
Bayside Planning Panel

24/04/2018

Item No	6.6
Application Type	Attached dwelling houses with pools and Torrens and Stratum Title Subdivision
Application Number	DA-2018/1004
Lodgement Date	12 January 2018
Property	37A-39 Daphne Street, Botany Lot 202 DP 1001451 and Lot 6 Sect E DP 1787
Owner	TMR Investments Group P/L
Applicant	TMR Investments Group P/L
Proposal	Demolition of the existing structures, construction of five (5) attached dwellings with swimming pools including associated excavation works and landscaping and Torrens Title subdivision for the dwellings and stratum subdivision of the car parking level
No. of Submissions	Nil
Cost of Development	\$2,883,074.00
Report by	Angela Lazaridis, Senior Development Assessment Planner

Officer Recommendation

- 1 That the Bayside Planning Panel supports the variation to clause 4.3 and clause 4.4 in accordance with the Clause 4.6 justification provided by the applicant.
 - 2 That the Development Application No. DA-2018/1004 for the demolition of the existing structures, Torrens Title subdivision and construction of five attached dwellings with swimming pools including associated excavation works and landscaping at 37A-39 Daphne Street, Botany, be approved subject to the conditions attached to this report.
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Attachments

- 1 Planning Assessment Report
- 2 Elevations
- 3 External Finishes
- 4 Subdivision Plan for dwellings
- 5 Streetscape Analysis
- 6 Subdivision Plan for basement level
- 7 Clause 4.6 variation of height and FSR

Location Plan



Figure 1: Locality Plan

BAYSIDE COUNCIL

Planning Assessment Report

Application Details

Application Number:	DA-2018/1004
Date of Receipt:	12 January 2018
Property:	37A-39 Daphne Street, Botany Lot 202 DP 1001451 and Lot 6 Sect E DP 1787
Owner:	TMR Investments Group P/L
Applicant:	TMR Investments Group P/L
Proposal:	Demolition of the existing structures, construction of five (5) attached dwellings with swimming pools including associated excavation works and landscaping and Torrens Title subdivision for the dwellings and the car parking level
Recommendation:	Approval, subject to conditions of consent
Value:	\$2,883,074.00
No. of submissions:	Nil
Author:	Angela Lazaridis- Senior Development Assessment Officer
Date of Report:	4 April 2018

Key Issues

Bayside Council received Development Application No. 2018/1004 on 12 January 2018 seeking consent for the demolition of the existing structures, construction of five (5) attached dwellings with swimming pools including associated excavation works and landscaping and Torrens Title subdivision for the dwellings and the car parking level at 37A-39 Daphne Street, Botany.

The application was placed on public exhibition for a fourteen (14) day period from 24 January to 8 February 2018. No submissions were received during the public notification period.

Key issues in the assessment of the development application include departures in the height and FSR and subdivision pattern.

The development proposes a height of 11.98 metres which is 1.98 metres greater than the 10 metre height requirement for the site. The proposal has had to be raised to meet the flood level required for the site. Additionally, the height and number of storeys proposed is consistent with the surrounding development. The site to the east has a maximum height of 12 metres under the BBLEP 2013, therefore the subject site will appropriate transition with the neighbouring site. Additionally, the proposed development has a lower height than what was approved under DA-15/253 which previously approved a four storey residential flat building. The proposal results in reduced bulk and scale than the approved development and a less impactful outcome on the surrounding context. The applicant has provided a Clause 4.6 variation to address the height non-compliance.

The development proposes to exceed the 0.85:1 permitted FSR of each site to have an FSR of 0.98:1 to 1.08:1. A majority of the non-compliance is attributed to the inclusion of the additional car parking space for each lot as well as some of the bulk of the development. The applicant has submitted a Clause 4.6 variation to justify the variation of the FSR. A discussion relating to FSR has been provided in the report below.

The development proposes Torrens Title subdivision of the dwellings and car parking level. The site area and street frontage widths proposed are smaller than the average sized lots in the area however the majority of attached dwellings in the surrounding streets are strata titled therefore the subdivision pattern in the area is varied. The built form proposed reads as a medium density development which is similar to existing development in the area and is acceptable.

The development application has been assessed in accordance with the relevant requirements of the *Environmental Planning and Assessment Act 1979 (EPA Act)* and is recommended for approval, subject to conditions of consent.

Recommendation

It is RECOMMENDED:

1. That the Bayside Planning Panel supports the variation to clause 4.3 and clause 4.4 in accordance with the Clause 4.6 justification provided by the applicant; and
2. That the Development Application No. 2018/1004 for the demolition of the existing structures, construction of five attached dwellings with swimming pools including associated excavation works and landscaping and Torrens Title subdivision of the dwellings and car parking level at 37A-39 Daphne Street, Botany, be approved subject to the conditions attached to this report.

Background

History

Development Application No. 15/81 was approved by Council on 18 November 2015 for the demolition and construction of a three storey residential flat building containing 10 units, including four affordable housing units, a basement level car park with 23 car spaces and lot consolidation. This consent has not been enacted upon.

Development Application No. 15/253 was approved by Council on 20 April 2016 for the demolition of the existing structures and construction of a three storey residential flat building containing 18 apartments including 6 affordable housing apartments and a basement level car park with 21 spaces and lot consolidation.

Section 96(2) Application No. 15/253/02 was approved by Council on 26 September 2017 to modify Development Consent No. 15/253 to amend the basement car park, approved units and an addition of 3 (2 x 1 bed and 1 x 2 bed) units on a new upper level along with a modified communal open space area. The proposal now includes 21 units with 10 affordable units. The height of the development was approved at 12.5 metres and had an FSR of 1.35:1.

Proposal

The development application seeks consent for the demolition of the existing structures, construction of five (5) attached dwellings with swimming pools including associated excavation works and landscaping and Torrens Title subdivision for the dwellings and car parking level.

The specifics of the proposal are as follows:

- Demolition of all structures on the site;
- Torrens Title Subdivision of the 2 lots into 5 separate lots ranging in size between 194.43sqm and 203.27sqm. The car parking level is partially below ground for 10 vehicles with each lot containing two car parking spaces;
- Construction of five x three storey attached dwelling houses each with four bedrooms (two with ensuite), open plan kitchen, living room and dining room, separate lounge room and study area, laundry, bathroom and internal courtyards with voids above;
- Construction of aboveground swimming pools for each lot;
- Relocation of the existing substation.

The below figures demonstrate the proposed development on the site:

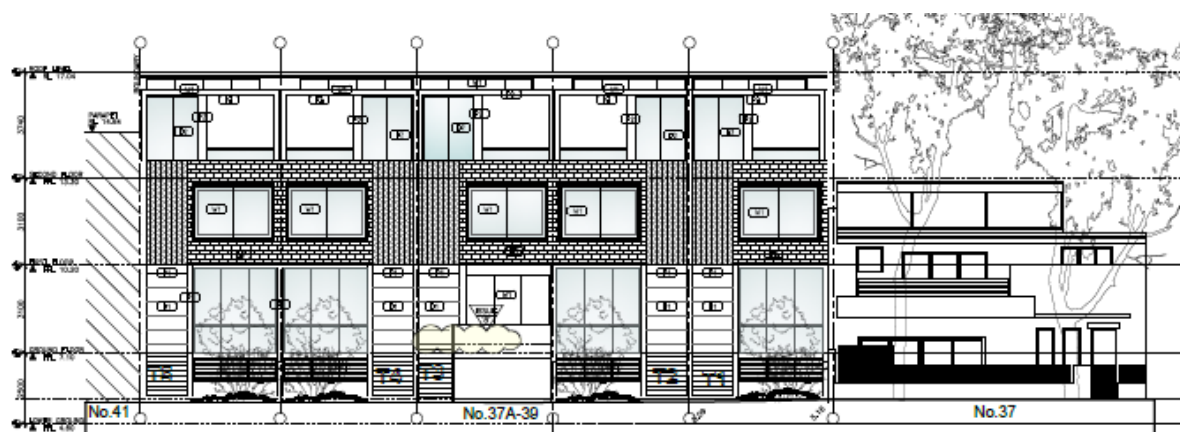


Figure 1. Proposed Northern Elevation

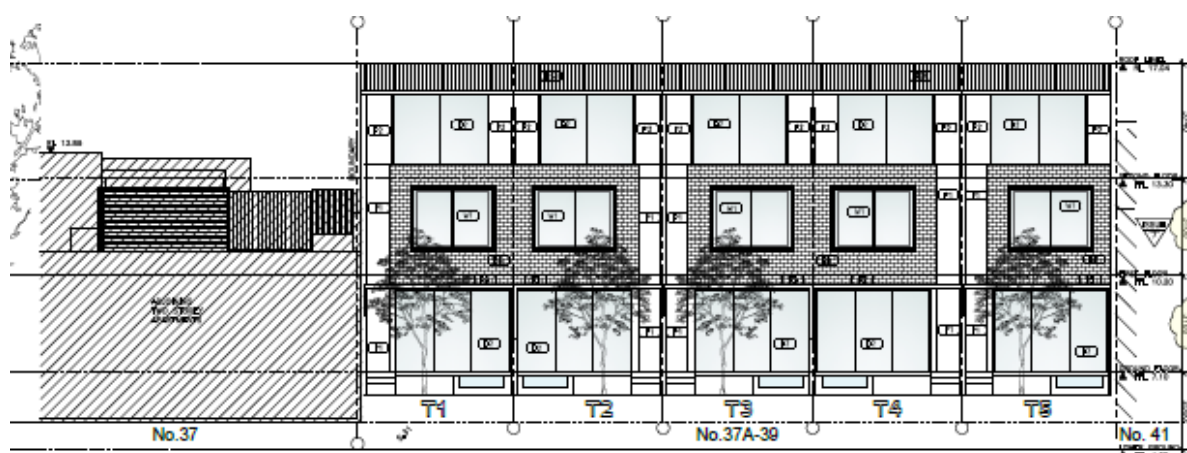


Figure 2. Proposed Southern Elevation

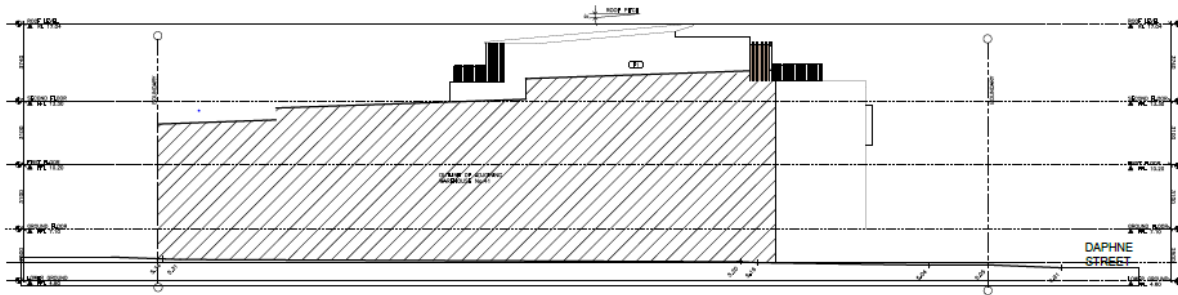


Figure 3. Proposed Eastern Elevation

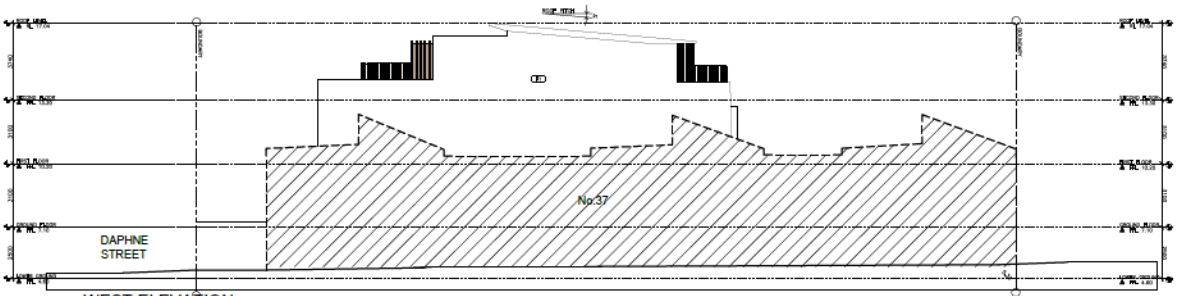


Figure 4. Proposed Western Elevation

Site Description

The site is known as No. 37A and 39 Daphne Street, Botany and consists of two allotments legally described as Lot 202 in DP 1001451 and Lot 6 Section E in DP 1787. The site is located on the southern side of Daphne Street, between Ivy Street to the west and Daniel Street to the east.

The site is a rectangular in shape with an area of 987.5m². The site has a frontage to Daphne Street of 24.38 metres, a rear boundary of 24.63metres and a depth along the eastern and western side boundaries of 40.25 metres.

The site surface topography is slightly sloping towards the north-west (Daphne Street), with an approximate gradient of 1 to 2%.

The subject site currently comprises two attached industrial style buildings with open ground floor factory floors and mezzanine office levels at the front with flat metal roofs. The buildings are setback approximately 11m from the front, nil to the sides, and nil to the rear. A concrete parking and manoeuvring area exists within the front setback as well as an electricity substation within a brick structure. A motor winding company currently operates at No 37A while a furniture hiring company operates at No 39. Metal wire fencing encloses the site along the front elevation.

There are no natural site features or trees located on the site. There are easements for drainage in the north-western portion and along the western side boundary of the site. Other easements for overhang and support exist in the middle of the site which relate to existing structures only, which are to be demolished under the proposal. The site location is illustrated in **Figure 5**. An aerial photo of the site and the existing development on the site are illustrated in **Figures 6, 7 and 8**.



Figure 5. Cadastre of Locality




Figure 6. Aerial photo of the site and surrounds



Figure 7. Development site as viewed from Daphne Street



Figure 8. Sydney Water Pumping Station adjoining the rear of the subject site which is the brick factory on the left.

Statutory Considerations

An assessment of the application has been undertaken pursuant to the provisions of the *Environmental Planning and Assessment Act, 1979*.

