Development proposes two levels of retail space (Lower Ground and Ground Floors).	✓
<b>Shop top housing</b>		
24. All shop top housing must address at least one street frontage, and have its main access off the primary street frontage and not a public internal circulation space.	Shop top housing fronts both Princes Highway and Lister Avenue. Access to basement car park is via Lister Avenue. Pedestrian access to units in Block A and Block B is via separate entrances on Lister Avenue and Princes Highway.	✓
25. The building must be designed to minimise potential impacts of commercial uses (eg restaurants and bars) on the amenity of residential users.	Impacts of potential commercial uses are minimised by provision of landscape and deep soil planting along both street frontages.	✓
<b>Building Design</b>		
	Controls in Section 5.2 Residential Flat Buildings of Rockdale DCP are addressed in this report. Façade and	✓

26. Façade and roof design is to comply with relevant controls in Section 5.2 Residential Flat Buildings of this DCP.	roof design comply with these controls.	
27. Blank party walls should be avoided and some modelling is to be provided to party walls.	Southern wall of development is articulated through use of windows and building modulation to avoid a blank party wall.	✓
28. Adjacent to a highway or railway line, the building articulation is to be a lightly modelled street wall building using recessed balconies, expressed openings, projecting sills, roof overhangs and the like.	<p>Façade fronting Princes Highway is well articulated through use of:</p> <ul style="list-style-type: none"> <li>• Recessed and partially projecting balconies.</li> <li>• Glass balustrades.</li> <li>• Louvres.</li> <li>• Roof overhang.</li> </ul>	✓
29. On retail streets, the building articulation is to be a heavily modelled street wall building, using projecting and/or recessed balconies, expressed window openings, deep reveals, roof overhangs and the like.	Recessed and partially projecting balconies with louvres are proposed to create an articulated façade with a defined base, middle and top. Roof overhang above retail component of development provides weather protection to pedestrians.	✓
30. Floors of a building above the sixth floor may have the building wall predominantly set back from the street boundary with projecting balconies or rooms.	Development proposes 4.2 metre setback from Princes Highway frontage from Level 3 with recessed and partially projecting balconies.	✓
31. Where buildings are situated on a corner site they have greater visual prominence and are to be designed to respond to street geometry, topography and sightlines. The façade treatment at the corner is to be designed to differentiate it from the street facades.	Subject site is prominent as it is a corner lot near the entrance of Rockdale Town Centre. Proposed building facades are well articulated through use of louvres and balconies and the stepped roof form responds the sloping topography of the site.	✓
32. The massing of a building on a corner site is to be distributed to enhance the street corner.	<p>Street corner of Lister Avenue and Princes Highway is enhanced through:</p> <ul style="list-style-type: none"> <li>• Building massed towards northern boundary.</li> <li>• 2 and 3 metre street setbacks comprising deep soil planting.</li> </ul>	✓
<b>Public Domain Interface</b>  <b>Ground floor articulation</b>	Ground floor level activated through retail floor space and glazed shopfronts. Blank walls are avoided	✓

33. Building design avoids dead spots at ground floor level, such as car parking frontages, blank walls and recessed spaces.	through articulated facades and location of windows and balconies.	
34. Areas of blank façade for structural and articulation purposes are only permitted with a width of no greater than 600mm.	Blank façades have been designed out.	✓
35. Finer construction detailing and more textural materials, such as face brick, stone and timber, are encouraged at ground floor to add richness to the pedestrian experience of the built environment.	Materials such as blue stone tile and glass balustrades provided as ground level combined with proposed landscape will enrich the pedestrian experience.	✓
36. For major retail developments including supermarkets and discount department stores, such stores are to avoid having any blank wall fronting the street frontage. Any blank walls are to be 'wrapped' by specialty shops fronting the public domain.	Proposal is not a major retail development.	N/A
37. Operable shopfronts for cafes and restaurants are encouraged to promote lively interaction between the public and private domains.	High proportion of glazing provided along shopfronts instead of operable shopfronts.	N/A
<b>Access to premises</b>		
38. Buildings must provide access to all ground floor retail or commercial premises which front the street. This must be the primary means of accessing a given tenancy. On sloping sites, the levels must be contiguous at the entries, but may vary elsewhere by no more than 600mm.	All retail premises provided with ground floor access and sloping topography is accounted for through separate entries to Ground Floor and Lower Ground levels.	✓
39. At pedestrian access points, the ground floor façade may be set back up to 1.2m provided that the resulting space is at footpath level (or graded from footpath level to the building entry) and has a depth to frontage (at building line) ratio of not more than 1:2.	Complies.	✓
40. Any development containing a public internal circulation space from which retail premises are accessed must ensure that the street access to such circulation space contributes positively to the public domain. The entry point must be flanked by active uses and may be set back up to 2m to provide an extension to the public domain, provided the resultant space is at	Entries to lift lobbies of Block A and Block B are integrated into façade of development and are adjacent to glazed shopfronts of retail premises.	✓

footpath level and has a depth to frontage (at building line) ratio of not more than 1:4.		
41. Garage doors should be set back. All vehicle entries are to have security shutters and be designed to integrate with the overall façade composition.	Security shutter is proposed on basement car parking entry on Lister Avenue and is integrated into façade composition.	✓
<b>Visual connection</b>		
42. Development includes display windows with clear glazing to ground floor retail and commercial premises with a maximum window sill height of 700mm. Glazing is not to be frosted or otherwise obscured at eye level; between the heights of 0.7-2.1m.	Clear glazing provided along shop fronts to provide passive surveillance and activate streetscape.	✓
43. Upper level building uses are to be designed so that they overlook the public domain particularly where continuous awnings are not provided, allowing opportunities for casual surveillance.	Passive surveillance of Princes Highway and Lister Avenue provided from upper floors.	✓
44. All ground floor lobbies are to have direct visual connection with the street, with clear sight lines.	Clear sight lines provided to residential entrance lobbies of Block A and Block B.	✓
45. Security features at ground level complement the design of the façade and allow window shopping and the spill of light into the street out of business hours.	Intercom and other security systems will not obscure glazed shopfronts.	✓
46. Roller shutters over windows and entry doors are not permitted.	Roller shutters not proposed.	✓
<b>Awnings</b>		
53. Continuous awnings are to be provided to all retail streets. and are to provide protection from both sun and rain	Awnings are not provided however overhand from Level 1 provides weather protection to pedestrians.	✓
54. Awnings meet the following requirements: a. minimum soffit height of 3.3m; b. maximum fascia height of 600mm; c. minimum setback from edge of kerb of 600mm; and d. maximum step of 900mm on sloping sites, which must not compromise environmental protection.	See Control 53 above.	✓
55. Awning height provides continuity with adjoining properties and follows the street gradient. It is		N/A



to be of sufficient depth to provide good shade and shelter to pedestrians.		
56. Under awning lighting is included, either recessed into the soffit of the awning or wall mounted on the building.	Provided under soffits above.	✓
57. Variation in the awning treatment at lobbies and entries to upper level building uses is encouraged to improve the legibility of the building.	Complies.	✓
<b>Parking</b>		
58. Where a building contains residential and non-residential uses, separate lift access must be provided from basement car parking to the residential and non-residential areas.	Separate lifts provided for residential and retail areas within basement levels.	✓
59. Residential parking spaces must be secure and separate from non-residential vehicle parking and servicing areas.	Retail and residential parking separated. Retail parking located on Basement Level 1 and residential parking located on levels below.	✓

## PART 7 SPECIAL PRECINCTS

### 7.5 ROCKDALE TOWN CENTRE

#### 7.5.1 Building use and function


Controls:	Comment	Compliance
<b>Street Role</b>		
1. The following diagram illustrates the role of all streets in the Centre. Developments are to comply with the standards for ground floor building uses and access locations set out in the following table for all street frontages.	Site identified as 'Edge' and 'Centre Edge Residential' along Lister Avenue and Princes Highway frontages.	✓
<p><u>Centre Edge Residential:</u> High density residential at the edge of the Centre with opportunities for retail or commercial uses.</p> <p><u>Standards:</u></p> <ul style="list-style-type: none"> <li>Active retail uses permitted on the ground floor frontage</li> <li>Access to residential lobbies should be from this frontage</li> <li>Ground floor residential with direct street access permitted</li> </ul>	<ul style="list-style-type: none"> <li>Active Ground floor provided.</li> <li>Separate entrances for residential lobbies.</li> <li>Direct street access provided for residential component of building.</li> <li>Vehicle access provided from Lister Avenue.</li> <li>Service vehicle access consistent with Aus Standards, do not impact visual impact.</li> </ul>	✓

<ul style="list-style-type: none"> <li>• Vehicle access permitted where the development does not front a Service Laneway</li> <li>• Service access permitted where the development does not front a Service Laneway</li> </ul>	
<b>Residential apartment guide</b>  3. A diversity of housing choice is to be offered by mixed use developments by providing a variety of apartment types and sizes. Innovative solutions to meeting current and future housing demands and changing household structures is encouraged. This includes but is not limited to: <ol style="list-style-type: none"> <li>a. 3 bedroom units which can be divided into a 2 bedroom unit and studio unit, sharing a common entry,</li> <li>b. 2 or 3 bedroom units with all bedrooms having ensuites,</li> <li>c. Units with large home office space which is separable from private living areas,</li> <li>d. Operable internal walls to allow multiple rooms or larger single rooms to be created as needed,</li> </ol>	<ul style="list-style-type: none"> <li>• The proposed development has a mix of apartment sizes and bedroom mixes. ✓</li> <li>• Providing a range of apartments that can be purchased and rented by a range of different socio-economic households.</li> <li>• Larger apartments can be utilised as home offices/businesses, which provide increased economic activity within the area.</li> </ul>
<b>Parking and loading</b>  4. Shared vehicular access between developments, especially along Active Laneways, is encouraged.	Shared vehicle access is provided for this development. ✓
5. No on site loading bay is required for developments with less than 1000m <sup>2</sup> of retail space.	A service bay is provided for commercial component of the development. ✓
6. Where no loading bay is provided on site, all retail tenancies are to have access to a street or lane with a marked loading bay, either directly or via a common retail servicing space separate from the residential basement parking area.	N/A
7. Visitor carparking provided on site must be provided behind a security gate or shutter accessed via intercom.	Complies ✓
8. Despite the requirements of the Parking and Loading Technical Specification, developments which contain residential accommodation are only required to provide on-site loading for removalists for a small rigid vehicle.	Complies ✓

<b>Communal open space and landscape design</b>		
2. A minimum of 25% of the site area is dedicated for communal open space. At least one of the communal open spaces must be large enough for recreational uses.	<p>Site area of 2088m<sup>2</sup> requires 522m<sup>2</sup> of communal open space. Development proposes:</p> <ul style="list-style-type: none"> <li>Upper shared terraces total (excluding the deep planter boxes forming the parapet around each terrace perimeter) = <b>444.2m<sup>2</sup></b>.</li> </ul> <p>Proposed communal open space is 14.9% less than the required size. This is acceptable as the site is considered within a dense urban area and is within walking distance of quality open space including:</p> <ul style="list-style-type: none"> <li>Rockdale Park.</li> <li>McCarthy Reserve.</li> </ul>	X
3. At least 50% of the communal open space should be soft landscaping.	<ul style="list-style-type: none"> <li>The site is within an urban area. Communal open spaces is predominantly on the roof top, which has planters that enable vegetation.</li> <li>The site does not have any deep soil planting at the moment, however this proposal increases the amount of deep soil zones.</li> <li>Each apartment has adequate access to private open space.</li> </ul>	✓
4. Refer to Part 4.3.3 Communal Open Space for design specifications.	Noted.	✓
5. A portion of the roof top of mixed use developments should communal open space are containing soft landscaping, accessible by all residents. It is to include adequate drainage and have access to Greywater or Rainwater.	Communal open space on the rooftop incorporates rain gardens and on site detention basins to sustain maintenance and watering requirements.	✓
6. All soft landscaping areas in a development must have access to Greywater or Rainwater to meet their watering needs.	Complies.	✓
<b>7.5.2 Building form and character</b>		
<b>Controls:</b>	<b>Comment</b>	<b>Compliance</b>

<p><b>Setbacks</b></p> <p>1. All developments in the town centre are to be built to the street edge on the lower level. The street edge is the street frontage boundary or where stipulated in the following table, the identified front setback.</p>	<ul style="list-style-type: none"> <li>• A minor setback is provided at the street edge, which enables a deep soil zone and accommodates large trees. This will improve the street edge and character of the site.</li> <li>• The residential component is set further back of the retail and commercial at the lower levels.</li> </ul>	✓
<p>2. All developments are to build to the side boundary and abut adjoining developments at the street edge and front build to line.</p>	<ul style="list-style-type: none"> <li>• The building is slightly setback from the side boundary. This does not preclude development to the south.</li> </ul>	✓
<p>3. Portions of buildings away from the street edge may be setback from the side boundary. Where this is the case they must be setback far enough from the side boundary for adequate building separation to be achieved or be able to be equitably achieved with future adjoining redevelopment.</p> <p>Centre Edge Residential Streets – 2 metre setback</p>	<ul style="list-style-type: none"> <li>• The building is adequately separated to enable development to the south.</li> </ul>	✓
<p><b>Street Character</b></p> <p>4. The Street Character diagram designates the character type of all streets in the Centre. Developments are to comply with the building envelopes and desired future character of the corresponding street type for all street frontages as per the following street sections and standards.</p>	<ul style="list-style-type: none"> <li>• Site identified as 'edge' with 'interface with residential area' along eastern boundary, 'Arterial Edge' along Princes Highway' and 'Local Edge' along Lister Avenue.</li> </ul>	✓
<p>5. Unless otherwise stated the setbacks illustrated in the street sections are build to line, meaning that the facade of buildings must be built to this line to create a consistent, continuous and definite street edge.</p>	<p>Development is setback 2 meters and 3 metres back from Lister Avenue and Princes Highway respectively.</p> <p>The street wall is consistent with development to the east (1A Lister Avenue) and provides a line to be continued by future development of sites to the south.</p>	✓
<p><b>Arterial Edge</b></p> <p>2. For Arterial Edge Road frontages of any development as designated by the Street Character diagram, the building envelop is (as per the section above):</p>	<p>Site is defined as 'Arterial Edge' along Princes Highway boundary.</p> <p>(a) Development proposes 3 metre setback for Lower Ground, Ground Floor, Level 1 and Level 2 and provides</p>	✗

<ol style="list-style-type: none"> <li>a. Lower 3 storeys are to be setback 3m from the property boundary to support the landscape frontage of the Green Gateway.</li> <li>b. Levels above the 3rd storey are to be setback at least 6m from the property boundary.</li> <li>c. The portion of the building above the 3rd floor is to have a side setback of at least 4.5m, a separation between buildings of at least 9m, and a maximum facade length of 40m.</li> <li>d. A minimum 9m rear setback is to be provided where development shares a boundary with a residential property.</li> <li>e. The design of the street wall buildings should complement the proportion/scale of the neighbouring street wall buildings.</li> </ol>	<p>deep soil planting and landscape. This is acceptable as:</p> <p>(b) Levels 3 to 12 are setback 4.2 metres from Princes Highway boundary.</p> <p>(c) Development proposes 3 metre setback to 594 Princes Highway (side setback) above the third floor. This is acceptable as:</p> <p>(d) Development proposes nil setback to 1A Lister Avenue for Lower Ground and Ground Floors, 2 metre setback on Level 1 and 5 metre setback for Level 2 and above. This is acceptable as:</p> <ul style="list-style-type: none"> <li>• 1A Lister Avenue is zoned R4 High Density Residential.</li> <li>• Development at 1A Lister Avenue can still achieve 2 hours on sunlight between 9am and 3pm on June 21.</li> <li>• Visual and Acoustic impacts are minimised through use of louvres</li> </ul> <p>(e) The street wall is consistent with development to the north further along Princes Hwy and provides a line to be continued by future development of sites to the south.</p>
<ol style="list-style-type: none"> <li>3. Comply with Arterial Edge-Green Gateway Style Sheet for the 3m frontage landscape design specifications.</li> </ol>	<p>Complies. ✓</p>
<p><b>Local Edge</b></p> <ol style="list-style-type: none"> <li>2. For Local Edge frontages of any development as designated by the Street Character diagram, the building envelop is to be (as per the section above):             <ol style="list-style-type: none"> <li>a. Lower 4 storeys are to be setback 2m from the property boundary</li> </ol> </li> </ol>	<p>Site identified as 'Local Edge' along Lister Avenue Frontage. Development proposes 2 metre setback for Ground Floor, Level 1 and Level 2 and 3.2 metre setback from Level 3. ✓</p> <p>The lower 3 storeys are setback instead of the lower 4 storeys, however this is acceptable as:</p>

<p>b. Levels above the 4th storey are to be setback at least 3m from the lower build to line.</p>	<ul style="list-style-type: none"><li>Proposed design creates a defined base, middle and top.</li></ul>
<p>3. A minimum 9m rear setback is to be provided where development shares a boundary with a residential property.</p>	<div>Development proposes following rear setback to 1A Lister Avenue:</div> <div></div> <ul style="list-style-type: none"><li>6.3 metre setback up to Level 2, (7.335m to wall) and</li><li>6.3 metre setback from Level 3.</li></ul> <div>This setback is acceptable as:</div> <ul style="list-style-type: none"><li>Development at 1A Lister Avenue can still achieve 2 hours on sunlight between 9am and 3pm on June 21.</li><li>Visual and Acoustic impacts are minimised through use of louvres</li></ul>

## 6.4 Section 79C Evaluation

The EP & A Act requires the consent authority to take into consideration such of the matters referred to in Section 79C (1) of the Environmental Planning and Assessment Act, which are addressed below.

This Statement of Environmental Effects assess the relevant planning instruments and provisions applicable to the land. Modifications to the proposal are consistent with DA and are consistent with:

*(a) the provisions of:*

- (i) any environmental planning instrument, and*
- (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
- (iii) any development control plan, and*
- (iv) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and*
- (v) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and*
- (vi) any coastal zone management plan (within the meaning of the Coastal Protection Act 1979), that apply to the land to which the development application relates.*

The development application is consistent with:

- State Environmental Planning Policies,
- Rockdale LEP 2011.
- Rockdale DCP 2011.

There are no draft controls or VPA.

*(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality.*

- Traffic Report states that the Princes Highway and Lister Avenue can accommodate for the estimated increase in traffic.
- Proposal does not have unreasonable overshadowing impacts on surrounding lots.
- Proposal continues building line of mixed use development within Rockdale Town Centre. When viewed from Princess Highway, the proposal is consistent with the skyline of existing and approved development within Rockdale.

*(c) the suitability of the site for the development.*

Proposed development is suitable for the site as:

- It is located on a prominent street corner.
- Site is within 400m of Rockdale Train station. Proposal will provide residential accommodation within walking distance of a train station in accordance with the principles of Transit Oriented Development.
- It is consistent with patterns of increased density within Rockdale Town Centre.
- The proposal defines the street edge with built form, creating activation at ground level.

*(d) any submissions made in accordance with this Act or the regulations,*



There were no relevant submissions made.

*(e) the public interest.*

The development is in the public interest as:

- Retail component will generate employment.
- Residential apartments will provide accommodation within walking distance of Rockdale Train Station and a variety of local shops and facilities.
- Proposal defines the street edge and will be used as an 'urban marker'.

## 7.0 Conclusion

This application is for the demolition of all existing structures and the construction of a shop top housing within Rockdale Town Centre including:

- 4 levels of basement car parking providing 209 car parking spaces.
- 818.2m<sup>2</sup> retail GFA on Lower Ground Floor and Ground Floor.
- 140 residential apartments on Level 1 to Level 13:
- Rooftop communal open space.

The proposed development is suitable for the following reasons:

- It is consistent with current patterns of redevelopment along Princes Highway towards higher density.
- Lower Ground and Ground Floor retail premises will activate the streetscape and generate employment opportunities.
- It is in keeping with the desired future character of the locality.
- The stepped building design is sympathetic to the site topography.
- It does not preclude the development of surrounding sites.

It is considered that the proposal is an appropriate response to its context and relevant state and local planning instruments. Accordingly, it is recommended that the application be recommended for approval in accordance with 79C of the EP&A Act, 1979.

# 588-592 Princes Highway

ROCKDALE

Shop Top Housing

## Clause 4.6 Application for Exception to Development Standards

April 2016

Prepared by:

**ae** design partnership  
architecture urban design planning

Prepared for:

**AVA Architects**

:

t: 02 9519 4994 f: 02 9519 4995  
<http://www.aedesignstudio.com.au>  
23 Barr St Camperdown NSW 2050  
Nom Architect N. R. Dickson 7061

Project:	588-592 Princes Highway, Rockdale		
Document:	Clause 4.6 Application for Exception to Development Standards		
Revision:	Date:	Authored By:	Approved By:
[A]	07/04/2016	Lucy Donnelly Tristan Kell	

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## 1.0 Introduction

This Clause 4.6 Request for Exception to Development Standards has been prepared as part of a Development Application seeking approval for the development of shop top housing at 588-592 Princes Highway, Rockdale in the Rockdale Local Government Area.

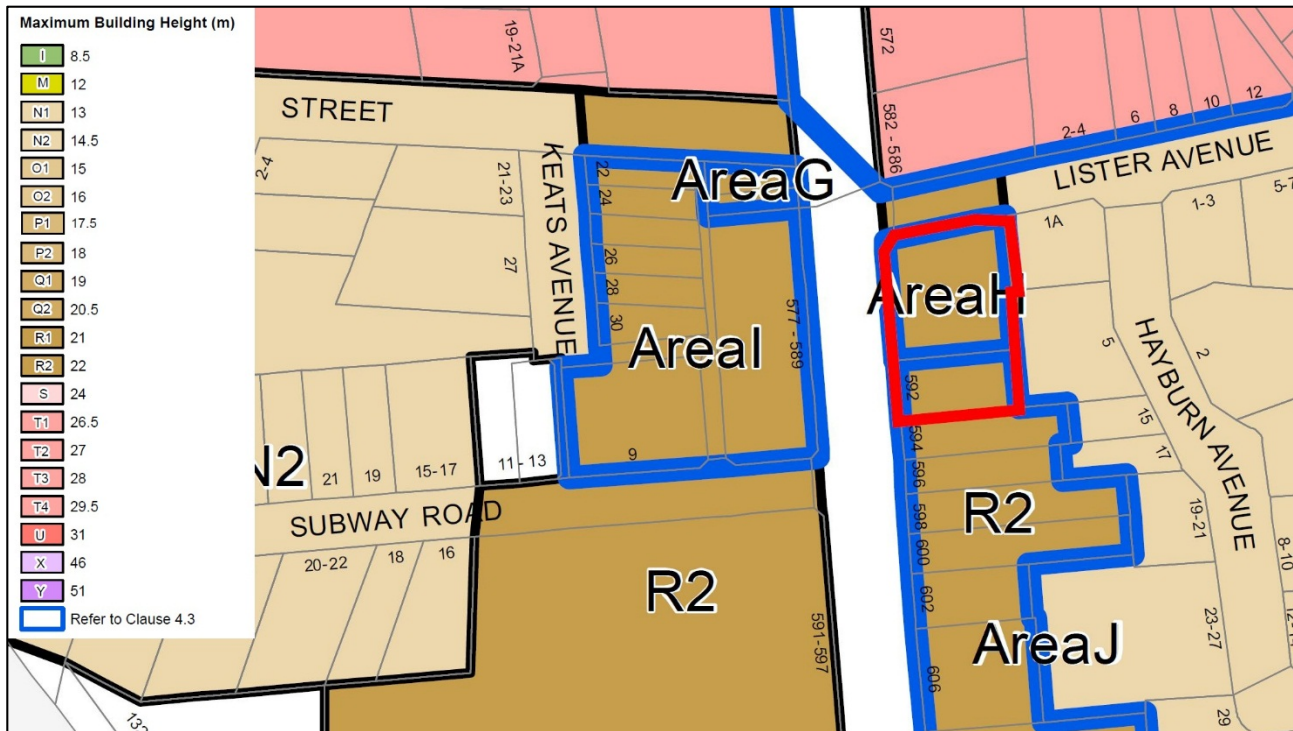


Figure 1: Rockdale LEP 2011 Maximum Height of Buildings Map.

Under **Clause 4.3 'Height of buildings'** of the applicable Environmental Planning Instrument, the Rockdale Local Environmental Plan 2011 (see Figure 1):

- The maximum permissible height across the subject site is 22 metres;
- An additional 12 metres is permissible within the northern allotment (Allotment I in DP840863) provided the proposed building is constructed within a lot of at least 2000m<sup>2</sup> (Clause 4.3(2A)(g) Rockdale LEP 2011) and
- An additional 9 metres is permissible within the southern allotment (Allotment II in DP 590046) provided the proposed building is constructed within a lot of at least 2000m<sup>2</sup>(Clause 4.3(2A)(i) Rockdale LEP 2011).

On the grounds that the proposal involves the construction of the building within an amalgamated northern and southern allotment, generating a combined site area exceeding 2,000m<sup>2</sup> (2087.69m<sup>2</sup> before dedication to Council of the northern portion of the northern allotment for the purposes of road widening as required by the Land Reservation Acquisition provisions set out within the Rockdale LEP), **the maximum permissible height applicable to the subject site is as follows:**

- Northern allotment: 34 metres
- Southern allotment: 31 metres

The proposed development has following maximum heights:

- Northern allotment: 44.6 metres (RL 56.35).
- Southern allotment: 40.51 metres (RL 49.95).

## I.I Brief Overview of the Proposal



Figure 2: Section of proposed development. Prepared by AVA Architects.

Within the 44.66 metre built form envelope is proposed:

- 4 levels of basement parking and service bay accessible from the north-eastern corner of the site via the secondary street frontage, Lister Avenue;
- 3 retail premises at Lower Ground and Ground Floor with active street frontage to the primary street frontage Princes Highway and secondary street frontage Lister Avenue;
- 140 residential apartments within the remaining 13 storeys;
- Rooftop communal open space; and
- Landscaped deep soil zones within setback to both street setbacks.



Greater detail is provided within Statement of Environmental Effects, to which this Application is attached. This request should be read in conjunction with that statement.

## 2.0 Clause 4.6 'Exceptions to development standards'

The Application for Exception to Development Standards is formalised through consideration of the proposed development against Clause 4.6 'Exceptions to development standards'. This clause is reproduced below:

- (1) The objectives of this clause are as follows:*
  - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
  - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) Consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
  - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) Development consent must not be granted for development that contravenes a development standard unless:*
  - (a) the consent authority is satisfied that:*
    - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
    - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
  - (b) the concurrence of the Director-General has been obtained.*
- (5) In deciding whether to grant concurrence, the Director-General must consider:*
  - (a) whether contravention of the development standard raises any matter of significance for State environmental planning, and*
  - (b) the public benefit of maintaining the development standard, and*
  - (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.*
- (6) [Omitted as not relevant]*

- (7) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) *[Omitted as not relevant]*

## 3.0 Consistent with the objectives of the development standard and the zones

The proposed development will be in the public interest because it is consistent with the objectives of height control and the relevant zone objectives.

### 3.1 Height control objectives

The objectives of the height control are set out in clause 4.3(1):

*(1) The objectives of the clause are as follows:*

- (a) to establish the maximum limit within which buildings can be designed and floor space can be achieved,*

**Response:** on the grounds that the site has area in excess of 2,000m<sup>2</sup> (2087.69m<sup>2</sup>) the maximum permissible heights are:

- Northern Allotment: 34 metres.
- Southern Allotment: 31 metres.

No maximum floor space ratio controls apply to the subject site.

- (b) to permit building heights that encourage high quality urban form,*

**Response:** The proposed development achieves a high quality urban form in accordance with the principles and criteria identified in Rockdale Design Excellence Guidelines:

- Streetscape:
  - 3 retail tenancies located on Lower Ground and Ground Floors, providing an active street frontage.
  - Deep soil zones incorporated into Princes Highway and Lister Avenue setbacks will:
    - Enhance amenity of streetscape.
    - Reduce 'Wind Tunnel' effects adjacent to Princes Highway.
    - Reduce stormwater runoff.
- Built Form:
  - Proposal is in harmony with the desired future character of Rockdale Town Centre:
    - Increased density with preference for mixed use buildings.
    - Active street frontages.
    - Greatest height and density along Princes Highway, framing the road.
    - A transition in height which steps down towards the south.
  - Building massed towards northern boundary and steps down towards the south in response to sloping topography.
  - Proposal responds to site as a prominent street corner:
    - Corner enhanced through Titanium Dioxide coated urban marker and added sustainability features.
  - Proposal forms a skyline profile that is consistent with existing and approved development along Prince Highway.
- Accessibility:

- Lower Ground and Ground Floor retail uses are active, well-lit and accessible by pedestrians.
- Vehicular entrance to basement car parking located off secondary frontage (Lister Avenue).
- Pedestrian and vehicular entrances to the building are separated to minimise conflicts.

(c) *to provide building heights that maintain satisfactory sky exposure and daylight to buildings, key areas and the public domain,*

Response:

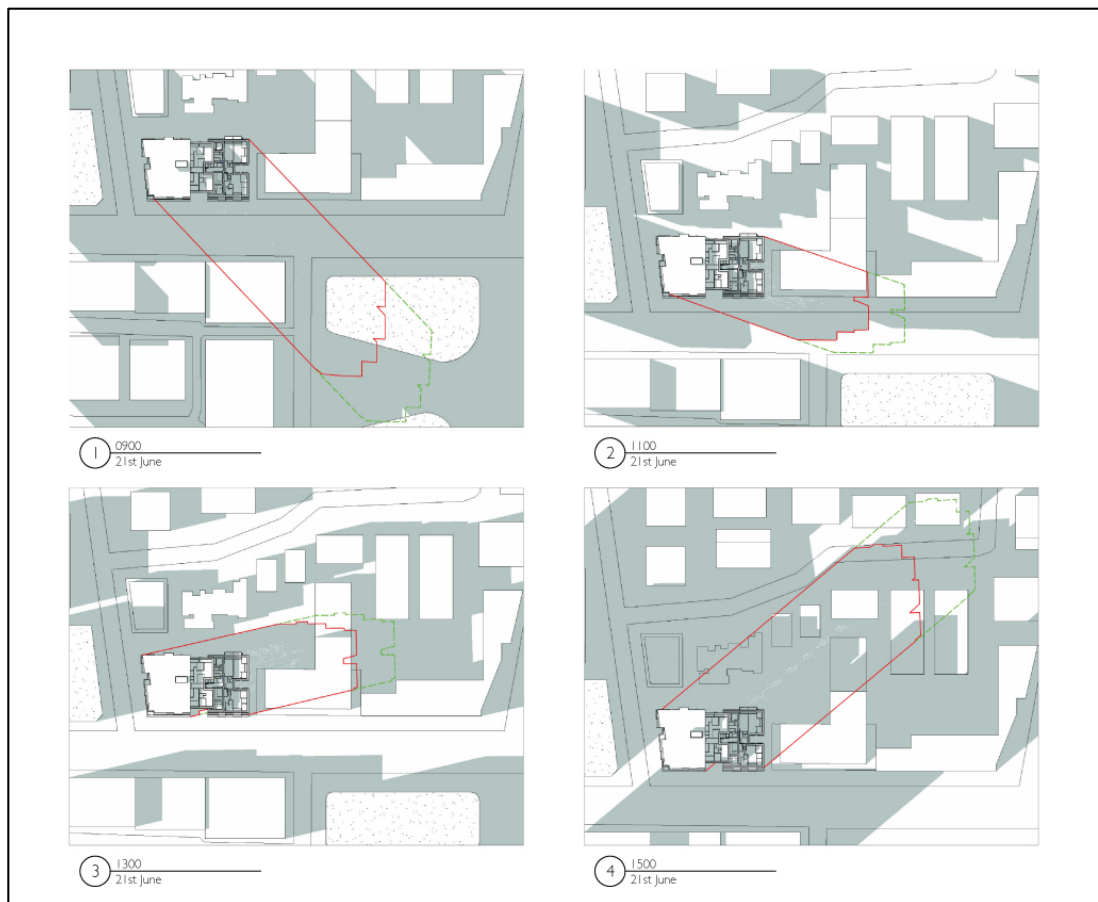


Figure 3: Overshadowing Impacts of proposal. Diagrams prepared by AVA Architects.

As shown in Figure 3, the additional height of the proposed development will have increased overshadowing impacts. However, we are of the opinion that these impacts are acceptable on the following grounds:

- Does not preclude solar access to any habitable rooms or private or communal open spaces associated with dwellings in the locality to less than 2 hours in mid-winter, consistent with the Apartment Design Guide; and
- Does not impact any valuable elements of public domain, i.e. public open spaces.
- Areas affected by additional overshadowing caused by height exceedance are already overshadowed by existing buildings.

(d) *to nominate heights that will provide an appropriate transition in built form and land use intensity.*

Response:



Figure 4: Rockdale LEP 2011 – Permissible Heights.

Rockdale LEP 2011 Height controls illustrate a desired height transition from the north to the south (see Figure 4). Rockdale LEP 2011 planning controls also identify the site as a prominent street corner.

Proposed development has maximum height of 44.66 metres (lift overrun) on the northern allotment and 40.51 metres on the southern allotment. There is a fall of 9.15 metres from the northern boundary to the southern boundary of the building. This is a transition in height of three storeys along Princess Highway frontage.

- (2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

Response:

Proposal exceeds maximum height controls identified by Rockdale LEP 2011:

- Northern allotment: exceedance of 10.6 metres.
- Southern allotment: exceedance of 9.51 metres.

Height exceedance is supportable for the following reasons:

- Proposal steps down a total of 9.15 metres from northern boundary to southern boundary (3 storeys). This creates a transition in height that steps down to the south.
- Does not preclude solar access to any habitable rooms or private or communal open spaces associated with dwellings in the locality to less than 2 hours in mid-winter, consistent with the Apartment Design Guide.
- Site is located on a prominent street corner and the additional height will allow the building to act as an urban marker with appropriate character and scale.

**(2A)** *Despite subclause (2), the height of a building may exceed the maximum height shown for the land on the Height of Buildings Map by an additional:*

- (g) 12 metres—if the building is in Area H identified on the Height of Buildings Map and on a lot having an area of at least 2,000 square metres,*

**Response:**

- Proposal exceeds permissible height by 10.6 metres on northern allotment.

- (i) 9 metres—if the building is in Area J identified on the Height of Buildings Map and on a lot having an area of at least 2,000 square metres*

**Response:**

- Proposal exceeds permissible height by 9.51 metres on southern allotment.

## 3.2 B4 Mixed use zone objectives

While the proposed development is not in contravention of the applicable land use zoning (B4 Mixed Use), the zone objectives are relevant to the broader planning context. The Objectives of the zone are addressed below:

The zone objectives are individually addressed below:

*To provide a mixture of compatible land uses.*

**Response:** The proposed development incorporates compatible land uses including ground floor retail and an upper level residential component.

*To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*

**Response:** The shop top housing development incorporating ground floor retail premises and upper level residential uses is suitable to its location, being within the centre of Leppington Strategic Centre and no more than 250 metres from the newly constructed Leppington Station on the South West Rail Link.



## 4.0 Compliance unreasonable or unnecessary

Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. Why this is the case is explained below.

### 4.1 Height control objectives

A key objective of the height control would be thwarted or undermined if the variation is not approved.

*(1) The objectives of the clause are as follows: ...*

*(b) to permit building heights that encourage high quality urban form,*

**Response:**

The proposed development achieves a high quality urban form in accordance with the principles and criteria identified in Rockdale Design Excellence Guidelines:

- Streetscape:
  - o Three retail tenancies located on Lower Ground and Ground Floors, providing an active street frontage.
  - o Deep soil zones incorporated into Princes Highway and Lister Avenue setbacks will:
    - Enhance amenity of streetscape.
    - Reduce 'Wind Tunnel' effects adjacent to Princes Highway.
    - Reduce stormwater runoff.
- Built Form:
  - o Proposal reflects desired future character of Rockdale Town Centre:
    - Increased density with preference for mixed use buildings.
    - Active street frontages.
    - Greatest height and density along Princes Highway, framing the road.
    - A transition in height which steps down towards the south.
  - o Building massed towards northern boundary and steps down towards the south in response to sloping topography.
  - o Proposal responds to site as a prominent street corner:
    - Corner enhanced through Titanium Dioxide coated ceramic tile cladding on north western corner.
  - o Proposal forms a skyline profile that is consistent with existing and approved development along Prince Highway.
- Accessibility:
  - o Lower Ground and Ground Floor retail uses are active, well-lit and accessible by pedestrians.

### 4.2 Aims of Plan

The aims of the Rockdale Local Environmental Plan 2011 are set out in Clause 1.2 Aims of Plan.

Key aims of the Rockdale LEP 2011 would be undermined if the variation is not approved.

*(2) The aims of this Plan are as follows:*

(c) *to maintain and improve residential amenity and encourage a diversity of housing to meet the needs of Rockdale residents,*

**Response:**

This objective is satisfied as:

- A high degree of residential amenity is achieved:
  - 92% of all apartments receive a minimum of 2 hours of direct sunlight between 9 am and 3 pm at mid-winter June 21st.
  - Cross ventilation is achieved in 103 of the 140 apartment units. (73.5%).
- A variety of apartment sizes are provided to suit varying needs of residents:
  - 3 bedroom: 11.4%
  - 2 bedroom: 52.1%
  - 1 bedroom: 36.4%

(g) *to encourage residential and employment densities around transport nodes in order to provide sustainable transport options,*

**Response:**

The site is located 400 metres from Rockdale Train Station and a variety of bus stops located along Princes Highway. The proposal offers both residential accommodation and employment opportunities within walking distance of public transport.

### 4.3 Burden of compliance disproportionate to consequences

The burden placed on the landowner, future occupiers of the development, future home buyers in the area and the wider community (by requiring strict height compliance) would be disproportionate to the consequences attributable to the proposed non-compliant development (relying on comments made in an analogous context, in *Botany Bay City Council v Saab Corp* [2011] NSWCA 308 (at paragraph 15)).

It should be understood that the consequences attributable to the proposed non-compliant development are either nil or not-significant. **This means that any burden of substance that is imposed as a result of requiring strict compliance is unreasonable.**

The burden would flow from reduced dwelling yield as a consequence of strict compliance with the development standard.

In this regard, the following burdens would flow from strict compliance:

- In terms of housing affordability:
  - Lost opportunity to improve housing affordability through increased housing stock and choice;
  - Higher build cost per dwelling;
  - Higher strata fees per dwelling for upkeep of same equipment and facilities.
  - An economic loss to the developer of the site.
  - The reduced sustainability of high quality architectural apartment living.
- Lost opportunity to maximise orderly and economic use of the land.
- Lost opportunity to achieve design excellence through enhancing the street corner. Compliance with height controls would result in a building with reduced definition of the street corner.

## 5.0 Environmental planning grounds

There are sufficient environmental planning grounds to justify contravening the development standard.

### 5.1 The Statutory Planning Controls

Section 4 outlines how allowing the variation would allow the objectives and aims of the statutory planning controls to be achieved (when they might otherwise be thwarted) or at least achieved more fulsomely.

Given that:

- the variation better achieves the planning controls than a complying development; and
- there are no significant adverse impacts arising from the variation,

it should be accepted that there are sufficient environment planning grounds to justify contravening the development standard.

### 5.2 A Plan for Growing Sydney (2015)

A Plan for Growing Sydney also set out 'the planning principles that will guide our Sydney grows' (on page 11). These principles include the following:

***PRINCIPLE 1: INCREASING HOUSING CHOICE AROUND ALL CENTRES THROUGH URBAN RENEWAL IN ESTABLISHED AREAS***

*Increasing housing close to centres and stations makes it easier to walk or cycle to shops or services; travel to work or other centres; reduces traffic congestion; and makes our neighbourhoods more community oriented.*

*Increasing the variety of housing available makes it easier for people to find a home that suits their lifestyle, household size and their budget.*

*Locating new housing in centres delivers a range of economic, environmental and social benefits to the community. Research by the Organisation for Economic Cooperation and Development (OECD) has similarly found that productivity benefits arise from a more compact city.*

***PRINCIPLE 2: STRONGER ECONOMIC DEVELOPMENT IN STRATEGIC CENTRES AND TRANSPORT GATEWAYS***

*Locating jobs in around 30 to 40 large centres across Sydney provides the greatest benefits to the city's overall productivity.*

*Sydney's largest and most important hubs for business and employment are 'strategic centres' and Sydney's 'transport gateways'. Together, these locations account for 43 per cent of all jobs across Sydney.*

*These locations will be an important focus for future growth because of their size, diversity of activities, their connections (mainly to the rail network), and the presence of major institutional activities such as health and*

The site is also located within the South Subregion as identified within A Plan for Growing Sydney. Priorities for South Subregion include:

*Accelerate housing supply, choice and affordability and build great places to live:*

*Work with councils to identify suitable locations for housing intensification and urban renewal, including employment agglomerations, particularly around Priority Precincts, established and new centres, and along key public transport corridors including the Illawarra Line, the South Line and Sydney Rapid Transit (along the Bankstown Line).*

**Response:** The Site is located within an Urban Renewal Corridor that runs along the Eastern Suburbs and Illawarra Train Line.

The site is suitable for increased density as:

- It is within walking distance (4 metres) of Rockdale Train Station, in accordance with the principles of Transit Oriented Development.
- Projected increase in traffic will have no adverse impact on the intersection of Lister Avenue and Princess Highway nor the surrounding road network (Traffic and Parking Impact Study, NK Traffic).

In addition to (and independently of) the reasons in section 5.1.1 above, we submit that:

- The variation better achieves key environmental planning goals articulated by the state government; and
- There are no significant adverse impacts arising from the variation.

Accordingly, it should be accepted that there are sufficient environment planning grounds to justify contravening the development standard.

## 6.0 Concurrence of the 'Director-General'

The 'Director-General' (now Secretary, Department of Planning and Environment) can be assumed to have concurred to the variation. This is because of the Department of Planning Circular PS 08-003 'Variations to development standards', dated 9 May 2008. This circular is a notice under 64(1) of the *Environmental Planning and Assessment Regulation 2000*.

A consent granted by a consent authority that has assumed concurrence is as valid and effective as if concurrence had been given.

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## Council Meeting

**12/10/2016**

Item No	9.13
Property:	<b>7-13 Willis Street, Wolli Creek</b>
Proposal:	Construction of two (2) x 9 storey residential flat building with roof top terraces containing 68 apartments with parking at basement level and demolition of existing structures
Report by	Luis Melim, Manager Development Services Pascal van de Walle
Application No	(R) DA-2016/296

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## Council Resolution

Resolved by the Administrator:

- 1 That Council support the variation to the Height standard contained in clause 4.3 of Rockdale Local Environmental Plan 2011 in accordance with the clause 4.6 justification submitted by the applicant.
  - 2 That Council support the variation to the Floor Space Ratio (FSR) standard contained in clause 4.4 of Rockdale Local Environmental Plan 2011 in accordance with the clause 4.6 justification submitted by the applicant.
  - 3 That development application DA-2016/296 for construction of two 9 storey residential flat buildings with roof top terraces containing 68 apartments with parking at basement level and demolition of existing structures be APPROVED.
  - 4 That the NSW Department of Planning and Environment be advised of Council's decision.
- 

## Officer Recommendation

- 1 That Council support the variation to the Height standard contained in clause 4.3 of Rockdale Local Environmental Plan 2011 in accordance with the clause 4.6 justification submitted by the applicant.
  - 2 That Council support the variation to the Floor Space Ratio (FSR) standard contained in clause 4.4 of Rockdale Local Environmental Plan 2011 in accordance with the clause 4.6 justification submitted by the applicant.
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-

## Attachment

- Planning Assessment Report
- Site Plan
- South Elevation
- North Elevation
- Clause 4.6

## Location Plan





# BAYSIDE COUNCIL

## Planning Assessment Report

### Application Details

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<b>Application Number:</b>	DA-2016/296
<b>Date of Receipt:</b>	26 February 2016
<b>Property:</b>	9 - 13 Willis Street, WOLLI CREEK NSW 2205 Lot 1 DP 1212687 Lot 3 DP 902616
<b>Owner:</b>	Mr Aimei Hang
<b>Applicant:</b>	Urban Link Pty Ltd
<b>Proposal:</b>	7 & 9-13 Willis Street, WOLLI CREEK NSW 2205 - Integrated Development - Construction of two x 9 storey residential flat buildings with roof top terraces containing 68 apartments with parking at basement levels and demolition of existing structures
<b>Recommendation:</b>	Approved
<b>No. of submissions:</b>	Nil
<b>Author:</b>	Pascal van de Walle
<b>Date of Report:</b>	27 September 2016

### Key Issues

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The key issues with the proposal are as follows:

- This proposal incorporates No. 7 Willis Street and resolves the site isolation issue that existed with the previous proposal for part of the site at 9-13 Willis Street (DA-2015/342). It will allow all of the remaining lots on the northern side of Willis Street to be developed to their capacity and also achieve a more consistent and cohesive streetscape.
- The applicant has offered to provide a bond to be used for the provision of future public domain works along the frontages of the subject site. These future works are to be undertaken by Council and will provide a community public benefit.
- Height - the proposal has a maximum height of 29.9m to the top of the lift overrun which exceeds the maximum permitted height of 28m by 1.9m (6.8%). The applicant has submitted a clause 4.6 variation which is found to be acceptable as detailed in the report, and the variation is supported in this case.
- Floor Space Ratio (FSR) - the proposal has an FSR of 3.42:1 and exceeds the maximum 2.85:1 FSR permitted for the site. The applicant has submitted a Clause 4.6 variation which is found to be acceptable as detailed in the report, and the variation is supported in this case.

## Recommendation

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- 1 That Council support the variation to the Height standard contained in clause 4.3 of Rockdale Local Environmental Plan 2011 (RLEP2011) in accordance with the clause 4.6 justification submitted by the applicant.
- 2 That Council support the variation to the FSR standard contained in clause 4.4 of Rockdale Local Environmental Plan 2011 (RLEP2011) in accordance with the clause 4.6 justification submitted by the applicant.
- 3 That development application DA-2016/296 for construction of two 9 storey residential flat buildings with roof top terraces containing 68 apartments with parking at basement level and demolition of existing structures be APPROVED.
- 4 That the NSW Department of Planning and Environment be advised of Council's decision.

## Background

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### History

The following applications on the subject site and immediately adjoining sites are of most relevance to this proposal:

- DA-2015/342 - 9-13 Willis Street - Construction of two x eight (8) storey residential flat buildings comprising 44 residential units, two (2) levels of basement parking and demolition of existing structures. Approved 16 November 2016.
- DA-2015/279 - 15-21 Willis Street - Construction of two x eight (8) storey residential flat buildings comprising 67 residential units, basement parking and demolition of existing structures. Approved by the JRPP on 16 September 2015.
- DA-2015/279/A - 15-21 Willis Street - Section 96(2) Application to modify DA-2015/279 Additional storey to each of the approved residential towers to accommodate an additional 7 units, reconfiguration of rooftop communal open space, additional part basement level, and minor changes including decrease in floor to floor heights for Ground & Level 1 and minor increase in floor space to each approved level of Tower B1 by 5m2 (total of 40m2)
- DA-2014/27 - 1-3 Willis Street & 1 Guess Avenue - Approved 17 February 2014 - Integrated Development - Construction of an eight (8) storey mixed use development over two (2) levels of basement parking, and demolition of existing structures.

There are also several recent approvals and current applications for similar developments on nearby sites including the following:

- DA-2016/24 - 2-10 Willis Street - construction of a nine (9) storey residential flat building comprising 93 residential units, basement car parking and demolition of existing buildings. The application was approved on 16 December 2015. It incorporates No. 2 Willis Street, a previously isolated site, into the proposal.

- DA-2014/89 - 4-10 Willis Street - Approved on 5 May 2014 - Integrated Development - Construction of an eight (8) storey residential flat building including roof terrace, comprising 68 apartments and parking for 87 vehicles, and demolition of the existing structures.
- DA-2014/122 - 13-21 Arncliffe Street - Approved 15 May 2014 - Integrated Development - Construction of an eight (8) storey mixed use development with rooftop terrace comprising 60 residential units (38 x 2 bed / 18 x 1 bed / 4 x 3 bed) 4 commercial tenancies, basement and ground level carparking for 84 vehicle, and demolition of existing structures.
- DA-2014/122/A - 13-21 Arncliffe Street - Under Assessment - Section 96(2) Application to modify DA-2014/122 to increase height of building, increase in residential units from 60 to 75, carparking from 84 to 103 spaces and deletion of communal rooftop terrace.
- DA 2014/335 - 40-50 Arncliffe Street - Approved 13 November 2014 - Integrated development - Construction of 2 x eight (8) storey residential flat buildings with rooftop terrace areas, comprising 175 residential units and basement parking, and demolition of existing structures.
- DA 2013/51 - 30 Arncliffe Street - Approved 11 February 2013 - Integrated Development - Construction of a mixed use development comprising 41 residential units and 3 commercial units and two basement carparking levels with a total of 56 car spaces, and demolition of existing structures.
- DA 2012/180 - 52 Arncliffe Street - Approved 27 June 2012 - Integrated Development - Construction of residential flat building comprising one-hundred and fifty (150) residential units and two (2) basement levels with capacity for 190 vehicles, and demolition of existing structures.
- DA 2012/180/A - 52 Arncliffe Street - Withdrawn - Section 96(2) Application to modify DA 2012/180 to include twelve (12) additional residential units to create a total of 162 residential units and 200 carparking spaces.
- DA 2012/180/B - 52 Arncliffe Street - Approved 14 August 2013 - Section 96(2) Application to modify DA 2012/180 to include six (6) additional residential units to create a total of 156 residential units and 200 car parking spaces.

## Proposal

The proposal includes construction of two x nine (9) storey residential flat buildings with roof top terrace containing 68 apartments, basement parking and demolition of existing structures. The buildings are in the form of a 2 level basement, a single level podium and two towers above - Tower A fronting Guess Avenue and Tower B fronting Willis Street. The application does not include subdivision.

A detailed description of the proposal is provided below:

### Demolition

Demolition of all existing structures on site.

### Construction

Construction of two x nine (9) storey residential flat buildings containing 68 residential units and basement parking comprising:

- 21 x 1 bedroom units (30.9%),
- 39 x 2 bedroom units (57.4%) and
- 8 x 3 bedroom units (11.7%).

*(Note - Building A (fronting Guess Avenue) = 38 Units, and Building B (fronting Willis Street) = 30 Units)*

#### Parking

- 61 residential car spaces (including 8 accessible spaces);
- 14 visitors spaces (including 1 accessible space); and,
- 10 motorcycle spaces.
- Vehicular access via Willis Street.

#### Communal Open Space

The proposal includes three (3) areas of communal open space with a total combined area of 692m<sup>2</sup>:

- (a) Podium Level = 498m<sup>2</sup>.
- (b) Roof Top Willis Street Building = 77m<sup>2</sup>
- (c) Roof Top Guess Avenue Building = 117m<sup>2</sup>

### **Site location and context**

The subject site is comprised of four (4) separate allotments which combined have a 36.655m frontage to both Guess Avenue and Willis Street, a western side boundary length of 43.574 and an eastern side boundary length of 43.58m. The site has an area of 1,596.7m<sup>2</sup>, is rectangular in shape, is generally level and contains no vegetation of significance.

Existing development on the site includes one and two storey industrial buildings with ancillary structures and hardstand areas which are used for parking and manoeuvring purposes.

The site is flood affected and within Class 3 Acid Sulfate Soils. The site is also located within the Wolli Creek Special Precinct under Council's Development Control Plan 2011.

The surrounding area was characterised by low scale industrial buildings, however the site and surrounding land was rezoned B4 Mixed Use under Rockdale LEP 2011 and the area is undergoing rapid change from industrial (employment lands) to a mixture of retail, commercial and residential flat developments.

Immediately to the west of the site are three lots known as 15-21 Willis Street. The JRPP granted consent for construction of two residential flat buildings each with a height of 8 storeys on 16 September 2015. This proposal is similar in nature and scale as the recent approval on the adjoining sites. In addition, a Section 96(2) application is currently under assessment for an additional (9th) level on the adjoining property at No. 15-21 Willis Street (DA-2015/279/A).

Similarly, approval has been granted for construction of residential flat buildings and mixed use developments with similar bulk, scale and character to the east at No.1-3 Willis and for all properties located on the opposite side of Willis Street. Some of these developments are currently under construction.

The properties located directly opposite the site in Guess Avenue are zoned special uses 'open space' under RLEP 2011, and the site is located within an easy (300m) walking distance from Wolli Creek

Railway Station.

A plan showing the subject site and approved and built developments is provided below (Figure 1):

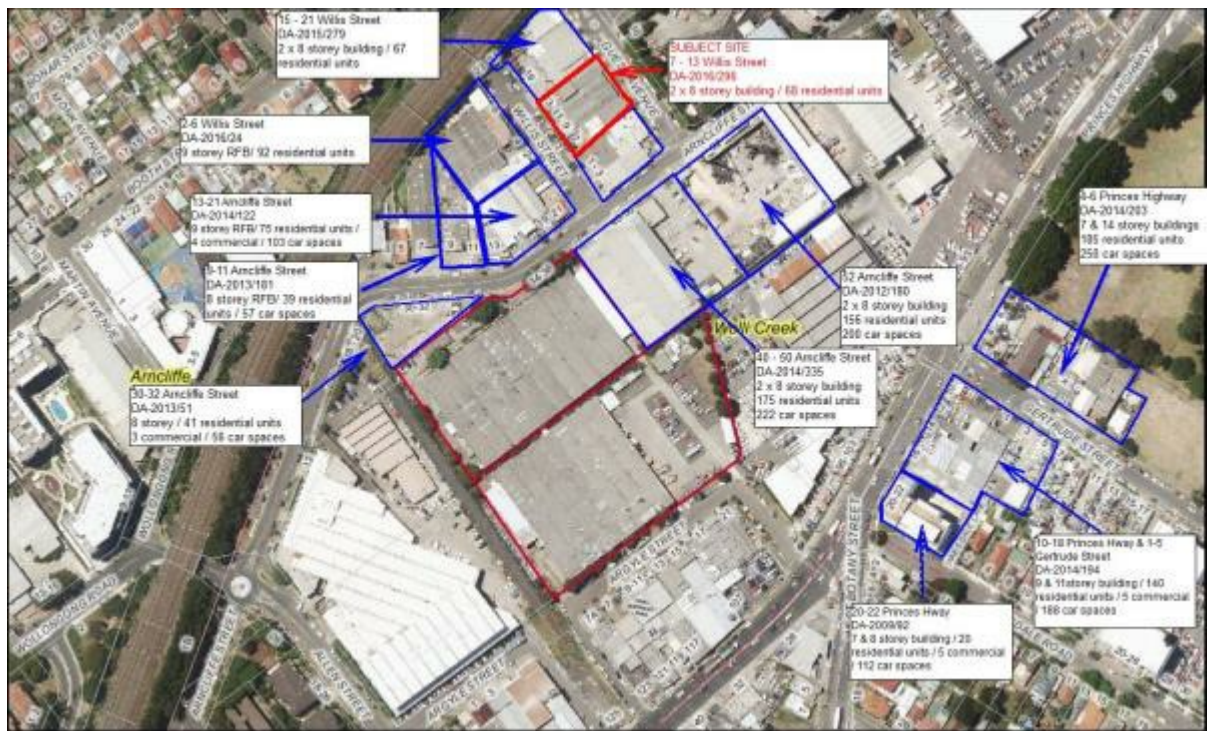


Figure 1 - Site Location Plan

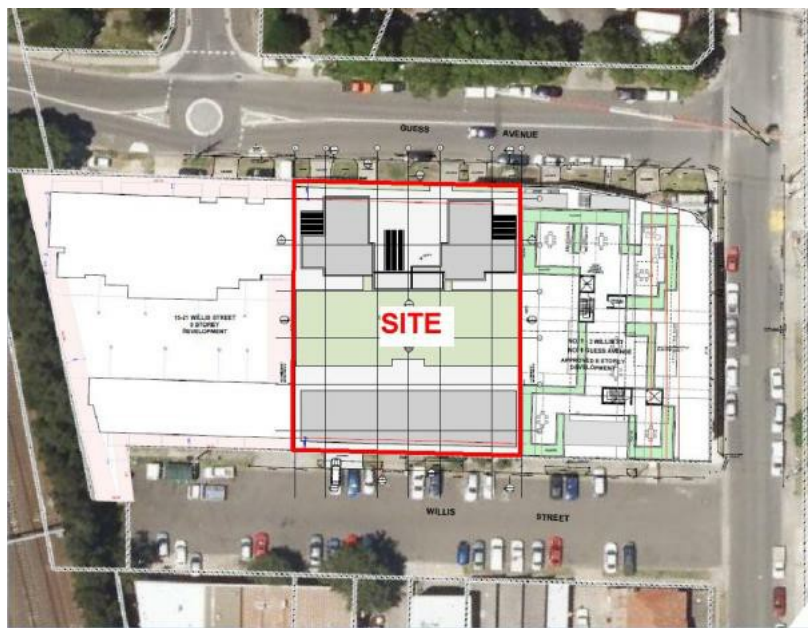


Figure 2 - Site Plan

## Statutory Considerations

### *Environmental Planning and Assessment Act, 1979*

An assessment of the application has been undertaken pursuant to the provisions of the *Environmental Planning and Assessment Act, 1979*.



## **S.91A - Development that is Integrated Development**

The proposal includes excavation works for two (2) basement levels of car parking that will transect the water-table and require temporary dewatering during the construction phase. The proposal is therefore Integrated Development pursuant to Section 91 of the Environmental Planning and Assessment Act 1979, and requires approval from the NSW Office of Water (NOW). The NOW deemed that the construction dewatering proposed for the project would be an 'aquifer interference activity' in accordance with the definition in the Water Management Act 2000, and issued General Terms of Approval (GTA's) appropriate to this activity on 18 April 2016 which have been included in the Draft Notice of Determination.

## **S.79C(1) - Matters for Consideration - General**

### **S.79C(1)(a)(i) - Provisions of Environmental Planning Instruments**

The following Environmental Planning Instruments are relevant to this application:

#### **State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

The applicant has submitted a BASIX Certificate for the proposed development. The Certificate number is 608747M\_03.

The commitments made result in the following reductions in energy and water consumption:

Reduction in Energy Consumption - 27%  
Reduction in Water Consumption - 40%  
Thermal Comfort - Pass

The applicant has also committed to the provision of LED lighting to all communal areas and Council requires that rainwater harvesting be installed for re-use in landscape planting.

A condition has been imposed on the consent to ensure that the BASIX and other ESD requirements are adhered to.

#### **State Environmental Planning Policy (Infrastructure) 2007**

SEPP (Infrastructure) 2007 has been considered in the assessment and the following key matters are of relevance to this proposal:

##### ***Clause 45 - Development likely to affect an electricity transmission or distribution network***

The proposal includes works within 5 metres of an exposed overhead electricity power line and draft conditions require the placement of power lines underground. The application was therefore referred to Ausgrid in accordance with clause 45 inviting comments about potential safety risks. A response was not received from Ausgrid, however subject to imposition of the standard conditions provided by Ausgrid for the previous proposal on parts of this site (DA-2015/342) in their letter dated 27 April 2015, the proposal is considered to satisfy the relevant requirements of clause 45.

##### ***Clause 87 - Impact of rail noise or vibration on non-rail development***

Before determining a development application for a residential building adjacent to a rail corridor consideration must be given to the Department of Planning's document titled "Development Near Rail Corridors and Busy Roads – Interim Guidelines". The proposal must also demonstrate that measures have been taken to ensure that noise impacts within the dwelling do not exceed the following LAeq (equivalent continuous noise levels):

(a) in any bedroom in the building—35 dB(A) at any time between 10.00 pm and 7.00 am; and

(b) anywhere else in the building (other than a garage, kitchen, bathroom or hallway) - 40dB(A) at any time.

The site is located within 50 metres of the Eastern Suburbs & Illawarra Rail Line and an Acoustic Report prepared by Acoustic Noise & Vibration Solutions (Amended date: 15th February 2016, Reference No. 2015/064) was submitted with the application. The acoustic report considers the impacts of rail noise and vibration on site and includes recommendations in Section 5 to ensure that the noise levels in the SEPP are achieved. To achieve these noise levels the windows and doors must be closed, and mechanical ventilation is therefore required (Note: this has been included in the applicant's BASIX Certificate). In this regard, the proposal is considered satisfactory subject to recommended conditions requiring implementation of the recommended measures and certification prior to Occupation.

### **State Environmental Planning Policy No 55—Remediation of Land**

The site and surrounding area has been used for a range of commercial and industrial land uses, and the site is therefore potentially contaminated. In accordance with the requirements of SEPP 55, a Detailed Site Investigation report prepared by Benviron Group (Job No. E787, Revision 1, 19 February 2016) was submitted with the application.

The report concluded that the site is suitable for the proposed residential development subject to recommended conditions. Council's Environmental Health Officers have assessed the report and have recommended standard conditions which have been included in the draft Notice of Determination.

Therefore, in accordance with Clause 7(1)(b) of SEPP 55, Council is satisfied that the land can be made suitable for the proposed residential use, and the proposed development satisfies the requirements & objectives of the SEPP.

### **State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development**

In accordance with clause 28(2) of this policy, the consent authority must take into consideration the following:

#### ***(a) The advice of the Design Review Panel (DRP)***

The proposal was considered by the Design Review Panel on 16 March 2016. The Panel found that the proposed height and scale of the development would sit relatively well within the evolving context of approved developments with a similar and acceptable scale, however they raised a number of issues which have been considered and addressed by the applicant. The Panel's key issues were:

- The proposed building separation distance is inadequate which, combined with the highly articulated built form, reduces the sense of separation within the central courtyard area of the development.
- Inadequate deep soil provision;
- Provision of communal open space at roof top level of the Willis Street building.
- Further consideration of sustainability measures
- Further details and consideration to be given to the ground floor level treatments to improve the public domain interface.
- Relocation of the garbage room to minimise service provision within the Willis Street frontage.



- Enlargement of Unit 4 by relocation of the entry lobby.
- Increasing the building separation distance to permit deletion of window screens for bedroom windows of units facing the internal courtyard;
- Appearance of the proposed screen wall to Willis Street.
- Guess Avenue facade design and materials are disconnected and require reconsideration.
- The rooftop elements are poorly designed

The applicant has addressed the Panels concerns. The key amendments made to the proposal include:

- The internal building elevations have been simplified through deletion of balconies and the building separation has been increased, improving the sense of space and openness within the central courtyard area of this, and adjoining, developments.
- 11.6% deep soil has been provided.
- The applicant has committed to installing LED lighting to communal areas, rainwater harvesting at roof level for reuse in landscaping and efficient water fixtures.
- Communal open space has now been provided at roof top level of the Willis Street building.
- Building design, material choice and landscape planting has been improved at the ground floor level to screen the raised ground floor level and to improve the interface with the public domain.
- Building separation distance has been increased between the units, permitting the deletion of screening, and is suitable in this case.
- Both Willis Street & Guess Avenue facades have been improved through reduced screening, simplification of facade treatments, and inclusion of vertical break as recommended by the Panel.
- Roof top design and materials have been amended and are acceptable.
- Entry lobbies have been enlarged and improved, and Unit 4 has also been enlarged.
- Additional planting provided at ground floor level Willis Street frontage.

***b) The design quality of the residential flat building when evaluated in accordance with the ten design quality principles.***

The application was accompanied by a Statement of Environmental Effects (SEE) prepared by Plan Urban Services that addresses the nine (9) design quality principles under the SEPP. In addition, the architect has prepared a design statement that has been submitted with the proposal. The position provided in the SEE is generally agreed with, and the 9 design quality principles have been considered in the assessment of the proposal and are found to be satisfactory as indicated below.

***Principle 1 – Context and neighbourhood character***

The area is undergoing a transition from an industrial to high density mixed use area containing retail, commercial and residential uses to take advantage of the proximity to the railway station. The design is generally consistent with the adjoining approved developments, and the desired future character of the area in terms of height, bulk and scale.

***Principle 2 – Built form and scale***

The building height is consistent with surrounding approved developments and generally consistent with Council's LEP requirements. The scale of development when viewed from the street frontages is consistent with adjoining approved developments and was supported by Council's Design Review Panel (DRP). The proposed buildings have been amended to address the built form issues raised by the DRP and Council, specifically with regards to design and building separation. The separation distance between the two proposed buildings is generally compliant with the SEPP and is adequate to ensure a good level of privacy, amenity and outlook is provided for future residents. The amended

proposal is satisfactory, with appropriate use of articulation to the facades via the incorporation of balconies, pedestrian entries at ground level, upper level voids and a range materials which adds visual interest to the facades.

#### *Principle 3 - Density*

The proposed FSR exceeds that permitted by RLEP 2011, however the density is similar to adjoining and nearby developments and the applicant has submitted a Clause 4.6 variation which is supported in this case. Furthermore, the Council's DRP agreed that the density would be acceptable subject to resolution of the central courtyard, ground floor layout, deep soil provision and communal open space issues identified by them. These issues have been fully addressed by the applicant and the proposal is therefore acceptable in this regard.

#### *Principle 4 – Sustainability*

The application has been amended to include a deep soil landscape zone along the sites street frontages and within the site. Solar access is maximised to dwellings particularly given the orientation of the buildings and internal layout of the units, with the majority of dwellings receiving northern or western sunlight. Communal open space has been provided at roof top level of both buildings to ensure that residents have access to communal open space which receives adequate sunlight at mid-winter, and a BASIX certificate also confirms the provision of appropriate energy efficiency measures within the development. Furthermore, the applicant has committed to the installation of LED lighting in the communal areas and the provision of rainwater harvesting for watering plants within the communal areas.

#### *Principle 5 - Landscape*

The proposal includes deep soil landscape planting at both street frontages, as well as a 90m<sup>2</sup> deep soil area located along the sites eastern boundary to permit mature trees to grow within the central courtyard areas of the sites. Planting is also provided at podium and roof top levels. The proposed landscape areas will be complemented by planting within the public domain, and will complement the building, screen the building from adjoining properties, and contribute to the streetscape and locality.

#### *Principle 6 - Amenity*

The proposal satisfies the cross ventilation requirements of the SEPP and meets the objectives of the solar access requirements of the SEPP. The applicant has amended the plans to increase the number of kitchens benefiting from cross-ventilation and natural ventilation to the kitchens, and the increased separation distance between the two buildings results in a high quality central communal open space area for the benefit of residents (which also removes the need for fixed screens to be provided to the bedroom windows). The site includes generous roof top and podium communal open space areas, and the lobby's have been improved and provide a high quality entrance to the development. The units and rooms are of adequate size and dimensions as required by the SEPP, and storage has also been provided in accordance with SEPP 65. The built form at both street frontages has been reorganised to improve the building's relationship with the public domain, benefiting the amenity of pedestrians and users of the surrounding public domain. Overall, the amended proposal has significantly improved the level of amenity that will be afforded to future residents (as well as future residents of adjoining sites). The proposal is therefore considered to provide a good standard of amenity.