S.4.15(1) - Matters for Consideration – General (formerly s.79c)

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

The following Environmental Planning Instruments are relevant to this application:

State Environmental Planning Policy (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. 891391M_02 dated 22 December 2017 prepared by Greenworld Architectural Drafting 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 2013.

The site currently consists of a brick light industry warehouse on the site. Due to the warehouse located on the site and the previous industrial stock that had surrounded the site, the application was referred to Council's Environmental Scientist and a Phase 1 and 2 report was submitted for assessment. The comments provided by the Environmental Scientist are as follows:

"A Detailed Site Investigation Report was submitted to Council and concludes that the site is suitable for the proposed development. Soil impacts were not found in the fill materials or natural soils on site. Groundwater exceedances are considered to be a regional issue, and can be managed during dewatering during construction."

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 2013 has been considered in the assessment of the Development Application and the following information is provided:

Relevant Clauses Principal Provisions of Botany Bay Local Environmental Plan 2013	Compliance Yes/No	Comment
Land use Zone	Yes	The site is zoned R3 Medium Density Residential zone under the Botany Bay Local Environmental Plan 2013.
Is the proposed use/works permitted with development consent?	Yes	The proposed use as attached dwelling houses on Torrens Title and the car park is permissible with Council's consent under the Botany Bay Local Environmental Plan 2013.
Does the proposed use/works meet the objectives of the zone?	Yes	The proposed development is consistent with the objectives of the R3 zone which are: <ul style="list-style-type: none">To provide for the housing needs of the community within a medium density residential environment.

Relevant Clauses Principal Provisions of Botany Bay Local Environmental Plan 2013	Compliance Yes/No	Comment
		<ul style="list-style-type: none"> 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.
<p>What is the height of the building?</p> <p>Does the height of the building comply with the maximum building height?</p>	<p>-</p> <p>No – Refer to Note 1</p>	<p>A maximum height of 10 metres applies to the subject site.</p> <p>Both dwellings have a maximum height of 11.98 metres from the NGL. This does not comply with the provisions of the BBLEP 2013. A clause 4.6 variation has been provided with the application.</p>
<p>What is the proposed Floor Space Ratio?</p> <p>Does the Floor Space Ratio of the building comply with the maximum Floor Space Ratio?</p>	<p>-</p> <p>No- Refer to Note 2 below</p>	<p>The maximum Floor Space Ratio requirement is 0.85:1.</p> <p>The lots have a site area as follows: Lot 1: 203.27sqm Lot 2: 194.43sqm Lot 3: 194.44sqm Lot 4: 194.44sqm Lot 5: 199.6sqm</p> <p>The proposed floor space ratio is as follows: Lot 1: 200sqm (0.98:1) Lot 2: 193sqm (0.99:1) Lot 3: 195sqm (1:1) Lot 4: 199sqm (1.02:1) Lot 5: 215sqm (1.08:1)</p> <p>The additional FSR includes the additional car parking space that is over the requirement stated within Table 1 in Part 3A of the BBDCP 2013.</p> <p>The Floor Space Ratio of the development does not comply with Council's requirements under the Botany Bay Local Environmental Plan 2013. A clause 4.6 variation has been submitted with the proposal and assessed in Note 1 below.</p>

Relevant Clauses Principal Provisions of Botany Bay Local Environmental Plan 2013	Compliance Yes/No	Comment
Is the site within land marked "Area 3" on the Floor Space Ratio Map? If so, does it comply with the sliding scale for Floor Space Ratio in Clause 4.4A?	N/A	The site is not located in an Area 3 zone.
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?	Yes	The site is not listed as a heritage item, nor is it located within a Heritage Conservation Area. Nearby heritage items include 52-54 Daphne St (Item 199) comprising a row of terrace houses and Booralee Park (Item 161) comprising a landscape item including parks gardens and trees.
The following provisions in Part 6 of Botany Bay Local Environmental Plan apply– <ul style="list-style-type: none"> 6.1 – Acid Sulfate Soils 6.2 – Earthworks 6.3 – Stormwater Management 6.9 – Development in areas subject to aircraft noise 	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>	<p>The site is located in a Class 4 Acid Sulfate Soils Area. As excavation is not proposed greater than 2 metres, an Acid Sulfate Soils Management Plan is not warranted.</p> <p>The proposal includes excavation for the partial basement level which will have a depth approximately 1.5m below ground level. Appropriate conditions have been imposed in the consent.</p> <p>The proposed development will provide a pumpout system has been proposed with rainwater tanks for each dwelling. The application was reviewed by Council's Development Engineer who has no objection to the proposal.</p> <p>The site falls within the 20-25 ANEF Contour. An acoustic report prepared by Sebastian Giglio Acoustic Consultant was provided with the application and appropriate conditions have been included within the consent.</p>

Note 1 – Clause 4.6 Variation relating to Height of Building variance

The applicant has provided a Clause 4.6 variation to the maximum permissible building height of 10 metres pursuant under Clause 4.3 of the BBLEP 2013. The proposal has a maximum building height of 11.9 metres, a breach of 1.98m. This is a variation of 17.8%.

Clause 4.3 of BBLEP 2013 specifies that the height of a building may not exceed the maximum height specified on the relevant Height of Buildings Map. The site is subject to a height limit of 10 metres. The proposed development exceeds the maximum height allowance when measured in accordance with the BBLEP definition of building height.

Clause 4.6 provides flexibility to vary the development standards specified within the LEP where it can be demonstrated that the development standard is unreasonable or unnecessary in the circumstances of the case and where there are sufficient environmental grounds to justify the departure. Clause 4.6 states the following:

(2) 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...

(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.

The Applicant has provided a Clause 4.6 variation to justify contravening the height standard. Their justification is provided below:

“Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard.

Assessment: The first point when following Wehbe is to establish whether compliance with the development standard is unreasonable or unnecessary.

The table below identifies that the proposed variation to the building height development standard will still achieve a development that satisfies the objectives of the building height development standard.

Table 5: Assessment against the objectives of the building height development standard

<i>Clause 4.3 – Building Height Development Standard of Botany Bay Local Environmental Plan 2013</i>	
<i>Objective</i>	<i>Proposal</i>
<i>Clause 4.3(1)(a)</i>	
<i>To ensure that the built form of Botany Bay develops in a coordinated and cohesive manner</i>	<i>To ensure that the built form of Botany Bay develops in a coordinated and cohesive manner The proposal provides for a built form that is consistent and compatible with the</i>

	<p><i>character of the local area in that it provides a development that is of a similar scale and type to surrounding development and recently approved development. Refer to the photos and description of surrounding development in Section 3 of the SEE.</i></p> <p><i>The proposal provides for a built form that is consistent and compatible with the character of the local area in that it provides a development that is of a similar scale and type to surrounding development and recently approved development. Refer to the photos and description of surrounding development in Section 3 of the SEE.</i></p> <p><i>The proposed built form of the development is of a lesser scale than that already approved on the subject site (DA-2015/253 approved a four storey residential flat building containing 21 units).</i></p> <p><i>The recessed nature of the upper-most level achieves a modest form of development. The recessed nature of the upper level and its lightweight construction and appearance also ensures that the proposal will not adversely affect the streetscape and will also not affect the amenity of surrounding properties in regard to solar access, privacy and view loss</i></p>
<p><i>Clause 4.3(1)(b)</i></p> <p><i>To ensure that taller buildings are appropriately located</i></p>	<p><i>Refer to comments above.</i></p>
<p><i>Clause 4.3(1)(c)</i></p> <p><i>To ensure that building height is consistent with the desired future character of an area</i></p>	<p><i>The subject site is located in an area of mixed character including both low and medium density residential development and some industrial sites to the north, east and west of the site. There are two and three storey medium density townhouse style residential developments along Daphne Street and Ivy Street to the west of the site.</i></p> <p><i>The site is located within the R3 Medium Density Residential zone with a frontage to Daphne Street. It is anticipated that the area will continue to undergo a transition from a light industrial area to a medium density residential area. This has begun</i></p>

	<p>to occur following redevelopment of other light industrial sites along Daphne Street.</p> <p>The proposal represents a desirable form of development which significantly enhances the appearance of the subject site.</p> <p>The proposed development aims to enhance the public domain and streetscape presentation of the subject site by demolishing the existing outdated commercial buildings on the site and replacing these with a high quality and attractive townhouse development in a landscaped setting.</p>
<p>Clause 4.3(1)(d)</p> <p>To minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development</p>	<p>The proposal has been carefully designed to minimise amenity impacts.</p> <p>The proposed development will not be visually obtrusive and will not result in adverse amenity impacts in terms of overshadowing, privacy or view loss to a greater degree than a complying development.</p>
<p>Clause 4.3(1)(e)</p> <p>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</p>	<p>The proposed development will not adversely affect the streetscape as demonstrated in the photomontage below. The proposed bulk and scale will sit comfortably in its context which includes buildings of a similar and greater scale and bulk. The proposal represents a desirable form of development which significantly enhances the appearance of the subject site.</p> <p>The provision of landscaping in the front and rear setbacks softens the appearance of the built form and retains the character of the area as intended by the controls. The proposed height would not be visually obtrusive when viewed from any public or private vantage point.</p>

2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.

Assessment: Not applicable in this instance.

3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.

Assessment: It is noted that the proposal is consistent with a number of recent approvals and recently constructed developments in the immediate surrounding area, refer to the photos and description of surrounding development in Section 3 of the SEE.

The proposed built form of the development is of a lesser scale than that already approved on the subject site (DA-2015/253 approved a four storey residential flat building containing 21 units).

Compliance with the development standard is unreasonable or unnecessary in the circumstances of this case because the exceedance is not considered to result in any adverse impacts as a result of the additional height. The additional building height is not responsible for any greater environmental impacts than a proposal with a compliant building height.

Given the lack of aural and visual privacy impacts, and overshadowing impacts above and beyond a compliant building envelope, there is no sound planning justification to reduce the proposed building height.

The proposed building height achieves a better planning outcome as it allows for the provision of a high quality and attractive townhouse development in a landscaped setting on the site in a manner which is appropriate and compatible with the existing and likely future character of the area. The proposed design will result in a reduced built form and less occupants on the site compared to the approved development on the subject site (DA2015/253).

The non-compliant building height will not be visually obtrusive. The proposal achieves a reasonable streetscape outcome which retains and contributes to a desirable future character.

The recessed nature of the upper-most level achieves a modest form of development. The recessed nature of the upper level and its lightweight construction and appearance also ensures that the proposal will not adversely affect the streetscape and will also not affect the amenity of surrounding properties in regard to solar access, privacy and view loss.

Given there are no detrimental environmental impacts associated with the additional building height, it is confirmed that the additional building height is therefore associated with a better planning outcome on this site.

As such this underlying objective or purpose would be thwarted if compliance was required in this case with the consequence that compliance is unreasonable in the circumstances of this case.

- 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.*

Assessment: Not applicable in this instance; the development standards of height and FSR cover a wide area and whilst they are not appropriate to this site they are appropriate to other sites elsewhere in the locality. There are numerous instances where consents departing from the standard have been approved and others where the standard have been upheld. This is more an indication of the inappropriateness of particular standards to some sites rather than a comment on Council's actions.

It is noted that the proposed built form of the development is of a lesser scale than that already approved on the subject site (DA-2015/253 approved a four storey residential flat building containing 21 units).

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.*

Assessment: The subject site is zoned R3 Medium Density Residential under Botany LEP 2013. The locality comprises a mix of commercial/light industrial and residential uses of varying building heights, building bulk and architectural design. Refer to the photos and description of surrounding development in Section 3 of the SEE.

The zoning of this site is not considered to be inappropriate. The proposed development is considered to satisfy the zone objectives as it provides for the housing needs of the community within a medium density residential environment. The proposed townhouses will provide for a variety of housing types within the surrounding medium density residential environment.

- **Clause 4.6(3)(b): There are sufficient environmental planning grounds to justify contravening the development standard**

There are considered to be sufficient planning grounds to justify varying the building height development standard, which include:

- *Compliance with the development standard is unreasonable or unnecessary in the circumstances of this case because the exceedance is not considered to result in any adverse impacts as a result of the additional height.*
- *The proposed built form is considered to satisfy the objectives of the Clause as it provides for a built form which is consistent and compatible with the character of the local area in that it provides a development that is of a similar scale and type to surrounding development and recently approved development.*
- *The proposed built form of the development is of a lesser scale than that already approved on the subject site (DA-2015/253 approved a four storey residential flat building containing 21 units).*
- *The non-compliant height will not be visually obtrusive and will not result in adverse amenity impacts in terms of overshadowing, privacy or view loss.*
- *The proposal is compliant in regard to the DCP length of building, width of townhouses, site coverage, basement excavation, private open space, front and rear setback, solar access, car parking, dwelling size and storage controls.*
- *The recessed nature of the upper-most level achieves a modest form of development. The recessed nature of the upper level and its lightweight construction and appearance also ensures that the proposal will not adversely affect the streetscape and will also not affect the amenity of surrounding properties in regard to solar access, privacy and view loss.*

- *The exceedance of the height control will have a minimal impact on the streetscape.*
- *The proposal represents a desirable form of development which significantly enhances the appearance of the subject site.*
- *The additional height is not responsible for any greater environmental impacts than a proposal with a compliant height.*
- *Given the lack of aural and visual privacy impacts, and overshadowing impacts above and beyond a compliant building envelope, there is no sound planning justification to reduce the proposed height.*
- *The proposed height achieves a better planning outcome as it allows for the provision of a high quality and attractive townhouse development in a landscaped setting on the site in a manner which is appropriate and compatible with the existing and likely future character of the area. The proposed design will result in a reduced built form and less occupants on the site compared to the approved development on the subject site (DA-2015/253).*
- *There are sufficient planning grounds to justify varying the development standard as the building responds to character statement for the area and provides additional housing as part of the urban renewal within the Botany Precinct.*
- *The proposal satisfies the zone and development standard objectives, as well as the relevant DCP objectives.*
- *It has also been demonstrated that the proposed height meets the objective to an equal or better degree than a development with a compliant height, given the positive streetscape outcome and consistency with the established and future pattern of development.*
- **Clause 4.6(4)(a)(ii): In the public interest because it is consistent with the objectives of the zone and development standard**

As outlined above, the proposed development is consistent with the development standard.

The subject site is located within the R3 Medium Density zone under the Botany Bay LEP 2013.

The proposed townhouse development is permissible within the R3 Medium Density zone.

The objectives of the R3 Medium Density Residential zone are as follows:

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.

The proposed development is considered to satisfy the zone objectives as it provides for the housing needs of the community within a medium density residential environment. The proposed townhouses will provide for a variety of housing types within the surrounding medium density residential environment. The development promotes alternative means of transport including walking and cycling as the site is located within close proximity to reliable and frequent bus services. It is noted that the proposed built form of the development is of a lesser scale than that already approved development on the subject site (DA-2015/253 approved a four storey residential flat building containing 21 units). The proposal is therefore considered that the proposal satisfies the zone objectives. It is considered that the proposed development is in the public interest as it will contribute positively within the streetscape and provide for additional local housing within the area. The non-compliance with the building height development standard is not considered to have a significant impact on the overall public benefit delivered as part of the development.

Other Matters for Consideration

Clause 4.6(5) of the Botany Bay LEP requires the following additional matters to be considered.

- **Clause 4.6(5)(a): Whether contravention of the development standard raises any matter of significance for State or regional environmental planning**

The proposed exceedance to the building height development standard will not result in any matters of significance for State or regional environmental planning.

The proposed building height on the subject site is entirely reasonable and appropriate given its proximity to a host of services including shops and public transport. The proposal is therefore consistent with the State Government's Urban Consolidation Policy which seeks to provide greater heights and densities in areas close to public transport, shops and services.

- **Clause 4.6(5)(b): The public benefit of maintaining the development standard**

There is not considered to be a public benefit in maintaining the development standard in this situation. It is considered that the proposed development is in the public interest as it will contribute positively within the streetscape and provide for additional local housing within the area. The non-compliance with the building height development standard is not considered to have a significant impact on the overall public benefit delivered as part of the development.

- **Clause 5.6(5)(c): Any other matters required to be taken into consideration by the Secretary before granting concurrence.**

There are not considered to be any additional matters to consider beyond those discussed above.”

Officer's Comment:

Having assessed the above points of justification, Council's officer agrees with the reasons presented for the variance in the height to the development. The plans demonstrate that the top floor has a greater setback along the northern and southern sides so that it is not significantly visible from the streetscape. This also reduces the bulk and scale of the development and does not contribute to any adverse impact onto the surrounding properties. Additionally, while the site has a maximum building height of 10 metres, the neighbouring site to the east at 41 Daphne Street has a 12-metre building height limit as specified within the BBLEP 2013. The proposal has been orientated to the side boundaries so that any future development of the neighbouring site will allow for an appropriate transition to the subject site, as is similarly demonstrated along the western elevation. As the proposal is lower than the height approved in DA-15/253 which had a height of 12.5 metres and evidently will be less of an impact to the surrounding development than what previously approved in addition to the flooding issue within the area resulting in higher floor levels, the height non-compliance is acceptable in this instance.

The proposal is consistent with the objectives of the standard and the applicant has satisfactorily established that the proposed variation is appropriate in maintaining and enforcing the development standard in these cases would be unreasonable and unnecessary and would not allow the orderly and economic development of this site.

The Clause 4.6 request is considered to be well-founded and the departure to the development standards is not contrary to the public interest. On this basis, it is recommended that the development standard relating to the building height for the site be varied in the circumstances as discussed above.

Note 2 – Clause 4.6 Variation relating to FSR variance

The applicant has provided a Clause 4.6 variation to the maximum permissible FSR for each site at 0.85:1 pursuant under Clause 4.4 of the BBLEP 2013. The site is not within an Area 3 zone therefore all development has a maximum FSR requirement of 0.85:1. The proposed development will result in the following GFAs and FSRs for the overall site and proposed lots:

	Site Area	Control	Proposed FSR and GFA	Compliance	Variation
Overall Site	987.5sqm	0.85:1 (839.375sqm)	1.01:1 (1,002sqm)	No	16.5%
Lot 1	203.27sqm	0.85:1 (172.8sqm)	0.98:1 (200sqm)	No	13.38%
Lot 2	194.43sqm	0.85:1 (165.26sqm)	0.99:1 (193sqm)	No	14.27%
Lot 3	194.44sqm	0.85:1 (165.77sqm)	1:1 (195 sqm)	No	17.6%
Lot 4	194.44sqm	0.85:1 (165.77sqm)	1.02:1 (199sqm)	No	20.05%
Lot 5	199.69sqm	0.85:1 (169.74sqm)	1.08:1 (215sqm)	No	22.67%

Clause 4.6 provides flexibility to vary the development standards specified within the LEP where it can be demonstrated that the development standard is unreasonable or unnecessary

in the circumstances of the case and where there are sufficient environmental grounds to justify the departure. Clause 4.6 states the following:

(2) 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...

(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.

The Applicant has provided a Clause 4.6 variation to justify contravening the height standard. Their justification is provided below:

“Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard.

Assessment: The first point when following Wehbe is to establish whether compliance with the development standard is unreasonable or unnecessary.

The table below identifies that the proposed variation to the FSR development standard will still achieve a development that satisfies the objectives of the FSR development standard.

Table 6: Assessment against the objectives of the FSR development standard

<i>Clause 4.4 – FSR Development Standard of Botany Bay Local Environmental Plan 2013</i>	
<i>Objective</i>	<i>Proposal</i>
<i>Clause 4.4(1)(a)</i> <i>To establish standards for the maximum development density and intensity of land use</i>	<i>Noted</i>
<i>Clause 4.4(1)(b)</i> <i>To ensure that buildings are compatible with the bulk and scale of the existing and desired future character of the locality</i>	<i>The proposal provides for a built form that is consistent and compatible with the character of the local area in that it provides a development that is of a similar scale and type to surrounding development and recently approved development. Refer to the photos and description of surrounding development in Section 3 of the SEE.</i> <i>The proposed built form of the development is of a lesser scale than that</i>

	<p><i>already approved on the subject site (DA-2015/253 approved a four storey residential flat building containing 21 units which had an FSR of 1.35:1).</i></p> <p><i>The recessed nature of the upper-most level achieves a modest form of development. The recessed nature of the upper level and its lightweight construction and appearance also ensures that the proposal will not adversely affect the streetscape and will also not affect the amenity of surrounding properties in regard to solar access, privacy and view loss</i></p>
<p><i>Clause 4.4(1)(c)</i></p> <p><i>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</i></p>	<p><i>The subject site is located in an area of mixed character including both low and medium density residential development and some industrial sites to the north, east and west of the site. There are two and three storey medium density townhouse style residential developments along Daphne Street and Ivy Street to the west of the site.</i></p> <p><i>The site is located within the R3 Medium Density Residential zone with a frontage to Daphne Street. It is anticipated that the area will continue to undergo a transition from a light industrial area to a medium density residential area. This has begun to occur following redevelopment of other light industrial sites along Daphne Street.</i></p> <p><i>The proposal represents a desirable form of development which significantly enhances the appearance of the subject site.</i></p> <p><i>The proposed development aims to enhance the public domain and streetscape presentation of the subject site by demolishing the existing outdated commercial buildings on the site and replacing these with a high quality and attractive townhouse development in a landscaped setting.</i></p>
<p><i>Clause 4.4(1)(d)</i></p> <p><i>To ensure that buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining</i></p>	<p><i>The proposed development will not adversely affect the streetscape as demonstrated in the photomontage below. The proposed bulk and scale will sit comfortably in its context which includes buildings of a similar and greater</i></p>

<p><i>roads and other public places such as parks, and community facilities</i></p>	<p><i>scale and bulk. The proposal represents a desirable form of development which significantly enhances the appearance of the subject site.</i></p> <p><i>The provision of landscaping in the front and rear setbacks softens the appearance of the built form and retains the character of the area as intended by the controls. The proposed FSR would not be visually obtrusive when viewed from any public place.</i></p>
<p><i>Clause 4.4(1)(e)</i></p> <p><i>To minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain</i></p>	<p><i>The proposal has been carefully designed to minimise amenity impacts. The proposed development will not be visually obtrusive and will not result in adverse amenity impacts in terms of overshadowing, privacy or view loss to a greater degree than a complying development.</i></p> <p><i>The proposed built form will not dominate the streetscape or be visually bulky when viewed from any public or private vantage point.</i></p>
<p><i>Clause 4.4(1)(f)</i></p> <p><i>To provide an appropriate correlation between the size of a site and the extent of any development on that site</i></p>	<p><i>The proposed development represents a reasonable and orderly use of the site and will provide for a compatible and integrated outcome with the existing and desired character for the site and its context.</i></p> <p><i>The proposal is compliant in regard to the DCP length of building, width of townhouses, site coverage, basement excavation, private open space, front and rear setback, solar access, car parking, dwelling size and storage controls, thereby demonstrating that the proposed bulk and scale of the development is appropriate for the site.</i></p>
<p><i>Clause 4.4(1)(g)</i></p> <p><i>To facilitate development that contributes to the economic growth of Botany Bay.</i></p>	<p><i>The proposed development will provide for the housing needs of the community within a medium density residential environment. The proposed townhouses will provide for a variety of housing types within the surrounding medium density residential environment</i></p>

2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.

Assessment: Not applicable in this instance.

3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.

Assessment: It is noted that the proposal is consistent with a number of recent approvals and recently constructed developments in the immediate surrounding area, refer to the photos and description of surrounding development in Section 3 of the SEE.

The proposed built form of the development is of a lesser scale than that already approved on the subject site (DA-2015/253 approved a four storey residential flat building containing 21 units which had an FSR of 1.35:1).

Compliance with the development standard is unreasonable or unnecessary in the circumstances of this case because the exceedance is not considered to result in any adverse impacts as a result of the additional floor area. The additional FSR is not responsible for any greater environmental impacts than a proposal with a compliant FSR.

Given the lack of aural and visual privacy impacts, and overshadowing impacts above and beyond a compliant building envelope, there is no sound planning justification to reduce the proposed FSR.

The proposed FSR achieves a better planning outcome as it allows for the provision of a high quality and attractive townhouse development in a landscaped setting on the site in a manner which is appropriate and compatible with the existing and likely future character of the area. The proposed design will result in a reduced built form and less occupants on the site compared to the approved development on the subject site (DA-2015/253).

The non-compliant FSR will not be visually obtrusive. The proposal achieves a reasonable streetscape outcome which retains and contributes to a desirable future character.

The recessed nature of the upper-most level achieves a modest form of development. The recessed nature of the upper level and its lightweight construction and appearance also ensures that the proposal will not adversely affect the streetscape and will also not affect the amenity of surrounding properties in regard to solar access, privacy and view loss.

Given there are no detrimental environmental impacts associated with the additional FSR, it is confirmed that the additional FSR is therefore associated with a better planning outcome on this site.

As such this underlying objective or purpose would be thwarted if compliance was required in this case with the consequence that compliance is unreasonable in the circumstances of this case.

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.

Assessment: Not applicable in this instance; the development standards of height and FSR cover a wide area and whilst they are not appropriate to this site they are

appropriate to other sites elsewhere in the locality. There are numerous instances where consents departing from the standard have been approved and others where the standard have been upheld. This is more an indication of the inappropriateness of particular standards to some sites rather than a comment on Council's actions.

It is noted that the proposed built form of the development is of a lesser scale than that already approved on the subject site (DA-2015/253 approved a four storey residential flat building containing 21 units which had an FSR of 1.35:1).

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.

Assessment: The subject site is zoned R3 Medium Density Residential under Botany LEP 2013. The locality comprises a mix of commercial/light industrial and residential uses of varying building heights, building bulk and architectural design. Refer to the photos and description of surrounding development in Section 3 of the SEE.

The zoning of this site is not considered to be inappropriate. The proposed development is considered to satisfy the zone objectives as it provides for the housing needs of the community within a medium density residential environment. The proposed townhouses will provide for a variety of housing types within the surrounding medium density residential environment.

- **Clause 4.6(3)(b): There are sufficient environmental planning grounds to justify contravening the development standard**

There are considered to be sufficient planning grounds to justify varying the FSR development standard, which include:

- *Compliance with the development standard is unreasonable or unnecessary in the circumstances of this case because the exceedance is not considered to result in any adverse impacts as a result of the additional floor area of the overall site and propose lots.*
- *The proposed built form is considered to satisfy the objectives of the Clause as it provides for a built form which is consistent and compatible with the character of the local area in that it provides a development that is of a similar scale and type to surrounding development and recently approved development.*
- *The proposed built form of the development is of a lesser scale than that already approved on the subject site (DA-2015/253 approved a four storey residential flat building containing 21 units which had an FSR of 1.35:1).*
- *The non-compliant FSR will not be visually obtrusive and will not result in adverse amenity impacts in terms of overshadowing, privacy or view loss.*
- *The proposal is compliant in regard to the DCP length of building, width of townhouses, site coverage, basement excavation, private open space, front and rear setback, solar access, car parking, dwelling size and storage controls.*

- *The recessed nature of the upper-most level achieves a modest form of development. The recessed nature of the upper level and its lightweight construction and appearance also ensures that the proposal will not adversely affect the streetscape and will also not affect the amenity of surrounding properties in regard to solar access, privacy and view loss.*
- *The exceedance of the FSR control will have a minimal impact on the streetscape.*
- *The proposal represents a desirable form of development which significantly enhances the appearance of the subject site.*
- *The additional FSR is not responsible for any greater environmental impacts than a proposal with a compliant FSR.*
- *Given the lack of aural and visual privacy impacts, and overshadowing impacts above and beyond a compliant building envelope, there is no sound planning justification to reduce the proposed FSR.*
- *The proposed FSR achieves a better planning outcome as it allows for the provision of a high quality and attractive townhouse development in a landscaped setting on the site in a manner which is appropriate and compatible with the existing and likely future character of the area. The proposed design will result in a reduced built form and less occupants on the site compared to the approved development on the subject site (DA-2015/253).*
- *There are sufficient planning grounds to justify varying the development standard as the building responds to character statement for the area and provides additional housing as part of the urban renewal within the Botany Precinct.*
- *The proposal satisfies the zone and development standard objectives, as well as the relevant DCP objectives.*
- *It has also been demonstrated that the proposed FSR meets the objective to an equal or better degree than a development with a compliant FSR, given the positive streetscape outcome and consistency with the established and future pattern of development.*
- **Clause 4.6(4)(a)(ii): In the public interest because it is consistent with the objectives of the zone and development standard**

As outlined above, the proposed development is consistent with the development standard.