#### *Principle 7 - Safety*

The proposal has been amended to remove concealment opportunities, and ensure that ground floor units and the lobbies directly overlook the public domain. Access to the car park is secure, and security access points are provided at several points to gain access to the lift lobby. Suitable lighting will be

provided, and the proposed design is satisfactory in this regard.

*Principle 8 - Housing diversity and social interaction*

The site is well located near a railway station and the proposal includes a variety of apartment sizes and layouts. The proposal includes 11.7% of 3 bedroom units and therefore satisfies the unit mix requirement in RDCP 2011 and providing a good variety of unit sizes for a diverse range of families. The proposal is therefore satisfactory in this regard.

*Principle 9 - Aesthetics*

*The amended proposal includes a range of materials, colours and finishes is proposed to provide for a satisfactory contemporary development in the context of the site and the Wolli Creek locality. The proposal is therefore considered comply with this principle.*

(c) *The Apartment Design Guide*

The proposal has been assessed against the Apartment Design Guide (ADG). The proposed development is considered to have performed adequately in respect to the objectives and design criteria contained within the ADG. The relevant issues are discussed below:

CLAUSE	DESIGN CRITERIA	COMMENTS	COMPLIES										
3J - Bicycle and car parking	<p>As per Guide to Traffic Generating Developments, or per council requirement, whichever is less.</p> <p>Parking provided off street.</p> <p>* 0.6 spaces / Studio or 1 bed = (21 x 1 bed) = 12.6 = 13</p> <p>* 0.9 spaces / 2 bed = (39 x 2 bed) = 35.1 = 35</p> <p>* 1.4 spaces / 3 bed = (8 x 1.4) = 11.2 = 11</p> <p>* 1 x Visitors / 5 units = 68/5 = 13.6 = 14</p>	<p>Total Required = 73 spaces.</p> <p>Total Provided = 74 spaces. This is 1 space in excess of the ADG however 16 spaces less than the requirement of RDCP 2011 and acceptable in this case.</p>	Yes.										
4D – Apartment size and layout	<p>Minimum internal areas:</p> <table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>35m<sup>2</sup></td></tr><tr><td>1 bedroom</td><td>50M<sup>2</sup></td></tr><tr><td>2 bedroom</td><td>70m<sup>2</sup></td></tr><tr><td>3 bedroom</td><td>90m<sup>2</sup></td></tr></table> <p>Internal areas includes only one bathroom. Additional bathrooms increase area by 5m<sup>2</sup> each.</p> <p>Further bedrooms increase minimum internal area by 12m<sup>2</sup> each.</p>	Apartment type	Minimum internal area	Studio	35m <sup>2</sup>	1 bedroom	50M <sup>2</sup>	2 bedroom	70m <sup>2</sup>	3 bedroom	90m <sup>2</sup>	<p>All unit sizes comply with the ADG.</p>	Yes
Apartment type	Minimum internal area												
Studio	35m <sup>2</sup>												
1 bedroom	50M <sup>2</sup>												
2 bedroom	70m <sup>2</sup>												
3 bedroom	90m <sup>2</sup>												

4C – Ceiling heights	Minimum ceiling heights:			All floor to ceiling heights comply with these requirements.	Yes
	Habitable	2.7m			
	Non-habitable	2.4m			
	Two storey apartments	2.7m main living 2.4m first floor, area < 50% of apartment area			
	Attic spaces	1.8m at edge 30deg min slope			
	Mixed use area	3.3m for ground and first floor			
3F Visual Privacy	Min separation - side & rear boundaries:			<u>Levels 1 - 4</u> * 15.7m - between habitable and non-habitable rooms. Exceeds minimum 9m required. * 16.8-17.5m between habitable rooms. Exceeds minimum 12m required.  <u>Levels 5 - 9</u> * 15.7m between habitable rooms and non-habitable rooms. Exceeds minimum 13.5m required. * 16.8-17.5m between habitable rooms. This is less than the 18m required, however acceptable in this case. See Note 1 below.	Yes
	Building height	Habitable rooms and balconies	Non habitable rooms		Yes
	Up to 12m (4 storeys)	6m	3m		
	Up to 25m (5-8 Storeys)	9m	4.5m		
	Over 25m (9+storeys)	12m	6m		
	Buildings on the same site combine required building separations. Gallery treated as habitable space				Yes
					<b>NO</b> - however satisfactory in this case. (See Note 1 below)

<p>4A – Solar and daylight access</p>	<p>Living rooms + POS of at least 70% of apartments receive min 2hrs direct sunlight b/w 9am &amp; 3 pm mid-winter</p> <p>Max 15% apartments receive no direct sunlight b/w 9am &amp; 3pm mid-winter</p>	<p>65% of units receive in excess of 2 hours solar access to living and balconies, however 74% of units could be made to comply but the overall amenity of these units is higher with the proposed layout.</p> <p>Eight units (11.7%) receive no direct sunlight between 9am and 3pm at mid-winter, however these units will start to receive sunlight to their balconies after 3pm at mid-winter.</p>	<p><b>NO</b> - The proposal could be made to comply however the proposed unit layouts result in better overall amenity and the proposal is therefore satisfactory in this case. (See Note 2 below).</p> <p>Yes</p>
<p>4F – Common circulation and spaces</p>	<p>Max apartments off a circulation core on a single level is eight.</p> <p>10 storeys and over, max apartments sharing a single lift is 40.</p>	<p>The maximum number of apartments off a circulation core is five (5), and the maximum number of units sharing a lift is 30 (with a maximum building height of 9 storeys).</p>	<p>Yes</p>

4E – Private open space and balconies	Primary balconies as follows:		All units comply with these requirements.	Yes										
	Dwelling type	Minimum area			Minimum depth									
	Studio	4m²			-									
	1 bed	8m²			2m									
	2 bed	10m²			2m									
	3+ bed	12m²			2.4m									
	Min balcony depth contributing to the balcony area is 1m.													
	Ground level, podium or similar -POS provided instead of a balcony: min area 15m² and min depth of 3m.													
4B – Natural ventilation	Min 60% of apartments are naturally cross ventilated in the first nine storeys of the building.  Ten storeys or > are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.  Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.		67.6%	Yes.										
4G – Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: <table><tr><td>Dwelling type</td><td>Storage size volume</td></tr><tr><td>Studio</td><td>4m²</td></tr><tr><td>1 bed</td><td>6M²</td></tr><tr><td>2 bed</td><td>8m²</td></tr><tr><td>3 bed</td><td>10m²</td></tr></table> At least 50% of the required storage is located within apartment		Dwelling type	Storage size volume	Studio	4m²	1 bed	6M²	2 bed	8m²	3 bed	10m²	The proposal can achieve compliance and a condition requires compliance prior to issue of the Construction Certificate.	Yes
Dwelling type	Storage size volume													
Studio	4m²													
1 bed	6M²													
2 bed	8m²													
3 bed	10m²													

**Note 1 - Building Separation Distance**

The proposal has been amended and the separation distances between the two buildings has been increased from 11.18m - 17.5m to between 15.7m and 17.5m. This exceeds the requirements of the ADG with the exception of minor variations between some of the habitable rooms on Levels 5, 6 & 7.

The separation distance proposed between these units is between 16.8m and 17.5m while the ADG requires 18m. The variation is acceptable in this case as all of the affected units are dual aspect units with their main living areas and balconies facing away from the opposite buildings (i.e. the living spaces all face the Guess Avenue or Willis Street). Only the bedrooms of units within the Guess Avenue building and bedrooms and kitchens of units within the Willis Street building face toward the internal courtyard and the other building. This internal unit layout combined with the amended landscape plan which incorporates larger tree planting within the podium and ground level landscape areas minimises privacy impacts. The reduced separation distance was generally supported by the Design Review Panel subject to the simplification of the facade design and creation of a sense of openness for the central courtyards (which will benefit occupants of this development as well as adjoining developments). The proposed separation distance is considered to be a superior outcome from an amenity perspective when compared to the use of privacy screens or stepping the lower and upper levels of the building. Therefore, the proposed variation is supported in this case.

## **Note 2 - Solar Access**

All 38 units located within the Guess Avenue Building (56% of the 68 units) achieve well in excess of 2 hours solar access to their private open space areas and living areas due to their north-eastern orientation. This will not be blocked in the future due to the future provision of public open space opposite the site. A total of 50 units (74%) within the Willis Street building could achieve in excess of 2 hours solar access at mid-winter, however due to overall amenity issues Council Officer's recommended that the units be redesigned with the kitchens facing the north-east and larger balconies and living spaces orientated to Willis Street (south-west). These units have a maximum depth of 9.5 metres and all contain open plan kitchen / living / dining areas which have dual frontage that will permit high levels of sunlight to penetrate the units throughout the year. The proposal could be made to comply strictly with the solar access requirements of the ADG, however this would have adverse impacts on privacy, building separation, and create other adverse amenity impacts. Therefore, the amended design is considered to result in a higher level of amenity and a better planning outcome and is supported in this case.

## **Rockdale Local Environmental Plan 2011**

<b>Relevant clauses</b>	<b>Compliance with objectives</b>	<b>Compliance with standard/provision</b>
2.3 Zone B4 Mixed Use	Yes	Yes - see discussion
2.7 Demolition requires consent	Yes	Yes - see discussion
4.3 Height of buildings	Yes	No - see discussion
4.4 Floor space ratio	Yes	No - see discussion
4.6 Exceptions to development standards	Yes - see discussion	Yes - see discussion
5.9 Preservation of trees or vegetation	Yes	Yes - see discussion
5.9AA Trees or vegetation not prescribed by development control plan	Yes	Yes
6.1 Acid Sulfate Soil - Class 3	Yes	Yes - see discussion
6.2 Earthworks		
6.4 Airspace operations	Yes	Yes - see discussion
6.6 Flood Planning Land	Yes	Yes - see discussion
6.7 Stormwater	Yes	Yes - see discussion
6.12 Essential services	Yes	Yes - see discussion



### 2.3 Zone B4 Mixed Use

The subject site is zoned B4 - Mixed Use under the provisions of Rockdale Local Environmental Plan 2011 (RLEP 2011). The proposal is defined as a Residential Flat Building which constitutes a permissible development only with development consent. The objectives of the zone are:

- To provide a mixture of compatible land uses.
- To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.

The proposed development is consistent with the objectives of the zone in that it provides a residential flat building in an area surrounded by recent approvals for RFB's and mixed use developments, and the site is located within 300m of the Wolli Creek Railway Station and nearby proposed future bicycle pathways along Arncliffe Street and Guess Avenue.

### 2.7 Demolition requires consent

The proposed development seeks consent for the demolition of the existing buildings and structures on the sites and hence satisfies the provisions of this Clause.

### 4.3 Height of buildings

A maximum height limit of 28m applies to the subject site. The proposal has a maximum height of 29.9m to its highest point, being the top of the lift overrun, therefore seeking to vary the height standard applicable to the subject site by a maximum of 1.9m (6.8%). The proposed height variation to the top of the roof for units is between 1m (3.6%) and 1.3m (4.6%) as the maximum height of the roof for units within the Guess Avenue Building is 29.3m and the maximum height of the roof for units within the Willis Street building is 29.0m.

The applicant has submitted a clause 4.6 variation to development standard in relation to the proposed above exceedance. The above has been addressed within Clause 4.6 of this report. The proposal is deemed to be consistent with the objectives of clause 4.3 - Height of Building for the reasons outlined within Clause 4.6.

### 4.4 Floor space ratio

A maximum FSR of 2.85:1 applies to the subject site. This equates to a maximum gross floor area (GFA) of 4,550.6m<sup>2</sup>. The proposal has a GFA of 5,447m<sup>2</sup> and a corresponding FSR of 3.42:1, which exceeds the maximum FSR by 896.4m<sup>2</sup> (19.7%).

The applicant has submitted a clause 4.6 variation to development standard in relation to the proposed variation to Clause 4.4 of RLEP 2011 which has been addressed in the consideration of Clause 4.6 in this report. The proposal subject to conditions is deemed to be consistent with the objectives of clause 4.4 - FSR.

### 4.6 Exceptions to development standards

Clause 4.6 allows a variation to a development standard subject to a written request by the applicant justifying the variation by demonstrating:

(3)(a) that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and

(3)(b) that there are sufficient environmental planning grounds to justify the variation.

In considering the applicant's submission, the consent authority must be satisfied that:

- (i) the applicant's written request is satisfactory in regards to addressing subclause (3) above, and
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives of the relevant zone.

5(a) The consent authority must also consider whether contravention of the development standard raises any matter of significance for State or Regional environmental planning, and

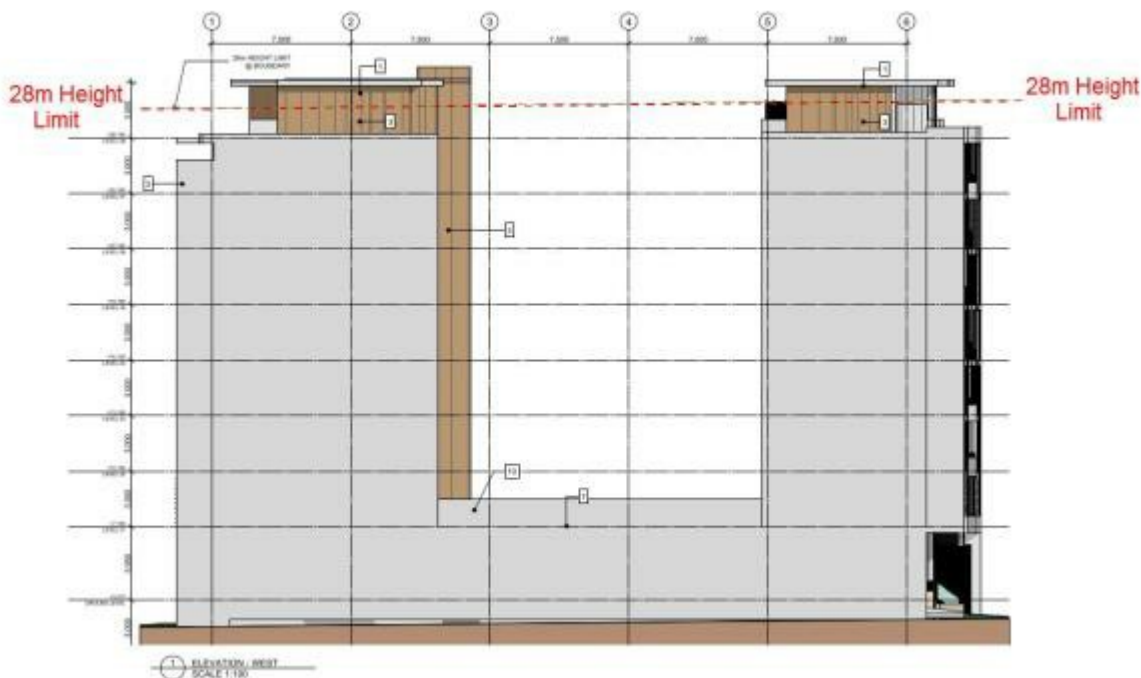
5(b) the public benefit of maintaining the development standard.

Variations to height and FSR have been assessed below.

It is noted that the proposal has further been assessed against the principles established by the Land and Environment court judgement *Four2Five v Ashfield Council* [2015] NSWLEC 90. The judgement established that justification was required in order to determine whether the development standard was unreasonable or unnecessary on grounds other than whether the development achieved the objectives of the development standard. Consideration is to be given to the particular site circumstances of the site and development.

#### Extent of Variations Proposed - Height & FSR

As noted within Clause 4.3 - Height of Buildings, the proposal seeks to vary the height standard applicable to the subject site. The proposal has a maximum height of 29.9m to the top of the lift overrun of the Guess Avenue Building which exceeds the maximum permitted height of 28m by 1.9m (6.8%) at its highest point. The top of the roof for units have a maximum height of 29.3m for the Guess Avenue Building and 29.0m for the Willis Street building, therefore exceeding the maximum 28m height by between 1 and 1.3m (Refer to **Figure 3**).



### ***Figure 3 - Building Height exceeding maximum 28m height limit***

The proposal also seeks to vary the FSR standard for the site as noted in Clause 4.4 - FSR. The proposal has a maximum FSR of 3.42:1 which exceeds the maximum permitted FSR of 2.85:1 by 896.4m<sup>2</sup> (19.7%).

The applicant has submitted a detailed justification to the proposed variations to both the height and FSR development standards in accordance with Clause 4.6 of RLEP 2011. Variations to height and FSR have been assessed below.

#### **A. Clause 4.3 - Height of Buildings**

A summary of the key rationale provided by the applicant in their clause 4.6 variation for the height development standard are as follows:

- The bulk of the building falls within the 28m height limit, so the variation is reflective of only a minor part of the structure.
- The ground floor level of the building is required to be raised for local flooding reasons.
- The parts of the building that exceed the height are setback from the main front building line.
- The proposal adheres to the objectives of the height standard, despite the variation to the height.
- The greater height will not result in additional adverse environmental amenity impacts to adjoining properties and the public domain.
- The proposed height respects the height and scale of surrounding developments;
- The greater height is not readily evident from the public domain;
- The proposal achieves a high quality built form which is consistent with other buildings in the area.
- The variation would not adversely impact on the environmental amenity nor the aesthetic character of the area.

The applicant's justification is generally agreed with. The area of non-compliance to the height is minor and is supported in this case in context of clause 4.6 for the following reasons:

- The proposed height variation is restricted to a minor portion of the top floor of the development which is setback from the main front building alignment. The location of the variation, design of the development and choice of materials allows the proposal to integrate with the adjoining developments and developments on the opposite side of Willis Street which are approved or under construction and provide for a cohesive streetscape appearance within Willis Street and Guess Avenue.
- The additional height proposed is minor and is not considered to be a detrimental environmental planning outcome as it does not give rise to adverse solar access, view loss or visual or acoustic privacy impacts on site or to neighbouring properties.
- The flooding constraints on site require the development to be raised, the flexible application of the Height standard is appropriate in this instance.
- The proposal is consistent with the objectives of Clause 4.3 – Height of Buildings of Rockdale LEP 2011, in that the development is a high quality urban form & retains appropriate sky exposure and solar access on site and to neighbouring properties.
- The proposal is consistent with the objectives of the B4 – Mixed Use zone, providing for a suitable residential use within a highly accessible location within the Wolli Creek town centre.
- The proposal is consistent with the aims of the Building Height control as specified within Part 2C of the Apartment Design Guide, ensuring the development responds to the desire future scale and character of Willis Street.

- The proposal demonstrates a high standard of architectural design that will provide an appropriate visual relationship with other new development in the area.

#### B. Clause 4.4 - FSR

A summary of the key rationale provided in the applicant's clause 4.6 in respect of the FSR development standard are as follows:

- The proposed non-compliance is similar to recent approvals for developments in the immediate vicinity of the site and the Wolli Creek Precinct. In this sense the control has been virtually abandoned by the Consent Authority where it relates to developments in and around the site.
- The bulk of the building generally complies with the envelope (height & setbacks) controls.
- The proposal is consistent with the objectives of the FSR standard.
- The greater FSR will not result in additional adverse environmental amenity impacts to adjoining properties and the public domain.
- A better outcome is achieved by varying the FSR standard for the development.
- The proposal generally complies with the ADG and relevant planning policies.
- The proposal fits well within the expected development outcomes and would be commensurate with the desired future character of the area.
- The variation would complement the future character of the locality when viewed in conjunction with the adjoining developments.
- The urban design response in the form of the proposed development achieves a high quality urban form which allows for increased housing opportunities and choice for future occupants without adversely impacting on the amenity of adjoining properties.
- The variation would not adversely impact on the environmental amenity nor the aesthetic character of the area.

The applicant's justification is supported in this instance, in context of clause 4.6 for the following reasons:

- The height and depth of the buildings is generally consistent in overall building height, depth and scale with the approved adjoining developments at No. 1-3 Willis Street & No. 15-21 Willis Street, as well as approved development located on the opposite side of Willis Street (including 13-21 Arncliffe Street which was approved by Council with an FSR of 3.41:1 and 2-10 Willis Street which was approved with an FSR of 3.4:1).
- The proposal retains an appropriate separation distance between buildings which ensures that the sense of space will result in a high level of amenity to the benefit of all residents. Furthermore, the proposal includes a deep soil planter zone centrally within the site to permit the planting of larger trees for the amenity of residents of the subject site and adjoining developments.
- The proposal has been amended to address the issues raised by the Design Review Panel and results in a development with a high level of amenity, maximising solar access, cross ventilation, outlook, and natural ventilation for kitchens to optimize internal amenity for future occupants.
- The redevelopment of the site will facilitate a use which is consistent with the objectives of the zone and built form which does not result in adverse environmental planning impacts upon adjoining or nearby properties in terms of overshadowing, aural and visual privacy, solar access, natural ventilation and views & vistas.
- The subject site has an overall area, depth & orientation, which enables the proposed development to align with the approved built form adjoining to the east and west, without resulting in adverse environmental planning impacts to surrounding approved development.
- The proposed development provides an appropriate built form, intensity and public domain

response on the subject site and contributes to the streetscape character of emerging development within Wolli Creek.

- The offer from the applicant to agree to a bond to ensure that future public domain works along the frontages of the subject site are undertaken. This will provide a demonstrable public benefit to the future local community.
- The proposal is consistent with the objectives of Clause 4.4 – FSR in that the development does not result in adverse amenity impacts on site, to neighbours or properties within the context of the site.
- The proposal provides a development that facilitates the orderly economic development of the site in an appropriate manner and results in the elimination of an isolated site by a development with a bulk, height, scale and mass which is not inconsistent with approved built forms on adjoining sites or other sites within close proximity to the subject site. The design of the development sits comfortably within the likely future built form context and future desired character for the area.
- The proposal is consistent with the objectives of Part 4 - Designing the Building, of the Apartment Design Guide, providing appropriate internal and external amenity, satisfactory environmental performance and an aesthetically pleasing built form on the subject site.

The public benefit of orderly development of this site outweighs strict adherence to the numeric standards presented by the height & FSR controls of RLEP 2011. The height and FSR development standards aforementioned are deemed unreasonable and unnecessary in this instance for the reasons noted above.

It is considered that in this instance, there are sufficient environmental planning grounds and public benefit in which to justify the contravention of the height & FSR standards for the site.

#### 5.9 Preservation of trees or vegetation

Council's Tree Management Officer has assessed the proposal and confirmed that the existing site trees are located within the footprint of the proposed building and that adequate compensation appears to be provided in the proposed landscape plan. The trees are not significant or landmark trees. The Officer raised no objection to the removal of the trees, and subject to planting in accordance with the approved Landscape Plan the proposal is satisfactory in relation to Clause 5.9 of LEP2011 and Clause 4.1.7 of DCP2011.

#### 6.1 Acid Sulfate Soil - Class 3

The site is affected by Class 3 Acid Sulfate Soils (ASS) and Development Consent is required as the proposal involves excavation works for the construction of two basement levels of car parking and temporary dewatering may lower the watertable. The Applicant has therefore submitted an Acid Sulfate Soils (ASS) Management Plan prepared by Benviron Group (Job No. E787/2, Issued 6 February 2016). Subject to imposition of the recommended conditions of consent requiring that works be carried out in accordance with the submitted ASS Management Plan, the proposal is consistent with the objectives and requirements of clause 6.1 of RLEP 2011.

#### 6.4 Airspace operations

The proposed development is affected by the Obstacle Limitation Surface (OLS) which is set at 51m to Australian Height Datum (AHD). The building height is at 32m to AHD and in this regard, it is considered that the proposed building will have minimal adverse impact on the OLS.

#### 6.6 Flood Planning Land

The site is affected by flooding and the proposal has therefore been designed to ensure that the driveway crossing, habitable floor levels and other relevant components of the development are in accordance with the requirements contained in Council's Flood Advice Letter. The plans have been assessed by Council's Development Engineer, and appropriate conditions of consent have been incorporated in the draft Notice of Determination, including compliance with an amended Flood Management Plan (FMP) prepared by SGC (Issue 2, dated 19 February 2016). Subject to compliance with these conditions, the proposal is satisfactory in regards to flooding.

#### 6.7 Stormwater

The applicant has submitted a stormwater concept plan which has been assessed by Council's Development Engineer. The proposal fails to include a rainwater tank or any stormwater treatment devices. On-site detention or retention is not required given the sites proximity to waterways therefore, a condition is proposed in the draft Notice of Determination requiring the submission and approval of a Stormwater Management System which complies with Council's DCP 2011 and Technical Specifications. The proposal is satisfactory subject to conditions.

#### 6.12 Essential services

Services will generally be available on the site. In addition, the proposal was referred to Sydney Water who confirmed by email dated 4 April 2016 that they raised no objection to the proposal subject to imposition of relevant conditions requiring their approval prior to issue of the Construction Certificate and that the applicant obtain a Section 73 Certificate. Additional conditions have been incorporated in the draft Notice of Determination requiring consultation with relevant utility providers in regards to any specific requirements for the provision of services on the site.

### **S.79C(1)(a)(ii) - Provisions of any Draft EPI's**

No relevant proposed instruments are applicable to this proposal.

### **S79C(1)(a)(iii) - Provisions of any Development Control Plan**

The following Development Control Plan is relevant to this application:

#### **Rockdale Development Control Plan 2011**

The application is subject to Rockdale DCP 2011. A compliance table for the proposed development is provided below:

<b>Relevant clauses</b>	<b>Compliance with objectives</b>	<b>Compliance with standard/provision</b>
4.1.1 Views and Vista	Yes	Yes - see discussion
4.1.3 Water Management	Yes	Yes
4.1.3 Flood Risk Management	Yes	Yes
4.1.3 Groundwater Protection	Yes	Yes
4.1.4 Soil Management	Yes	Yes
4.1.7 Tree Preservation	Yes	Yes
4.1.9 Lot size and Site Consolidation - isolated sites	Yes	Yes - see discussion
4.2 Streetscape and Site Context - General	Yes	Yes
4.2 Streetscape and Site Context - Fencing	Yes	Yes
4.3.1 Open Space and Landscape Design - Residential Flat Buildings	Yes	No - see discussion

<b>Relevant clauses</b>	<b>Compliance with objectives</b>	<b>Compliance with standard/provision</b>
4.3.2 Private Open Space - Residential Flat Building/Shoptop housing	Yes	No - see discussion
4.3.3 Communal Open Space	Yes	Yes - see discussion
4.4.2 Solar Access - Residential Flat Buildings and Shop Top Housing	Yes	No - see discussion
4.4.3 Natural Lighting and Ventilation - Residential	Yes	Yes
4.4.4 Glazing - General Controls	Yes	Yes - see discussion
4.4.5 Visual privacy	Yes	Yes - see discussion
4.4.5 Acoustic privacy	Yes	Yes - see discussion
4.4.5 Visual and Acoustic Privacy - Building Separation	Yes	Yes - see discussion
4.4.7 Wind Impact	Yes	Yes - see discussion
4.5.1 Social Equity - Housing Diversity and Choice	Yes	Yes - see discussion
4.5.2 Social Equity - Equitable Access	Yes	Yes
4.6 Parking Rates Residential Flat Buildings	Yes	Yes - see discussion
4.6 Car Park Location and Design	Yes	Yes
4.6 Vehicles Enter and Exit in a Forward Direction	Yes	Yes
4.6 Basement Parking - General	Yes	Yes
4.6 Driveway Widths	Yes	Yes
4.6 Basement Parking - Residential Flat Buildings	Yes	Yes
4.6 Access to Parking	Yes	Yes
4.6 Design of Loading Facilities	Yes	Yes
4.6 Car Wash Facilities	Yes	Yes
4.6 Pedestrian Access and Sustainable Transport	Yes	Yes
4.7 Air Conditioning and Communication Structures	Yes	Yes
4.7 Waste Storage and Recycling Facilities	Yes	Yes - see discussion
4.7 Service Lines/Cables	Yes	Yes
4.7 Servicing - Wolli Creek and bonar Street	Yes	Yes - see discussion
4.7 Laundry Facilities and Drying Areas	Yes	Yes
4.7 Letterboxes	Yes	Yes - see discussion
4.7 Storage Areas	Yes	Yes - see discussion
4.7 Hot Water Systems	Yes	Yes
5.2 RFB - Site Coverage	Yes	No - see discussion
5.2 RFB - Building Design	Yes	Yes
5.2 RFB - Building Entry	Yes	Yes
5.2 RFB - Lift Size and Access	Yes	No - see discussion
7.1.2 Wolli Creek Vision	Yes	Yes
7.1.3 Wolli Creek Structure Plan	Yes	Yes
7.1.4 Wolli Creek Land Use Strategy	Yes	Yes - see discussion
7.1.5 Wolli Creek Road Network and Vehicular Access	Yes	Yes
7.1.6 Wolli Creek Open Space and Movement	Yes	Yes
7.1.8 Wolli Creek Street Character and Setbacks	Yes	Yes
7.1.8 - Wolli Creek Mixed Use Street Frontage	Yes	Yes



Relevant clauses	Compliance with objectives	Compliance with standard/provision
7.1.9 Wolli Creek - Environmental Management	Yes	Yes

#### 4.1.1 Views and Vista

The proposal incorporates an additional site (No. 7 Willis Street) to the previous approval (DA-2015/342). The new site is located adjacent to, and nearby, recently approved residential flat developments that are of similar nature and scale to the current proposal, and no longer leaves an isolated site. The proposal includes some variations to the height and density requirements for the site, however it has been amended to comply with the key recommendations provided by the Design Review Panel and the amended proposal is considered to complement the changing character and scale of development in the locality. Therefore, the proposal will have minimal adverse impact on the surrounding views enjoyed by current and future adjacent developments.

#### 4.1.9 Lot size and Site Consolidation - isolated sites

The site has a 36.635m frontage to both Guess Avenue and Willis Street, and therefore exceeds the minimum 24m frontage requirement.

#### 4.3.1 Open Space and Landscape Design - Residential Flat Buildings

The proposal includes 170m<sup>2</sup> of deep soil planting and therefore provides 10.7% landscaped area. This does not meet the minimum 15% required by RDCP 2011, however the planting is provided at the site frontages and within the central area between the two buildings which will permit the planting of a significant tree centrally within the courtyard area. The proposal also includes an additional 692m<sup>2</sup> of landscape planting at podium level. Therefore, the variation to the proposal meets the objectives and is acceptable in this case.

#### 4.3.2 Private Open Space - Residential Flat Building/Shoptop housing

The proposal includes balconies which comply with the requirements of the ADG. The proposal is therefore acceptable in this regard.

#### 4.3.3 Communal Open Space

The amended proposal includes 692m<sup>2</sup> area of communal open space which is provided at podium level and the roof top level of each proposed building. The communal open space area exceeds the minimum 340m<sup>2</sup> required by RDCP 2011 (i.e. 5m<sup>2</sup> per dwelling), and all of the three spaces are accessible by lift. The roof top areas obtain high levels of direct solar access at mid-winter and this will ensure that adequate quality communal space is available during the winter months when the central courtyard area will receive limited direct sunlight. The landscape design of the communal open spaces optimise useability, privacy and social opportunity, and respect for neighbours' amenity, however further refinement is required and a condition is proposed requiring that an amended landscape plan be submitted to, and approved by, Council prior to issue of the Construction Certificate. Subject to recommended conditions, the communal areas are considered to provide a good level of amenity for future occupants of the development.

#### 4.4.2 Solar Access - Residential Flat Buildings and Shop Top Housing

Solar access and the amenity of units is found to be acceptable. Refer to the assessment of solar access under the ADG.

#### 4.4.4 Glazing - General Controls

The proposal complies with the requirements of BASIX, however includes many north facing windows to

Kitchens / living areas in the Willis Street building that will require inclusion of awnings above to minimise direct sunlight from entering the rooms in the warming months. This will be addressed by way of a condition of consent.

#### 4.4.5 Visual privacy

The proposal will not result in any adverse privacy impacts or overlooking toward adjoining properties. Privacy impacts between the two (2) proposed buildings has been minimised as discussed in response to SEPP 65 and is found to be acceptable.

#### 4.4.5 Acoustic privacy

There will be minimal adverse impact on the acoustic privacy of adjoining and surrounding properties as consideration has been given to the location and design of the building and landscaping in relation to private recreation areas to minimise noise intrusion on the amenity of adjoining properties. In addition, where the bedrooms of one dwelling shares its walls with a living room of another dwelling within the development the applicant has demonstrated that the walls separating the dwellings will achieve an Acoustical Star Rating of 5 in accordance with the Association of Australian Acoustical Consultants (AAAC). Therefore the proposal is satisfactory with regards to acoustic impacts.

#### 4.4.5 Visual and Acoustic Privacy - Building Separation

The proposal generally complies with the building separation requirements under the ADG and is found to be acceptable in this case.

#### 4.4.7 Wind Impact

The application was accompanied by a Pedestrian Wind Environment Report prepared by Windtech Consultants (No. WC394-02F02(REV0), dated 12 February 2016). The report considered the potential impacts to the critical outdoor areas within and around the development, including the podium level communal open space area, the communal open space area on the adjoining properties, the building entries and pedestrian footpaths to Guess Avenue and Willis Street.

The report found that the wind impacts to and from the development would be acceptable, as follows:

- wind impacts to the ground level trafficable areas were minimised and would be adequate due to significant shielding provided by proposed buildings on the subject site and surrounding buildings and proposed tree planting.
- ground level communal open space will not be adversely impacted by wind, particularly with the inclusion of proposed trees and shrubs.
- wind impacts to the Level 1 communal open space area were also found to be acceptable, subject to inclusion of the proposed boundary wall along the north-western and south-eastern boundaries which will provide effective wind mitigation. The impacts to the communal open space will be further minimised by planting of significant trees in accordance with the submitted landscape plan.
- wind impacts to the roof top level communal open space area on the Guess Avenue building was found to be acceptable subject to proposed setbacks and planting. The report was not updated to include the Willis Street building, however this area is similar to the Guess Avenue building and is acceptable subject to compliance with the recommended conditions (which include a requirement for perimeter planting).
- private balconies are not expected to be adversely impacted by wind due to devices incorporated into the design, including the recessing of the balconies into the built form, blade walls and balustrades. (Note: while the design has been amended, the position of the balconies has not changed, the blade features have generally been retained or increased, and the

balustrades have been retained).

Additional tree planting is also proposed within the public domain in accordance with Council's Public Domain Plan that will assist to minimise wind impacts within the public domain. The wind impacts are therefore considered to be satisfactory and in accordance with the relevant objective of RDCP 2011.

#### 4.5.1 Social Equity - Housing Diversity and Choice

Part 4.5 of RDCP 2011 contains objectives and controls that aim to ensure that apartments in mixed use developments are flexible, maximise housing choice and provide equality of access. The proposal is considered to satisfy the relevant objectives and requirements. Compliance with the key controls are discussed below:

- Provision of 10%-30% 1 bedroom units, 50-75% 2 bedroom units, and 10-20% 3 bedroom units. The proposed unit mix generally complies with the requirements of RDCP 2011. In this case, the proposal includes 11.7% x 3 bedroom units, 57.4% x 2 bedroom units and 30.9% x 1 bedroom units. The only minor variation is the 30.9% x 1 bedroom units which marginally exceeds the maximum 30% permitted. The proposal includes adequate 3 bedroom units and will permit a good social mix.
- Minimum 10% of units being adaptable in accordance with AS 4299, and barrier free access to be provided to a minimum of 20% of apartments.

Part 4.5.1 requires that a minimum of 7 dwellings be provided as adaptable units in accordance with AS 4299. The proposal includes 7 adaptable units, however 6 of these are 1 bedroom units and a condition will require that a mix of 1 and 2 bed units be provided as adaptable units similar to other developments. The proposal was also accompanied by an Access Compliance Report prepared by Vista Access Architects. The report concludes that the proposal will be capable of providing the required number of accessible units (and associated car parking spaces), that barrier free access will be provided to all units, and that the proposal will achieve compliance with the BCA and applicable codes / standards. The applicant has amended the plans to ensure that the accessible parking spaces are in close proximity to the lifts.

The proposal is therefore considered to satisfy the requirements of Part 4.5 of RDCP 2011 subject to inclusion of recommended conditions.

#### 4.6 Parking Rates Residential Flat Buildings

The amended proposal includes 74 car parking spaces, 10 motorcycle spaces, a dedicated car-wash bay and a dedicated loading bay for small rigid vehicles (SRV's). The proposal complies with the parking requirements of SEPP 65 / RMS and the car wash bay and loading bay requirements of RDCP 2011 as shown in the table below:

<b>Dwelling Size</b>	<b>DCP rate</b>	<b>RMS Rate</b>	<b>Provided</b>	<b>Compliance</b>
Studio / 1 bedroom	1 space/ dwelling = 21	0.6 space/ dwelling = 12.6	12 spaces	Yes
2 bedroom dwellings	1 space/ dwelling = 39	0.9 space/ dwelling = 35.1 (36)	36 spaces	Yes

3 bedroom dwellings	2 spaces/ dwelling = 16	1.4 space/ dwelling = 11.2 (12)	12 spaces	Yes
Visitor	1 space/5 dwellings = 13.4 = 14 (rounded up)	1 space/5 dwellings = 13.4 (14)	14 spaces	Yes
Motorcycle	1/15 units = 5 spaces		6 spaces	Yes
Bicycle	1/10 units = 7 spaces		Conditional	Yes
Car wash bay	16 or more dwellings = dedicated		1 space	Yes
Service / Loading Bay	1 SRV		1 SRV	Yes
<b>Total Car Parking</b>	<b>89</b>	<b>73</b>	<b>74 car spaces</b>	<b>Yes</b>

#### 4.7 Waste Storage and Recycling Facilities

The application includes a garbage chute for waste and provision of a 240L recycling bin at each floor level of each building. A garbage storage room is provided at ground floor level for each building which can accommodate a 1,100L bin and a number of 240L recycling bins. In addition, the proposal includes a separate waste storage room which is easily accessible from the street and will be used to store full waste bins ready for collection (as well as excess empty bins). A bulky waste storage area has also been provided which can be used for larger items such as furniture. This is consistent with Council's Technical Specifications and all recent approvals for developments in Willis Street. The proposed garbage rooms at ground level have adequate dimensions to accommodate the five x 1,100L bins and 17 x 240L recycling bins. The proposal is therefore satisfactory with regards to waste storage & recycling.

#### 4.7 Servicing - Wolli Creek and Bonar Street

A condition is included in the draft Notice of Determination requiring that the low voltage electricity cables be relocated underground.

#### 4.7 Letterboxes

The amended plans do not include letterboxes, however there is ample space adjacent to each of the building entries for the provision of letterboxes. Therefore, the proposal is acceptable subject to a condition requiring compliance with RDCP 2011.

#### 4.7 Storage Areas

The proposal includes designated storage areas both within the unit and at basement level and a condition is proposed requiring that the proposal include a minimum of 6m<sup>3</sup> for each one-bedroom unit, 8m<sup>3</sup> for each two-bedroom unit and 10m<sup>3</sup> for each three-bedroom unit in accordance with the ADG. Subject to inclusion of the recommended the proposal is considered to provide adequate storage that meets the objectives of the control.

## 5.2 RFB - Site Coverage

Part 5.2, Control 1 of RDCP 2011 requires that residential flat buildings have a maximum site coverage of 35%, however variations may be acceptable in flood prone areas. The site is affected by flooding and the proposal has a site coverage of 1,441.7m (90%). The proposal was amended to provide a 2m deep soil setback along the Willis Street frontage, a 6m wide deep soil zone along the sites eastern boundary (adjacent to No. 7 Willis Street), and a 1m deep soil zone along the Guess Avenue frontage. The proposed site coverage is similar to other approved and adjoining developments located on flood prone land within the Wolli Creek area, and the proposal also includes a 692m<sup>2</sup> landscaped area at podium and roof top levels, and the development provides in excess of the 7% deep soil required by the ADG. Therefore the proposal satisfies the objectives of this requirement and the variation is supported in this case.

## 5.2 RFB - Lift Size and Access

The proposal complies with Controls 31-36, Part 5.2 of RDCP 2011 with the exception of the provision of a single lift to Levels 7 - 8 of the Willis Street building instead of two (2) lifts being provided for units above the 6th floor as required by Control 34. The Willis Street building contains only four units per level and these upper two floors do not include accessible units. This complies with the ADG and the DRP did not raise any concerns with this non-compliance. Given the limited number of units and compliance with the ADG, the proposal is considered acceptable in this case subject to imposition of recommended conditions regarding minimum lift sizes.

### 7.1.4 Wolli Creek Land Use Strategy

Whilst the site is characterised as 'mixed use' within the land use strategy, this does not require that all buildings be designed as mixed-use buildings. Residential flat buildings are also permissible on these sites and within the B4 Mixed Use zone, and some developments on nearby and adjoining sites are also fully residential. In this case, it is unlikely that commercial tenancies would be feasible due to the sites location and visibility. Additionally, numerous other commercial tenancies are proposed at the intersection of Willis Street and Arncliffe Street under separate development applications, as well as within other nearby mixed use developments and Wolli Creek town centre. The proposal has been designed to ensure that street fronting dwellings are provided with elevated terrace areas which will provide passive surveillance of the street.

## **Clause 92 EP&A Regulation 2000 – Additional Matters**

Clauses 92-94 of the Regulations outline the matters to be considered in the assessment of a development application. Clause 92 requires the consent authority to consider the provisions of *AS 2601:1991 - Demolition of Structures* when demolition of a building is involved. In this regard a condition of consent is proposed to ensure compliance with the standard. All relevant provisions of the Regulations have been taken into account in the assessment of this proposal.

## **S.79C(1)(b) - Likely Impacts of Development**

Potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls. The impacts that have not already been addressed are as follows:

### Traffic & Parking

The site is located nearby Wolli Creek Railway Station and in proximity to bus stops for a number of bus routes linking Wolli Creek to the wider region. The application complies with the parking requirements in the ADG as well as the provision of motorcycle and bicycle parking facilities, loading bay and car wash bay in accordance with RDCP 2011. The proposal was also accompanied by a Traffic & Parking

Impact Assessment Report prepared by Traffic Solutions P/L which concluded that the proposal would not have a net increase in estimated peak hour traffic flows of approximately 22 vehicle trips in the morning and afternoon peaks, and therefore would not have an unacceptable impact on the surrounding road network. Therefore, the parking and traffic impacts of the proposal are considered to be minimal and satisfactory.

#### Social Impact

The amended proposal will activate and enhance the public domain, and includes residential units of adequate size and mix for the locality. The residential units have access to good public transport that will assist to reduce car use, and the proposal includes motorcycle and bicycle parking. The proposal also includes three (3) separate areas of communal open space, of which the roof top areas benefit from good solar access throughout the year. The proposal is not considered to result in any significant adverse social impacts and is satisfactory for the site.

#### Safety and Security

Safer by Design principles of crime prevention through environmental design are incorporated into RDCP 2011 and this aspect has been considered in the assessment of this proposal. The proposal has been designed as a secure development, with restricted access to private and communal areas. The proposal has been amended to further activate the Willis Street ground level to ensure adequate passive surveillance of both Willis Street and Guess Avenue is achieved (as well as the future public open space located on the opposite side of Guess Avenue), and the access doors from the car parking area to ground level units have been amended so that they are visible from the public spaces. Furthermore, draft conditions are proposed requiring the installation of CCTV cameras at relevant locations, the preparation of a lighting maintenance policy, use of graffiti resistant materials at ground floor level and provision of an intercom facility for residents.

#### Construction

Construction of the mixed use development involves excavation works, piling, and construction of the building. The impacts will be minimised through use of standard conditions relating to hours of construction, noise and vibration, dust suppression, traffic management, shoring of adjoining properties, and the like. A draft condition is also proposed requiring submission of a Construction Management Plan (CMP) that will address all relevant conditions and include measures to be implemented to minimise impacts to nearby residents / tenants and the general public during construction.

### **S.79C(1)(c) - Suitability of the site**

The relevant matters pertaining to the suitability of the site for the proposed development have been considered in the assessment of the proposal. Additional conditions of consent are proposed to further minimise any impacts on neighbouring properties. There are no known major physical constraints, environmental impacts, natural hazards or exceptional circumstances that would hinder the suitability of the site for the proposed development.

### **S.79C(1)(d) - Public submissions**

The development has been notified in accordance with the provisions of Rockdale DCP 2011. Council did not receive any submissions on this proposal.

### **S.79C(1)(e) - Public interest**

The proposal has been assessed against the relevant planning policies applying to the site having

regard to the objectives of the controls. As demonstrated in the assessment of the development application, the proposal will allow the development of the site in accordance with its environmental capacity. The proposed building is a high quality building that will add architectural value to the existing streetscape. Furthermore, the proposal does not create unreasonable impacts on surrounding properties. As such it is considered that the development application is in the public interest.

**S94 Contribution towards provision or improvement of amenities or services**

The proposal is subject to Council’s S94 Contributions Plan and a condition of consent has been included in the draft Notice of Determination requiring the payment of the relevant contributions.

*Civil Aviation Act, 1988*

The site is within an area that is subject to the Civil Aviation (Building Controls) Regulations 1988 made under the *Civil Aviation Act, 1988*.

**Civil Aviation (Building Control) Regulations 1988**

The Regulations require a separate approval from the Civil Aviation Safety Authority if a building or structure exceeds a prescribed height limit.

Section 5 Prohibition of the construction of buildings of more than 50 feet in height in specified areas

The subject site is affected by the 15.24m building height Civil Aviation Regulation. The proposed building height exceeds 15.24m and has a maximum height of 31.31m (to AHD), and therefore the proposal was referred to Sydney Airports for comment. Sydney Airports by letter dated 7 April 2016 approved the proposed height subject to conditions. The recommended conditions have been included in the draft Notice of Determination.

**Schedule 1 - Draft Conditions of consent**

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**General Conditions**

The following conditions restrict the work to the detail provided in the Development Application and are to ensure that the development is complete.

- 1. The term of this consent is limited to a period of five (5) years from the date of the original approval. The consent will lapse if the development does not commence within this time.
- 2. The development must be implemented substantially in accordance with the plans listed below, the application form and on any supporting information received with the application, except as may be amended in red on the attached plans and by the following conditions.

Plan/Dwg No.	Drawn by	Dated	Received byCouncil
DA1000 (Issue D) – Areas / Compliance	Urban Link Architecture	26/09/16	26/09/16
DA2000 (Issue D) – Site Plan	Urban Link Architecture	26/09/16	26/09/16



DA2001 (Issue D) – Site Analysis Plan	Urban Link Architecture	26/09/16	26/09/16
DA2100 (Issue D) – Basement 02	Urban Link Architecture	26/09/16	26/09/16
DA2101 (Issue D) – Basement 01	Urban Link Architecture	26/09/16	26/09/16
DA2102 (Issue D) – Ground Floor	Urban Link Architecture	26/09/16	26/09/16
DA2103 (Issue D) – Level 01	Urban Link Architecture	26/09/16	26/09/16
DA2104 (Issue D) – Level 02	Urban Link Architecture	26/09/16	26/09/16
DA2105 (Issue D) – Level 03	Urban Link Architecture	26/09/16	26/09/16
DA2106 (Issue D) – Level 04	Urban Link Architecture	26/09/16	26/09/16
DA2107 (Issue D) – Level 05	Urban Link Architecture	26/09/16	26/09/16
DA2108 (Issue D) – Level 06	Urban Link Architecture	26/09/16	26/09/16
DA2109 (Issue D) – Level 07	Urban Link Architecture	26/09/16	26/09/16
DA2110 (Issue D) – Level 08	Urban Link Architecture	26/09/16	26/09/16
DA2111 (Issue D) – Roof Plan	Urban Link Architecture	26/09/16	26/09/16
DA3000 (Issue D) – North Elevation	Urban Link Architecture	26/09/16	26/09/16
DA3001 (Issue D) – North Internal Elevation	Urban Link Architecture	26/09/16	26/09/16
DA3002 (Issue D) – East Elevation	Urban Link Architecture	26/09/16	26/09/16
DA3003 (Issue D) – South Elevation	Urban Link Architecture	26/09/16	26/09/16
DA3004 (Issue D) – South Internal Elevation	Urban Link Architecture	26/09/16	26/09/16
DA3005 (Issue D) – West Elevation	Urban Link Architecture	26/09/16	26/09/16
DA3006 (Issue D) – Streetscapes	Urban Link Architecture	26/09/16	26/09/16
DA3100 (Issue D) – Sections North-South	Urban Link Architecture	26/09/16	26/09/16
DA3101 (Issue D) – Sections North-South	Urban Link Architecture	26/09/16	26/09/16
DA3102 (Issue D) – Sections East-West	Urban Link Architecture	26/09/16	26/09/16

DA3103 (Issue D) – Ramp Detail Section	Urban Link Architecture	26/09/16	26/09/16
DA3104 (Issue D) – Driveway Detail Section	Urban Link Architecture	26/09/16	26/09/16

3. All new building work must be carried out in accordance with the provisions of the Building Code of Australia (BCA).
4. **A Construction Certificate must be obtained from Council or an Accredited Certifier prior to any building work commencing.**
5. The development must be implemented and all BASIX commitments thereafter maintained in accordance with BASIX Certificate Number 608747M\_03 other than superseded by any further amended consent and BASIX certificate.  
**Note:** Clause 145(1)(a1) of the Environmental Planning & Assessment Regulation 2000 provides: A certifying authority must not issue a construction certificate for building work unless it is satisfied of the following matters: -
  - (a1) that the plans and specifications for the building include such matters as each relevant BASIX certificate requires.**Note:** Clause 154B(2) of the Environmental Planning & Assessment Regulation 2000 provides: "A certifying authority must not issue a final occupation certificate for a BASIX affected building to which this clause applies unless it is satisfied that each of the commitments whose fulfilment it is required to monitor has been fulfilled."  
Note: For further information please see <http://www.basix.nsw.gov.au>.
6. The pergola / roofed areas of the communal open space areas at roof top level shall not be enclosed at any future time without prior development consent.
7. This approval is not to be construed as permission to erect any structure on or near a boundary contrary to the provisions of the Dividing Fences Act.
8. Excavation, filling of the site (with the exception of the area immediately under the building envelope), or construction of retaining walls are not permitted unless shown on the approved plans and authorised by a subsequent construction certificate.
9. The materials, finishes and façade details approved under condition 2 and any other relevant condition of this consent shall not be altered or amended at the construction certificate stage without a prior S96 application and approval under the EP&A Act.

## Development specific conditions

The following conditions are specific to the Development Application proposal.

10. Sydney Airport Corporation Limited (SACL) has approved the maximum height of the proposed building at 32 metres relative to Australian Height Datum (AHD). This height is inclusive of all vents, chimneys, aerials, TV antennae and construction cranes etc. No permanent or temporary structure (including construction cranes, etc.) is to exceed this height without further approval from Sydney Airport Corporation Limited.

Note: Under Section 186 of the Airports Act 1996, it is an offence not to give information to the Airport Operator that is relevant to a proposed "controlled activity" and is punishable by a fine of up to 50 penalty units.

For further information on Height Restrictions please contact SACL on 9667 9246.

11. **NSW Water**  
The following conditions imposed as General Terms of Agreement by NSW Water,

Department of Primary Industries, must be complied with:

#### A. General

A1. An authorisation shall be obtained for the take of groundwater as part of the activity. Groundwater shall not be pumped or extracted for any purpose other than temporary construction dewatering at the site identified in the development application. The authorisation shall be subject to a currency period of 12 months from the date of issue and will be limited to the volume of groundwater take identified.

A2. The design and construction of the building must prevent any take of groundwater after the authorisation has lapsed by making any below-ground levels that may be impacted by any water table watertight for the anticipated life of the building. Waterproofing of below-ground levels must be sufficiently extensive to incorporate adequate provision for unforeseen high water table elevations to prevent potential future inundation.

A3. Sufficient permanent drainage shall be provided beneath and around the outside of the watertight structure to ensure that natural groundwater flow is not impeded and:

- (a) any groundwater mounding at the edge of the structure shall be at a level not greater than 10 % above the level to which the water table might naturally rise in the location immediately prior to the construction of the structure; and
- (b) any elevated water table is more than 1.0 m below the natural ground surface existent at the location immediately prior to the construction of the structure; and
- (c) where the habitable structure is founded in bedrock or impermeable natural soil then the requirement to maintain groundwater flows beneath the structure is not applicable.

A4. Construction methods and material used in and for construction shall be designed to account for the likely range of salinity and pollutants which may be dissolved in groundwater, and shall not themselves cause pollution of the groundwater.

A5. DPI Water requires documentation (referred to as 'report') comprising measurements, maps, bore logs, calculations, results, discussion and justification for various matters related to the dewatering process. Information will be required at several stages: prior to construction commencing (initial report - which will accompany the application for the authorisation), at any time when an authorisation renewal is required or a significant change in activities occurs (intermediate report); and at the completion of dewatering and related operations (completion report). Reports need to be submitted to DPI Water at Parramatta Office, in a format consistent with electronic retrieval without editing restrictions; raw data should be presented in Excel spreadsheets without editing restrictions.

#### B. Prior to excavation

B6. The following shall be included in the initial report:

- (a) measurements of groundwater levels beneath the site from a minimum of three relevant monitoring bores, together with details of the bores used in the assessment including bore logs and three-dimensional identification information.
- (b) a map of the site and its immediate environs depicting the water table (baseline conditions) shown relative to the topography and approved construction footprint from the surface level and below. An assessment of the potential variation in the water table during the life of the proposed building together with a discussion of the methodology and information on which this assessment is based.

(c) details of the present and potential groundwater flow paths and hydraulic gradients in and around the site; the latter in response to the final volumetric emplacement of the construction.

(d) a schedule for the ongoing water level monitoring and description of the methodology to be used, from the date of consent until at least two months after the cessation of pumping. [DPI Water prefers that monitoring be undertaken on a continuous basis using automatic loggers in boreholes.]

B7. The Applicant shall assess the likely impacts of the dewatering activities on other groundwater users or structures or public infrastructure; this assessment will include an appropriate bore, spring or groundwater seep census and considerations relevant to potential subsidence or excessive settlement induced in nearby buildings and property, and be documented together with all calculations and information to support the basis of these in the initial report.

B8. Groundwater quality testing of samples taken from outside the footprint of the proposed construction, with the intent of ensuring that as far as possible the natural and contaminant hydrochemistry of the potential dewatered groundwater is understood, shall be conducted on a suitable number of samples and tested by a NATA-certified laboratory. Details of the sampling locations and the protocol used, together with the test results accompanied by laboratory test certificates shall be included in the initial report. An assessment of results must be done by suitably qualified persons with the intent of identifying the presence of any contaminants and comparison of the data against accepted water quality objectives or criteria for the intended dewatering purpose. In the event of adverse quality findings, the Applicant must develop a plan to mitigate the impacts of the hydrochemistry on the dewatered groundwater and present the details of all assessments and plans in the initial report.

B9. Groundwater quality testing generally in accordance with Clause 8, shall be undertaken on any anniversary or other renewal or alteration of any dewatering authorisation.

B10. A reasonable estimate of the total volume of groundwater to be extracted shall be calculated and included in the initial report; together with details and calculation methods for the parameters and supporting information to confirm their development or measurement (e.g. permeability predicted by slug-testing, pump-testing or other means).

B11. A copy of a valid consent for the development shall be provided in the initial report.

B12. The method of disposal of pumped water shall be nominated (i.e. reinjection, drainage to the stormwater system or discharge to sewer) and a copy of the written permission from the relevant controlling authority shall be provided in the initial report. The disposal of any contaminated pumped groundwater (sometimes called "tailwater") must comply with the provisions of the Protection of the Environment Operations Act 1997 and any requirements of the relevant controlling authority.

B13. Contaminated groundwater (i.e. above appropriate NEPM 2013 thresholds) shall not be reinjected into any aquifer. The reinjection system design and treatment methods to remove contaminants shall be nominated and included in the initial report and any subsequent intermediate report as necessary. The quality of any pumped water that is to be reinjected must be demonstrated to be compatible with, or

improve, the intrinsic or ambient groundwater in the vicinity of the reinjection site.

#### C. During excavation

C14. Engineering measures designed to transfer groundwater around and beneath the basement shall be incorporated into the basement construction to prevent the completed infrastructure from restricting pre-existing groundwater flows.

C15. Piping, piling or other structures used in the management of pumped groundwater shall not create a flooding hazard or induce mounding of groundwater. Control of pumped groundwater is to be maintained at all times during dewatering to prevent unregulated off-site discharge.

C16. Measurement and monitoring arrangements to the satisfaction of DPI Water are to be implemented. Weekly records of the volumes of all groundwater pumped and the quality of any water discharged are to be kept and a completion report provided after dewatering has ceased. Records of groundwater levels are to be kept and a summary showing daily or weekly levels in all monitoring bores provided in the completion report.

C17. Pumped groundwater shall not be allowed to discharge off-site (e.g. adjoining roads, stormwater system, sewerage system, etc.) without the controlling authority's approval and/or owner's consent/s. The pH of discharge water shall be managed to be between 6.5 and 8.5. The requirements of any other approval for the discharge of pumped groundwater shall be complied with.

C18. Dewatering shall be undertaken in accordance with groundwater-related management plans applicable to the excavation site. The requirements of any management plan (such as acid sulfate soils management plan or remediation action plan) shall not be compromised by the dewatering activity.

C19. The location and construction of groundwater extraction works that are decommissioned are to be recorded in the completion report. The method of decommissioning is to be identified in the documentation.

C20. Access to groundwater management works used in the activity is to be provided to permit inspection when required by DPI Water under appropriate safety procedures.

Following excavation

C21. Following completion of the dewatering operations, the applicant shall submit to DPI Water, Parramatta Office, the completion report which shall include:

- (a) detail of the volume of water taken, the precise periods and location of water taken, the details of water level monitoring in all of the relevant bores; and
- (b) a water table map depicting the aquifer's settled groundwater condition and a comparison to the baseline conditions; and
- (c) a detailed interpreted hydrogeological report identifying all actual resource and third party impacts, including an assessment of altered groundwater flows and an assessment of any subsidence or excessive settlement induced in nearby buildings and property and infrastructure.

C22. The completion report is to be assessed by DPI Water prior to any certifying agency's approval for occupation or use of the completed construction.

12. Ausgrid Conditions

(a) Prior to any development being carried out, the approved plans must be submitted to Ausgrid's local customer service office for approval to determine whether the development will affect Ausgrid's network or easements.

(b) The development must comply with both the Reference Levels and the precautionary requirements of the Draft Radiation Protection Standard for Exposure Limits to Electric and Magnetic Fields 0 Hz – 3 kHz (ARPANSA, 2006), for development in proximity to overhead power lines.

13. Car, motorcycle and bicycle parking spaces shall be provided and allocated in accordance with the Apartment Design Guide (ADG) and relevant Rockdale Development Control Plan (RDCP) 2011 requirements, and this shall be reflected in any subsequent strata subdivision of the development. The allocation shall occur at the following minimum rates:

<b>Dwelling Size</b>	<b>Required</b>
Studio / 1 bed dwellings = 21	0.6 spaces / dwelling
2 bedroom dwellings = 39	0.9 spaces / dwelling
3 bedroom dwellings = 8	1.4 spaces / dwelling
<b>Total Residential Car Parking Spaces</b>	<b>59 (min.) (including 7 accessible spaces)</b>
Visitor	1 space / 5 dwellings = 14 (including 1 accessible space)
Bicycle (Res. + Com.)	1/10 units = 7 spaces (Min.)
Motorcycle (Res + Com.)	1/15 units = 5 spaces (Min.)
Carwash Bay	16 or more dwellings = 1 space

*Notes:*

- *Visitor's parking spaces are to be restricted to Ground Floor Level and Basement Floor Level 01 only.*
- *All residential visitor spaces, car wash bays and loading bays shall be labelled as common property on the final strata plan for the site.*
- *Stacked parking spaces must only be allocated to a single residential unit.*
- *Car-wash bay must be connected to the Sydney Water sewer system in accordance with Sydney Water requirements.*
- *This parking allocation condition applies to any Strata Certificate issued with respect to a Consent issued in accordance with Section 81 (1)(A) of the Environmental Planning and Assessment Act 1979 or a Complying Development Certificate issued in accordance with Part 6 of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.*

14. Loading & Unloading (e.g. Removalist Vans / Trucks):

Loading and unloading shall be restricted as follows:

(a) Loading and unloading within the site shall be restricted to commercial vehicles not exceeding the size and mass description of Small Rigid Vehicle (SRV) from AS2890.2:2002. Commercial vehicles greater in size and mass than the SRV are not permitted to enter the site.

(b) All loading, unloading and transfer of goods to and from the loading bay and premises, including removalist vans, shall take place wholly within the property.

(c) Loading areas are to be used only for the loading and unloading of goods, materials etc. not for any other purpose.

15. Storage

Prior to issue of the Occupation Certificate:

(a) Accessible storage shall be provided for all apartments.

(b) The minimum storage area to be provided for each dwelling shall be in accordance with the requirements in the Apartment Design Guide (ADG), as follows:

- Studio / 1 bed unit = 6m<sup>3</sup>
- 2 bed unit = 8m<sup>3</sup>
- 3 bed unit = 10m<sup>3</sup>

(c) A minimum 50% of the storage space required by (b) above shall be provided in each apartment.

(d) The storage areas located within the basement levels shall be of metal construction (mesh and/or solid metal) and be provided with lock and key prior to issue of the Occupation Certificate.

16. Street Numbering & Letterbox Provision

(a) The buildings shall be provided with the following street numbers:

- 15 Guess Avenue, Wolli Creek; and
- 11 Willis Street, Wolli Creek.

(b) Mail boxes must be installed along the street frontage of the property boundary in accordance with Australia Post Guidelines and Controls 15, 16 and 17 of Part 4.7 of Rockdale DCP 2011 which requires the following:

- (i) to be integrated with building design and are preferably to be located in a covered area attached to or within the building;
- (ii) to be close to the major street entry and lockable; and
- (iii) to be visible from some of the dwellings (where possible), and located where residents can meet and talk, preferably with seating and pleasant ambience..

(c) Prominent house numbers are to be displayed, with a minimum number size of 150 mm in height for each number and letter in the alphabet.

17. Antenna / Satellite Dishes

The proposal may include the installation of a single master antenna for the development in accordance with Controls C1 and C2, Part 4.7 of RDCP 2011. No further antennas or satellite dishes may be installed without obtaining further approval (unless permitted as exempt development).

18. Design Quality

(a) In order to ensure the design quality excellence of the development is retained:

- i. A Registered Architect is to have direct involvement in the design documentation, contract documentation and construction stages of the project;
- ii. The design architect is to have full access to the site and is to be authorised by the applicant to respond directly to the consent authority where information or clarification is required in the resolution of design issues throughout the life of the project;
- iii. Evidence of the design architect's commission is to be provided to the Department prior to release of the Construction Certificate.



(b) The design architect of the project is not to be changed without prior notice and approval of the Council or Department.

19. Safer by Design

To maximise security in and around the development the following shall be incorporated into the development, with details to be approved by the Principal Certifying Authority prior to the issue of the Construction Certificate:

- (a) Monitored CCTV facilities shall be implemented throughout the development. Areas of focus include the basement car park (including entry and exits), main entry areas to the development and garbage/storage areas.
- (b) A lighting maintenance policy shall be established for the development. Lighting shall be designed to the Australian and New Zealand Lighting Standards. Australia and New Zealand Lighting Standard 1158.1 - Pedestrian, requires lighting engineers and designers to consider crime risk and fear when selecting lamps and lighting levels.
- (c) Security mirrors shall be installed within corridors and on blind corners to enable users to see around blind corners.
- (d) Graffiti resistant materials shall be used to ground level external surfaces.
- (e) Intercom facilities shall be installed into entry/exit points to enable residents to communicate and identify with people prior to admitting them to the development.

20. Public Domain Works

Prior to the commencement of construction above the ground floor, the applicant shall provide to Council a bank guarantee to the total value of \$100,000 to be used for the sole purpose of design and construction of public domain improvement works along the Willis Street frontage of the development site in accordance with the Rockdale Public Domain Technical Manual and Rockdale DCP 2011. This work is to include but not be limited to paving, street lighting and planting across the frontage of the site to Willis Street. These works are to be commenced by Council within 12 months of the issue of a Final Occupation Certificate. If works do not commence within this specified period, the bank guarantee shall be relinquished.

21. Parking spaces shall not be enclosed without further approval of Council. The enclosure of car spaces is not permitted unless the enclosure complies with the design requirements of AS2890.1.

22. The existing and future owners (Registered Proprietor) of the property will be responsible for the operation and maintenance of the Rain Tank system. The registered proprietor will:

- (i) permit stormwater to be temporarily detained by the system;
- (ii) keep the system clean and free of silt, rubbish and debris;
- (iii) maintain, renew and repair the whole or parts of the system so that it functions in a safe and efficient manner, and in doing so complete the same within the time and in the manner specified in written notice issued by the Council;
- (iv) carry out the matters referred to in paragraphs (ii) and (iii) at the proprietor's expense;
- (v) not make any alterations to the system or elements thereof without prior consent in writing of the Council;
- (vi) permit the Council or its authorised agents from time to time upon giving reasonable notice (but at any time and without notice in the case of emergency) to enter and inspect the land for compliance with the requirements of this clause;
- (vii) comply with the terms of any written notice issued by the Council in respect to the requirements of this clause within the time stated in the notice.

23. The existing and future owners (Registered Proprietor) of the property will be responsible for the efficient operation and maintenance of the pump system.

The Registered Proprietor will:

- (i) permit stormwater to be temporarily detained and pumped by the system;
  - (ii) keep the system clean and free of silt, rubbish and debris;
  - (iii) maintain, renew and repair the whole or parts of the system so that it functions in a safe and efficient manner; and in doing so complete the same within the time and in the manner specified in written notice issued by the Council;
  - (iv) carry out the matters referred to in paragraphs (ii) and (iii) at the proprietor's expense;
  - (v) not make alterations to the system or elements thereof without prior consent in writing of the Council.
  - (vi) permit the Council or its authorised agents from time to time upon giving reasonable notice (but at any time and without notice in the case of emergency) to enter and inspect the land for compliance with the requirement of this clause;
  - (vii) comply with the terms of any written notice issued by the Council in respect to the requirements of this clause within the time stated in the notice.
24. All wastewater and stormwater treatment devices (including drainage systems, sumps and traps) shall be regularly maintained in order to remain effective. All solid and liquid wastes collected from the device shall be disposed of in accordance with the Protection of the Environment Operations Act, 1997.
25. The rainwater tank shall be routinely de-sludged and all contents from the de-sludging process disposed – solids to the waste disposal and de-sludged liquid to the sewer.
26. Noise from mechanical ventilation & Air Conditioning
- (a) The use of the premises, building services, equipment, machinery and, ancillary fittings shall not give rise to an "offensive noise" as defined under the provisions of the Protection of the Environment Operations Act, 1997.
  - (b) The use of mechanical plant including air conditioners, fans, compressors, condensers, freezers, swimming pool or spa pumps (whether commercial or domestic) shall not cause sound pressure levels in excess of the criteria given in the NSW Industrial Noise Policy – 2000.
  - (c) Residential air conditioners shall not cause 'offensive noise' as defined by the Protection of the Environment Operations Act 1997 or contravene provisions of the Protection of the Environment (Noise Control) Regulation 2008 where emitted noise from a residential air conditioner can be heard within a habitable room in any other residential premises at night.
27. The visible light reflectivity from building materials used on the façade of the building shall not exceed 20% and shall be designed so as not to result in glare that causes any nuisance or interference to any person or place. A statement demonstrating compliance with these requirements shall be submitted to the satisfaction of the Certifying Authority prior to the issue of a Construction Certificate for the relevant stage of works.
28. The proposal shall include bicycle parking facilities located at ground floor or basement parking levels which shall be capable of accommodating at least ten (10) bicycles. The facility shall:

- be designed in accordance with AS2890.3:1993.
- be in the form of individual bicycle lockers or within a caged or gated secure area in accordance with RDCP 2011 - i.e. fully secured by way of a chain-mesh style fencing (or similar) with gate and key / padlock to restrict access, so as to minimise opportunity for theft of bicycles.