The subject site is located within the R3 Medium Density zone under the Botany Bay LEP 2013.

The proposed townhouse development is permissible within the R3 Medium Density zone.

The objectives of the R3 Medium Density Residential zone are as follows:

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.

The proposed development is considered to satisfy the zone objectives as it provides for the housing needs of the community within a medium density residential environment. The proposed townhouses will provide for a variety of housing types within the surrounding medium density residential environment.

The development promotes alternative means of transport including walking and cycling as the site is located within close proximity to reliable and frequent bus services. It is noted that the proposed built form of the development is of a lesser scale than that already approved development on the subject site (DA-2015/253 approved a four storey residential flat building containing 21 units). The proposal is therefore considered that the proposal satisfies the zone objectives. It is considered that the proposed development is in the public interest as it will contribute positively within the streetscape and provide for additional local housing within the area. The non-compliance with the FSR development standard is not considered to have a significant impact on the overall public benefit delivered as part of the development.

Other Matters for Consideration

Clause 4.6(5) of the Botany Bay LEP requires the following additional matters to be considered.

- **Clause 4.6(5)(a): Whether contravention of the development standard raises any matter of significance for State or regional environmental planning**

The proposed exceedance to the FSR development standard will not result in any matters of significance for State or regional environmental planning.

The proposed FSR on the subject site is entirely reasonable and appropriate given its proximity to a host of services including shops and public transport. The proposal is therefore consistent with the State Government's Urban Consolidation Policy which seeks to provide greater heights and densities in areas close to public transport, shops and services.

- **Clause 4.6(5)(b): The public benefit of maintaining the development standard**

There is not considered to be a public benefit in maintaining the development standard in this situation. It is considered that the proposed development is in the public interest as it will contribute positively within the streetscape and provide for additional local housing within the area. The non-compliance with the FSR development standard is not considered to have a significant impact on the overall public benefit delivered as part of the development.

- **Clause 5.6(5)(c): Any other matters required to be taken into consideration by the Secretary before granting concurrence.**

There are not considered to be any additional matters to consider beyond those discussed above. “

Officer's Comments:

The Clause 4.6 variation to the FSR development standard has been assessed in accordance with the BBLEP 2013.

The proposal:

- will create an appropriate built form which is consistent with surrounding medium density residential developments;
- provides lesser impact and density than what was approved in DA-15/253 which was a residential flat building;
- will comprise of high internal amenity with large sized rooms, sufficient solar access, natural ventilation and visual privacy;
- The departure from the maximum FSR control will not result in any significant adverse amenity impacts such as overshadowing as the site has a north to south orientation, privacy impacts or any significant view loss to the surrounding neighbours and this has been addressed through the proposal and conditions;
- will provide the two off-street car parking space for each dwellings. This number will not generate to significant traffic impact;
- will introduce an architectural feature to Bay Street which incorporates quality facade treatments and an articulated form through the use of balconies and windows, roof form mix 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 GFA calculation included the additional car parking space for each dwelling. The proposal is categorised as attached dwellings as the proposal involves Torrens Title Subdivision of the dwellings and car parking. In this instance, attached dwellings require 1 car parking space. Any additional car spaces that are enclosed in a garage or basement car park are to be included within the GFA calculation. This is the case in this instance. The additional car space pushes the FSR greater than 10% for each dwelling. The additional GFA is contained within a partial basement therefore the impact is not significant as discussed within the justification above. The development resembles multi-dwelling housing which is the prevalent form of development in the surrounding streets. Multi-dwelling housing requires a minimum of two car parking spaces which the proposal has adopted. The additional FSR from the car parking is therefore acceptable. With the exclusion of the car parking, the dwellings still exceed the FSR slightly due to the size of the rooms however due to the constraints of the site and the development proposed to be built to the boundary, the internal amenity of the rooms within each dwelling is appropriate for its occupants.

The proposal is consistent with the objectives of the standard and the applicant has satisfactorily established that the proposed variation is appropriate in maintaining and enforcing the development standard in these cases would be unreasonable and unnecessary and would not allow the orderly and economic development of this site.

The Clause 4.6 request is considered to be well-founded and the departure to the development standards is not contrary to the public interest. On this basis, it is recommended that the development standard relating to the FSR for the site be varied in the circumstances as discussed above.

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

There are no current Draft EPIs applicable to this development

S.4.15(1)(a)(iii) - Provisions of any Development Control Plan

Botany Bay Development Control Plan 2013

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

Part 3A- Parking and Access

Part	Control	Proposed	Complies
3A.2. Parking Provisions of Specific Uses	C2 Attached dwelling house = 1 space	Two spaces have been allocated to each dwelling within a partial basement. As the DCP requires one car parking space associated with the development, the additional car space has been assessed as additional GFA.	Yes
3A.3.1 Car Park Design	C26 The minimum width of the access driveway at the property boundary shall be:- (i) For dwelling houses: <ul style="list-style-type: none">▪ 3 metres	The entry into the car parking level is 3 metres wide.	Yes

Part 3E- Subdivision and Amalgamation

Torrens Title Subdivision

Control	Proposed	Complies
C1 Development applications shall demonstrate that the proposed subdivision is consistent with the Desired Future Character of the area. Desired Future Character – Subdivision Retain and preserve the rectilinear grid pattern within the Precinct	Five allotments are proposed which are rectangular in pattern and will maintain the rectilinear grid pattern within the precinct. The DCP does not contain a character statement and a desired future character statement has been prepared for the precinct (bounded by Daphne Street, Ivy Street, Daniel Street and Bay Street).	Yes – Refer to Note 3
C2 – 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	The proposed lots will have a site areas ranging between 194.43sqm and 203.27sqm and will have a north-west to south-east orientation, rectilinear shape and frontage to Daphne Street. The area and dimensions of the proposed allotments are not consistent with the surrounding lot sizes in the immediate area however the built form is similar.	No – Refer to Note 3
C3 – Development application which proposes the creation of new allotments	Building Plans for the development have been provided.	Yes

Control	Proposed	Complies
must be accompanied by a conceptual building plan that demonstrates compliance with relevant building controls.		
C5 –Proposed lots must be of a size and have dimensions to enable the siting and construction of a dwelling and ancillary structures that: <ul style="list-style-type: none"> i) Acknowledge site constraints ii) Address the street iii) Minimize impacts on adjoining properties including access to sunlight, daylight, privacy and views iv) Provide usable private open space v) Protect existing vegetation vi) Mitigate potential flood affectation and stormwater management requirements vii) Acknowledge contamination of the land viii) Protect heritage items 	The proposed allotments can accommodate dwelling houses that acknowledge site constraints, street frontage, solar access, private open space, vegetation, flood affectation and contamination.	Yes
C7 All lots created shall have at least one (1) frontage to the street.	Both lots have a frontage to Daphne Street.	Yes

The subdivision plans that were submitted as part of the development application demonstrate that a right of carriageway will be proposed at the entry point to the car park level and along the aisle width. Two spaces have been allocated for each dwelling with staircase access located along the southern car parking spaces of the car parking level. Additionally, an easement for drainage of water on the OSD system is proposed. Appropriate conditions have been imposed in the consent relating to conditions to be satisfied prior to the issue of the subdivision certificate being issued.

Note 3 – Prevailing Subdivision Pattern

The DCP states that 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 Botany Bay Local Environmental Plan 2013.

The objectives of Part 3E.2.1 – General Torrens Title Subdivision and Amalgamation of the Botany Bay Development Control Plan 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 dwellings on proposed Lots 1 to 5 generally comply with the DCP controls for dwellings.

Site Area and Site Frontage

In summary, the site will be subdivided into five individual allotments namely Lot 1 (203.2sqm), Lot 2 (194.4sqm), Lot 3 (194.4sqm), Lot 4 (194.4sqm) and Lot 5 (199.6sqm). A right of carriageway is proposed within the front setback of Lot 3 to allow access into the car parking level. An assessment of the lot sizes and street frontage widths of ten properties on either side of the subject site as well as the properties opposite and to the rear of the site has been undertaken.

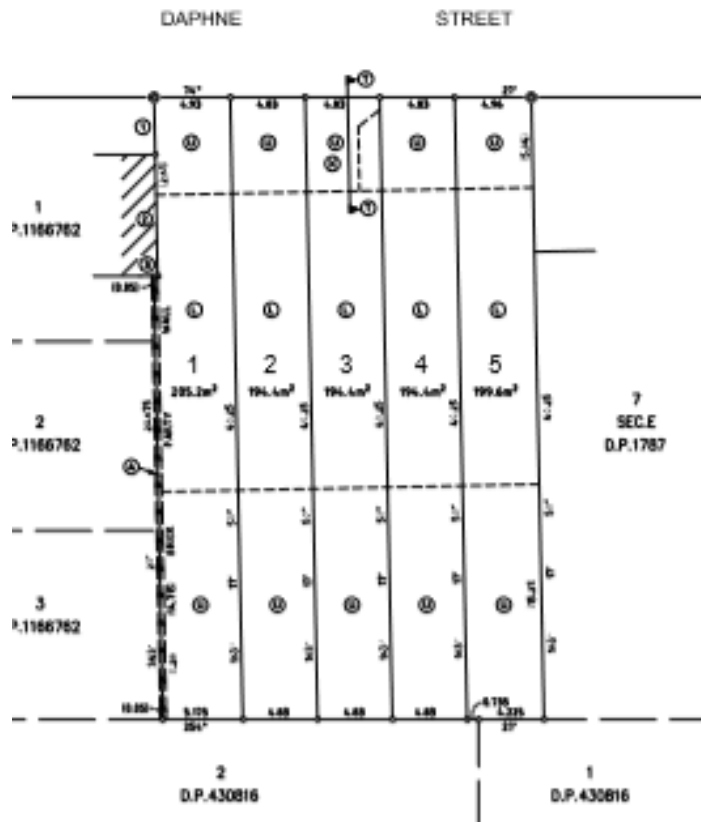


Figure 9. Proposed Torrens Title lots of the site

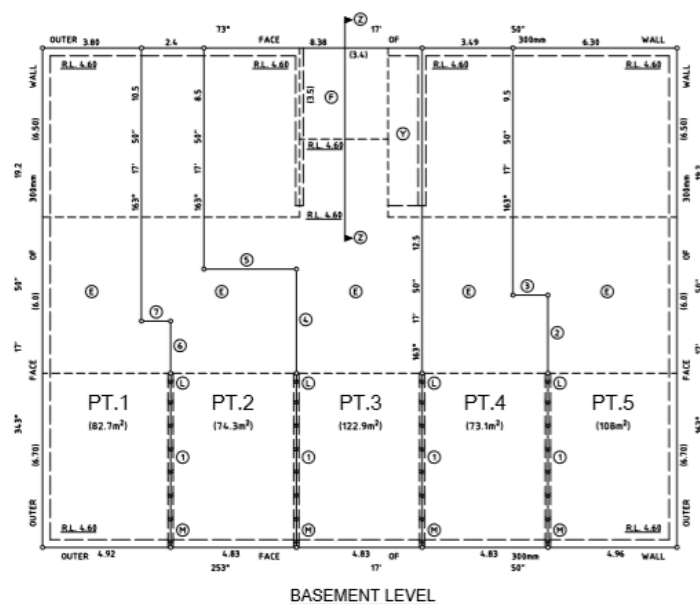


Figure 10. Proposed subdivision of the car parking level

The area has been rezoned R3 Medium Density Residential zone and is currently undergoing transition with RFBs and attached terraces along Daphne Street, Ivy Street, Rose Street and Bay Street. The area to the south of Daphne Street and on the northern side of Daphne Street

comprise of attached dwellings that have been strata subdivided. While the proposed subdivision will result in narrow allotments, the development built form is similar to the bulk and scale of these strata titled dwellings.