Construction of the secure bicycle storage area shall be completed prior to issue of the Occupation Certificate.

29. Off-Street Car Parking Design

(a) The off-street parking areas associated with the subject development shall be designed strictly in accordance with AS2890.1 and AS2890.6.

(b) Swept Path Analysis - Prior to issue of the Construction Certificate plans are required to be submitted to, and approved by, the Principal Certifying Authority (PCA) detailing the traffic, access and parking arrangements including swept path analysis. The swept path analysis for residential/commercial vehicles must use a recognised computer software package such as Autoturn and must demonstrate compliance with Section B3 of AS/NZS2890.1:2004. The swept path analysis shall be prepared for all areas where vehicles are accessing the basement ramp, and demonstrate that opposing two car movements comply with the Standards for B85 size design & B99 checking size vehicles.

(c) The driveway entry and ramp down to Level B0 must have a clear width of 6.1 metres on the plans that form part of the Construction Certificate (i.e. being 5.5m wide + 300mm clearance on either side).

30. Internal Height Clearance - Parking & Access

(a) Internal height clearance shall be designed throughout the car park and access driveway in accordance with AS2890.1 and AS2890.6.

(b) An amended Driveway Detail Section must be submitted to, and approved by, the Principal Certifying Authority (PCA) prior to issue of the Construction Certificate demonstrating that an internal height clearance of 3.5m has been achieved within the ground floor ramp and manoeuvring areas for the SRV.

31. All proposed lights shall comply with the Australian Standard AS4282 - 1997 "Control of the Obtrusive Effects of Outdoor Lighting". In this regard, the lighting of the premises shall be directed so as not to cause nuisance to the owners or occupiers of adjacent/adjoining premises or to motorists on adjoining or nearby roads.

32. Waste & Recycling

(a) A garbage chute and 1 x 240L recycling bin shall be provided at all residential levels within the development.

(b) The premises shall be capable of accommodating 3 x 1,100 Litre garbage bins for the Guess Avenue Building and 2 x 1,100L garbage bins for the Willis Street building, 10 x 240L recycling bins for the Guess Avenue Building and 8 x 240L recycling bins for the Willis Street Building (unless otherwise agreed in writing by Council's Waste Management Officer).

(c) Bulky Garbage Storage – the 'Bulky Waste Store' area shown in the approved Plan DA2102 must be clearly marked and sign posted prior to issue of the Occupation Certificate, and must be retained for the lifetime of the development for the storage of bulky garbage items (e.g. furniture, mattresses, etc.). The space must

have a minimum area of 10m<sup>2</sup>.

(d) Hot and cold water hose cocks shall be installed in each of the garbage rooms prior to issue of the Occupation Certificate.

33. (a) Flooring within the development shall achieve the following minimum equivalent Association of Australian Acoustical Consultants (AAAC) Star Rating within the below specified areas of the development:

- 3 Star for tiled areas within kitchens, balconies, bathrooms and laundries. Tiled flooring within corridors, living areas and bedrooms is not permitted.
- 4 Star for timber flooring in any area.
- 5 Star for carpet in any area.

(b) Walls within the development shall be constructed to satisfy the requirements of the Building Code of Australia.

(c) A report shall be submitted to the Principal Certifying authority for approval prior to the issue of the relevant Construction Certificate. The report is to include BCA requirements and details of floor/ceilings between residential apartments. Floor coverings within apartments shall be identified within the report.

(d) A suitably qualified acoustic engineer with MIE Australia membership or employed by a consulting firm eligible for AAAC membership is to certify that the details provided in the report required by (c) above satisfies the requirements of this condition, with the certification to be submitted to the Principal Certifying Authority for approval prior to the issue of the relevant Construction Certificate.

34. Services to be concealed

Details demonstrating compliance with this requirement shall be submitted to the Principal Certifying Authority (PCA) prior to the issue of the Construction Certificate.

(a) All vertical plumbing, other than roofwater heads and downpipes, shall be concealed within the brickwork of the building.

(b) If a electrical kiosk / substation is required, it must be located within the building as shown in the approved plans unless otherwise approved by a Section 96 Application. Landscape planting shall be provided in front of the substation so as not to detract from the overall appearance of the development and amenity of the streetscape.

(c) Fire booster valves must be located as shown in the approved plans unless otherwise approved by a Section 96 Application.

35. Public Place Activities - Design and Construction of Works in Public Places

The implementation of this Consent generates a need for works to be completed in a public place owned by Council.

#### *A. Design*

The scope of works is to be identified by Bayside Council. For identified works the preparation of the design and specification shall be undertaken in accordance with the design brief issued by Bayside Council, and the Engineering Drawing Guide: For Works In Association With Developments And Subdivisions and Engineering Specification Guide: For Works In Association With Developments And Subdivisions, or approved replacement documents. For identified works the

preparation of the design and specification shall be undertaken by a professional engineer, or other professional person, meeting the requirements of the design brief issued by Bayside City Council.

Note: To enable the scope of works to be determined and alignment levels issued a completed application must be submitted together with the required fee, under the Roads Act 1993 and/or the Local Government Act 1993 for the scope of works to be determined and alignment levels issued.

Note: The works required will be determined using the following criteria:

- i) To ensure that infrastructure construction and reconstruction required to facilitate both pedestrian and vehicular access into and around the site is provided.
- ii) To ensure that there is adequate construction and reconstruction of stormwater infrastructure to facilitate drainage of the site and minimise impacts to the site and adjoining properties as a result of the development.
- iii) To ensure that infrastructure relevant to the proposed development meets current standards and specifications.
- iv) To mitigate any impacts the development may have on traffic and pedestrian safety.
- v) To satisfy the requirements of any Development Control Plan, Public Domain Plan, Streetscape Manual or any other relevant Council Plan, including the Section 94 Contributions Plan.
- vi) To ensure there are adequate transitions between newly constructed infrastructure and existing infrastructure.

#### *B. Before Construction of public domain works*

A detailed design and specification for works to be carried out on public land (including a road or footpath) shall be completed and approved by Bayside Council pursuant to the Roads Act and/or Local Government Act prior to construction. All fees for inspection by Bayside Council shall be paid and the works approval for works in a public place activated.

Note: Approval under the Roads Act or Local Government Act cannot be granted by a Principal Certifying Authority or by a Private Certifier. Failure to obtain approval from Bayside Council may result in fines or prosecution.

#### *C. Before Occupation*

All works required in the public place as detailed by the approved design and specification must be completed before occupation of the development. All works-as-executed records for works establishing infrastructure assets to be handed over to Council for ongoing maintenance shall be provided to Bayside Council, and a handover certificate issued by Bayside Council.

### 36. Public Place Works - Pre-commencement Inspection

The implementation of this Consent generates a need for the adequate regulation of the works and activities in a public place.

#### *A. Before Public Place Works*

A Pre-commencement Inspection/meeting is to be convened by the holder of the Consent for the works approval for works in a public place. The meeting shall be held on-site a minimum 5 days prior to any demolition and/or construction activity and be held between the hours of 8.00 am and 4.30 pm Monday to Friday. The meeting must be attended by a representative of the Principal Certifying Authority, the builder/site manager of the building/civil construction company and supervising engineer, in addition to a representative of Bayside Council. The attendance of the owner is required when it is intended to use more than one builder/principal contractor

throughout the course of construction.

The purpose of the meeting is to:

- i) Ensure safe passage for pedestrians, Work and Hoarded Zones are maintained in accordance with Bayside Council requirements;
- ii) Check the installation and adequacy of all traffic management devices;
- iii) Confirm that the consents, approved design plans and approved specifications are retained on site.

Note: The consent for the works approval for works in a public place must be activated and all inspection fees must be paid to Bayside Council prior to the meeting. Please refer to Bayside Council Councils Adopted Schedule of Fees and Charges

37. Public Place Activities - Approvals Required under Roads Act or Local Government Act

*A. Before Construction*

No occupation or works are to be carried out on public land (including a road or footpath) or access provided over a public reserve adjacent to the development site without approval being obtained from Bayside Council and the necessary fee paid under the Roads Act 1993 and/or the Local Government Act 1993.

Note: Approval under the Roads Act or Local Government Act cannot be granted by a Principal Certifying Authority or by a Private Certifier. Failure to obtain approval from Bayside Council may result in fines or prosecution.

38. Public Place Activities - Site Management Plan

The implementation of this Consent generates a need for works on the development site and in a public place to be appropriately managed to ensure the protection of the environment and safety of the other public place users.

*A. Before Commencement of Works including Demolition*

A Site Management Plan must accompany the completed application form. If any demolition of infrastructure in a public place is to commence prior to the issue of a works approval for works in a public place the applicant must submit to Bayside Council a separate Demolition Site Management Plan. These plans must satisfy the Objectives and Controls of Bayside Council Development Control Plan 2011 relating to site management and must incorporate the following throughout demolition and construction:

- i) safe access to and from the site during construction and demolition
- ii) safety and security of the site, road and footpath area including details of proposed fencing, hoarding and lighting
- iii) method of loading and unloading excavation machines, building materials
- iv) how and where, construction materials, excavated and waste materials will be stored.
- v) methods to prevent material being tracked off the site onto surrounding roadways
- vi) erosion and sediment control measures

*B. During Works*

The site management plan measures must remain in place and be maintained throughout the period of works and until the site has been stabilised and/or restored in accordance with the works approval for works in a public place.

39. Any soil disposed of off-site shall be classified in accordance with the procedures in the NSW Environment Protection Authority's Environmental Guidelines: Waste

Classification Guidelines (2009).

40. Acoustic Report

The plans submitted with the Construction Certificate shall demonstrate that all of the recommendations contained in the acoustic report prepared by Acoustic Noise & Vibration Solutions P/L – Reference No. 2015-064, “Part 1 Acoustic insulation between floors & walls; Star Ratings; & Mechanical Ventilation System & Part 2 Acoustic Noise and Vibration near Railway Lines” dated the 15 February 2016, are adopted and will be implemented in the development.

### **Prior to issue of the construction certificate**

The following conditions must be completed prior to the issue of the Construction Certificate.

41. The following fees shall be paid to Council prior to the issue of a Construction Certificate. If payment is made after the end of the financial year, the amount shall be adjusted in accordance with Council's adopted fees and charges.
- i. A Footpath Reserve Restoration Deposit of \$29,970.00. This is to cover repair of any damages, or other works to be done by Council. This includes construction, removal, or repair as required to: kerb and guttering, existing or new driveways; paved areas and concrete footpaths. The deposit may be lodged with Council in the form of a Bank Guarantee (Any proposed Bank Guarantee must not have an expiry date). The deposit will not be returned by Council until works are completed and all damage is restored and all specified works are completed by Council.
  - ii. An environmental enforcement fee of 0.25% of the cost of the works.
  - iii. A Soil and Water Management Sign of \$17.50.
42. For work costing \$25,000 or more, a Long Service Leave Levy shall be paid. For further information please contact the Long Service Payments Corporation on their Helpline 13 1441.
43. An application for Boundary levels shall be made to Council's Customer Service Centre prior to issue of the Construction Certificate. All boundary works, egress paths, driveways and fences shall comply with this level.  
A fee is payable to Council for the determination of boundary levels. If payment is made after the end of the financial year, the amount shall be adjusted in accordance with Council's adopted fees and charges.
44. A Section 94 contribution of \$1,246,837.41 shall be paid to Council. Such contributions are only used towards the provision or improvement of the amenities and services identified below. The amount to be paid is adjusted at the time of payment, in accordance with the contribution rates contained in Council's current Adopted Fees and Charges. The contribution is to be paid prior to the issue of any compliance certificate for works above the floor level of the ground floor. (Payment of the contribution is not required prior to any separate construction certificates issued only for demolition, site preparation works and the construction of basement levels). The contribution is calculated from Council's adopted Section 94 contributions plan in the following manner:

Open Space	\$695,840.31
Community Services & Facilities	\$33,640.03



Town Centre & Streetscape Improvements	\$74,564.59
Wolli Creek Redevelopment Area Infrastructure	\$422,272.06
Plan Administration & Management	\$20,520.42

Copies of Council's Section 94 Contribution Plans may be inspected at Council's Customer Service Centre, Administration Building, 2 Bryant Street, Rockdale.

45. Landscape Plan - To be Amended

Prior to issue of the Construction Certificate, an amended Landscape Plans shall be submitted to, and approved by, Bayside Council's Landscape Architect (Fional MacColl - 9562 1666). The amended plan(s) shall be substantially in accordance with the landscape plans submitted with the application (Drawing No. LS00 (Issue B)), shall be updated to reflect the amended architectural plans, and shall ensure that at minimum the following additional items are addressed:

(a) Podium Level Communal Open Space

- BBQ & roofed seating area to be provided;
- Adequate tree planting to be provided / retained as recommended by the Design Review Panel (refer to Minutes of Meeting dated 16 March 2016).
- Children's play area to be provided.
- Fencing details at the boundary with No. 19-21 Willis Street (including proposed treatment to the internal and external face of the wall).

(b) Willis Street roof top communal open space - the following to be provided:

- roofed BBQ, sink & seating, roofed,
- cupboard for storing cleaning and gardening equipment.

(c) Guess Avenue roof top communal open space - The following to be provided:

- seating, BBQ & surface treatment to be provided generally as per Plan DA-2110 (Issue C).
- solid roofing to be provided over the BBQ & seating area,
- sink & cupboard for storing cleaning & gardening equipment.

(d) a minimum 800mm soil depth is provided at podium level and for any planter boxes,

(e) a fully automated drip irrigation system, approved by Sydney Water, shall be installed and maintained to ensure adequate water is provided to the podium and roof landscaping,

(f) podium landscaping and paved areas shall be drained into the stormwater drainage system.

46. The plans submitted with the Construction Certificate shall demonstrate compliance with the following requirements:

(a) The architectural plans submitted with the Construction Certificate must correspond with the amended / approved landscape plans (which are required to be submitted to, and approved by, Council prior to issue of the Construction Certificate).

(b) An intercom system to be provided within all units to permit visitors to access the building and car parking area.

(c) Any hot water systems/units located on the balcony of a dwelling shall be

encased in a recessed box with the lid/cover of the box designed to blend in with the building and all associated pipe work is to be concealed, as required by Control 19 of Part 4.7 of Rockdale DCP 2011.

(d) Ceiling Heights

(i) Ceiling heights for all habitable areas shall be a minimum of 2.7 metres as measured vertically from finished floor level to the underside of the ceiling.

(ii) Ceiling heights for all non-habitable areas shall be a minimum of 2.4 metres as measured vertically from finished floor level to the underside of the ceiling.

(e) Acoustic Measures - The noise reduction measures specified in the noise report prepared by Acoustic Noise & Vibration Solutions P/L – Reference No. 2015-064, “Part 1 Acoustic insulation between floors & walls; Star Ratings; & Mechanical Ventilation System & Part 2 Acoustic Noise and Vibration near Railway Lines” dated the 15 February 2016, must be shown in the Construction Plans. This includes all commitments, including measures to ensure compliance with the following LAeq (equivalent continuous noise levels) in accordance with SEPP (Infrastructure) 2007:

(i) in any bedroom in the building—35 dB(A) at any time between 10.00 pm and 7.00 am; and

(ii) anywhere else in the building (other than a garage, kitchen, bathroom or hallway) - 40dB(A) at any time.

(f) The ground level deep soil landscape zones located along both street frontages and the sites eastern boundary adjacent to No. 1-3 Willis Street must be naturally draining.

(g) Lift Size – All lift cars are to have minimal internal dimensions of 2.1m x 1.5m, must be capable of carrying stretchers and have lift door openings wide enough to enable bulky goods (white goods, furniture etc) to be easily transported.

(h) The windows to the breezeway / access corridors for both buildings must include operable windows to ensure natural ventilation of these spaces.

(i) Awnings shall be provided above the north facing kitchen, corridor and bedroom windows for Units 11, 14, 20, 23, 29, 32, 38, 41, 47, 50, 56, 59, 65 and 67 to minimise sun from entering these windows during the warmer summer months.

(j) Wind Report - Compliance with the submitted Pedestrian Wind Environment Report prepared by Windtech Consultants (No. WC394-02F02(REV0), dated 12 February 2016), including (but not limited to) the required boundary walls located along the north-western and south-eastern boundaries of the Level 1 (podium) communal open space areas must be included in the plans submitted with the Construction Certificate to ensure that wind impacts to this area are minimised in accordance with the submitted wind report.

(k) Inclusion of the following sustainability measures as agreed by the applicant :

- LED lighting to all communal areas;
- Rainwater harvesting for re-use in landscape planting.

(l) Mechanical ventilation - Any mechanical ventilation system for the basement car park must comply in all respects with the requirements of Australian Standard 1668, Part 1 & 2. If vents for this system are proposed within the podium level landscape

area they must be appropriately designed and screened by landscape planting.

(m) Windows to be provided above the doors for Units 7, 9, 12, 16, 18, 21, 25, 27, 30, 34, 36, 39, 43, 45, 48, 52, 54, 57, 61, 63, 66 and 67 to ensure that natural cross ventilation can be provided for these units as shown in the approved plans.

(n) Roofing shall be provided for the full depth of the balconies for units located on Level 7 to provide sun and weather protection.

(o) The aluminium louvre screens to the Willis Street and Guess Avenue facades (Item 9 on the Finishes Schedule provided in the elevation plans) shall be sliding louvres. They may not be fixed.

(p) The 13 pastel colour variation louvres provided to the Willis Street & Guess Avenue facades shall be constructed of powder-coated aluminium.

47. Prior to the issue of the Construction Certificate a certificate from a practicing Structural Engineer, registered with NPER, shall be submitted to Council stating that the subsurface structural components located on the boundary of the public road, including but not limited to the slabs, walls and columns, have been designed in accordance with all SAA Codes for the design loading from truck and vehicle loads.
48. Prior to issue of the Construction Certificate, a suitably qualified engineer is to certify that the structure can withstand the forces of floodwater, scour, debris and buoyancy in a 0.5% AEP flood event.
49. All building materials shall be flood resistant, or flood compatible to a height of 500mm above the 1% AEP flood, or flow level. All internal electrical switches, power points or similar utilities liable to flood damage shall be set at a minimum of 500mm above the 1% AEP flood, or flow level. Details shall be provided and approved prior to the issue of a construction certificate.
50. Compliance with Council's Development Control Plan (DCP) 2011 – Requirements for Access. Access in accordance with Australian Standard 4299 must be provided to and within seven (7) residential units, and between this units and their allocated carparking space. The allocated parking space will be located in close proximity to the access points of the building / lift of the building. A mix of one (1) and two (2) bedroom units are to be provided as adaptable unit(s), with a minimum of three (3) x 2 bedroom units. Please note that compliance with this condition requires the relevant unit(s) to be constructed to comply with all the essential (Type C) requirements of AS4299.

**Note:** Compliance with Council's Development Control Plan (DCP) 2011 – Requirements for Access and the Building Code of Australia does not necessarily guarantee that the development meets the full requirements of the Disability Discrimination Act (DDA) 1992. It is the responsibility of the applicant to make the necessary enquiries to ensure that all aspects of the DDA legislation are met.

51. Compliance with Council's Development Control Plan (DCP) 2011 - Requirements for Access. Compliance with this condition requires a minimum of eight (8) adaptable car parking spaces to be provided. The car spaces shall be identified and reserved at all times and be in the vicinity to lifts or as close as possible to public areas and facilities. The car spaces shall have minimum dimensions in accordance with AS 2890.6 and all spaces shall have an uninterrupted minimum headroom clearance of 2.5 metres free of all obstructions, such as service pipes, fittings etc for use by vehicles fitted with roof mounted wheelchair racks.

52. All low voltage street mains in that section of the street/s adjacent to the development shall be placed underground. This shall include any associated services and the installation of underground supplied street lighting columns where necessary. The applicant shall confer with Ausgrid to determine Ausgrid's requirements. Written confirmation of Ausgrid's requirements shall be obtained prior to issue Construction Certificate.

53. Sydney Water

The approved plans must be submitted to the Sydney Water Tap in™ online service to determine whether the development will affect any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met. The Sydney Water Tap in™ online self-service replaces our Quick Check Agents as of 30 November 2015.

Sydney Water's Tap in™ online service is available at:

<https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm>

54. Prior to issue of the Construction Certificate, a longitudinal driveway profile shall be submitted to Principal Certifying Authority for assessment and approval. The profile shall start in the centre of the road and be along the critical edge (worst case) of the driveway. Gradients and transitions shall be in accordance with Council's Code and the crest level shall also be constructed to protect the low level driveway from flooding. In this case, the driveway crest level must be 500mm above the 1 in 100 year flood level (refer to Council's flood advice letter). The profile shall be drawn to a scale of 1 to 25 and shall include all relevant levels, grades (%) and lengths.

55. The subsurface structure shall be designed with a waterproof retention system (ie tanking and waterproofing) with adequate provision for future fluctuation of the water table. The subsurface structure is required to be designed with consideration of uplift due to water pressure and "flotation" (buoyancy) effects. Subsoil drainage around the subsurface structure must allow free movement of groundwater around the structure, but must not be connected to the internal drainage system. The design of subsurface structure, tanking and waterproofing, and subsoil drainage shall be undertaken by a suitably experienced Chartered Professional Engineer(s). Design details and construction specifications shall be included in the documentation accompanying the Construction Certificate.

56. Construction Management Plan & Traffic Management Plan

A Construction Management Plan (CMP) shall be prepared in accordance with the requirements of all relevant regulatory approval bodies. Prior to the commencement of works the Certifying Authority shall be satisfied that the Construction Management Plan has obtained all relevant regulatory approvals. The Construction Management Plan shall be implemented during demolition, excavation and construction.

Prior to the issue of the relevant Construction Certificate, a Construction Traffic Management Plan (TMP) prepared by a suitably qualified person shall be submitted to and approved by the Certifying Authority. The Plan shall address, but not be limited to, the following matters:

- (a) ingress and egress of vehicles to the site;
- (b) loading and unloading, including construction zones;
- (c) predicted traffic volumes, types and routes; and
- (d) pedestrian and traffic management methods.

Copies of the CMP and TMP shall be submitted to Council.

57. Safety - Driveway entry / exit

Plans submitted with the Construction Certificate shall ensure that the front fences or ramp walls greater than 1200 mm high are setback 2.5m at the location of the driveway access point. The front fence or ramp wall shall then return at a splay to 2.0m to maintain adequate sight distance to pedestrians and vehicles.

58. If the development is likely to disturb or impact upon telecommunications infrastructure, written confirmation from the service provider that they have agreed to the proposed works must be submitted to the Principal Certifying Authority prior to the issue of a Construction Certificate or any works commencing, whichever occurs first; and the arrangements and costs associated with any adjustment to telecommunications infrastructure shall be borne in full by the applicant/ developer.

59. Geotechnical - Adjoining buildings founded on loose foundation materials

As the basement floors are being proposed closer to existing built structures on neighbouring properties, which may be in the zone of influence of the proposed works and excavations on this site, a qualified practicing geotechnical engineer must:

(a) Implement all recommendations contained in the report prepared by Geotechnique Pty Ltd- Ref: 12836/4-AA, dated 11 February 2016

(b) Provide a certificate that the construction certificate plans are satisfactory from a geotechnical perspective and

(c) Confirm that the proposed construction methodology

To prepare a Construction Methodology report demonstrating that the proposed construction methods (including any excavation, and the configuration of the built structures) will have no adverse impact on any surrounding property and infrastructure. The report must be submitted with the application for a Construction Certificate for the relevant stage of works.

(d) Inspect the works as they progress. The Inspections are to occur at frequencies determined by the geotechnical engineer.

(e) Where a Private Certifier issues the Construction Certificate a copy of the above documentation must be provided to Council, once the Construction Certificate is issued for the relevant stage of works.

The report must include an investigation to determine the design parameters appropriate to the specific development and site. This would typically include:

- Location & level of nearby foundations/footings (site and neighbouring)
- Proposed method of excavation
- Permanent and temporary support measures for excavation
- Potential settlements affecting footings/foundations
- Ground-water levels (if any)
- Batter slopes
- Potential vibration caused by method of excavation

- De-watering including seepage and off site disposal rate (if any)

*Note: A failure by contractors to adequately assess and seek professional engineering (geotechnical) advice to ensure that appropriate underpinning and support to adjoining land is maintained prior to commencement may result in damage to adjoining land and buildings. Such contractors are likely to be held responsible for any damages arising from the removal of any support to supported land as defined by section 177 of the Conveyancing Act 1919.*

60. Vibration Monitoring

Vibration monitoring equipment must be installed and maintained, under the supervision of a professional engineer with expertise and experience in geotechnical engineering, between any potential source of vibration and any building identified by the professional engineer as being potentially at risk of movement or damage from settlement and/or vibration during the excavation and during the removal of any excavated material from the land being developed.

If vibration monitoring equipment detects any vibration at the level of the footings of any adjacent building exceeding the peak particle velocity adopted by the professional engineer as the maximum acceptable peak particle velocity an audible alarm must activate such that the principal contractor and any sub-contractor are easily alerted to the event.

Where any such alarm triggers all excavation works must cease immediately. Prior to the vibration monitoring equipment being reset by the professional engineer and any further work recommencing the event must be recorded and the cause of the event identified and documented by the professional engineer.

Where the event requires, in the opinion of the professional engineer, any change in work practices to ensure that vibration at the level of the footings of any adjacent building does not exceed the peak particle velocity adopted by the professional engineer as the maximum acceptable peak particle velocity these changes in work practices must be documented and a written direction given by the professional engineer to the principal contractor and any sub-contractor clearly setting out required work practice.

The principal contractor and any sub-contractor must comply with all work directions, verbal or written, given by the professional engineer.

A copy of any written direction required by this condition must be provided to the Principal Certifying Authority within 24 hours of any event.

Where there is any movement in foundations such that damaged is occasioned to any adjoining building or such that there is any removal of support to supported land the professional engineer, principal contractor and any sub-contractor responsible for such work must immediately cease all work, inform the owner of that supported land and take immediate action under the direction of the professional engineer to prevent any further damage and restore support to the supported land.

*Note: Professional engineer has the same mean as in Clause A1.1 of the BCA.*

*Note: Building has the same meaning as in section 4 of the Act i.e. "building includes part of a building and any structure or part of a structure".*

*Note: Supported land has the same meaning as in section 88K of the Conveyancing Act 1919.*

61. Car Wash Bay

A dedicated car wash bay is required with a minimum width of 3.5m. A tap and power connection shall be provided for users of the car wash bay, and a sign shall be fixed saying 'Car Wash Bay'. The runoff shall be directed and treated as per Rockdale Technical Specification Stormwater Management. Details shall be provided with the plans accompanying the Construction Certificate.

62. Stormwater Drainage

Prior to the issue of the Construction Certificate, detailed drainage design plans for the management of stormwater are to be submitted to Council or an Accredited Certifier for assessment and approval. Design certification, in the form specified in Councils Technical Specification – Stormwater Management, and drainage design calculations are to be submitted with the plans. Council's Technical Specification – Stormwater Management sets out the minimum documentation requirements for detailed design plans.

The amended design shall address the following issues:

(a) In accordance with section 7.1.9 of Councils DCP 2011 where within the Wollie Creek area a development is required to capture the first 10-20mm of stormwater runoff and detained for re-use purposes, a rainwater tank is required. The measures put in place to re-use water, maintain groundwater quality, minimise at source generation of water pollutants, and convey stormwater flows through the site.

(b) The post development stormwater discharge from the site into the Guess Street should not exceed the pre development discharge and the discharge must be less than 50 l/s for the combined discharge of the site for the 50 year ARI event.

(c) The design shall identify, and discuss in detail, the measures put in place to re-use water, maintain groundwater quality, minimise at source generation of water pollutants, and convey stormwater flows through the site.

(d) The basement pump storage shall be sized to contain the total volume of runoff generated by the two hour 1 in 50 year storm assuming the pumps are not operating. This is equivalent to 10.6 m<sup>3</sup> per 100 m<sup>2</sup> of area being drained anticipated groundwater seepage capacity. All the pump storage volume is to be underground and to have minimum dual pumps.

(e) To implement any required drainage measures on the base of geotechnical Engineer's advice on the drainage under the floor slab and basement walls for a tanked basement structure.

*Note: The detailed plans are required to incorporate an oil interceptor for the driveway and carpark stormwater run-off in accordance with Rockdale Technical Specification Stormwater Management, section 7.5.4.*

63. All basement surface runoff shall be directed through a propriety oil and sediment filtration system prior to discharge. Details of the pit type, location, performance and manufacturer's maintenance and cleaning requirements shall be submitted to the



Certifying Authority, and approved, prior to the issue of the construction certificate for the relevant stage of construction.

The owners/occupiers are to undertake all future maintenance and cleaning to the manufacturer's requirements.

## **Prior to commencement of works**

The following conditions must be completed prior to the commencement of works.

64. A dilapidation survey shall be undertaken of all properties and/or Council infrastructure, including but not limited to all footpaths, kerb and gutter, stormwater inlet pits, and road carriageway pavements, in the vicinity which could be potentially affected by the construction of this development. Any damage caused to other properties during construction shall be rectified. A copy of the dilapidation survey and an insurance policy that covers the cost of any rectification works shall be submitted to the Accredited Certifier (AC) prior to issue of the Construction Certificate. The insurance cover shall be a minimum of \$10 million.
65. A Soil and Water Management Plan shall be prepared. The Plan must include details of the proposed erosion and sediment controls to be installed on the building site. A copy of the Soil and Water Management Plan must be kept on-site at all times and made available on request.

Soil and sedimentation controls are to be put in place prior to commencement of any work on site. The controls are to be maintained in effective working order during construction.

Council's warning sign for soil and water management must be displayed on the most prominent point on the building site, visible to both the street and site workers. The sign shall be erected prior to commencement of works and shall be displayed throughout construction.

66. A sign must be erected at the front boundary of the property clearly indicating the Development Approval Number, description of work, builder's name, licence number and house number before commencement of work. If owner/builder, the Owner/Builder Permit Number must be displayed.
67. A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:
  - i. stating that unauthorised entry to the work site is prohibited, and
  - ii. showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours. Any such sign is to be removed when the work has been completed. This condition does not apply to:
  - iii. building work carried out inside an existing building or
  - iv. building work carried out on premises that are to be occupied continuously (both during and outside working hours) while the work is being carried out.
68. Where it is necessary to import landfill material onto the site to fill the land to levels shown on the plans forming part of the consent, a certificate, prepared by a suitably qualified and experienced Contaminated Land Consultant, shall be submitted to Council being the Regulatory Authority prior to the commencement of works, certifying that the imported fill is suitable for the land use.
69. A hoarding or fence shall be erected between the work site and the public place when the work involved in the erection or demolition of a building:

i) is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or

ii) building involves the enclosure of a public place,

Where the development site adjoins a public thoroughfare, the common boundary between them must be fenced for its full length with a hoarding, unless, the least horizontal distance between the common boundary and the nearest part of the structure is greater than twice the height of the structure. The hoarding must be constructed of solid materials (chain wire or the like is not acceptable) to a height of not less than 1.8m adjacent to the thoroughfare.

Where a development site adjoins a public thoroughfare with a footpath alongside the common boundary then, in addition to the hoarding required above, the footpath must be covered by an overhead protective structure, type B Hoarding, and the facing facade protected by heavy duty scaffolding unless either:

(i) the vertical height above footpath level of the structure being demolished is less than 4m; or

(ii) the least horizontal distance between footpath and the nearest part of the structure is greater than half the height of the structure.

The overhead structure must consist of a horizontal platform of solid construction and vertical supports, and the platform must -

(i) extend from the common boundary to 200mm from the edge of the carriageway for the full length of the boundary;

(ii) have a clear height above the footpath of not less than 2.1m;

(iii) terminate not less than 200mm from the edge of the carriageway (clearance to be left to prevent impact from passing vehicles) with a continuous solid upstand projecting not less than 0.5m above the platform surface; and

(iv) together with its supports, be designed for a uniformly distributed live load of not less than 7 kPa

The 'B' Class hoarding is to be lit by fluorescent lamps with anti-vandalism protection grids.

Any such hoarding, fence or awning is to be removed when the work has been completed.

The principal contractor or owner builder must pay all fees and rent associated with the application and occupation and use of the road (footway) for required hoarding or overhead protection.

70. Toilet facilities must be available or provided at the work site before works begin and must be maintained until the works are completed at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site.

## **During demolition / excavation / construction**

The following conditions must be complied with during demolition, excavation and or construction.

71. A copy of the Construction Certificate and the approved plans and specifications must be kept on the site at all times and be available to Council officers upon request.
72. Hours of construction shall be confined to between 7 am and 6.30 pm Mondays to Fridays, inclusive, and between 8 am and 3.30 pm Saturdays with no work being carried out on Sundays and all public holidays.
73. Upon inspection of each stage of construction, the Principal Certifying Authority (or other suitably qualified person on behalf of the Principal Certifying Authority) is also required to ensure that adequate provisions are made for the following measures (as applicable), to ensure compliance with the terms of Council's approval:

- Sediment control measures
- Provision of perimeter fences or hoardings for public safety and restricted access to building sites.
- Maintenance of the public place free from unauthorised materials, waste containers or other obstructions.

74. Ground water shall only be pumped or drained to Council's stormwater system if the water is clean and unpolluted. The standard used to determine the acceptability of the quality of the water is the 'Australian and New Zealand Environment and Conservation Council - Australian Water Quality Guidelines for Fresh and Marine Waters 1992'.

Note: Prior treatment and/or filtration of the water may be necessary to achieve acceptable quality, including a non-filterable residue not exceeding 50 milligrams/litre or small quantities may be removed by the services of a Licenced Liquid Waste Transporter. It is an offence under the provisions of the Protection of the Environment Operations Act 1997 to pollute the stormwater system.

75. Demolition operations shall not be conducted on the roadway or public footway or any other locations, which could lead to the discharge of materials into the stormwater drainage system.
76. All waste generated on site shall be disposed of in accordance with the submitted Waste Management Plan.
77. A Registered Surveyor's check survey certificate or compliance certificate shall be forwarded to the certifying authority detailing compliance with Council's approval at the following stage/s of construction:
- After excavation work for the footings, but prior to pouring of concrete, showing the area of the land, building and boundary setbacks.
  - Prior to construction of each floor level showing the area of the land, building and boundary setbacks and verifying that the building is being constructed at the approved level.
  - Prior to fixing of roof cladding verifying the eave, gutter setback is not less than that approved and that the building has been constructed at the approved levels.
  - On completion of the building showing the area of the land, the position of the building and boundary setbacks and verifying that the building has been constructed at the approved levels.
  - On completion of the drainage works (comprising the drainage pipeline, pits, overland flow paths, on-site detention or retention system, and other relevant works) verifying that the drainage has been constructed to the approved levels, accompanied by a plan showing sizes and reduced levels of the elements that comprise the works.
78. All excavation and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards and guarded and protected to prevent them from being dangerous to life or property.

When excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building or an adjoining allotment of land, you shall:

- preserve and protect the building from damage and
- underpin and support the building in an approved manner, if necessary and

- iii. give notice of intention to excavate below the level of the base of the footings of a building on an adjoining allotment of land to the owner at least 7 days prior to excavation and furnish particulars of the excavation to the owner of the building being erected or demolished.

Note: The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this conditions allotment of land includes a public road and any other public place.

Works shall not encroach onto or over adjoining properties, including retaining walls, fill material or other similar works. Soil shall not be lost from adjoining sites due to construction techniques employed on the subject site.

79. When soil conditions require it:

- i. retaining walls associated with the erection or demolition of a building or other approved methods of preventing movement of the soil shall be provided, and
- ii. adequate provision shall be made for drainage.

80. Any new information discovered during remediation, demolition or construction works which has the potential to alter previous conclusions about site contamination, shall be notified to Council being the Regulatory Authority for the management of contaminated land.

81. All contractors shall comply with the following during all stages of demolition and construction:

- A Waste Container on Public Road Reserve Permit must be obtained prior to the placement of any waste container or skip bin in the road reserve (i.e. road or footpath or nature strip). Where a waste container or skip bin is placed in the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
- A Road Opening Permit must be obtained prior to any excavation in the road reserve (i.e. road or footpath or nature strip). Where excavation is carried out on the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
- A Hoarding Permit must be obtained prior to the erection of any hoarding (Class A or Class B) in the road reserve (i.e. road or footpath or nature strip). Where a hoarding is erected in the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
- A Crane Permit must be obtained from Council prior to the operation of any activity involving the swinging or hoisting of goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway. Permits can be obtained from Council's Customer Service Centre.
- A current Permit to Dewater or Pump Out a site must be obtained prior to the discharge of pumped water into the road reserve, which includes Council stormwater pits and the kerb and gutter. Permits can be obtained from Council's Customer Service Centre.

82. Adopt and implement all recommendations contained in the Acid Sulphate Soil Management Plan prepared by Benviron Group - Job No. E787/2 dated the 19 February 2016
83. The following conditions are necessary to ensure minimal impacts during construction:
- i. Building, demolition and construction works not to cause stormwater pollution and being carried out in accordance with Section 2.8 of Council's Stormwater Pollution Control Code 1993. Pollutants such as concrete slurry, clay and soil shall not be washed from vehicles onto roadways, footways or into the stormwater system. Drains, gutters, roadways and access ways shall be maintained free of sediment. Where required, gutters and roadways shall be swept regularly to maintain them free from sediment.
  - ii. Stormwater from roof areas shall be linked via a temporary downpipe to an approved stormwater disposal system immediately after completion of the roof area.
  - iii. All disturbed areas shall be stabilised against erosion within 14 days of completion, and prior to removal of sediment controls.
  - iv. Building and demolition operations such as brickcutting, washing tools or paint brushes, and mixing mortar shall not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.
  - v. Stockpiles are not permitted to be stored on Council property (including nature strip) unless prior approval has been granted. In addition stockpiles of topsoil, sand, aggregate, soil or other material shall be stored clear of any drainage line or easement, natural watercourse, kerb or road surface.
  - vi. Wind blown dust from stockpile and construction activities shall be minimised by one or more of the following methods:
    - a) spraying water in dry windy weather
    - b) cover stockpiles
    - c) fabric fences
  - vii. Access to the site shall be restricted to no more than two 3m driveways. Council's footpath shall be protected at all times. Within the site, provision of a minimum of 100mm coarse crushed rock is to be provided for a minimum length of 2 metres to remove mud from the tyres of construction vehicles.

An all weather drive system or a vehicle wheel wash, cattle grid, wheel shaker or other appropriate device, shall be installed prior to commencement of any site works or activities, to prevent mud and dirt leaving the site and being deposited on the street. Vehicular access is to be controlled so as to prevent tracking of sediment onto adjoining roadways, particularly during wet weather or when the site is muddy. Where any sediment is deposited on roadways it is to be removed by means other than washing and disposed of appropriately.

In addition builders / demolishers are required to erect a 1.5m high fence along the whole of the street alignment other than at the two openings. Such protection work, including fences, is to be constructed, positioned and maintained in a safe condition to the satisfaction of the Principal Certifying Authority, prior to the demolition of the existing structures and

commencement of building operations.

- viii. Any noise generated during construction of the development shall not exceed limits specified in any relevant noise management policy prepared pursuant to the Protection of the Environment Operations Act, 1997 or exceed approved noise limits for the site.
- 84. Council's warning sign for soil and water management must be displayed on the most prominent point on the building site, visible to both the street and site workers. The sign must be displayed throughout construction. A copy of the sign is available from Council.
- 85. All existing trees located within the site may be removed subject to replacement planting in accordance with the approved landscape plan.

### **Prior to issue of occupation certificate or commencement of use**

The following conditions must be complied with prior to issue of the Occupation Certificate or Commencement of Use.

- 86. An Occupation Certificate shall be obtained in relation to the approved works prior to any use or occupation of the building.
- 87. Where Council's park/reserve is damaged as a result of building work or vehicular building traffic, this area shall be restored by Council at the applicant's expense. Repairs shall be completed prior to the issue of the Occupation Certificate.
- 88. Strata By-Laws  
A by-law shall be registered and maintained for the life of the development, which requires that :
  - (a) balconies are not to be used as clothes drying areas, storage of household goods and air-conditioning units that would be visible from the public domain;
  - (b) an owner of a lot must ensure that all floor space within the lot complies with the acoustic conditions for floors specified in this consent;
  - (c) Notwithstanding subclause (b), in the event that a floor covering in the lot is removed, the newly installed floor covering shall have a weighted standardized impact sound pressure level not greater than L'nT,w 45 measured in accordance with AS ISO 140.7 and AS ISO 717.2. A test report from a qualified acoustic engineer employed by a firm eligible to membership of the Association of Australian Acoustical Consultants shall be submitted to the Owners Corporation within 14 days of the installation of the new floor covering demonstrating compliance with that standard. In the event that the standard is not complied with, the floor covering shall be removed and replaced with a floor covering that conforms to that standard in accordance with any directions given by the Owners Corporation.
  - (d) Chair lifts provided at the entrance lobbies to both buildings are to be maintained in good working condition at all times to ensure access is provided for people with a disability.
  - (e) Planter boxes located within the private courtyards of Units 1, 2, 3, 4 and 5 must be maintained as soft landscape area for the lifetime of the development. These areas may not be paved at any time.

Proof of registration of the By Law shall be submitted to Council prior to the issue of the Occupation Certificate.

89. Prior to issue of the Occupation Certificate, ground level surfaces are to be treated with anti-graffiti coating to minimise the potential of defacement. In addition, any graffiti evident on the exterior facades and visible from a public place shall be removed forthwith.

90. Flood Management Report

Prior to issue of the Occupation Certificate:

(a) The approved recommendations from the Flood Management Report (Issue 2) prepared by SGC dated 19 February 2016 shall be implemented.

(b) A summary page of the Flood Management Plan shall be displayed within each apartment.

*Note:* The Wolli Creek Precinct has a minimum floor level based on the 0.5% AEP Flood.

91. Lot Consolidation

All existing allotments are to be consolidated into one (1) allotment. A copy of the plan of consolidation must be provided to the Principal Certifying Authority prior to release of the Occupation Certificate.

92. All works within the road reserve, which are subject to approval pursuant to Section 138 of the Roads Act 1993, shall be completed and accepted by council.

93. Underground placement of cables

The underground placement of all low voltage street mains in that section of Willis Street and Guess Avenue adjacent to the development, and associated services and the installation of underground supplied street lighting columns, shall be carried out at the applicant's expense. The works shall be completed and Ausgrid's requirements shall be met prior to issue of the Occupation Certificate.

94. Substation Requirements

Where an electricity substation is required by Ausgrid, a final film survey plan shall be endorsed with an area having the required dimensions as agreed with Ausgrid over the location of the proposed electricity distribution substation site. The substation must be located internally within the building in the room labelled "Substation" on the approved Ground Floor Plan (Plan No. DA2102) unless otherwise amended by a Section 96 Application. The substation site shall be dedicated to Council as public roadway, or as otherwise agreed with Ausgrid. Ausgrid's requirements shall be met prior to release of the issue of the Occupation Certificate.

95. Vehicular Entry & Exit in Forward Direction

Vehicles shall enter and exit the site in a forward direction at all times. Prior to issue of the Occupation Certificate:

(a) A plaque with minimum dimensions 300mm x 200mm shall be permanently fixed to the inside skin of the front fence, or where there is no front fence a prominent place approved by the Principal Certifying Authority, stating the following: "Vehicle shall enter and exit the site in a forward direction at all times".

(a) The vehicular entry in Willis Street must be clearly marked and signposted ("entry" or "no entry") from the street and ("exit" or "no exit") internally.

96. Prior to completion of the building works, a full width vehicular entry is to be constructed to service the property. Any obsolete vehicular entries are to be removed and reconstructed with kerb and gutter. This work may be done using either a



Council quote or a private contractor. There are specific requirements for approval of private contractors.

97. The width of the double driveway at the boundary shall be a maximum of 6 metres.

98. Access to Basement Car Park

Prior to issue of the Occupation Certificate, the following shall be complied with:

(a) The gate for the basement shall be located in order to permit the queuing of one (1) vehicle when waiting to enter the basement garage.

(b) An intercom system shall be provided at the entrance to the car parking area. The system must be connected to all units to allow residents to provide access to the basement car park for visitors.

99. Seventy-four (74) off-street car spaces shall be provided in accordance with the submitted plan and shall be sealed and linemarked to Council's satisfaction prior to issue of the Occupation Certificate. The pavement of all car parking spaces, manoeuvring areas and internal driveways shall comply with Australian Standard AS3727 – Guide to Residential Pavements.

100. Prior to the issue of the Final Occupation Certificate, a Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water.

It is recommended that applicants apply early for the certificate, as there may be water and sewer pipes to be built and this can take some time. This can also impact on other services and building, driveway or landscape design.

Application must be made through an authorised Water Servicing Coordinator. For help either visit [www.sydneywater.com.au](http://www.sydneywater.com.au) > Plumbing, building and developing > Developing > Land development or telephone 13 20 92.

101. Prior to occupation, a registered surveyor shall certify that the driveway(s) over the footpath and within the property have been constructed in accordance with the approved driveway profile(s). The certification shall be based on a survey of the completed works. A copy of the certificate and a works-as-executed driveway profile shall be provided to Council if Council is not the Principal Certifying Authority.

102. Testing and evaluation of the wall insulation system and floor system is to be carried out at post construction stage by a suitably qualified acoustical engineer with MIE Australia membership or employed by a consulting firm eligible for AAAC membership to confirm compliance with conditions of this consent. A report is to be submitted to the PCA and Council, prior to the issue of the Occupation Certificate. The report is to include details & finishes of the walls and floors separating apartments. A report is to be submitted to the Principal Certifying authority prior to the issue of the Occupation Certificate.

103. Acoustic Report - Certification

(a) The noise reduction measures specified in the noise report prepared by Acoustic Noise & Vibration Solutions P/L – Reference No. 2015-064, “Part 1 & Part 2 Acoustic Noise and Vibration near Railway Lines” dated the 15 February 2016, shall be implemented into the development prior to issue of the Occupation Certificate.

(b) The development shall be constructed to ensure compliance with the following LAeq (equivalent continuous noise levels) in accordance with SEPP (Infrastructure) 2007:

(i) in any bedroom in the building—35 dB(A) at any time between 10.00 pm and

7.00 am; and

(ii) anywhere else in the building (other than a garage, kitchen, bathroom or hallway) - 40dB(A) at any time.

(c) The noise reduction measures specified in the report listed in (a) and the noise levels required by (b) above must be validated by a Certificate of Compliance prepared by the acoustic consultant and submitted to the Principal Certifying Authority (PCA) prior to the issue of an Occupation Certificate. If Council is not the PCA, a copy shall be submitted to Council concurrently.

104. Landscape Certification

Prior to issue of the Occupation Certificate a Landscape Architect shall provide a report to the certifying authority (with a copy provided to Council, if Council is not the principal certifying authority) stating that the landscape works have been carried out in accordance with the approved plans and documentation.

The certificate shall, amongst other matters, confirm compliance with the following:

- A minimum soil depth of 800mm is provided for planter beds on the podium and roof top terrace levels;
- A fully automated irrigation system has been installed to the podium landscaping;
- Podium landscaping and paved areas are drained into the stormwater drainage system.

The approved landscaping is to be maintained to the approved standard at all times.

105. Prior to occupation or use of the premises, a qualified mechanical engineer shall certify that the mechanical ventilation/air conditioning system complies in all respects with the requirements of Australian Standard 1668, Part 1 & 2.

106. Prior to issue of the Occupation Certificate, a chartered professional engineer shall certify that the tanking and waterproofing has been constructed in accordance with the approved design and specification. A copy shall be provided to Council if council is not the Principal Certifying Authority.

107. Prior to issue of the Occupation Certificate, a certificate from a Registered Surveyor shall be provided to the Principal Certifying Authority (PCA) certifying that the habitable/commercial floor level is constructed a minimum of 500mm above the 0.5% Annual Exceedance Probability (A.E.P) Flood Level. A copy of the certificate shall be provided to Council where Council is not the Principal Certifying Authority.

108. Prior to occupation a Chartered Professional Engineer shall certify that the stormwater system has been constructed in accordance with the approved plans and as required by Rockdale Technical Specification Stormwater Management. The certificate shall be in the form specified in Rockdale Technical Specification Stormwater Management and include an evaluation of the completed drainage works. A works-as-executed drainage plan shall be prepared by a registered surveyor based on a survey of the completed works. A copy of the certificate and works-as-executed plan(s) shall be supplied to the Principal Certifying Authority. A copy shall be provided to Council if Council is not the Principal Certifying Authority.

109. The underground garage shall be floodproofed to a minimum of 500mm above the 0.5% Annual Exceedance Probability flood level. The levels shall be certified by a registered surveyor prior to construction of the driveway or other openings.

110. The development shall comply with Rockdale Development Control Plan (DCP) 2011, and the Planning Considerations and Development Controls listed in the Flood

Advice letter issued by Council on 8 October 2014 (Ref: F08/691P04, 14/132032).

111. A positive covenant pursuant to the Conveyancing Act 1919 shall be created on the title of the lots that contain the stormwater / rainwater tank facility to provide for the maintenance of the facility.
112. The pump system, including all associated electrical and control systems, shall be tested and inspected by a suitably qualified and experienced person. Records of testing shall be retained and provided to the certifying hydraulic engineer and/or PCA upon request.
113. The drainage system shall be constructed in accordance with the approved drainage plans and any amendments in red. All stormwater drainage plumbing work shall comply with the NSW Code of Practice: Plumbing and Drainage and Australian Standard AS3500.

Drainage grates shall be provided at the boundary. Width of the drainage grates shall be in accordance with Rockdale Technical Specification Stormwater Management.

A silt/litter arrestor pit as detailed in Rockdale Technical Specification Stormwater Management shall be provided prior to discharge of stormwater from the site.

114. Signs shall be displayed adjacent to all stormwater drains on the premises, clearly indicating "Clean water only - No waste".
115. The owner of the premises is required to comply with the following requirements when installing a rainwater tank:
  - Inform Sydney Water that a Rainwater tank has been installed in accordance with applicable requirements of Sydney Water.
  - The overflow from the rainwater tank shall be directed to the storm water system.
  - All plumbing work proposed for the installation and reuse of rainwater shall comply with the NSW Code of Practice: Plumbing and Drainage and be installed in accordance with Sydney Water "Guidelines for rainwater tanks on residential properties.
  - A first flush device shall be installed to reduce the amount of dust, bird faeces, leaves and other matter entering the rainwater tank.

## **Roads Act**

116. Construction related activities must not take place on the roadway without Council approval.

Short-term activities (including operating plant, materials delivery) that reduce parking spaces, affect access to a particular route or prevent or restrict the passage of vehicles along the road must not occur without a valid Temporary Roadside Closure Permit.

Activities involving occupation of the parking lane for durations longer than allowed under a Temporary Roadside Closure Permit require a Construction Zone Permit and must not occur prior to the erection of Works Zone signs by Council's Traffic and Road Safety Section.

Permit application forms should be lodged at Council's Customer Service Centre

allowing sufficient time for evaluation. An information package is available on request.

117. Where applicable, the following works will be required to be undertaken in the road reserve at the applicant's expense:

- i) construction of a concrete footpath along the frontage of the development site;
- ii) construction of a new fully constructed concrete vehicular entrance/s;
- iii) removal of the existing concrete vehicular entrance/s, and/or kerb laybacks which will no longer be required;
- iv) reconstruction of selected areas of the existing concrete Footpath/vehicular entrances and/or kerb and gutter;
- v) construction of paving between the boundary and the kerb;
- vi) removal of redundant paving;
- vii) construction of kerb and gutter.

118. In addition to the works in the road reserve listed above, the following modification and/or improvement works to the road and drainage in Willis Street will be required to be undertaken at the applicant's expense:

(a) That the development shall comply with signage and road marking for following controls:

- (i) Parallel parking along the frontage of the property.

*Note:* Detailed plans of the works are required to be submitted to Council for assessment and approval pursuant to Section 138 of the Roads Act 1993, prior to the issue of the Construction Certificate and approved by the Traffic Committee.

119. All footpath, or road and drainage modification and/or improvement works to be undertaken in the road reserve shall be undertaken by Council, or by a Private Licensed Contractor subject to the submission and approval of a Private Contractor Permit, together with payment of all inspection fees. An estimate of the cost to have these works constructed by Council may be obtained by contacting Council. The cost of conducting these works will be deducted from the Footpath Reserve Restoration Deposit, or if this is insufficient the balance of the cost will be due for payment to Council upon completion of the work.
120. All driveway, footpath, or road and drainage modification and/or improvement works to be undertaken in the road reserve shall be undertaken in accordance with Council's Subdivision and Civil Works Construction Specification (AUS-SPEC 1). Amendment to the works specification shall only apply where approved by Council. Where a conflict exists between design documentation or design notes and AUS-SPEC 1, the provisions of AUS-SPEC 1 shall apply unless otherwise approved by Council.
121. This Roads Act approval does not eradicate the need for the Contractor to obtain a Road Opening Permit prior to undertaking excavation in the road or footpath.
122. Any driveway works to be undertaken in the footpath reserve by a private contractor requires an "Application for Consideration by a Private Contractor" to be submitted to Council together with payment of the application fee. Works within the footpath reserve must not start until the application has been approved by Council.
123. Following completion of concrete works in the footpath reserve area, the balance of the area between the fence and the kerb over the full frontage of the proposed

development shall be turfed with either buffalo or couch (not kikuyu).

## Development consent advice

- a. You are advised to consult with your utility providers (i.e. Energy Aust, Telstra etc) in order to fully understand their requirements before commencement of any work.
- b. *Telstra Advice – Dial Before You Dig*

Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets, please contact Dial before You Dig at [www.1100.com.au](http://www.1100.com.au) or telephone on 1100 before excavating or erecting structures (This is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contacting the Dial before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial before You Dig service in advance of any construction or planning activities.

- c. Where Council is not engaged as the Principal Certifying Authority for the issue of the Subdivision Certificate (Strata), and the Section 88B Instrument contains easements and/or covenants to which Council is a Prescribed Authority, the Council must be provided with all relevant supporting information (such as works-as-executed drainage plans and certification) prior to Council endorsing the Instrument.
- d. All asbestos fibre demolition material and asbestos dust shall be handled, stored and removed in accordance with the relevant legislation and guidelines including:
  - Work Health and Safety Act 2011
  - Work Health and Safety Regulation 2011
  - Code of Practice for the Safe Removal of Asbestos [NOHSC: 2002 (2005)]
  - Code of Practice for the Management and Control of Asbestos in Workplaces [NOHSC: 2018 (2005)]
  - Protection of the Environment Operations (Waste) Regulation 2005

All work procedures shall be devised to minimise the release of dust and fibres. A checklist of safety precautions when working with asbestos is available in Health & Safety Guidelines prepared by the WorkCover Authority of NSW. Collection, storage and transportation is subject to the Protection of the Environment Operations (Waste) Regulation 2005.

- e. Hazardous and/or intractable wastes arising from the demolition process shall be removed and disposed of in accordance with the requirements of the relevant statutory authorities (NSW WorkCover Authority and the NSW Environment Protection Authority), together with the relevant regulations, including:
  - Work Health and Safety Act 2011
  - Work Health and Safety Regulation 2011
  - Protection of the Environment Operations (Waste) Regulation 2005.
- f. Demolition and construction shall minimise the emission of excessive noise and prevent "offensive noise" as defined in the Protection of the Environment Operations Act 1997. Noise reduction measures shall include, but are not limited to the following

strategies:

- choosing quiet equipment
  - choosing alternatives to noisy activities
  - relocating noise sources away from affected neighbours
  - educating staff and contractors about quiet work practices
  - informing neighbours of potentially noise activities in advance
  - equipment, such as de-watering pumps, that are needed to operate on any evening or night between the hours of 8 p.m. and 7 a.m. or on any Sunday or Public Holiday, shall not cause a noise nuisance to neighbours of adjoining or nearby residences. Where the emitted noise exceeds 5 dB(A) [LAeq(15m)] above the background sound level [LA90] at the most affected point on the nearest residential boundary at any time previously stated, the equipment shall be acoustically insulated, isolated or otherwise enclosed so as to achieve the sound level objective.
- g. The water from the rainwater tank should not be used for drinking, Sydney Water shall be advised of the installation of the rainwater tank.
- h. All site works shall comply with the occupational health and safety requirements of the NSW WorkCover Authority.
- i. In the event of any inconsistency between conditions of this approval and the drawings/documents referred to in condition 2, the conditions of this approval prevail.





Issue	Amendment	Date
A	COORDINATION	02/02/2016
B	REVISED DA	14/04/2016
C	REVISED DA	18/04/2016
D	REVISED DA	26/09/2016

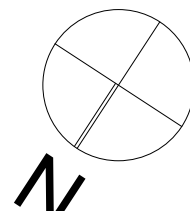
1 PLAN - SITE PLAN  
SCALE 1:200



Shop 6-11 320 Liverpool Road Enfield NSW 2136  
Phone (02) 9545 2014 Fax (02) 9545 0944  
Email info@urbanlink.com.au  
NOMINATED ARCHITECT: YOUSSEF EL-KHAWAJA - 89333  
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DEVELOPMENT APPLICATION

project	7-13 Willis St, Woll Creek	project no	16-020
client	URBAN (WOLL) PTY LTD	scale as shown@	A1
drawing	SITE PLAN	drawn	MB
		checked	TJ
		issue	D





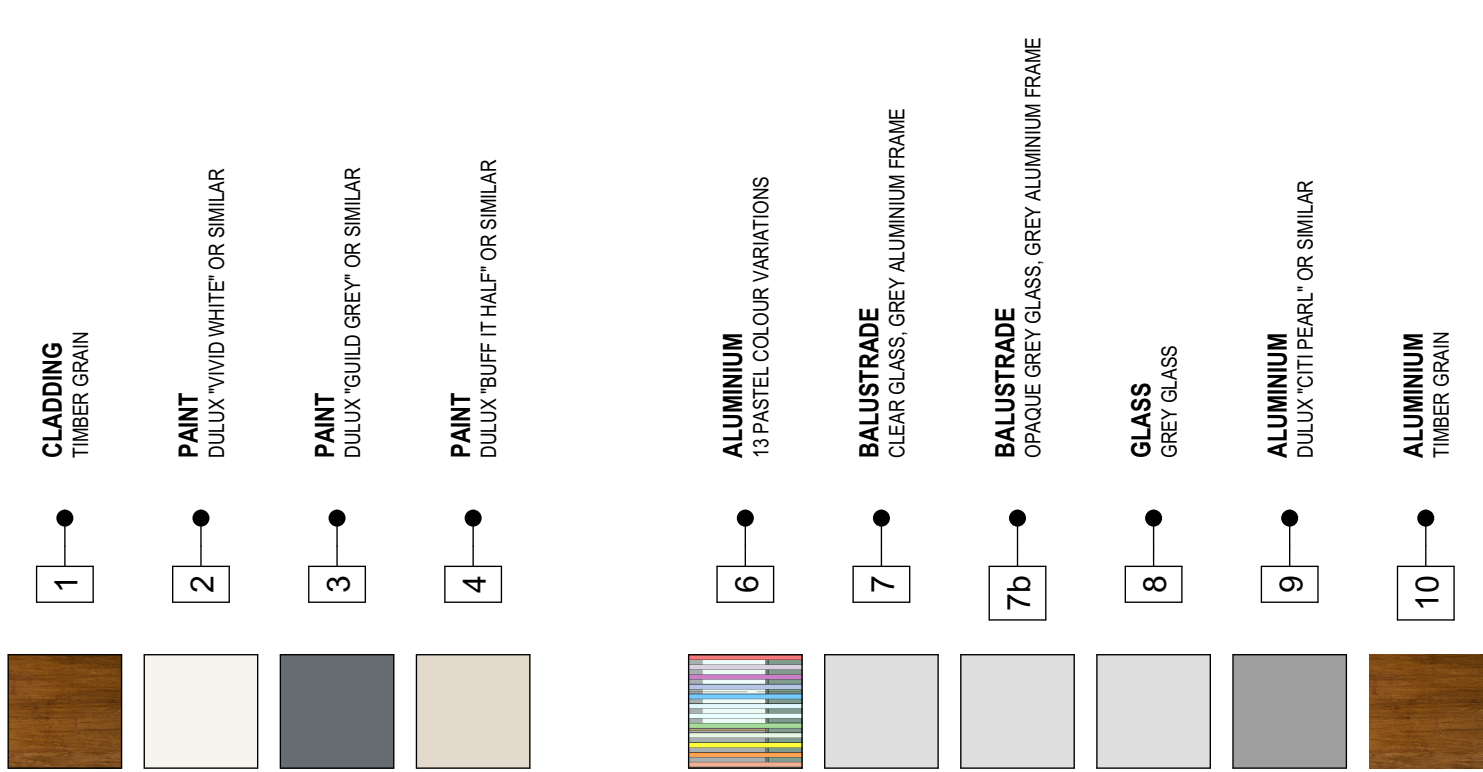
FINISHES

1	CLADDING TIMBER GRAIN
2	PAINT DULUX 'IVID WHITE' OR SIMILAR
3	PAINT DULUX 'GUILD GREY' OR SIMILAR
4	PAINT DULUX 'BUFF IT HALF' OR SIMILAR
6	ALUMINIUM 13 PASTEL COLOUR VARIATIONS
7	BALUSTRADE CLEAR GLASS, GREY ALUMINIUM FRAME
7b	BALUSTRADE OPAQUE GREY GLASS, GREY ALUMINIUM FRAME
8	GLASS GREY GLASS
9	ALUMINIUM DULUX 'CITIPEARL' OR SIMILAR
10	ALUMINIUM TIMBER GRAIN



1 ELEVATION - SOUTH (WILLIS ST)  
SCALE 1:100

FINISHES



1 ELEVATION - NORTH (GUESS AVE)  
SCALE 1:100



### **Clause 4.6 Variation**

The proposal seeks to vary two standards within the Rockdale LEP 2011, being building height and FSR.

In general the proposed building achieves the 28m LEP building height control with the exception relating to the lift and stair overruns providing access to the top most level of the buildings. These levels incorporate private residential space, private terraces and communal open space. These facilities improve amenity for future residents and on that basis a better planning outcome is achieved through its retention and variation to the standard.

The LEP applies a maximum permissible floor space ratio (FSR) of 2.85:1 to the site. This equates to a gross floor area (GFA) of 4550.6m<sup>2</sup>, while the proposal incorporates a total GFA of 5448m<sup>2</sup> equating to a FSR of 3.42:1 and thus exceeds the LEP standard. However, Council has varied the FSR standards throughout Wolli Creek in many recent DAs, while the current proposal completes the Willis Street block, removes an isolated site and is of similar bulk and scale to the adjoining developments previously approved. In this context there is an argument that the FSR control in relation to this site is unreasonable and unnecessary.

Accordingly a request to vary these standards under *Clause 4.6* of the LEP is required and set out below.

### **Height of Building**

The proposal includes residential space, roof top private and common open spaces, providing greater amenity and recreational opportunities for residents. The required lift overrun and fire stairs to that upper level exceed the maximum building height controls within *Rockdale Local Environmental Plan (LEP) 2011*. It is worth noting that the bulk of the building up to the top eave falls within the 28m LEP height limit, so the variation is reflective of only a minor part of the structure. It also should be noted that the ground floor level is required by Council to be raised up to RL 3.21 for local flooding reasons, while the greatest level of breach is only 1.9m.

*Clause 4.6* of the LEP outlines the matters to be considered by Council where a proposal seeks to vary a numerical standard contained within the LEP. The relevant parts of the clause and comments thereon in relation to the proposal are set out as follows:

*4.6 Exceptions to development standards*

*(1) The objectives of this clause are:*

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.....*

**Comment**

Objective (a) provides the impetus for the clause in confirming its intention for flexibility in the application of development standards. This integrates well with a number of the Aims of the LEP, contained within *Clause 1.2* as shown below:

- (a) to provide a vibrant area in which Rockdale residents can live, work and play,.....*
- (c) to maintain and improve residential amenity and encourage a diversity of housing to meet the needs of Rockdale residents,.....*
- (g) to encourage residential and employment densities around transport nodes in order to provide sustainable transport options,*
- (h) to minimise impacts on land subject to environmental hazards, particularly flooding.*

In varying the LEP height standards these objectives are adhered to in that the proposal achieves a balanced development outcome between an acceptable built form within the **B4** zone and the future amenity and character of the surrounding area. The built form outcome will be one of quality, with care taken in the design phase to ensure that any impacts to surrounding properties and the public domain are ameliorated. The height variation occurs primarily as a result of lifting the building above the local flooding level. Finally, the location of the site promotes walking and public transport use.

The terms of objective (b) of *Clause 4.6* are particularly relevant as it introduces the desired achievement from objective (a) in providing a *better outcome*, from applying a flexible approach. In the circumstances of this proposal a better outcome is achieved by varying the relevant height standard through:

- The re invigoration of a low use site with a new vibrant modern building, that although marginally greater in height, respects its surroundings and reduces its impact on nearby residential properties.
- The greater height is not readily evident from the public domain. The central location of the lift and stairs reduce their visibility from the public domain. The stepping of the upper floors of the building further strengthens this reduced visibility.
- The lack of impact in terms of privacy, solar access and amenity from the proposal and its respect of the existing residential properties on nearby sites.

The provision of a development that provides a variety of dwelling sizes and layouts, improves housing choice and affordability for future residents. It also increases the range of land uses available within the local area and the potential for increased patronage of the nearby railway station. These are the integral aims of the *B4 Mixed Use* zoning, as evidenced by the following objectives of that zone:

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*

A better planning outcome can also be considered in terms of the potential impact of the proposal from the increased height on the public domain and in an urban design sense. Any assessment of these issues must consider the proposal in terms of the context of the site, its built form, the need for residential development in the locality and the design parameters of SEPP 65 and the relevant DCP. These matters are discussed elsewhere in this report, with the proposal performing well in regard thereto.



It may be suggested in certain submissions that all of the above benefits could be achieved by a smaller compliant development. However, it is primarily the roof top structures that incorporate the greatest breach the LEP height control, although there is a minor breach in relation to the bedrooms of units 60, 61, 63, 64, 65, 66 and 68 of between 1m (3.6%) and 1.3m (4.6%). The roof top facilities provide enhanced recreational opportunities for residents and improve their future amenity, while the unit height variation, allows for greater unit mix, encouraging housing choice and affordability.