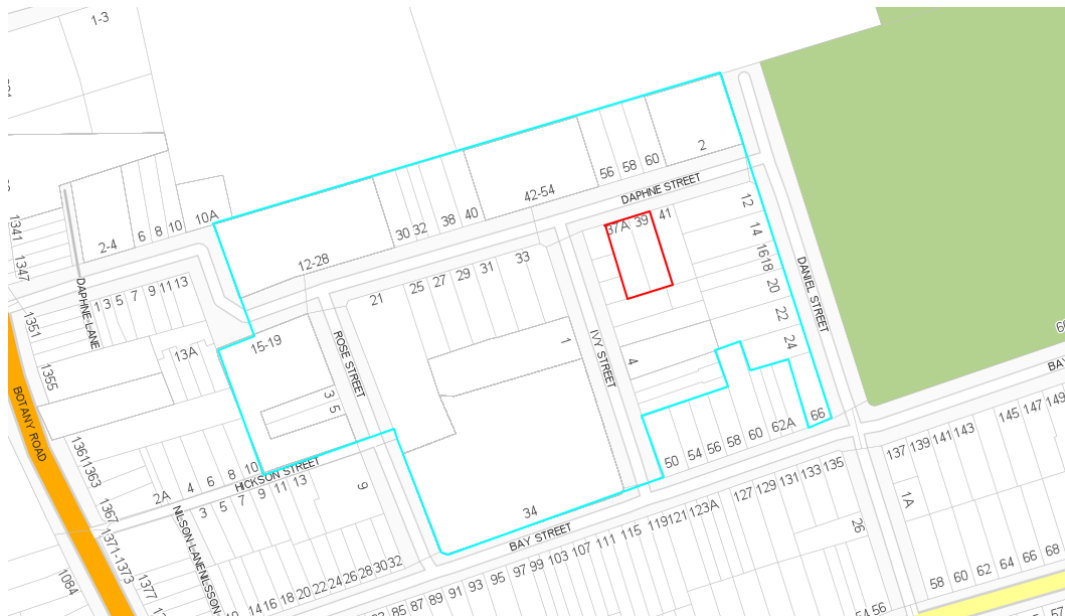


Figure 11. Cadastre of study area used to determine the existing subdivision pattern for the locality

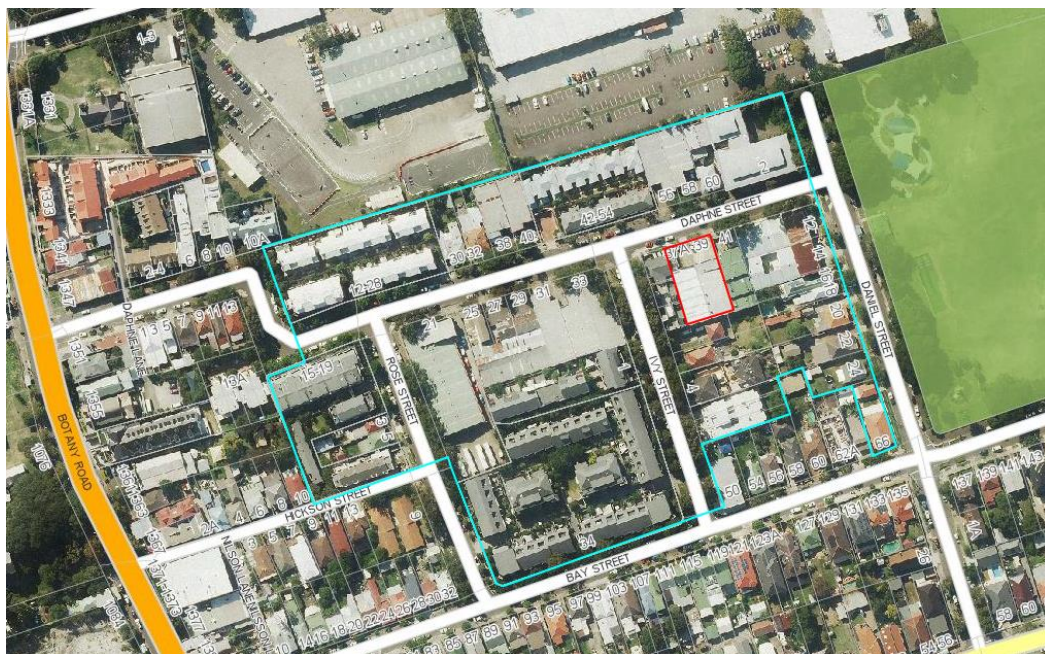


Figure 12. Aerial of existing subdivision pattern for locality and subject site

As demonstrated in the maps above, the proposed subdivision is inconsistent with the site areas proposed in the immediate locality with a majority of the sites ranging in size from 144sqm to 6,800sqm. The larger blocks of land contain strata subdivided dwellings which are of a two and three storey built form. Additionally, there are examples of three/four storey residential flat buildings existing on Daphne Street which have a greater bulk than the proposed development. The size and orientation of the dwellings provide appropriate street setbacks with the top floor of each dwelling setback further than the front setback proposed

on the bottom two levels to alleviate any bulk present along Daphne Street. This is consistent with the majority of the three storey attached dwellings in the area which have their top floor setback from the front.

The proposed site frontage widths are smaller than the established street frontage width average within the locality. The proposed widths are between 4.83 metres to 4.96 metres wide while the average street frontage width in the locality is 12.2m. Lots 1 and 5 also have a narrow southern boundary width than the front boundary width proposed. As stated above, the subdivision pattern is mixed in the immediate area and while the strata titled properties do not demonstrate individual street frontage widths, the dwelling widths are of a similar size to what is being proposed. The inclusion of a partial basement appears to be the predominant car parking method as the majority of attached development contain this. Within the cadastre image above, it is demonstrated that there is no consistent subdivision pattern within the study area however there is a consistent built form which the development is proposing to replicate. Regardless of how the site is subdivided, the end result will be the same in regards to built form and impact to the neighbouring properties. The Torrens Title Subdivision arrangement is acceptable and will be conditioned within the consent to provide the relevant information prior to the issue of a subdivision certificate.

On its merits, the appropriateness of the resultant subdivision is acceptable when taking into consideration the existing attached dwellings along Daphne Street and the surrounding streets, the provision of housing opportunities in the locality and compliance with the controls under the Botany Bay Local Environmental Plan 2013 and Botany Bay Development Control Plan 2013.

Part 3G – Stormwater Management

The proposed development will provide a pumpout system has been proposed with rainwater tanks for each dwelling. The site is flood affected therefore the proposal provides a crest to the basement to stop any flood waters from entering the car parking level. The application was reviewed by Council's Development Engineer who has no objection to the proposal.

Part 3J – Aircraft Noise and OLS

The provisions of Australian Standard AS2021-2000 have been considered in the assessment of the development application, as the subject site is located within the 20-25 ANEF contour. Residential development in these areas is considered unacceptable under Table 2.1 of Australian Standard AS2021-2000 unless an acoustic report is submitted to Council, which demonstrates that the proposed dwelling can achieve the requirements under Table 3.3 of AS2021-2000.

An acoustic report prepared by Sebastian Giglio Acoustic Consultant has been prepared to accompany the development application.

The report demonstrates that the proposed development (when complete) will conform with the relevant requirements of AS2021-2000 provided the recommendations contained in the acoustic report are undertaken. Appropriate conditions have been recommended in the consent.

Part 3K – Contamination

Refer to SEPP No.55- Remediation of Land section of the report above. In summary, the proposal is suitable for the site.

Part 3N- Waste Minimisation and 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.

Part	Control	Proposed	Complies
4A.2.4 Streetscape Presentation	C2 Development must be designed to reinforce and maintain the existing character of the streetscape.	The area surrounding the site comprises of predominantly medium density development such as attached dwellings/multi dwelling developments and residential flat buildings. The attached dwellings located on Daphne Street, Ivy Street and Rose Street are two/three storeys in height and do not have car parking within the front setback as they provide basement car parking. This has been demonstrated within the subject proposal with a partial basement car park. The setbacks proposed and landscaped area is consistent with the existing development in the street.	Yes
	C3 Dwellings must reflect dominant roof lines and patterns of the existing streetscape.	The proposal comprises of a mix of skillion and flat roof. This is consistent with the roof form along Daphne Street which are contemporary attached dwellings with a mix of top floor recessed level and roof forms to accommodate rooms or attics. The height of the development is similar as well even if it is not compliant with the LEP requirement.	Yes Acceptable
	C4 Buildings must address the street.	All five dwellings address Daphne Street.	Yes
	C6 Dwellings front door is to be readily apparent from the street.	The front doors of each lot are visible from Daphne Street.	Yes
4A.2.7 Site Coverage	C2 Sites between 200-250sqm, the maximum site coverage is 65%. Sites less than 200sqm is assessed on merit.	The approximate site coverage areas based on council officers calculations are as follows: Lot 1: 101.36sqm (49.8%) Lot 2: 97.6sqm (50%) Lot 3: 98.6sqm (50.7%) Lot 4: 97.6sqm (50%) Lot 5: 101.6sqm (50%)	Yes

Part	Control	Proposed	Complies
		Site coverage complies.	
4A.2.8 Building Setbacks	<p>C1 Dwelling houses must comply with the following minimum setbacks as set out in Table 1.</p> <p>Less than 12.5m lot width:</p> <ul style="list-style-type: none"> • Front – comply with prevailing street setback or 6m min. • Side – merit. • Rear – 4m min • Nil boundary- merit • Eaves- 450mm <p>Note: The subject site has an average lot width of 4.88m and ranges from 4.83 metre to 4.96 metre frontages.</p>	<p>Front:</p> <p>Lot 1: 6.1m (ground); 6.39m (first); 6.16m (second- balcony); 11.59m (second- building)</p> <p>Lot 2: 6m (ground); 6.39m (first); 6.16m (second- balcony); 11.59m (second- building)</p> <p>Lot 3: 9m (ground); 6.39m (first); 6.16m (second- balcony); 11.59m (second- building)</p> <p>Lot 4: 5.7m (ground); 6.39m (first); 6.16m (second- balcony); 11.59m (second- building)</p> <p>Lot 5: 5.8m (ground); 6.39m (first); 6.16m (second- balcony); 11.59m (second- building)</p>	Yes
		<p>Side:</p> <p>Lot 1 (western): Nil Lot 5 (eastern): Nil</p> <p>The rest of the dwellings meet at the common boundary.</p>	Yes
		<p>Rear:</p> <p>Lot 1: 15.315m (ground); 13.915m (first); 16.535m (second)</p> <p>Lot 2: 15.315m (ground); 13.915m (first); 16.535m (second)</p> <p>Lot 3: 15.315m (ground); 13.915m (first); 16.535m (second)</p> <p>Lot 4: 15.315m (ground); 13.915m (first); 16.535m (second)</p> <p>Lot 5: 15.315m (ground); 13.915m (first); 16.535m (second)</p>	Yes
		<p>Nil Boundary:</p> <p>Common nil boundary setbacks between each dwelling.</p> <p>Eaves:</p>	Yes
			N/A

Part	Control	Proposed	Complies
		Flat and skillion roofs is proposed therefore the requirement for 450mm is not required.	
	C5 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.	The side setbacks on Lot 1 and Lot 5 are not modulated as they will be built to the boundary. Due to the site width on all the allotments, it is difficult to provide greater setbacks to the dwellings without restricting the habitable space. The rear of the development has provided a greater setback to the top floor which reduces any bulk when viewed from the rear.	Yes
4A.2.9 Landscape Area	C2 Development shall comply with the following minimum landscaped area requirements, based on the area of the site in Table 2 . Table 2 requires the following minimum landscaped area: (i) 15% for sites that have an area less than 250sqm	Lot 1: 45.62sqm (22%) Lot 2: 58.02sqm (30%) Lot 3: 43.35sqm (22%) Lot 4: 61.9qm (31.8%) Lot 5: 60.8sqm (30%)	Yes
	C8 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.	The front setback of each lot with the exception of Lot 3 and 1 provide ample landscaped area. Lot 3 cannot accommodate landscaping in the front as it provides access to the basement car parking while Lot 1 front setback consists the substation. However greater than 50% of the front setback is landscaped.	Yes
	C9 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.	The front setback of Lots 2, 4 and 5 contain trees within the front setback.	Yes
4A.3.1 Materials and Finishes	C1 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).	A Schedule of Colours and Finishes was provided with the development application. The development will be constructed out of rendered brick, facebrick, timber cladding, colorbond roof, aluminium windows, breeze blocks and glass balustrading.	Yes
4A.3.2 Roofs and Attics/Dormer	C1 Where roof forms in a street are predominantly	The dwellings incorporate a 5 degree slope to the top floor with	Yes

Part	Control	Proposed	Complies
	<p>pitched, then any proposed roof should provide a similar roof form and pitch.</p> <p>C3 A variety of roof forms will be considered, provided that they relate appropriately to the architectural style of the proposed house and respect the scale and character of adjoining dwellings.</p>	the remainder roof form being a flat roof. This is consistent with the roof forms along the street.	
4A.3.4 Fences	<p>C7 Fences (or returns) that are higher than 1 metre are not encouraged along residential frontages but may be constructed to a maximum of 1.2 metres provided the top 600mm of the fence is 50% transparent or open style</p>	Front fences have been proposed at a height of 1.5 metres. The fences will be rendered brick with the top half open style horizontal aluminum fence.	Condition
	<p>C18 Side fences of a height of 1.8 metres are not to extend beyond the front building line.</p> <p>Note: Fences with untextured surfaces that present a blank appearance to the street are unsuitable and discouraged.</p>	No fences proposed along the side as development is built to the common boundary. Common fences between the proposed sites will be constructed.	N/A
	<p>C19 The maximum height of a rear fence is not to exceed 1.8 metres.</p>	No change depicted on plans however any fence is to have a height of 1.8 metres.	N/A
4A.4.1 Visual Privacy	<p>C2 Visual privacy for adjoining properties must be minimised by:</p> <ul style="list-style-type: none"> ▪ using windows which are narrow or glazing ▪ Ensuring that windows do not face directly on to windows, balconies or courtyards of adjoining dwellings ▪ Screening opposing windows, balconies and courtyards; and ▪ Increasing sill heights to 1.5 metres above floor level. 	There are a number of windows that are located on the northern and southern elevations that face either the street or the rear yards. The windows that face the street are quite large and provide adequate surveillance. The windows that face the rear yards are contained to the first floor with the ground and the top floor containing doors leading out to balconies. Privacy screens are proposed between each of the dwellings to provide privacy between the neighbours. The top floor has been setback further from the rear to prevent any direct overlooking from bedrooms to the properties to the south along Ivy Street,	Yes

Part	Control	Proposed	Complies
	C3 First floor balconies are only permitted when adjacent to a bedroom.	All the proposed balconies are located off bedrooms with the exception of a terrace area located at the top floor at the front of the site. There is no impact from this balcony as it fronts the street.	Yes
4A.4.3 Solar Access	C1 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.	The proposed development will overshadow its rear yards during June 21 as the sites have a north-south orientation. The proposal will not overshadow the neighbouring properties to the east and west as they have been built to the boundary and the POS is not located in close proximity. The principal living areas are orientated to the south with direct access to the rear yards therefore they will not achieve the two hours of sunlight however the applicant has provided lounge rooms or studies to the north which provides the minimum 2 hours of sunlight. The southern property consists of a substation which will not have any impact on the surrounding developments. The proposal is a better outcome in solar access than what was approved within DA-15/253 which was for a residential flat building.	Yes
	C2 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
4A.4.4 Private Open Space	C2 For sites less than 250sqm, a minimum area of 25sqm applies.	Lot 1: 26.8sqm Lot 2: 26.3sqm Lot 3: 26.7sqm Lot 4: 26.84sqm Lot 5: 26.47sqm	Yes
4A.4.7 Vehicle Access	C1 Driveways within a property shall have a minimum width of 3 metres. C6 The number of vehicle crossings is to be limited to one (1) per allotment.	There is a common driveway to the basement car park level that is accessed at the front of Lot 3. This has a width of 3 metres.	Yes

Part	Control	Proposed	Complies
4A.4.8 Car Parking	C1 Development must comply with Part 3A – Car Parking	Refer to Part 3A above.	Yes
	C10 Garages, parking structures (carports and car spaces) and driveways are not to dominate the street. Note: Existing situations where garages dominate the street may not be used as a precedent to justify approval of other similar proposals.	The development proposes a partial basement car parking level to remove any car parking being located within the front setback and reduce the garage dominance along Daphne Street.	Yes

Part 70- Swimming Pool

The proposal includes above ground swimming pools within the rear yard of each site. The pools will have a maximum depth between 1.3 metres to 1.8 metres and have an area of 10sqm.