Subsection (3) of Clause 4.6 states as follows:

- (3) Consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.....*

In assessing whether or not compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, it may be worth considering the principles laid down in the Land and Environment Court judgement of Cripps J. in *Hooker Corporation Pty Ltd v Hornsby Shire Council*

In that decision the Court was considering an objection to a development standard under SEPP 1 and his Honour set out a number of important principles for consideration of such an objection. While an objection under SEPP 1 is not contemplated in this case, two of the principles set out in that judgement are relevant to the subject proposal. These are:

- *It must be assumed that a development standard has a purpose; and,*
- *It is not to be used as a means to affect general planning change*

*Clause 4.3* of the LEP contains objectives that indicate the purpose of the building height control as outlined below together with comments on the proposal's performance against them.

*(a) to establish the maximum limit within which buildings can be designed and floor space can be achieved,*

**Comment:** The proposal in the main complies with the maximum height limit and would comply completely if it was not required to be raised to clear the local flooding level. To reduce the height to absolute compliance would not reduce the FSR by a sufficient amount to be compliant. In this context the two controls (height & FSR) are inconsistent and it would not be possible to meet / achieve this objective in its totality.

*(b) to permit building heights that encourage high quality urban form,*

**Comment:** The proposed building height is generally consistent with the buildings on either side of it, which will result in a consistent streetscape appearance and urban form. The design is one of quality with the facades adding interest and quality into that streetscape.

*(c) to provide building heights that maintain satisfactory sky exposure and daylight to buildings, key areas and the public domain,*

**Comment:** The bulk of the proposal is compliant with the maximum height with the lift and stair overruns being the primary point of breach. As such the shadow cast by the building will be commensurate with that anticipated under the LEP and DCP. In this context there will be no negative impacts onto key areas or the public domain.

*(d) to nominate heights that will provide an appropriate transition in built form and land use intensity.*

**Comment:** The proposed building is commensurate in height with its recently approved neighbours and those buildings approved opposite in Willis Street. The built form and land use intensity within this precinct will remain consistent and as this precinct is not at the extremities the relevant zone, height or density locals, transition to lower intensity areas are not an issue.

In this context and in consideration of the nature of the variation sought, it cannot be argued that the proposal is seeking to *effect general planning change*. The development, in the main,



remains compliant with the principles and general parameters of the built form controls and expectations within the planning framework.

A recent decision in the NSW Land & Environment Court provides further clarity in relation to the issues to be confirmed in deciding whether or not the application of the LEP standard is *unreasonable or unnecessary in the circumstances of the case*.

In the matter of Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009 Pearson C has confirmed that the decision of Preston CJ in *Wehbe v. Pittwater Council* [2007] NSWLEC 827 provides indirect assistance only, in determining ways of establishing that compliance with a development standard in an environmental planning instrument might be seen as unreasonable or unnecessary.

At paragraphs 61 and 62 of the decision the Commissioner states:

*61 The written request argues that compliance is unnecessary in the circumstances of the case because the proposed development meets the objectives of the standard and the zone objectives, and that insistence on strict compliance would be unreasonable. Achieving the objectives of the development standard notwithstanding non-compliance with the standard was the most commonly invoked way of establishing that compliance with a development standard was “unreasonable or unnecessary in the circumstances of the case” under cl 6 of SEPP 1: Wehbe v Pittwater Council [2007] NSWLEC 827 at [42] per Preston CJ. In Wehbe at [44]-[48] Preston CJ identified other ways in which an applicant might establish that compliance with a development standard is unreasonable or unnecessary, namely that the underlying objective or purpose is not relevant to the development; that the objective would be defeated or thwarted if compliance was required; that the development standard has been virtually abandoned or destroyed by the Council’s own actions in departing from the standard; or that the zoning of the land is unreasonable or inappropriate.*

*62 I agree with the submission of Four2Five that the wording of cl 4.6, being different to that in SEPP 1, requires the decision-maker to be faithful to the*

*language of the clause rather than any stated principles developed in the application of SEPP 1, and that, subject to that caution, the case law developed in relation to the application of SEPP1 may be of assistance in applying cl 4.6. While Wehbe concerned an objection under SEPP 1, in my view the analysis is equally applicable to a variation under cl 4.6 where cl 4.6(3)(a) uses the same language as cl 6 of SEPP1. Consistency with the objectives of the development standard and the zone objectives is now addressed specifically in cl 4.6(4)(a)(ii), with separate attention required to the question of whether compliance is unreasonable or unnecessary, using the same expression as that in cl 6 of SEPP 1, in cl 4.6(3)(a) and 4.6(4)(a)(i) of the LEP.....*

The Commissioner's decision was confirmed in the decision of Pain J on judicial review.

In *North Shore Gas Company v North Sydney Municipal Council* (Land and Environment, New South Wales, 15 September 1986, unreported) Stein J similarly held that compliance with a development standard was not required where the standard has been virtually abandoned or destroyed by Council's own action.

In recent years Council has varied its maximum building height requirements in a number of instances where the ground floors of proposed buildings were required to be raised to meet minimum local flooding levels. This is the case with this proposal with the maximum height overrun being approximately half of the amount of the raised ground floor. In this sense the control has been virtually abandoned by the Consent Authority where it relates to such components of a development. This context is considered to be the same in relation to the subject proposal.

In view of all of the above, compliance with the numerical LEP standard for building height is considered to be unreasonable and unnecessary in the circumstances. If approved, the proposal (when built) will not be out of place with, nor detrimental to the amenity of its surroundings. It is also considered that the continued revitalisation and improvement of the Willis Street precinct and wider Wolli Creek area can only benefit the community.



Clause 4.6 (3) then goes on to require:

*(b) that there are sufficient environmental planning grounds to justify contravening the development standard.....*

Earlier in this report the relevant zone objectives and the proposal's conformity with them was discussed and found to be acceptable. Rather than repeating the reasons why the proposal meets those environmental planning grounds, it may be appropriate (for the purposes of this question) to consider the variation to the height standard in terms of the *environmental amenity and aesthetic character of the area*.

In considering the *environmental amenity* one looks at impacts such as overshadowing, privacy/ overlooking, view loss, visual domination etc. These provide an indication of a proposal's suitability and reflect the matters for consideration under Section 79C of the Act.

The proposed additional structures on the roof will not generate any additional overshadowing to adjoining lands, as they are set well back from the parapet. Any shadow cast from the balustrades will be cast within the site or onto the adjacent roof form, as they are set in from the edge of the building. As the top floor eaves are within the permitted building height standard, any shadow impact will remain commensurate with that anticipated within the planning controls for a compliant building.

The potential for privacy loss and overlooking derive from a building's orientation and the internal layout. Both of the buildings proposed are set back from the street frontages with more than the separation requirements of the Apartment Design Guideline (ADG) available to the buildings on the opposite sides of Willis Street and Guess Avenue. The development's use and will not diminish the privacy of occupants of nearby buildings (present and future).

The building when completed will provide view opportunities from its upper levels in the same degree as those on sites adjacent, should they be redeveloped, as envisaged within the controls. The size and nature of the roof top structures and the unit bedroom variations are so minor in built form terms that they will not impinge on views that may be enjoyed from any future buildings on surrounding properties.

Visual domination is an issue more generally associated with perceptions from the public domain and from multi storey buildings. In this case, the proposal in the main is compliant with the relevant height standards and will retain its “fit” within its locality as envisaged by those controls. In that context the minor height variations and the proposed relationship in bulk and scale terms is considered to be reasonable.

In determining the *aesthetic character of the area* it is reasonable to review the type and form of development existing in the near vicinity of the site and likely to occur in consideration of the future character of the area. *Rockdale LEP 2011* and the associated DCP provides for development uplift within the Wolli Creek area with the relevant controls permitting buildings of a height and density similar to that currently proposed.

The overall building envelope is generally in accordance with those controls, with the variant structures being set well back, occupying a minor area of the building’s footprint and increasing some parts of the façade height only. They facilitate access and useability of the roof top space and unit mix, in a manner that will not impact on surrounding properties. The availability of the residential space and roof top facilities will enhance the amenity of future residents within an area, which will become much more urban than suburban.

An area’s desired future character is generally evident from reviewing any proposed changes to the relevant planning framework affecting a site. In this case the relevant LEP and DCP have only recently been adopted and facilitate a much greater level of development within this and other parts of the Council area. The expected built form outcome is similar to that proposed for the subject land, with the proposal likely to sit well within the expected development outcomes and be commensurate with the desired future character of the area.

In light of this detailed assessment it would appear that neither the *environmental amenity* nor the *aesthetic character of the area*, are detrimentally impacted by the proposal and the minor non compliance of the roof top structures with the LEP height standard is reasonable. In this sense it is fair to say that the underlying purpose of the standard has been met.

*Clause 4.6* of the LEP goes on further to relevantly state:

*(2) Consent must not be granted for development that contravenes a development standard unless:*

*(a) the consent authority is satisfied that:*

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

*(b) the concurrence of the Director-General has been obtained.*

**Comment:** These matters have previously been considered and are positively demonstrated by the proposal. The Director General has formally delegated his function to Council.

*(5) In deciding whether to grant concurrence, the Director-General must consider:*

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) the public benefit of maintaining the development standard, and*
- (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.....*

**Comment:** No matters of State or Regional Environment Planning significance are compromised, nor will the proposed development create any environmental impact as indicated throughout this report. The proposal will not generate any amenity impacts to neighbours, whilst its bulk and scale is satisfactory.



### **Floor Space Ratio (FSR)**

The LEP applies a maximum permissible floor space ratio (FSR) of 2.85:1 to the site. This equates to a gross floor area (GFA) of 4550.6m<sup>2</sup>, while the proposal incorporates a total GFA of 5435m<sup>2</sup> equating to a FSR of 3.41:1 and thus exceeds the maximum FSR control within *Rockdale Local Environmental Plan (LEP) 2011*. It is worth noting that the bulk of the building generally complies with the envelope (height & setbacks) controls within the relevant Planning Framework.

*Clause 4.6* of the LEP outlines the matters to be considered by Council where a proposal seeks to vary a numerical standard contained within the LEP. The relevant parts of the clause and comments thereon in relation to the proposal are set out as follows:

#### *4.6 Exceptions to development standards*

##### *(1) The objectives of this clause are:*

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.....*

Objective (a) provides the impetus for the clause in confirming its intention for flexibility in the application of development standards. This integrates well with a number of the Aims of the LEP, contained within *Clause 1.2* as shown below:

- (a) to provide a vibrant area in which Rockdale residents can live, work and play,.....*
- (c) to maintain and improve residential amenity and encourage a diversity of housing to meet the needs of Rockdale residents,.....*
- (g) to encourage residential and employment densities around transport nodes in order to provide sustainable transport options,*
- (h) to minimise impacts on land subject to environmental hazards, particularly flooding.*

In varying the LEP FSR standard these objectives are adhered to in that the proposal achieves a balanced development outcome between an acceptable built form within the **B4** zone and the future amenity and character of the surrounding area. The built form outcome will be one of quality, with care taken in the design phase to ensure that any impacts to surrounding properties and the public domain are ameliorated. Finally, the location of the site promotes walking and public transport use.

The terms of objective (b) of **Clause 4.6** are particularly relevant as it introduces the desired achievement from objective (a) in providing a **better outcome**, from applying a flexible approach. In the circumstances of this proposal a better outcome is achieved by varying the relevant FSR standard through:

- The re invigoration of a low use site with a new vibrant modern building, that although greater in FSR, respects its surroundings and reduces its impact on nearby residential properties.
- The greater FSR is not readily evident from the public domain. The proposed buildings are similar in bulk and scale to those surrounding it, some of which have compliant FSR's and some of which exceed the LEP standard.
- The lack of impact in terms of privacy, solar access and amenity from the proposal and its respect of the existing residential properties on nearby sites.

The provision of a development that provides a variety of dwelling sizes and layouts, improves housing choice and affordability for future residents. It also increases the range of land uses available within the local area and the potential for increased patronage of the nearby railway station. These are the integral aims of the **B4 Mixed Use** zoning, as evidenced by the following objectives of that zone:

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*



A better planning outcome can also be considered in terms of the potential impact of the proposal from the increased height on the public domain and in an urban design sense. Any assessment of these issues must consider the proposal in terms of the context of the site, its built form, the need for residential development in the locality and the design parameters of SEPP 65 and the relevant DCP. These matters are discussed elsewhere in this report, with the proposal performing well in regard thereto.

It may be suggested in certain submissions that all of the above benefits could be achieved by a smaller compliant development. However, as noted previously the proposed FSR has been achieved within the relevant envelope controls that apply to the subject site and if reduced to compliance would thwart the achievement of those building height controls and the objectives within the LEP that go with them.

Subsection (3) of Clause 4.6 states as follows:

*(3) Consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.....*

In assessing whether or not compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, it may be worth considering the principles laid down in the Land and Environment Court judgement of Cripps J. in *Hooker Corporation Pty Ltd v Hornsby Shire Council*

In that decision the Court was considering an objection to a development standard under SEPP 1 and his Honour set out a number of important principles for consideration of such an objection. While an objection under SEPP 1 is not contemplated in this case, two of the principles set out in that judgement are relevant to the subject proposal. These are:

- *It must be assumed that a development standard has a purpose; and,*
- *It is not to be used as a means to affect general planning change*

**Clause 4.4** of the LEP contains objectives that clearly indicate the purpose of the FSR control. Those objectives relevant to this issue are outlined below together with comments on the proposal's performance against them.

*(a) to establish the maximum development density and intensity of land use, accounting for the availability of infrastructure and generation of vehicular and pedestrian traffic, in order to achieve the desired future character of Rockdale,*

**Comment:** The proposal provides a built form and intensity of use in terms of unit numbers commensurate with recently approved developments adjacent and nearby. Its traffic generation and both vehicular and pedestrian is acceptable, while its location close to Wolli Creek Railway Station will promote a positive modal split. The details of the proposal in terms of traffic and parking are provided within the relevant report, to be submitted with the DA.

*(b) to minimise adverse environmental effects on the use or enjoyment of adjoining properties,*

**Comment:** The proposed development is of similar size and nature to a number of developments approved around it. Its general compliance with the relevant planning framework, including the **ADG** ensures that it will not have any adverse environmental effects on the use or enjoyment of adjoining properties.

*(c) to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing or likely to undergo a substantial transformation.*

**Comment:** The site is located within an area undergoing substantial transformation and as such this objective is not relevant. The site is located well away from other areas of lower density and permissible building height.



In this context and in consideration of the nature of the variation sought, it cannot be argued that the proposal is seeking to *effect general planning change*. The development, in the main, remains compliant with the principles and general parameters of the built form controls and expectations within the planning framework.

A recent decision in the NSW Land & Environment Court provides further clarity in relation to the issues to be confirmed in deciding whether or not the application of the LEP standard is *unreasonable or unnecessary in the circumstances of the case*.

In the matter of Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009 Pearson C has confirmed that the decision of Preston CJ in *Wehbe v. Pittwater Council* [2007] NSWLEC 827 provides indirect assistance only, in determining ways of establishing that compliance with a development standard in an environmental planning instrument might be seen as unreasonable or unnecessary.

At paragraphs 61 and 62 of the decision the Commissioner states:

*61 The written request argues that compliance is unnecessary in the circumstances of the case because the proposed development meets the objectives of the standard and the zone objectives, and that insistence on strict compliance would be unreasonable. Achieving the objectives of the development standard notwithstanding non-compliance with the standard was the most commonly invoked way of establishing that compliance with a development standard was “unreasonable or unnecessary in the circumstances of the case” under cl 6 of SEPP 1: Wehbe v Pittwater Council [2007] NSWLEC 827 at [42] per Preston CJ. In Wehbe at [44]-[48] Preston CJ identified other ways in which an applicant might establish that compliance with a development standard is unreasonable or unnecessary, namely that the underlying objective or purpose is not relevant to the development; that the objective would be defeated or thwarted if compliance was required; that the development standard has been virtually abandoned or destroyed by the Council’s own actions in departing from the standard; or that the zoning of the land is unreasonable or inappropriate.*

*62 I agree with the submission of Four2Five that the wording of cl 4.6, being different to that in SEPP 1, requires the decision-maker to be faithful to the language of the clause rather than any stated principles developed in the application of SEPP 1, and that, subject to that caution, the case law developed in relation to the application of SEPP1 may be of assistance in applying cl 4.6. While Wehbe concerned an objection under SEPP 1, in my view the analysis is equally applicable to a variation under cl 4.6 where cl 4.6(3)(a) uses the same language as cl 6 of SEPP1. Consistency with the objectives of the development standard and the zone objectives is now addressed specifically in cl 4.6(4)(a)(ii), with separate attention required to the question of whether compliance is unreasonable or unnecessary, using the same expression as that in cl 6 of SEPP 1, in cl 4.6(3)(a) and 4.6(4)(a)(i) of the LEP.....*

The Commissioner's decision was confirmed in the decision of Pain J on judicial review.

In *North Shore Gas Company v North Sydney Municipal Council* (Land and Environment, New South Wales, 15 September 1986, unreported) Stein J similarly held that compliance with a development standard was not required where the standard has been virtually abandoned or destroyed by Council's own action.

In recent years Council has varied its maximum FSR requirements in a number of instances within the Wolli Creek area. The approved DA at 2 – 10 Willis Street included an FSR of 3.6:1 as against the current proposal at 3.41:1. The adjoining development at 15 – 21 Willis Street also included additional FSR. In this sense the control has been virtually abandoned by the Consent Authority where it relates to developments in and around this precinct and Wolli Creek in general. This context is considered to be the same in relation to the subject proposal.

In view of all of the above, compliance with the numerical LEP standard for building height is considered to be unreasonable and unnecessary in the circumstances. If approved, the proposal (when built) will not be out of place with, nor detrimental to the amenity of its surroundings. It is also considered that the continued revitalisation and improvement of the Willis Street precinct and wider Wolli Creek area can only benefit the community.



*Clause 4.6 (3)* then goes on to require:

*(b) that there are sufficient environmental planning grounds to justify contravening the development standard.....*

Earlier in this report the relevant zone objectives and the proposal's conformity with them was discussed and found to be acceptable. Rather than repeating the reasons why the proposal meets those environmental planning grounds, it may be appropriate (for the purposes of this question) to consider the variation to the height standard in terms of the *environmental amenity and aesthetic character of the area*.

In considering the *environmental amenity* one looks at impacts such as overshadowing, privacy/ overlooking, view loss, visual domination etc. These provide an indication of a proposal's suitability and reflect the matters for consideration under Section 79C of the Act.

The proposed additional FSR is located within a generally compliant building height. As such it will have no negative impact on overshadowing, privacy/ overlooking, view loss or visual domination. These matters are more appropriately related to building height and scale and were discussed in detail in the *Clause 4.6* request related to that control.

In determining the *aesthetic character of the area* it is reasonable to review the type and form of development existing in the near vicinity of the site and likely to occur in consideration of the future character of the area. *Rockdale LEP 2011* and the associated DCP provides for development uplift within the Wolli Creek and surrounding precincts, with the relevant controls permitting buildings of a height and density similar to that currently proposed.

These matters have been discussed previously in both this and the other *Clause 4.6* variation request. Further discussion is not considered to be required.

An area's desired future character is generally evident from reviewing any proposed changes to the relevant planning framework affecting a site. In this case the relevant LEP and DCP have only recently been adopted. As mentioned above these plans facilitate a much greater level of development within the Precinct with the expected built form outcome and land use intensity similar to that proposed for the subject land.

In this context the proposal will sit well within the expected development outcomes and be commensurate with the desired future character of the area.

In light of this detailed assessment it would appear that neither the *environmental amenity* nor the *aesthetic character of the area*, are detrimentally impacted by the proposal and the non compliance with the LEP FSR standard is reasonable. In this sense it is fair to say that the underlying purpose of the standard has been met.

*Clause 4.6* of the LEP goes on further to relevantly state:

*(3) Consent must not be granted for development that contravenes a development standard unless:*

*(b) the consent authority is satisfied that:*

*(ii) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

*(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

*(b) the concurrence of the secretary has been obtained.*

**Comment:** These matters have previously been considered and are positively demonstrated by the proposal. The Secretary has formally delegated her function to Council.

*(5) In deciding whether to grant concurrence, the Secretary must consider:*

*(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*

*(b) the public benefit of maintaining the development standard, and*

*(c) any other matters required to be taken into consideration by the Director-General before granting concurrence.....*

**Comment:** No matters of State or Regional Environment Planning significance are compromised, nor will the proposed development create any environmental impact, nor generate any amenity impacts to neighbours as indicated throughout this report.

The integrity and longevity of the provisions of the LEP should the variation in the height and FSR standards be granted by Council is a correct and proper consideration in the assessment of any development proposal. As shown in this report the LEP itself provides for flexibility in appropriate circumstances, such as in the case of the subject proposal.

### **Conclusion**

An assessment undertaken against the relevant planning framework indicates that the proposal is an acceptable one. It will not impact negatively on the amenity of nearby residents. The variations to the building height and floor space ratio standards contained within the LEP are matters that any reasonable authority properly exercising its planning powers could agree to.

A number of recent development consents have been granted over properties in Willis Street and Guess Avenue, with the exception of No. 7 Willis Street. That site had been isolated as a result of those approvals. Its inclusion within the current application results in a better planning outcome and a completion of the streetscape as envisaged by the relevant planning framework.

In the context of the site and the design proposed, it is considered that the proposal will result in a better planning outcome than one that complied with those standards.



### 3.5 Rockdale Development Control Plan (DCP) 2011

The DCP is divided into a number of parts, including a preliminary discussion, considerations of urban strategy, site analysis and general development principles. Part 4 provides the general principles for development, whilst Part 5 concerns building types, with detailed criteria for differing built form outcomes.

Part 4 is divided into a number of sections relating to site planning, streetscape and site context, landscape planning and design, sustainability, social equity, car parking and site facilities. All of these issues have been considered in the design preparation phase, with certain matters such as contamination, flooding and acid sulphate soils previously discussed in this report.

*Part 5.2* of the DCP provides built form criteria specifically related to residential flat buildings. The objectives for this section of the DCP are as follows:

- A. To encourage development of a high standard of architectural merit and design*
- B. To promote buildings of articulated design and massing, with building facades that contribute to the character of the street and provide useable external spaces*
- C. to ensure the size and location of residential flat buildings allow for the sharing of views and preserve privacy and sunlight for neighbouring and new residents*
- D. To encourage innovative housing which is pleasant to live in, relates to the existing and future neighbourhood character, is responsive to the site and is environmentally sensitive*
- E. To improve the range and quality of housing and residential environments that meet the diversity of peoples' needs and community expectations about health, safety and amenity*
- F. To promote orderly development of land on large sites in preference to development on small narrow sites*

- G. To accommodate a range of different household types within each development*
- H. to ensure residential flat buildings are accessible to all occupants and visitors and that goods and furniture can be readily moved throughout the building*
- I. To encourage the design of housing with spaces for the “community” of residents as well as individual living units*
- J. To promote high density residential development which has good access to public transport services*

The proposal meets the relevant objectives, through its articulated building forms, varied unit sizes and shapes, and its associated contribution to the viability of the precinct. It also facilitates the widening of the surrounding streets and the creation of an improved public domain

The remainder of *Part 5.2* provides numerical standards to be achieved in building forms and site layout etc. *Part 7* of the DCP, provides further detailed design and built form criteria for “Special Precincts” within the Rockdale Council area. The subject site is located within *Precinct 7.1 – Wolli Creek* and therefore is also subject to the provisions of that Part of the DCP.

*Table 1* below provides an amalgam of the relevant numerical controls from each of these two Parts of the DCP and the proposal’s level of compliance therewith.

<b>TABLE 1 – DCP COMPLIANCE</b>			
<b><u>Control</u></b>	<b><u>Standard</u></b>	<b><u>Proposed</u></b>	<b><u>Compliance</u></b>
<b>Site Coverage</b>	35% of site area	100% of site area	<b>No See 3.5.1</b>
<b>Building Height</b>	Up to 8 storeys	Eight Storeys	<b>Yes</b>
<b>Setbacks</b>			<b>See 3.5.2</b>
<b>Street Type - Mixed Use</b>			
<b>Guess Avenue</b>	3m	Min 3m	<b>Yes</b>
<b>Willis Street</b>	2m	Min 2m	<b>Yes</b>
<b>Sides</b>	Zero at street frontages	Zero	<b>Yes</b>

<u>Control</u>	<u>Standard</u>	<u>Proposed</u>	<u>Compliance</u>
<b>Unit Sizes</b>			
1 bedroom	Minimum 50m	Minimum 50m	Yes
2 bedroom	Minimum 80m	Minimum 80m	Yes
3 bedroom	124m	Minimum 100m	No See 3.5.3
<b>Top Floor Height</b>	Minimum 3.5m	>3.5m	Yes
<b>Units per lift per floor</b>	Maximum 8 units	Maximum 2.5 units	Yes
<b>2 Lifts above 6<sup>th</sup> floor</b>	Each unit access 2 lifts	Each pod has 2 lifts	Yes
<b>Common Corridor Width</b>	Minimum 2m	Minimum 2m	Yes
<b>Car Parking</b>			
Studio	0.8 space per unit (0.8)	1	Yes
1 bedroom unit	0.8 space per unit (16)	16	Yes
2 bedroom unit	0.9 space per unit (35.1)	35	Yes
3 bedroom unit	1 spaces per unit (8)	8	Yes
Visitors	1 space per 5 units (13.6)	14	Yes
<b>Total</b>	<b>73.5</b>	<b>74</b>	<b>Yes</b>

The proposal therefore complies with the majority of the relevant numerical standards within the DCP, with the exception of site coverage and the minimum 3 bedroom unit size. It is also worth clarifying the street type and setback regime, with these matters addressed in sections 3.5.1, 3.5.2 and 3.5.3 below.

### **3.5.1 – Site Coverage**

The DCP states as follows with regard to site coverage:

#### *Site Coverage*

*1. Building footprints for residential flat buildings are limited to 35% of the site area. the building footprint fits within the front, side and rear setback requirements and responds to site features, privacy, solar access and outdoor space design principles. Exceptions to this requirement may be considered in flood prone areas where podium development is warranted.*



As noted in the final sentence above, exceptions are to be considered in flood prone areas where podium development is warranted. As indicated earlier in this report the site is flood prone and Council's engineers have determined a minimum ground floor slab height for the proposal at RL 3.21.

That level is between 1.2m and 1.4m above the surrounding street levels and must be applied across the site by way of a podium. As such, it is necessary to cover the whole site. The intent of the control is envisaged as a mechanism to obtain landscaped open space within developments, which the current proposal achieves on the first floor podium. At 370m this space is greater than the minimum required 25% (298.7m ) of site area.

In this context the variation is considered to be reasonable

### **3.5.2 – Street Type**

*Part 7.1.8* of the DCP looks at *Street Character and Setbacks* and sets controls within the Wolli Precinct for setbacks. While the proposal complies with these controls some clarification is considered of value.

The map on page 7/16 of the DCP indicates the setbacks for the site as being 3m from Guess Avenue and 2m from Willis Street. The two frontages are also confirmed as "*Mixed Use Frontage*" on the map on page 7/17 of the DCP. The proposal is for a residential flat building as a standalone development, which as discussed previously is a permissible use. It does not have retail or commercial uses activating the site's street frontages. Such uses are encouraged within the DCP but are not mandated for the subject site on the relevant LEP Active Street Frontage map.

In terms of the side setback to the adjoining property, *Control 1* within *Part 7.1.8* of the DCP states as follows:

*Building design is to provide street wall buildings with zero side setback at the street frontage.*

The proposed design achieves this requirement fronting Guess Avenue and Willis Street, which results in a zero lot line to the adjoining property. The surrounding sites have both been approved for redevelopment and upon completion a street wall built form outcome will be achieved.

### **3.5.3 – Unit Size**

The three bedroom units range in size but are all greater in area than 100m<sup>2</sup>, which whilst not meeting the DCP is larger than the minimum requirements for three bedroom units under the *ADG*.

Council's DCP minimum unit size requirements are not in conformity with the *SEPP 65* based *ADG* recommendations above, which is a higher order environmental planning instrument and therefore takes precedence. As the proposed 3 bedroom units exceed the *ADG* recommendations, in that context their areas are considered to be satisfactory.

There are no other provisions of the DCP relevant to the subject site and/ or proposal

#### 4. SECTION 79C ASSESSMENT

The matters to be considered in the assessment pursuant to Section 79C of the Environmental Planning and Assessment Act, 1979 are:

*(a) the provisions of:*

- (i) any environmental planning instrument, and*
- (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
- (iii) any development control plan, and*
- (iiia) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and*
- (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates,*

*(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*

*(c) the suitability of the site for the development,*

*(d) any submissions made in accordance with this Act or the regulations,*

*(e) the public interest.*

##### 4.1 Environmental Planning Instruments

The proposed development is subject to the provisions of the *Rockdale LEP 2011* and is permissible in the zone with the consent of Council. The proposal satisfies the relevant objectives of the zone, and the numerical controls within the LEP.

##### 4.2 Draft Environmental Planning Instruments (EPI's)

There is no draft EPI's relevant to the subject site or current proposal.

### 4.3 Development Control Plans

The proposed development is subject to the provisions of *Rockdale DCP 2011* and is generally compliant with the relevant provisions as discussed in a previous section of this report.

### 4.4 Any Planning Agreement or draft under Section 93F of the Act

There is no draft or finalised Planning Agreement under Section 93F of the Act, relevant to the subject site and/ or current proposal.

### 4.5 Matters prescribed by the Regulation

Beyond *Part 6 - Procedures relating to Development Applications*, there are no matters prescribed by the Regulation that are relevant to the proposed development.

### 4.6 Likely Impacts

The proposal is permissible within the relevant zone, while the level of intensity will not result in any diminution of the area's amenity nor create any adverse environmental impacts.

### 4.7 Suitability of the Site

The current proposal seeks to replace existing industrial facilities with a contemporary residential flat development within an acceptable density. The suitability of the site to accommodate this form of activity has previously been determined in its recent re zoning to *B4 Mixed Use* under the *Rockdale LEP 2011*.

### 4.8 Submissions made in accordance with the Act or the Regulations

There are no submissions available at this stage.

### 4.9 Public Interest

The public interest is served in circumstances where a proposed development results in an improved design outcome that enhances the streetscape and though its compliance with relevant controls, meets the desired future character of an area.



## 5. CONCLUSION

The proposal is permissible, with Council's consent, under the terms of *Rockdale LEP 2011*. It conforms to the relevant provisions of that Plan, the objectives and controls within the *Rockdale DCP 2011*.

The development represents an appropriate design response to the opportunities and constraints offered by the site and will be compatible and consistent with the existing and desired future character of this locality. The proposal will not have any unreasonable impact on the amenity enjoyed by the residents of adjoining and nearby properties.

Adequate provision is to be made for the off-street parking and access needs generated by the development and there will be no negative impact on the efficiency and effectiveness of the surrounding road network.

Approval of the development will serve the public interest on the following grounds:

- *the provision of additional residential accommodation offering greater housing choice and affordability;*
- *the proposal's consistency with the principles of urban consolidation leading to the more efficient use of community infrastructure;*
- *the proposal's consistency with the principles of ecologically sustainable development;*  
*and*
- *the employment opportunities during the construction phase of the development.*

The proposal is in conformity with the statutory heads of considerations contained in Section 79C of the *Environmental Planning and Assessment Act 1979*. Accordingly, the application is considered to be suitable for approval.

*David Furlong – BTP, MPIA*

*Director*

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## **Council Meeting**

**12/10/2016**

Item No	10.1
Subject	<b>Minutes of Bayside Traffic Committee 28 September 2016</b>
Report by	Jeremy Morgan, Manager City Infrastructure
File	(R) F08/887P04

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## **Council Resolution**

Resolved by the Administrator:

That the minutes of the Bayside Traffic Committee meeting held on 28 September 2016 be confirmed.

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## **Officer Recommendation**

That the Minutes of the Bayside Traffic Committee of 28 September 2016 be confirmed.

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## **Present**

Jeremy Morgan, Manager City Infrastructure, Bayside Council (Chairperson)  
Nicolas Kocoski, Manager Network & Safety Services – South, Roads and Maritime Services  
Sergeant Frank Gaal, St George Local Area Command  
Senior Constable Alexander Weissel, Botany Bay Police  
Ron Hoenig, State Member for Heffron  
Steve Kamper, State Member for Rockdale  
James Evans, representing State Member for Maroubra  
Les Crompton, representing State Member for Kogarah

## **Also Present**

Stuart Dutton, Director City Infrastructure, Bayside Council  
James Suprain, Roads and Maritime Services – East  
George Perivolarellis, of State Member for Rockdale Office  
Rabih Bekdache, State Transit Authority, Kingsgrove  
Eric Graham, State Transit Authority- East  
Lyn Moore, NSW Pedestrian Council  
Joe Scarpignato, St George Cabs  
Paul Gage, St George Bicycle Users Group  
Bruce Cooke, Coordinator Governance, Bayside Council  
Pintara Lay, Coordinator Traffic and Road Safety, Bayside Council  
Michael Lee, Traffic Engineer, Bayside Council  
Agasteena Patel, Traffic Engineer, Bayside Council  
Jacqueline Symes, Parking Ranger, Bayside Council  
Pat Hill, Traffic Committee Administrative Officer, Bayside Council

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The Convenor opened the meeting in the Rockdale Town Hall, Pindari Meeting room at 9:15am.

## **1 Apologies**

The following apologies were received:  
Glen McKeachie, Coordinator Regulations, Bayside Council  
Steve Poulton, Manager Special Projects, Bayside Council

## **2 Disclosures of Interest**

There were no disclosures of interest.

## **3 Minutes of Previous Meetings**

That the Minutes of the meeting of the Bayside Traffic Committee held on 10 August 2016 (Rockdale City Council) and 5 September 2016 (Botany Bay City Council) be confirmed.