The inclusion of the pools within the site coverage and landscaping calculations continue to comply with the requirements.

It is noted that Control C2 of Part 70.2 requires that swimming pools are to be located at ground level or if the site slopes, the swimming pools and associated structures are not to be elevated more than 500mm above existing ground level. As demonstrated in the plans, all the swimming pools are located above ground and are attached to the rear of the dwelling and surrounded by decking. Due to the flooding issue in the area and the difference in the height of the floor levels of the dwelling and the ground level of the rear yard, the pool has been located so that direct access from the living areas could be achieved. The location of the pools will not impact on the neighbouring properties as they are located away from the side boundaries as well as the applicant has positioned the pools so that they are grouped in pairs so that the impact of noise to living areas is slightly reduced from a neighbouring pool.

The plans do not demonstrate any pool fencing proposed therefore appropriate conditions of consent will be imposed so that a 1.2 metre high glass swimming pool fence in accordance with the Australian Standards will be installed around each pool.

The location of pool pumps have not been demonstrated on the plans however has been conditioned to be within a soundproofed enclosure which has been conditioned.

The proposal is consistent with the requirements and provisions within Part 70- Swimming Pool relating to location of pools, overall site coverage, setbacks, equipment associated with swimming pools and drainage and stormwater management. Appropriate conditions have been imposed in the consent regarding to the construction, management and provisions prior to the occupation of the development and the ongoing use of the development.

Part 8 – Botany Character Precinct

Part 8.4.2 Desired Future Character of the Botany 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 Botany.

The site is located on Daphne Street which contains a number of attached multi dwelling development. The site is also located within an R3 Medium Density Residential zone which permits for higher densities such as attached dwellings at a three storey height. The proposal provides a good transition from the existing industrial warehouses on the site and has been designed to provide good transition should the industrial warehouses on the eastern neighbour redevelop.



Figure 13. Examples of multi dwelling developments along Ivy Street



Figure 14. Examples of multi dwelling developments along Ivy Street

The attached dwellings are similar in nature to the development that is located along Daphne Street, Rose Street and Ivy Street which consists of a number of sets of attached dwellings which comprise of two storey plus third storey attic/rooms setback from the street. While the height is similar to these developments, the subject site is Torrens Titled while the other developments are strata titled. However this is acceptable as the sites provide adequate setbacks, car parking and does not contribute to unreasonable bulk.

The layout of the proposal is consistent and promotes commonality with the development along Daphne Street. The dwellings are contemporary in nature which is consistent with the

style of the multi dwelling and residential flat development in the street and maintains consistent roof form and building heights.

The site could accommodate for larger buildings and bulk however the applicant has opted with for attached dwellings with Torrens Title Subdivision. The development is consistent and complies with the site coverage, landscaped area, car parking and private open space.

Accordingly, the proposal is considered suitable for the subject site and is considered compatible with the desired future character as described in the Botany Bay Development Control Plan 2013 for the Botany precinct.

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

The proposed development will have no significant adverse environmental, social or economic impacts in the locality.

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

It is noted that the site contains an existing industrial warehouse over the majority of the site. The applicant has provided a Phase 1 and 2 contamination report which has been assessed and is found that the site can be made suitable for residential development subject to appropriate conditions.

The front of the site contains a substation which will be relocated as part of this development. This is acceptable and has been considered as part of this proposal.

The site is flood affected and therefore all the dwellings have been required to be raised above the flood level. The partial basement has been amended to demonstrate a crest to prevent any flood waters from entering the car parking level. This has been reviewed by Council's Development Engineer who has provided appropriate conditions in the consent.

The proposed development, being for the demolition of the existing structures, Torrens Title subdivision for the dwellings and the car parking level and construction of five attached dwellings with swimming pools including associated excavation works and landscaping within the R3 Medium Density Residential Area, is an appropriate development in the context of the site and the locality.

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

In accordance with Part 2 – Advertising & Notification of the Botany Bay Development Control Plan (BBDCP) 2013, the development application was notified and advertised for 14 days from 24 January to 8 February 2018. No submissions were received.

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

Granting approval to the proposed development will have no significant adverse impact on the public interest.

OTHER MATTERS

Section 7.11 Contributions (formerly s.94)

The City of Botany Bay's Section 94 Development Contributions Plan 2016 became effective on 14 June 2016. The below contribution applies to the proposed development:

Contribution Rates

1 x New 4 Bedroom dwellings: \$21,981.87

5 dwellings x \$21,981.87 = \$109,909.35

As the total amount of each dwelling is over \$20,000.00, the section 7.11 contribution rate is capped at **\$100,000.00** based on five dwellings. No credit is applicable under the Plan as there is no existing dwellings on the site. Appropriate conditions have been imposed in the consent.

Conclusion

Development Application No. 2018/1004 for the demolition of the existing structures, Torrens Title subdivision for the dwellings and the car parking level and construction of five attached dwellings with swimming pools including associated excavation works and landscaping at 37A-39 Daphne Street Botany, has been assessed in accordance with the relevant requirements of the *Environmental Planning and Assessment Act 1979*.

The development is compliance in site coverage, landscaping, private open space and car parking. The amenity of the neighbouring development continues to be maintained and is a better outcome and built form than the previously approved residential flat building development on the site. This is demonstrated by the lack of submissions provided with the application. The height non-compliance is acceptable due to the development being raised to meet the flooding requirement. The additional height and bulk is encapsulated within the centre of the development therefore the top floor will not be as visible as the street and provide bulk to the site. The non-compliance in the floor space ratio is partially contributed to the inclusion of the additional car parking space within the GFA. The additional car space for each dwelling is a welcome addition to the development particularly as each dwelling proposes four bedrooms. Additionally, the rate for multi dwelling housing and dwellings with greater than four bedrooms require 2 spaces outweighs the FSR argument. The removal of the calculation of car parking from the GFA would result in the development being less than 10% variation from the standard.

The amenity of the neighbouring development will not be adversely impacted by the proposal and acceptable amenity is provided to the proposal. The subdivision pattern while not consistent with the general subdivision pattern in the area, the development is not considered out of context in the area particularly as there are existing strata titled development that is in close proximity to the development that have a similar bulk and scale. Therefore, the proposal is recommended for approval subject to conditions of consent.

Attachment

Schedule 1 – Conditions of Consent

Premises: 37A-39 Daphne Street, Botany

Da No.: DA-2018/1004

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
DA-00- Cover Sheet- Rev 8	Derek Raithby Architecture	Dated December 2017; Received 6 April 2018
DA-01- Site Analysis Plan- Rev 6		Dated December 2017; Received 12 January 2018
DA-02- Basement and Ground Floor Plan- Rev 8		Dated April 2018; Received 6 April 2018
DA-03- First and Second Floor Plan- Rev 8		Dated April 2018; Received 6 April 2018
DA-04- Elevations- Rev 8		Dated April 2018; Received 6 April 2018
DA-05- Section- Rev 8		Dated April 2018; Received 6 April 2018
DA-06- External Finishes- Rev 7		Dated February 2018; Received 6 March 2018
DA-11- Diagrams GFA- Rev 10		Dated April 2018; Received 13 April 2018
DA-12- Diagrams- Landscape Plans- Rev 7		Dated February 2018; Received 6 March 2018
DA-13- Site Management Plan- Rev 6		Dated December 2017; Received 12 January 2018
DA-14- Services Plan- Rev 6		Dated December 2017; Received 12 January 2018
DA-16- Windows and Doors Schedule- Rev 6		Dated December 2017; Received 12 January 2018
DA-17- Subdivision Plan- Rev 6		Dated December 2017; Received 12 January 2018
DA-18- Streetscape Analysis- Rev 7		Dated February 2018; Received 6 March 2018
LPDA-15- 241- Landscape Plan GF	Conzept Landscape Architects	Dated December 2017; Received 12 January 2018
LPDA-15- 242- Landscape Plan- Roof		Dated December 2017; Received 12 January 2018
Subdivision Plan for basement level	-	Received 26 February 2018

Reference Document(s)	Author	Date Received
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BASIX Certificate No. 891391M_02	Prepared by Greenworld Architectural Drafting	Dated 22 December 2017; Received 12 January 2018
Cover Letter relating to request for information	Derek Raithby Architecture	Dated 2 March 2018 Received 6 March 2018
OSD and Flood Controls	Capital Engineering Consultants	Dated 1 March 2018; Received 6 March 2018
Geotechnical Desktop Study Report	Environmental Investigations	Dated 4 May 2015; Received 12 January 2018
Statement of Environmental Effects and Clause 4.6	ABC Planning	Dated April 2018; Received 13 April 2018
Acid Sulfate Soils Assessment and Management Plan	Environmental Investigations	Dated 4 May 2015; Received 12 January 2018
Acoustic Report	Sebastian Giglio Acoustic Consultant	Dated 7 December 2017; Received 12 January 2018
Stage 2 Detailed Site Investigation Report	EI Australia	Dated 26 March 2018; Received 27 March 2018
Nathers Certificate	-	Received 12 January 2018
Waste Management Plan	-	Received 12 January 2018

2. This Consent relates to land in Lot 202 DP 1001451 and Lot 6 Sect E DP 1787 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 Certificates (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 COMMENCEMENT OF ANY DEVELOPMENT OR WORK

6. 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.
7. 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.
8. A dilapidation survey shall be undertaken of all adjoining 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 Principal Certifying Authority prior to issue of the Construction Certificate. The insurance cover shall be a minimum of \$10 million.
 9. 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.
 10. An Erosion and Sediment Control Plan (ESCP) shall be prepared in accordance with the Landcom *Managing Urban Stormwater – Soils and Construction* 4th Edition (2004). All management measures recommended and contained within the Erosion and Sediment Control Plan (ESCP) shall be implemented in accordance with the *Landcom Managing Urban Stormwater – Soils and Construction* 4th Edition (2004). This plan shall be implemented prior to commencement of any site works or activities. All controls in the plan shall be maintained at all times. A copy of the ESCP shall be kept on-site at all times and made available to Council Officers on request.
 11. For any water from site dewatering to be permitted to go to the stormwater, the water must meet ANZECC 2000 Water Quality Guidelines for Fresh and Marine Water for the 95% protection trigger values for marine water. The results of all testing must be completed by a NATA accredited laboratory.

All laboratory results must be accompanied by a report prepared by a suitably qualified person indicating the water meets these guidelines and is acceptable to be released into council's stormwater system. If it is not acceptable, details of treatment measures to ensure that the water is suitable for discharge to council's stormwater shall be provided in this report.

Reports shall be provided to council prior to discharge of any groundwater to the stormwater system.
 12. Erosion and sediment control devices shall be installed and functioning 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 public stormwater drainage system, natural watercourses, bushland and neighbouring properties. In this regard, all stormwater discharge from the site shall meet the legislative requirements and guidelines including the *Protection of the Environment Operations Act 1997*.

These devices 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.

13. To ensure that relevant engineering and water quality provisions are met during the period of dewatering for construction, prior to any water from site dewatering to be permitted to go to council's stormwater system a permit to discharge to the stormwater shall be obtained from Council. Dewatering shall not commence until this is issued by Council.
14. Building plans must be lodged through a Sydney Water Tap In Service for approval prior to commencement of works.
15. This Consent shall not preclude the demolisher from giving notice to other statutory authorities, such as Sydney Water Corporation, WorkCover, etc.
16. 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.
17. 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.
18. Dewatering is not permitted on this site without NSW-EPA approval.
19. If an excavation associated with the proposal extends below the level of the base of the footings of a building on an adjoining allotment of land or the common boundary fence the person causing the excavation to be made:
 - a) Must preserve and protect the building/ fence from damage; and,
 - b) If necessary, underpin and support such building in an approved manner;
 - c) Must at least be 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of the intention to do so to the owner of the adjoining allotment of land and, furnish particulars of the excavation to the owner of the building being erected or demolished;
 - d) 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.
 - e) If the soil conditions required it:

- i. Retaining walls associated with the erection of a building (swimming pool) or other approved methods of preventing movement or other approved methods of preventing movement of the soil must be provided and:-
 - ii. Adequate provision must be made for drainage.
- 20. 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
- 21. 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.

CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE ISSUE OF ANY CONSTRUCTION CERTIFICATE

- 22. 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.
- 23. The applicant must prior to the obtainment of the approved plans and specifications pay the following fees:-
 - a) Footpath Crossing Deposit \$73,140.00 (See below)
 - b) Development Control \$3,000.00
 - c) Section 7.11 Contributions (Section 94) \$100,000.00 (See below)
- 24. The payment of the following monetary contributions in accordance with Council’s Section 94 Contributions Plan 2016. This result is a total contribution of **\$100,000.00**, to be paid to Council prior to the issue of the Construction Certificate.

The contribution is broken down as follows:

- a) Community Facilities- Citywide: \$17,159.71
- b) Recreation Facilities- Citywide: \$74,538.31
- c) Administration: \$1,278.86
- d) Transport Management- Citywide: \$7,023.12

Note: The Section 94 Contribution fees are subject to annual review and the current rates are applicable for the financial year in which your consent is granted. If you pay the contribution in a later financial year you will be required to pay the fee applicable at the time. The Section 94 Contribution fees are subject to annual review and the current

rates are applicable for the financial year in which your consent is granted. If you pay the contribution in a later financial year you will be required to pay the fee applicable at the time.

25. Prior to the issue of any Construction Certificate, the applicant shall lodge a Footpath Crossing Deposit of \$73,140.00 (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.
26. 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.
27. 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.
28. Prior to the issue of the Construction Certificate, a plan (written and/or diagrammatic) shall be submitted and approved by the Principal 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.
29. Construction Management Program shall be submitted to, and approved in writing by the Council prior to the issue of a Construction Certificate. The program shall detail:
 - a) The proposed method of access to and egress from the site for construction vehicles, including access routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or public reserves being allowed,
 - b) The proposed phases of construction works on the site and the expected duration of each construction phase,
 - c) The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken,
 - d) The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process,
 - e) The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any

part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site,

- f) The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period,
 - g) The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site,
 - h) The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an Accredited Certifier (Structural Engineering), or equivalent,
 - i) Proposed protection for Council and adjoining properties, and
 - j) The location and operation of any onsite crane. Please note that a crane may require prior approval from Sydney Airports Corporation.
 - k) The location of any Construction Zone (if required) approved by Council's Traffic Committee, including a copy of that approval.
 - l) A plan (written and/or diagrammatic) showing the method of access of building materials and plant to the property, and storage location on the property during construction and shall include all existing structures.
30. Prior to the issue of a Construction Certificate, a detailed Traffic Management Plan for the pedestrian and traffic management of the site during construction shall be prepared and submitted to the relevant road authority (Council or Roads and Maritime Services) for approval. The plan shall:
- a) be prepared by a RMS accredited consultant,
 - b) nominate a contact person who is to have authority without reference to other persons to comply with instructions issued by Council's Traffic Engineer or the Police, and
 - c) if required, implement a public information campaign to inform any road changes well in advance of each change. The campaign may be required to be approved by the Traffic Committee.

Note: Any temporary road closure shall be confined to weekends and off-peak hour times and is subject to Council's Traffic Engineer's approval. Prior to implementation of any road closure during construction, Council shall be advised of these changes and Traffic Control Plans shall be submitted to Council for approval. This Plan shall include times and dates of changes, measures, signage, road markings and any temporary traffic control measures.

31. 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 Principal Certifying Authority for approval. A copy of the detailed design plans shall be provided to Council where Council is not the Principal Certifying Authority.

(The detail drawings and specifications shall be prepared by a suitably qualified and experienced civil engineer and to be in accordance with Council's 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 measures such as:

- a) the provision for an on-site detention system (OSD) which shall be designed according to Part 6 of the SMTG. It should be noted that OSD systems shall be designed to detain the stormwater run-off from the site for all storm events up to and including 1 in 100 year ARI storm and permissible site discharge (PSD) shall be based on the 1 in 5 year ARI peak flow generated from the site under the state of nature condition. Each proposed lot shall have their own individual OSD system,
 - b) the provision for an on-site basement pump-out system designed in accordance with part 7.3 of the Botany Bay DCP Stormwater Management Technical Guidelines (SMTG),
 - i) No pump-out shall be used to drain seepage from the basement due to the elevated water table level. That is the pump shall be designed as a "fully tanked" structure,
 - ii) The pump-out can only be utilized to dispose runoff that may enter the basement carpark from driveway access to the basement,
 - c) rainwater tank systems shall be provided for each proposed lot, each having a minimum capacity of 1200L with a catchment of at least 30m² of roof area of the development. The rainwater tanks shall have internal reuse in accordance with Section 4 of Botany Bay's SMTG. Overflow from the rainwater tanks shall connect to the proposed site drainage system.
 - d) The submission of detailed calculations including computer modelling where required supporting the proposal.
32. Any connection to Council's inground stormwater drainage infrastructure located along Daphne Street will require the assessment, approval and inspection by Council's Public Works section to ensure the integrity of this Council asset is maintained. Engineering plans detailing the method of connection and an inspection fee in accordance with Council's current fees and charges must be paid to Council prior to the issue of the Construction Certificate. Council must be notified when the connection has been made to the pit/pipe and an inspection must be made by a Council officer prior to restoration/backfill at the point of connection for approval.
- Where the point of connection is in neighbouring property, the applicant must provide written notification to the affected property owner no less than a week prior to the works and all structures/ surface areas affected by the drainage connection works must be reinstated at the completion of this activity, at no cost to the affected property owner.
33. 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. All building materials shall be flood resistant, or flood compatible to a height of RL5.30m AHD. All internal electrical switches, power points or similar utilities liable to flood damage shall be set at

or above RL5.30m AHD. Details shall be provided and approved prior to the issue of a construction certificate.

34. 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:
 - a) The floor level of the habitable areas of the building shall be at least 5.80m AHD.
35. 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. The profile shall be drawn to a scale of 1 to 25 and shall include all relevant levels, grades (%) and lengths. A crest level of minimum height of RL 5.50m AHD shall be provided for the development. This height shall be also used to also protect the basement from outflanking of flood waters.
36. Prior to the issue of any Construction Certificate, the applicant shall carry out an invasive investigation of the existing drainage easement, reference no. H496045 to confirm the existence of any Council or Sydney Water infrastructure. Council's engineer shall confirm, on site, the result of the investigation and provide written permission for the excavation of the basement carpark.
37. Prior to the issue of any Construction Certificate, any part of the proposed building within 3m of the proposed detention tank(s) or underground rainwater tank(s) 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.
38. To ensure that utility authorities and Council are advised of any effects to their infrastructure by the development, the applicant shall:
 - a) 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,
 - b) Negotiate with the utility authorities (eg AusGrid, Sydney Water, Telecommunications Carriers and Council in connection with:
 - c) On Daphne St, adjacent to the development, the Ausgrid power pole will need to be decommissioned,
 - d) All above ground utilities shall be relocated underground in accordance with Ausgrid and any other affected and relevant service provider, and
 - e) All underground and above ground infrastructure shall be constructed as specified by Ausgrid, RMS, Council and any other affected service provider. The location of the new electrical pillars, any new pits and trenches for utilities shall be confirmed with Council prior to the issue of the Construction Certificate.

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.

39. Prior to the issue of any Construction Certificate, all driveways/access ramps/vehicular crossings shall be designed to 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, E-07 and E-16.

As part of this development, a new concrete driveway shall be constructed. A new six (6) metre wide driveway layback shall be constructed as part of the new driveway. 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.

All redundant vehicular crossings shall be removed and replaced to fit the main footpath cross-section. If any applicant wants to retain an existing vehicular crossing an application still has to be submitted with the matter highlighted.

The design should be submitted to the PCA for approval. The approved design form part of the future road opening permit application.

40. The off-street parking areas associated with the subject development shall be designed strictly in accordance with AS2890.1:2004. Internal height clearance shall be designed throughout the car park and access driveway in accordance with AS2890.1:2004
41. 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.

DURING WORKS

42. 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 afterhour's contact telephone number.
- b) Any such sign is to be removed when the work has been completed.
- 43. The demolisher shall comply with Australian Standard 2601 - 2001 "Demolition of Structures".
- 44. 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.
- 45. 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.
- 46. 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).
- 47. 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.
- 48. 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
49. In order to ensure safe handling of asbestos materials, the re-use or sale of asbestos building materials is strictly prohibited.
 50. Any new information that comes to light during demolition or construction which has the potential to alter previous conclusions about site contamination and remediation must be notified to Council and the accredited certifier immediately.
 51. The management of potential and actual acid sulfate soils shall be conducted in accordance with all recommendations within the '*Acid Sulfate Soils Assessment and Management Plan – 37A – 39 Daphne Street, Botany NSW*' (E22192 AC) by Environmental Investigations Australia dated 4 May 2015.
 52. For any water from site dewatering to be permitted to go to the stormwater system, the water must meet ANZECC 2000 Water Quality Guidelines for Fresh and Marine Water for the 95% protection trigger values for Marine Water. All testing must be completed by a NATA accredited laboratory. All laboratory results must be accompanied by a report prepared by a suitably qualified and experienced person indicating the water is acceptable to be released into Councils stormwater system. If it is not acceptable, details of treatment measures to ensure that the water is suitable for discharge to council's stormwater shall be provided in this report. Reports shall be provided to council prior to discharge of any groundwater to the stormwater system.
 53. To ensure that relevant engineering and water quality provisions are met during the period of dewatering for construction, prior to any water from site dewatering to be permitted to go to council's stormwater system a permit to discharge to the stormwater shall be obtained from Council. Dewatering shall not commence until this is issued by Council.
 54. All materials excavated from the site (fill or natural) shall be classified in accordance with the NSW Environment Protection Authority (EPA) Waste Classification Guidelines (2014) prior to being disposed of to a NSW approved landfill or to a recipient site.
 55. To prevent contaminated soil being used onsite and to ensure that it is suitable for the proposed land use, all imported fill shall be appropriately certified material and shall be validated in accordance with the:
 - a) Office of Environment and Heritage (OEH) approved guidelines; and
 - b) Protection of the Environment Operations Act 1997; and
 - c) Protection of the Environment Operations (Waste) Regulation 2014.

All imported fill shall be accompanied by documentation from the supplier which certifies that the material has been analysed and is suitable for the proposed land use.
 56. Results of the monitoring of any field parameters such as soil, groundwater, surface water, dust or noise measurements shall be made available to Council Officers on request throughout the remediation and construction works
 57. No demolition materials shall be burnt or buried on the site.
 58.
 - 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.
- 59. 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.
- 60. 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.
- 61. The approved Waste Management Plan shall be complied with at all times during demolition, construction and on-going use of the site.
- 62. 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.
- 63.
 - 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.
- 64. 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.

65. 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.

66.

- 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.
67. 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.
68. 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.
69. Construction Operations:
- a) the applicant shall conduct all construction works and any related deliveries/activities wholly within the site. If any use of Council's road reserve is required, approval and permits shall be obtained from Council.
 - b) Construction operations such as brick cutting, washing tools or brushes and mixing mortar shall not be carried out on park/road reserve or in any other locations which could lead to the discharge of materials into the stormwater drainage system or onto Council's lands.
 - 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.
70. During Demolition, Excavation, Construction and Deliveries, access to the site shall be available in all weather conditions. The area shall be stabilised and protected from

erosion to prevent any vehicles (including deliveries) tracking soil materials onto street drainage system/watercourse, Council's lands, public roads and road-related areas. 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 Council's land.

71. During construction, the applicant shall ensure that all works and measures have been implemented in accordance with approved Traffic Management Plan and Construction Management Plan at all times.
72. 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.

CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE ISSUE OF ANY SUBDIVISION CERTIFICATE

73. 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.
74. 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 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.
75. 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.

CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE ISSUE OF A OCCUPATION CERTIFICATE

76. Prior to the issue of any Occupation Certificate, the approved subdivision is to be registered. The linen plans are to be submitted to Council prior to the release of the Occupation Certificate, and proof of registration with the Land and Property Information is to be submitted prior to occupation and use of any building.
77. 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.

78. 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 required 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).
79. 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.
80. 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.
81. The owner of the premises is required to comply with the following requirements when installing a rainwater tank:
- a) Inform Sydney Water that a Rainwater tank has been installed in accordance with applicable requirements of Sydney Water.
 - b) The overflow from the rainwater tank shall be directed to the storm water system.
 - c) 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.
 - d) A first flush device shall be installed to reduce the amount of dust, bird faeces, leaves and other matter entering the rainwater tank.
82. Prior to the issue of any Occupation Certificate, the applicant shall carry out the following works:
- a) On Daphne 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 Daphne 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.
83. 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.
84. Prior to the issue of any Occupation Certificate(s), 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.

85. Prior to the issue of any Occupation Certificate(s), 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 all relevant standards.
86. 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.
87. Reciprocal rights of carriageway shall be provided over the full length of the driveway, facilitating access for all proposed allotments to allow manoeuvring into and out of the basement garage. An 88B Instrument is to be provided for the rights of carriageway and is to be lodged with the Subdivision Certificate.
88. Prior to the issue of any Occupation Certificate, the existing drainage easement, reference no. H496045, shall be extinguished with the prior written approval of Council and the presentation of the relevant Council inspection signoff.
89. Prior to the issue of any Occupation Certificate(s), a restriction on Use of Land and a positive covenant pursuant to the Conveyancing Act 1919 shall be created on the title of the lots that contain the Stormwater Detention facility. A 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. The following covenants shall be imposed under Section 88(B) of the Conveyancing Act 1919 and lodged with the NSW Land and Property Information:
- a) Restriction on Use of Land for On-Site Detention System. Refer to Appendix B of the Stormwater Management Technical Guidelines for suggested wording.
 - b) Positive covenant for the maintenance of the On-Site Detention System. Refer to Appendix B of the Stormwater Management Technical Guidelines for suggested wording.
90. A certificate from a Registered Surveyor shall be provided to the Principal Certifying Authority (PCA) certifying that the habitable floor level is constructed at or above RL5.80m AHD. A copy of the certificate shall be provided to Council where Council is not the Principal Certifying Authority.
91. A certificate from a Registered Surveyor shall be provided to the Principal Certifying Authority certifying that the pool coping level, storage shed floor, patio and deck are constructed at or above RL5.30m AHD. A copy of the certificate shall be provided to Council where Council is not the Principal Certifying Authority.
92. Flow through open form fencing (louvres or pool fencing) is required for all new front fencing and all internal fences and gates up to RL5.30m AHD. Any new boundary fences adjoining private property shall have an 80mm gap at the bottom to allow flows through. Details of approved types of flow through fencing can be obtained from Council. Documentation shall be provided to Certifying Authority prior to occupation.
93. 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.