That it was noted that the Committee recommendations included in the minutes of the meeting of the Bayside Traffic Committee were adopted by the Council at its meeting of 14 September 2016.

## **4 Matters Arising**

There were no matters arising.

## **5 Reports**

### **a) Major Traffic Issues**

#### **BTC16.01 Terms of Reference**

Committee recommendation

That the Bayside Traffic Committee terms of reference and other details be noted.

#### **BTC16.02 Code of Conduct**

Committee recommendation

That the Bayside Traffic Committee members receive and note Council's Code of Conduct, and acknowledge its receipt.

**BTC16.03 Abercorn Street, Bexley, in front of St Gabriel's Primary School-  
proposed relocation of a raised pedestrian crossing**

Committee recommendation

- 1 That the proposed raised pedestrian crossing in Abercorn Street in front of St Gabriel Primary School be designed and certified by the applicant to meet the with Roads and Maritime Services' Technical Directions:
  - \* T2001/04b (Use of Traffic Calming Devices as Pedestrian Crossings) for the dimensions of raised platform and the flush threshold between the top of the kerbs
  - \* TDT2011-01a- (Pedestrian Refuges) for the dimensions of kerb blister islands to reduce the required length of 'No Stopping' zones
  - \* TDT2007-01 (Use of Fluorescent Material for Road signs) for example, the fluoro yellow green materials for the pedestrian crossing signs and pedestrian warning signs
- 2 That the detailed drawing be submitted to the Bayside Traffic Committee for consideration.
- 3 That the applicant ensure that the driveway be designed to enable vehicles to enter and leave in a forward direction.

(Note: Les Crompton is objecting to the recommendation. He preferred the marked footcrossing be retained where it is).

**BTC16.04 Arncliffe Street, Arncliffe in front of Nos. 30 – 32 Arncliffe Street –  
proposed parking restrictions**

Committee recommendation

That approval be given to the propose parking restrictions along southern kerbline of Arncliffe Street outside number 30-32 Arncliffe Street as follows:

- 1 from 0m at the existing electricity light pole KO19887 east of the bend to a point 7m - retain the existing 'No Stopping' restriction
- 2 from 7m to 13m - Proposed 6m of '15 minute parking, 8:30am-6:00pm Mon-Fri' parking restriction to provide a high parking turn over for the existing Cafe Bar customers and for other road users
- 3 from 13m to 38m- Proposed '2 hour parking, 8:30am-6:00pm, Mon-Fri' parking restriction further east excluding the driveways of 30-32 Arncliffe Street

**BTC16.05 Brocklehurst Lane in front of Kingsgrove RSL Club – proposed  
parking restrictions**

Committee recommendation

That approval be given to the re-arrangement of parking restrictions in Brocklehurst Lane north of The Avenue as follows:

- 1 proposed 'No Stopping' restriction along the eastern side of Brocklehurst Lane in front of Kingsgrove RSL Club
- 2 retain the existing 'No Parking ' restriction along the western kerb line of Brocklehurst Lane

**BTC16.06 Charles Street at the rear of 108 Princes Highway, Wolli Creek – proposed concrete median and speed hump**

Committee recommendation

- 1 That approval be given to the installation of concrete median island with associated signage in Charles Street by maintaining a minimum 3m wide travel lane on each side to ensure a left in/left out access to the new development at the applicant's expense
- 2 That approval be given to the installation of a speed hump with associated signage to ensure safety of traffic south of the access driveway of the new development which is located near the bend in Charles Street at the applicant's expense.

**BTC16.07 Clarence Road at Lydham Street, Rockdale – Proposed double barrier centre lines**

Committee recommendation

- 1 That approval be given to the installation of double barrier centre lines, raised pavement markers and hazard signage on approach to the intersection of Clarence Road to Lydham Avenue Rockdale as show in the attachment to this report
- 2 That the additional street light be provided

**BTC16.08 Herbert Street, Rockdale, in front of Yamba Woora Reserve, north of Heathcote Street – proposed pedestrian refuge island**

Committee recommendation

- 1 That approval be given in principle for the installation of a pedestrian refuge island in Herbert Street north of its intersection with Heathcote Street in front of 'Yamba Woora' Reserve, Rockdale, subject to availability of funding
- 2 That detailed plan of the above pedestrian refuge island be submitted to the Traffic Committee for further consideration.

**BTC16.09 Jameson Lane, Sans Souci, between Griffiths Street and Toyer Avenue – proposed parking restrictions**

Committee recommendation

That approval be given to the following parking restrictions in Jameson Lane, Sans Souci between Griffiths Street and Toyer Avenue:

- 1 from 0m- to a point 10m - proposed 'No Stopping' restrictions immediately south of Griffiths Street on eastern and western kerblines
- 2 10m-115m - proposed 'No Stopping 2:30pm-3:30pm School Days' restrictions along the western kerblines south of 'No Stopping' restrictions
- 3 115m-125m 'No Stopping' restrictions along the western kerblines of Jameson Lane south of 'No Parking' restrictions
- 4 10m-91m - proposed 'No Stopping 2:30pm-3:30pm School Days' restrictions along the eastern kerblines south of 'No Stopping' restrictions
- 5 91m - 115m - replace existing 'No Parking' restriction with 'No Stopping 2:30pm-3:30pm and No Parking at other times' restrictions along the eastern kerblines
- 6 115m-125m maintain existing 'No Stopping' restrictions along the eastern kerblines of Jameson Lane.

**BTC16.10 Loftus Street Hirst Street and Edward Street – proposed parking restriction as part of Development Application consent**

Committee recommendation

- 1 That approval be given to the installation of 'No Stopping' signs in Loftus Street, Hirst Street and Edward Street to re-enforce the 10m statutory 'No Stopping' zones around the new building at 2- 8 Loftus Street, Turrella, as follows:
  - \* on the north-western corner of Loftus Street and Hirst Street
  - \* on the south-eastern corner of Hirst Street and Edward Street
- 2 That the installation of the signage be fully funded by the applicant.

**BTC16.11 Ramsgate Road and Alfred Street, Ramsgate Beach Town Centre Improvement – Temporary Road Closure – Traffic Management Plan**

Committee recommendation

That endorsement be given for the temporary road closure in Alfred Street south of Ramsgate Road for a period of 7 weeks beginning 12 September 2016 until 6 November 2016 to facilitate the construction of Ramsgate Beach Town Centre Improvement Project.

**BTC16.12      Regent Street and Westbourne Street intersection, Bexley –  
Proposed double centre lines and concrete median islands**

Committee recommendation

That approval be given to the provision of additional traffic safety measures at the intersection of Westbourne Street and Regent Street, Bexley, as follows:

- ★ painted islands, (6m long with 1m wide) with concrete rumble bars
- ★ 10m double centre lines leading toward the tail of the islands.

**BTC16.13      Solander Street, Monterey, north kerb line between Nos. 4 and 12  
Solander Street – proposed conversion from parallel parking to 90 degree  
angled parking arrangement**

Committee recommendation

- 1      That approval be given to conversion of parallel parking to 90 degree angled parking arrangement along the northern kerb line of Solander Street between the driveways serving No. 4 and No 6-8 Solander Street, Monterey, to provide six parking spaces with rear to kerb arrangement
- 2      That a 'No Parking' zone be provided between the driveways of No 6-8 and No 10 Solander Street, Monterey
- 3      That five rear to kerb 90 degree angle parking spaces be line marked in the area between the driveways serving No. 10 and No 12 Solander Street, Monterey.

**BTC16.14      The Grand Parade, Bay Street, General Holmes Drive, President  
Avenue, Brighton Le Sands – New Year Eve Fireworks Display – Temporary  
Road Closure**

Committee recommendation

- 1      That the proposed road closures in The Grand Parade, Bay Street, President Avenue, General Holmes Drive and affected surrounding streets in Brighton Le Sands, on Saturday 31 December 2016 and 2am on Sunday 1 January 2017 to celebrate the New Years Eve Family Firework Display, as shown in the attached Traffic Control Plan (TCP) and Traffic Management Plan (TMP) subject to approval of the Police and Roads and Maritime Services Transport Management Centre as follows be endorsed:
  - 1.1      Closure of The Little Grand Parade between Bestic Street and General Holmes Drive from 1600 hours. Local resident access will be maintained from Henson Street
  - 1.2      Closure of Bay Street from The Grand Parade to Moate Avenue from 1800 hours
  - 1.3      Closure of lane one southbound on The Grand Parade from Gordon Street to the pedestrian signalised crossing south of Duke Street from 1730 hours



- 1.4 Closure of lane one northbound on The Grand Parade from the pedestrian signalised crossing south of Duke Street to Bay Street from 1730 hours
- 1.5 Closure of The Grand Parade and General Holmes Drive from Bestic Street to President Avenue in both directions from 1930 hours to 2230 hours
- 1.6 Traffic will be detoured before the road closure as a result of the 'recommendation 1.5' above to President Avenue then West Botany Street from 1930 hours to 2230 hours. However, oversized vehicles and dangerous goods carrying vehicles will be detoured via Bay Street or Joyce Drive then Qantas Drive then Marsh Street/Wickham Street
- 1.7 Any oversized vehicles and dangerous goods carrying vehicles which are already on General Holmes Drive, will be held on General Holmes Drive north of Bestic Street until the road reopen at 2230 hours
- 2 That endorsement be given to the installation of Special Event Clearway restrictions at the following locations:
  - 2.1 Bay Street from The Grand Parade to Moate Avenue, both sides from Saturday 31 December 2016, 1300 hours to New Year Day 0100 hours
  - 2.2 The Grand Parade and General Holmes Drive from President Avenue to Bestic Street, both sides from Saturday 31 December 2016's 0400 hours to New Year Day 0200 hours
  - 2.3 Crawford Road along the eastern kerb line, south of Bay Street from the southern end of existing 'No Stopping' zone for another 20m from Saturday 31 December 2016's 0400 hours to New Year Day's 0200 hours
  - 2.4 Crawford Road along the western kerb line, south of Bay Street from the southern end of existing 'No Stopping' zone for another 150m from Saturday 31 December 2016's 0400 hours to New Year Day 0200 hours
- 3 That the proposed Traffic Control Plan (TCP) and Traffic Management Plan (TMP) be submitted to the Police and Transport Management Centre for approval

**b) Minor Traffic Issues**

**BTC16.15 Broadford Street, Bexley, in front of No. 40 Broadford Street – proposed removal of a disabled parking restriction**

Committee recommendation

That approval be given to the removal of a disabled parking in front of 40 Broadford Street, Bexley, as it is no longer required

**BTC16.16 Chuter Avenue Access Road, Ramsgate, at Florence Street – proposed signposting to reinforce 10m statutory 'No Stopping' restriction**

Committee recommendation

That approval be given for the installation of 10m 'No Stopping' restrictions on both sides of Chuter Avenue access road, north of its intersection with Florence Street

**BTC16.17 Eton Street at Stoney Creek Road, Bexley – proposed signposting to reinforce 10m statutory 'No Stopping' restriction**

Committee recommendation

That approval be given for the extension of 'No Stopping' restrictions by 3m from 7m to 10m along the western kerblines of Eton Street, at its intersection with Stoney Creek Road

**BTC16.18 Norman Avenue, Dolls Point, south of Sandringham Street – proposed extension of 'No Stopping' by 19m**

Committee recommendation

That approval be given to the replacement of 10m 'No Stopping 6am-9pm' parking restriction along the eastern kerb line of Norman Avenue with 19m 'No Stopping' restrictions, south of Sandringham Street, Dolls Point as follows:

- 1 from 0m to a point 10m - Retain the existing "No Stopping" zone
- 2 from 10m to 20m- remove existing "No Stopping, 6am- 9pm" restriction
- 3 from 10m to 29m- install "No Stopping" restriction
- 4 from 29m southerly - retain existing parking arrangement

**BTC16.19 Wilson Street, Kogarah, east of Rocky Point Road – proposed removal of 2P restriction**

Committee recommendation

That parking restrictions along the northern kerb line of Wilson Street east of Rocky Point Road in front of old Endeavour Nursing Home, 74-76 Rocky Point Rd, Kogarah be rearranged as follows at the developer's expense:

- a) from 0m - to 10m - Retain existing "No Stopping" restriction
- b) from 10m to 31m - Remove "2P" parking zone
- c) from 31m to 52.5m (covering the driveways of the Nursing Home) -Remove the "No Parking" restriction

**BTC16.20 Wollongong Road, near the newly constructed pedestrian tunnel east of Al Zahra College – proposed 'P10 Minute, 8am- 9:30am, and 2:30pm- 4pm, School Days' restriction**

Committee recommendation

That approval be given to the installation of 'P10 minutes 8am-9:30am 2:30pm- 4:00pm, School Days' restrictions along the eastern kerbline of Wollongong Road, south of Martin Avenue, north of the entrance to the Arncliffe pedestrian tunnel to allow for drop off and pick up of school children as follows:

- ★ Om to a point 10m - proposed 'No Stopping' restriction
- ★ from 10m to 40m - proposed 'P10 minutes 8:30am-9:30am 2:30pm- 4:00pm, School Days' restriction
- ★ from 40m southerly to Allen Street - proposed 'No Stopping' restriction

**BTC16.21 Coward Street at No. 200 Coward Street, east of O'Riordan Street, Mascot – proposed 'Works Zone, 10am- 3pm, Mon – Fri' restriction**

Committee recommendation

That the proposed 'Works Zone' not be approved and that the applicant revise the proposed traffic control plan for the construction site

## **6 General Business**

**BTC16.22 Additional Items – General Business – Matters raised by Members of the Bayside Traffic Committee**

Committee recommendation

That matters raised be investigated.

**BTC16.23 King Street and Sutherland Street, Mascot, provision of right turn facility – matter raised by Mr Ron Hoenig, MP for Heffron**

Committee recommendation

That matters raised be investigated and a progress report be provided at the next BTC meeting.

**BTC16.24 Bexley Shopping Centre Car Park between Stoney Creek Road and Forest Road, traffic exiting in contravene to the one-way direction into Forest Road – matter raised by Mr Les Crompton**

Committee recommendation

That matters raised be investigated.

**BTC16.25      Wollongong Road, cul de sac end, Arncliffe, the part time 'No Stopping' should be changed to a full time 'No Stopping' to facilitate turning movement – matter raised by Mr Nicolas Kocoski**

Committee recommendation

That matters raised be investigated.

**BTC16.26      Resignation from Bayside Traffic Committee Membership – matter raised by Mr Nicolas Kocoski**

Summary:

Mr Nicolas Kocoski has resigned from Bayside Council Traffic Committee due to the following reasons:

- He has been promoted to a higher position in the Roads and Maritime Services
- After the Council amalgamation between Rockdale and Botany Bay City Councils on 9 September 2016, Bayside Council has been grouped in the eastern district of RMS.
- A new RMS's representative, Mr James Suprain, from the eastern district of RMS will attend the Bayside Traffic Committee meetings

Mr Kocoski has been an excellent representative from RMS to the Rockdale Traffic Committee for the past ten (10) years. His input and assistance to develop and implement traffic and safety measures on local streets are very much appreciated.

Committee recommendation

- 1      That the Committee thank Mr Nicolas Kocoski for his valuable contribution and constructive inputs to the traffic and road safety issues on local streets for the past 10 years
- 2      The Committee welcome Mr James Suprain as the new representative from RMS to Bayside Council Traffic Committee

The Convenor closed the meeting at 11:13am.

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## **Council Meeting**

**12/10/2016**

Item No	10.2
Subject	<b>Minutes of Local Representation Committee 5 October 2016</b>
Report by	Liz Rog, Acting Manager Governance
File	(R) F16/903

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## **Council Resolution**

Resolved by the Administrator:

That the minutes of the Local Representation Committee meeting held on 5 October 2016 be received.

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## **Officer Recommendation**

That the Minutes of the Local Representation Committee of 5 October 2016 be received.

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## **Present**

Greg Wright, Administrator  
Joe Awada  
Liz Barlow  
Mark Castle  
Christina Curry (Skype)  
George Glinatsis  
Mark Hanna  
Tarek Ibrahim  
Petros Kalligas  
James Macdonald  
Nicholas Mickovski  
Greg Mitchell  
Michael Nagi  
Shane O'Brien  
Peter Poulos  
Bill Saravinovski  
Brian Troy  
Andrew Tsounis

## **Also Present**

Meredith Wallace, General Manager  
Fausto Sut, A/Director Corporate and Community  
Karen Purser, Manager Community Planning and Reporting  
Liz Rog, A/Manager Governance  
Lauren Thomas, Governance Officer  
Vince Carrabs, Coordinator City Media and Events (arrived at 7.30pm)

The Administrator opened the meeting in the Administration Centre, Level 2 Conference Room, 2 Bryant Street, Rockdale at 7.12 pm.

## **1 Acknowledgement of Traditional Owners**

The Administrator read the acknowledgement of traditional owners.

## **2 Apologies**

Ron Bezic, Ben Keneally and Paul Sedrak.

Note - Christina Curry participated in the meeting via teleconference.

## **3 Disclosures of Interest**

There were no disclosures of interest.

## **4 Minutes of Previous Meetings (N/A)**

Being the first meeting of the committee, there were no minutes to confirm.

## **5 Terms of Reference (Q & A From Members)**

### **5.1 Role**

The Administrator explained the role of the Committee to members as outlined in the Terms of Reference. The focus of the committee is to ensure the best outcomes for the Bayside Council and community.

### **5.2 Code of Conduct**

Members were advised that the Model Local Government Code of Conduct is the code for the committee, with members already familiar with the conduct obligations based on their roles as former Councillors.

### **5.3 Interaction with Media**

As outlined in the Terms of Reference.

### **5.4 Communication Pathways with Council Officers**

Q: Bill Saravinovski - Responding to requests from the Community.

A: General requests and operational matters should be directed to customer service where a service request (CRM) would be raised for the matter. More complex requests can be directed to the General Manager and/or the Administrator.

## **5.5 Remuneration**

The Administrator advised members that remuneration is based on the Joint Regional Planning Panel rates regarding attendance at meetings.

## **6 Schedule of Meeting Dates / Venues – October to December 2016**

It was confirmed that the Local Representative Committee meetings for the remainder of the year would be held on 2 November 2016 and 7 December 2016. The meetings will be held at alternating venues – the Rockdale Service Centre and the Mascot Service Centre, with the November meeting to be held at Mascot.

## **7 Presentation on Transition Plan Milestones**

Meredith Wallace presented Members with an overview of highlights the transition to Bayside Council has progressed so far. While it has been an extremely busy time for staff “business as usual” has been maintained for communities and constituents. Council staff are giving out as much information as they can to residents to keep them informed. The Bayside brand is already in many public places and on all council vehicles, stationery, news print, website and one telephone number.

Information Technology staff are currently working at harmonising software systems. It has been three weeks of rapid, relentless change.

It is planned that functional staff will be co-located in one of the current Administration buildings as soon as possible with longer term accommodation options being planned.

Residents can make any payment for services at either of the Bayside Service Centres at Rockdale and Mascot. Access to pools and libraries is available to resident across the new local government area.

There is an opportunity to create a new service centre as a contact point for the community, within the former Mayoral Office in Eastgardens Shopping Centre.

The Administrator and General Manager participate in fortnightly phone link-ups with the Department of Premier and Cabinet and other Councils who began the transition process four months earlier than Bayside Council. This has been particularly useful in our transition.

Q: Mark Castle - Whether an extension would be needed for local government elections, past the September 2017 date?

A: This was not an option for Council, as the date is set by the State Government.

The Administrator advised that staff were working hard to provide a seamless integration and whilst much is happening in the background, its aim is to ensure the community is unaware of any disruption.

Q: Bill Saravinovski - Two different salary systems for staff?

A: In the short term there will be two different salary systems however, there will be harmonisation of salaries in the longer term.



Q: Andrew Tsounis – Lodgement of Development Applications is an option at both Customer Service Centres?

A: Yes – however there are two different Local Environmental Plans continuing to operate based on the former geographical locations with different Development Control Plans for the two unique areas still being utilised. In the longer term, one set of planning instruments will be developed.

Similarly, a uniform fees and charges schedule will be introduced.

Q: Greg Mitchell – Would former events as scheduled, continue to operate in the new Council?

A: Community and civic events that were scheduled for the remainder of 2016 by both former Councils will be going ahead as planned, including the backlog of Citizenship ceremonies already scheduled. However, any future Citizenship ceremonies will be combined and will alternate between Mascot and Rockdale venues. Future events would be combined, where appropriate, in the new year.

## **8 Community Grants Program (\$1 Million State Funding) Briefing**

The Manager, Community Planning and Reporting (KP) gave a presentation explaining the Stronger Communities Fund and how the Community Grants Program would be implemented, including summarising the obligations on Council and outlining the process for applications for grants.

## **9 Major Projects Program (\$9 Million State Funding) Briefing**

The Manager, Community Planning and Reporting (KP) gave a presentation explaining the Stronger Communities Fund and how the Major Projects Program would be implemented, including summarising the obligations on Council and outlining the process for identifying priority programs.

Q: Bill Saravinovski – whether the money could be used for property acquisitions, such as Primrose House.

A: Projects identified would require a fully scoped 'fit for purpose' brief to establish if the project was viable for Council and whether it addressed a priority need for the community. The Administrator added that any such purchase would need to have a use; that is – what is the end benefit to the community.

Q: Tarek Ibrahim – The two lots of money (\$10M for transition and \$10M for Grants Program) seem to cancel each other out in terms of cost of transition to create the new Council 'vs' projects identified for the funding program.

The General Manager explained that there are two lots of \$10 million for two entirely different purposes: one for transition and one for the community, being additional infrastructure.

An implementation plan will be put in to place in the next three weeks to determine the allocation of the \$10 million against transition costs. An effort will be made to keep it under \$10 million where realistically possible.

## **10 Criteria For Identifying Priority Actions And Programs For The Stronger Communities Funding**

The Administrator asked members to identify any emerging issues relating to policy, priority or resourcing around the Bayside community and to provide their feedback on the matter at the next meeting of the Local Representation Committee.

## **11 Advice From Members On Local Issues**

Q: Bill Saravinovski: Progress on the former resolutions of the former Council entities such as special rate levies, and those relating to Town Centres, Sporting Facilities and Cooks Cove for example.

A: Matters such as the Capital Works Program and special rates were locked in. Regular updates would be provided to the committee on projects that were a high priority. Projects underway will be considered at the October Council meeting and that these matters were progressing as per previously set timeframes.

Q: Mark Castle – Concerns regarding aircraft noise and dealing with the airport was raised as a constant issue for the former Botany Council, would this still be a priority for the new Council.

The Interim General Manager advised that the Australian Mayoral Aviation Council would continue with John Patterson remaining on, in his role with the AMAC. A report about membership of external bodies, including AMAC, is listed as an item on October's Council Meeting agenda.

Q: Andrew Tsounis - Shifting sands; seawall erosion and flag issue along the Botany Bay foreshore is a matter that is considered important to raise with the State Government.

The Administrator advised that he would seek a briefing on this matter to develop his understanding.

Q: Andrew Tsounis – Cooks River Alliance and other groups that the former councils had a commitment with, given Georges River Council have changed their views, has Bayside established a new position?

A: The matter is listed for the October Council meeting to discuss continued involvement and to appoint delegates to those identified external bodies.

The Administrator flagged the pending Independent Hearing and Assessment Panel report as an item to be considered at the October Council meeting. The Administrator noted he was yet to review the report, however he explained to members that he aims to be transparent at all meetings and provide the reasoning behind each recommendation made at the Council meeting.

Q: Brian Troy - The IHAP is something that the former Botany Bay City Council would never appoint as it was seen to be more open to corruption and its decision making was not transparent as it was not conducted in front of the public. This is not something he would support.

A: Views noted.

Q: Shane O'Brien – An IHAP was discussed generally and no position taken by the former Rockdale City Council.

A: Views noted.

Q: Brian Troy - Would meetings continue to be recorded and broadcast on the internet as was the longstanding arrangement in place for Botany Bay Council Meetings?

A: The webcasting of Meetings is not a requirement in the newly adopted Code of Meeting Practice, however it is an item that had been raised for consideration in the near future with a view to enabling webcasting at either Town Hall venue.

Q: Shane O'Brien – A public forum available for registered speakers to address the Council Meetings.

A: Yes, the registration process remains in place for items listed on the agenda.

The Administrator asked members to consider options for a recognition function being held to recognise the service of the former Councillors of the last term of the two former Councils of Botany Bay and Rockdale.

The majority of members agreed with the suggestion and a decision is still to be made on the scale of the event.

Q: George Glinatsis – Change Bayside to reflect the Bay – Botany Bay should be maintained.

A: Bayside Council was named in the proclamation by the State Government. While it is possible to change the name now, it would be a costly exercise and a false step given that culturally, throughout the organisation the brand of Bayside Council has gained significant momentum.

## **12 Action Items Review (N/A)**

The Administrator advised members that a follow up action table will be developed and listed at the next and subsequent meetings for discussion.

The Administrator closed the meeting at 8.29 pm.

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## Council Meeting

12/10/2016

Item No	11.1
Subject	<b>Closed Council Meeting</b>
Report by	Liz Rog, Acting Manager Governance Evan Hutchings, Acting Manager Governance
File	(R) SF16/959

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## Summary

This report recommends that the Council Meeting be closed to the press and public in order to consider the items below.

Council's Code of Meeting Practice allows members of the public to make representations to or at a meeting, before any part of the meeting is closed to the public, as to whether that part of the meeting should be closed.

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## Council Resolution

Minute 2016/037

Resolved by the Administrator:

- 1 That, in accordance with section 10A (1) of the Local Government Act 1993, the Council considers the following items in closed Council Meeting, from which the press and public are excluded, for the reasons indicated:

**11.2 CONFIDENTIAL – Report from NSW Fire and Rescue – 2-4 Dillon Street, Ramsgate (Section 121ZD)**

In accordance with Section 10A (2) (g) of the Local Government Act 1993, the Council resolves itself into closed session with the press and public excluded by reasons of advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege. It is considered that if the matter were discussed in an open Council Meeting it would, on balance, be contrary to the public interest due to the issue it deals with.

**11.3 CONFIDENTIAL – Tender – Mascot Childcare Centre Upgrade**

In accordance with Section 10A (2) (c) of the Local Government Act 1993, the Council resolves itself into closed session with the press and public excluded by reasons of information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business. It is considered that if the matter were discussed in an open Council Meeting it would, on balance, be contrary to the public interest due to the issue it deals with.

**11.4 CONFIDENTIAL – Tender – Footpath, Kerb and Gutter and Pram Ramp Works**

In accordance with Section 10A (2) (c) of the Local Government Act 1993, the Council resolves itself into closed session with the press and public excluded by reasons of information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business. It is considered that if the matter were discussed in an open Council Meeting it would, on balance, be contrary to the public interest due to the issue it deals with.

**11.5 CONFIDENTIAL – Tender – SRV13 Scarborough Park Amenities Refurbishment**

In accordance with Section 10A (2) (d) of the Local Government Act 1993, the Council resolves itself into closed session with the press and public excluded by reasons of commercial information of a confidential nature that would, if disclosed:

- i) prejudice the commercial position of the person who supplied it, or
- ii) confer a commercial advantage on a competitor of the Council, or
- iii) reveal a trade secret.

It is considered that if the matter were discussed in an open Council Meeting it would, on balance, be contrary to the public interest due to the issue it deals with.

**11.6 CONFIDENTIAL – Senior Staff Structure**

In accordance with Section 10A (2) (a) of the Local Government Act 1993, the Council resolves itself into closed session with the press and public excluded by reasons of personnel matters concerning particular individuals (other than Councillors).

- 2 That, in accordance with section 11 (2) and (3) of the Local Government Act 1993, the reports, correspondence and other documentation relating to these items be withheld from the press and public.

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**Officer Recommendation**

- 1 That, in accordance with section 10A (1) of the Local Government Act 1993, the Council considers the following items in closed Council Meeting, from which the press and public are excluded, for the reasons indicated:

**11.2 CONFIDENTIAL – Report from NSW Fire and Rescue – 2-4 Dillon Street, Ramsgate (Section 121ZD)**

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- iii) reveal a trade secret.

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- 2 That, in accordance with section 11 (2) and (3) of the Local Government Act 1993, the reports, correspondence and other documentation relating to these items be withheld from the press and public.

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## Council Meeting

**12/10/2016**

Item No	11.2
Subject	<b>CONFIDENTIAL – Report from NSW Fire and Rescue - 2-4 Dillon Street, Ramsgate</b>
Report by	Liz Rog, Acting Manager Governance Paul Vogt, Manager Regulatory Services
File	(R) F08/584

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### **Confidential**

In accordance with Section 10A (2) (g) of the Local Government Act 1993, the Council resolves itself into closed session with the press and public excluded by reasons of advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege. It is considered that if the matter were discussed in an open Council Meeting it would, on balance, be contrary to the public interest due to the issue it deals with.

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## Council Resolution

Resolved by the Administrator:

That report Reference number BFS16/784 (10359) dated 6 September 2016 forwarded on behalf of the Commissioner of Fire and Rescue NSW be tabled at Council's meeting as required by Section 121ZD(2) of the Environmental Planning and Assessment Act 1979.

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**Council Meeting**

**12/10/2016**

Item No	11.3
Subject	<b>Tender – Mascot Childcare Centre Upgrade</b>
Report by	Stuart Dutton, Director City Infrastructure
File	(B) S15/154

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**Confidential**

In accordance with Section 10A (2) (c) of the Local Government Act 1993, the Council resolves itself into closed session with the press and public excluded by reasons of information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business. It is considered that if the matter were discussed in an open Council Meeting it would, on balance, be contrary to the public interest due to the issue it deals with.

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**Council Resolution**

Resolved by the Administrator:

- 1 The report of the Director City Infrastructure be received and noted.
  - 2 That 2020 Projects Pty Ltd be approved as the preferred tenderer for the Mascot Childcare Centre upgrade works
  - 3 The General Manager be authorised to finalise negotiations and sign the relevant contract with the preferred tenderer.
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## Council Meeting

12/10/2016

Item No	11.4
Subject	<b>CONFIDENTIAL - Tender – Footpath, Kerb and Gutter and Pram Ramp Works</b>
Report by	Stuart Dutton, Director City Infrastructure
File	(B) S16/96

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### Confidential

In accordance with Section 10A (2) (c) of the Local Government Act 1993, the Council resolves itself into closed session with the press and public excluded by reasons of information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business. It is considered that if the matter were discussed in an open Council Meeting it would, on balance, be contrary to the public interest due to the issue it deals with.

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## Council Resolution

Resolved by the Administrator:

- 1 The report of the Director City Infrastructure be received and noted.
  - 2 That Civil Construction Partners (CCP) be approved as the preferred tenderer for the Footpath works package.
  - 3 That Mack Civil Pty Ltd be approved as the preferred tenderer for the Kerb & Gutter and Pram Ramps works packages.
  - 4 The General Manager be authorised to sign the relevant contracts
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**Council Meeting**

**12/10/2016**

Item No	11.5
Subject	<b>CONFIDENTIAL – Tender – SRV13 Scarborough Park Amenities Refurbishment</b>
Report by	Coordinator City Projects, Maritza Abra Senior Project Architect, Louise Farrell
File	(R) F16/194

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**Confidential**

In accordance with Section 10A (2) (d) of the Local Government Act 1993, the Council resolves itself into closed session with the press and public excluded by reasons of commercial information of a confidential nature that would, if disclosed:

- i) prejudice the commercial position of the person who supplied it, or
- ii) confer a commercial advantage on a competitor of the Council, or
- iii) reveal a trade secret.

It is considered that if the matter were discussed in an open Council Meeting it would, on balance, be contrary to the public interest due to the issue it deals with.

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**Council Resolution**

Resolved by the Administrator:

- 1 That in accordance with Regulation 178(1)(A) of the Local Government (General) Regulations 2005, Council accept the Tender from Camporeale Holdings Pty Ltd (Trading as Michael Camporeale Builders) for the Contract F16/194 - SRV13 Scarborough Park Amenities Refurbishment in the amount of \$763,788 (exclusive of GST).
  - 2 That the 2016/2017 Budget be revised as per the estimated project cost as shown in the Financial Implications section of the report, with funding allocated from the Special Rate Variation reserve.
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**Council Meeting**

**12/10/2016**

Item No                11.6  
Subject                **CONFIDENTIAL – SENIOR STAFF STRUCTURE**  
Report by             Meredith Wallace, Interim General Manager  
File                     (R) SF16/959

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**Confidential**

In accordance with Section 10A (2) (a) of the Local Government Act 1993, the Council resolves itself into closed session with the press and public excluded by reasons of personnel matters concerning particular individuals (other than Councillors).

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**Council Resolved**

Resolved by the Administrator:

Bayside Council will be re-structured under the following four new divisions:

- 1     City Future
  - 2     City Life
  - 3     City Presentation
  - 4     City Performance
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## **Council Meeting**

**12/10/2016**

Item No	11.7
Subject	<b>Resumption of Open Council Meeting</b>
Report by	Liz Rog, Acting Manager Governance Evan Hutchings, Acting Manager Governance
File	(R) SF16/959

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## **Summary**

This report recommends that the closed part of the Council Meeting concludes and that the meeting be opened to the press and public.

Council's Code of Meeting Practice requires that, if Council passes a resolution during a meeting, or part of a meeting, that is closed to the public, the Chairperson will make the resolution public as soon as practicable after the closed part of the meeting has ended.

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## **Council Resolution**

Minute 2016/043

Resolved by the Administrator:

That the open meeting of Council be reconvened.

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## **Officer Recommendation**

That, the closed part of the meeting having concluded, the open Council Meeting resume and it be open to the press and public.

That it be noted that the General Manager made public the resolutions that were made during the closed part of the meeting.