94. 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 Bayside Council. These provisions are to be put into effect prior to the release of the Subdivision/Strata Certificate.
95. The Council nature strip in Daphne 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.
96. Prior to the issue of the Occupation Certificate, the swimming pools are to be registered with the NSW Government at www.swimmingpoolregister.nsw.gov.au and a registration certificate is to be submitted to the Council.
97. Prior to the issue of the Occupation Certificate, the following is required:
 - e) High-level overflows from the swimming pool shall be gravity fed and connected to Sydney Water's sewer via an approved system. The connection must not directly vent the receiving sewer. Upon completion, certification from a licence plumber shall be submitted to the Principal Certifying Authority to certify that the connection has been made in accordance with Sydney Water's requirements and the current plumbing codes.
 - f) The Principal Certifying Authority shall confirm the concourse area surrounding the swimming pool have been constructed at minimum 1.0% grade towards the pool to prevent surface water overflowing into the adjoining properties.
 - g) Where a dividing fence, being a dividing fence that separates the lands of adjoining owners or a public place, is to form part of the safety enclosure in which the swimming pool is to be located, then such fencing must be a minimum of 1.8m in height from the finished surface level surrounding the pool, sound and in a state of good repair and condition. The boundary fencing shall be installed prior to the completion of the swimming pool.
 - h) The swimming pool shall be fenced in accordance with Section 7 of the Swimming Pools Act 1992 and Australian Standard AS1926 (2012), prior to the filling of water in the pool or use of the pool. Such fence shall be provided with a self-latching and self-closing gate, opening outwards, capable of being opened from the poolside only and with provision for permanent locking when not in use. The fence shall be installed to the satisfaction of the Principal Certifying Authority, prior to the filling of water in the pool/use of the pool.

The fence required surrounding the swimming pool and in relation to any gate that forms part of such fence shall be erected in accordance with the approved plans and specifications, together with the standards set out in AS1926 entitled "Fences and Gates for Private Swimming Pools".

Note: The definition of "swimming pool" is that given under Clause 3 of the Swimming Pools Act 1992.
 - i) The pool shall be provided with at least two depth markers above the water line, being of numerical figures or at least 75mm in height, and shall be located in two locations on either side of the pool, indicating the corresponding depth of the pool.

- j) The provision of a suitable poster showing the details of resuscitation techniques shall be erected. This poster should also contain the advice that "YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS SWIMMING POOL", together with details of resuscitation techniques (for adults, children and infants) set out in accordance with the relevant provisions of the document entitled "Cardio Pulmonary Resuscitation", according to the AS 1926.1 2012 and the Swimming Pool Regulation 2008.
- k) An approved resuscitation poster, outlining life-saving resuscitation procedures, shall be erected and displayed in a prominent position adjacent to the pool.

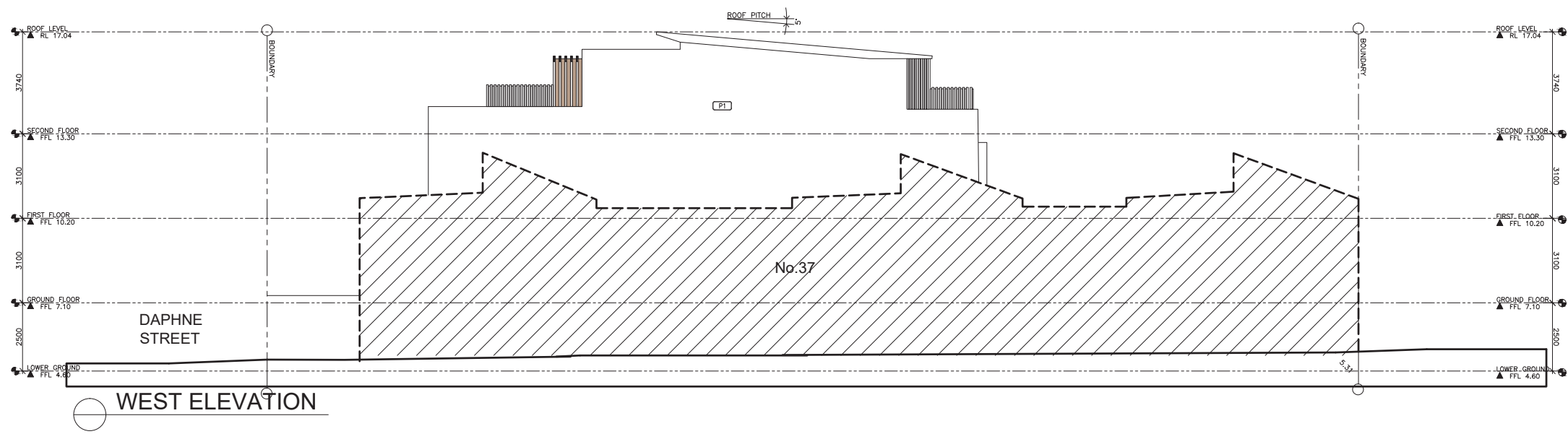
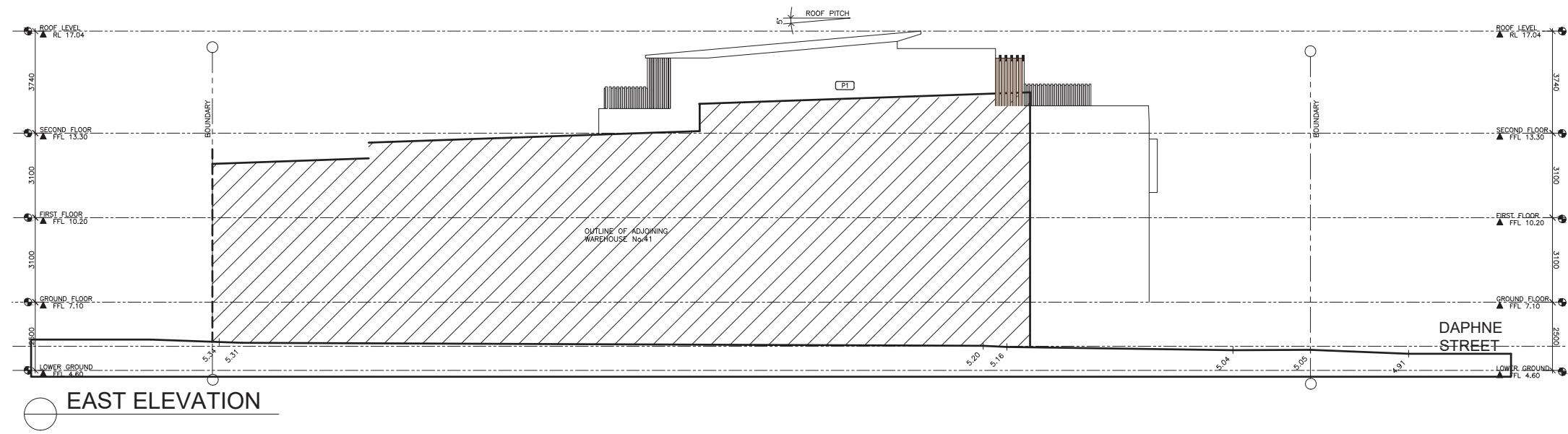
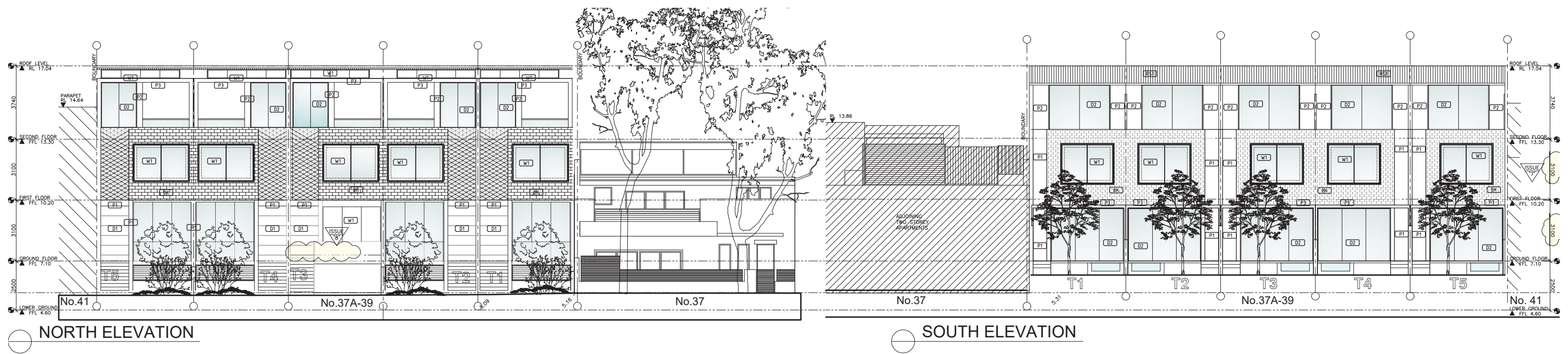
Note: The above notices shall be kept in a legible condition and at a visible location on the pool side at all times.

- 98. Prior to use or operation of the swimming pool, any filtration equipment or pump(s) shall be enclosed with appropriate sound insulation materials to ensure noise levels do not exceed 5dBA above the ambient background noise level when measured at the side and rear boundaries of the property.
- 99. 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

- 100. 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.
- 101. 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.
- 102. 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. The water from the rainwater tanks should not be used for drinking, 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.
- 103. 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*.
- 104. The pool filtering equipment must be encased by a soundproof cover and be located as far as practical from adjoining properties. Pool equipment must not operate between 10:00pm and 7:00am.

105. The pool must not be filled with bore water or groundwater.
106. Access to an area in which a swimming pool is located shall not be through any garage, outbuilding or dwelling.
107. The fence including any access gate or other boundary construction that encloses the swimming pool for the purpose of child safety must at all times be maintained in a state of good repair and condition.
108. The water from the rainwater tanks should not be used for drinking, the rainwater tanks 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.
- 109.
- 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.



LEGEND			
[B1] COLORBOND METAL ROOF SHEETING.	[B1] FRAMELESS GLASS BALUSTRADE WITH ANODISED RAIL.		
[P1] CEMENT RENDERED PAINT FINISH 1.	[MF] METAL FENCE.		
[P2] CEMENT RENDERED PAINT FINISH 2.	[TB1] TIMBER FLOORING.		
[CL1] TILE WALL CLADDING.	[TB2] TIMBER DECK.		
[CL2] COLORBOND WALL CLADDING.	[CRP] CARPET.		
[W1] WINDOWS FRAMING POWDERCOAT.	[T1] TILES LAID TO FALL ON SCREED.		
[D1] ALUMINUM DOORS POWDERCOAT.	[T2] EXTERNAL TILES LAID TO FALL ON SCREED.		
[D2] PANEL GARAGE DOOR COLORBOND.	[CF1] CONCRETE FLOOR.		



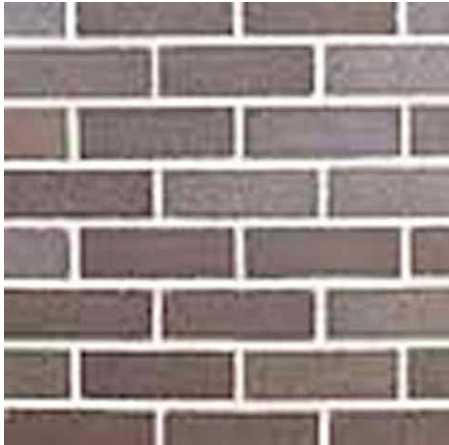
WINDOWS
W1



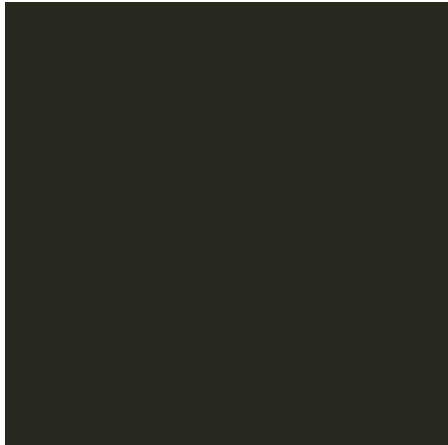
FRONT DOORS
D1



SLIDING DOORS
D2



BRICK WALL
BK1



COLOUR PAINT 1
P1



COLOUR PAINT 2
P2



COLOUR PAINT 3
P3



PRIVACY SCREEN
SC1



BREEZE BLOCKS
BRZ



GLASS BALUSTRADE
BL1



POOL FENCE – FRAMELESS GLASS
BL2

ISSUE
1-7



EXTERNAL FINISHES

CONTRACTOR MAY SELECT SIMILAR FINISHES SUBJECT TO APPROVAL BY THE ARCHITECT.

DEREK RAITHBY ARCHITECTURE
LEVEL 2, 57 RENWICK STREET,
LEICHHARDT NSW 2040
T: (02) 9518 3563 ABN:61613174020
info@derekraithby.com.au Architect #7469

7	FEB 2018	ISSUE TO COUNCIL	AL	
6	DEC 2017	DEVELOPMENT APPLICATION	DR	
5	DEC 2017	ISSUE TO CONSULTANTS	DR	
4	NOV 2017	ISSUE TO TOWN PLANNER	DR	
3	NOV 2017	DEVELOPED CONCEPT	DR	
2	NOV 2017	AMENDED CONCEPT	DR	
1	OCT 2017	INITIAL CONCEPT	DR	
amend	date	description	by	amend date description by

Client

REZNOV ENTERPRISES
C/- DEREK RAITHBY ARCHITECTURE

DO NOT SCALE OFF DRAWINGS. WORK TO FIGURED DIMENSIONS ONLY. ALL DIMENSIONS ARE TO BE CONFIRMED ON SITE PRIOR TO COMMENCEMENT OF WORK. REPORT ANY DISCREPANCIES TO THE ARCHITECT. NOMINATED ARCHITECT DEREK RAITHBY REG. 7469 COPYRIGHT DRA (AUS) PTY LTD

Project

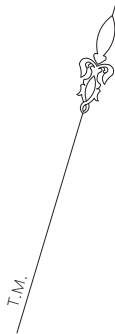
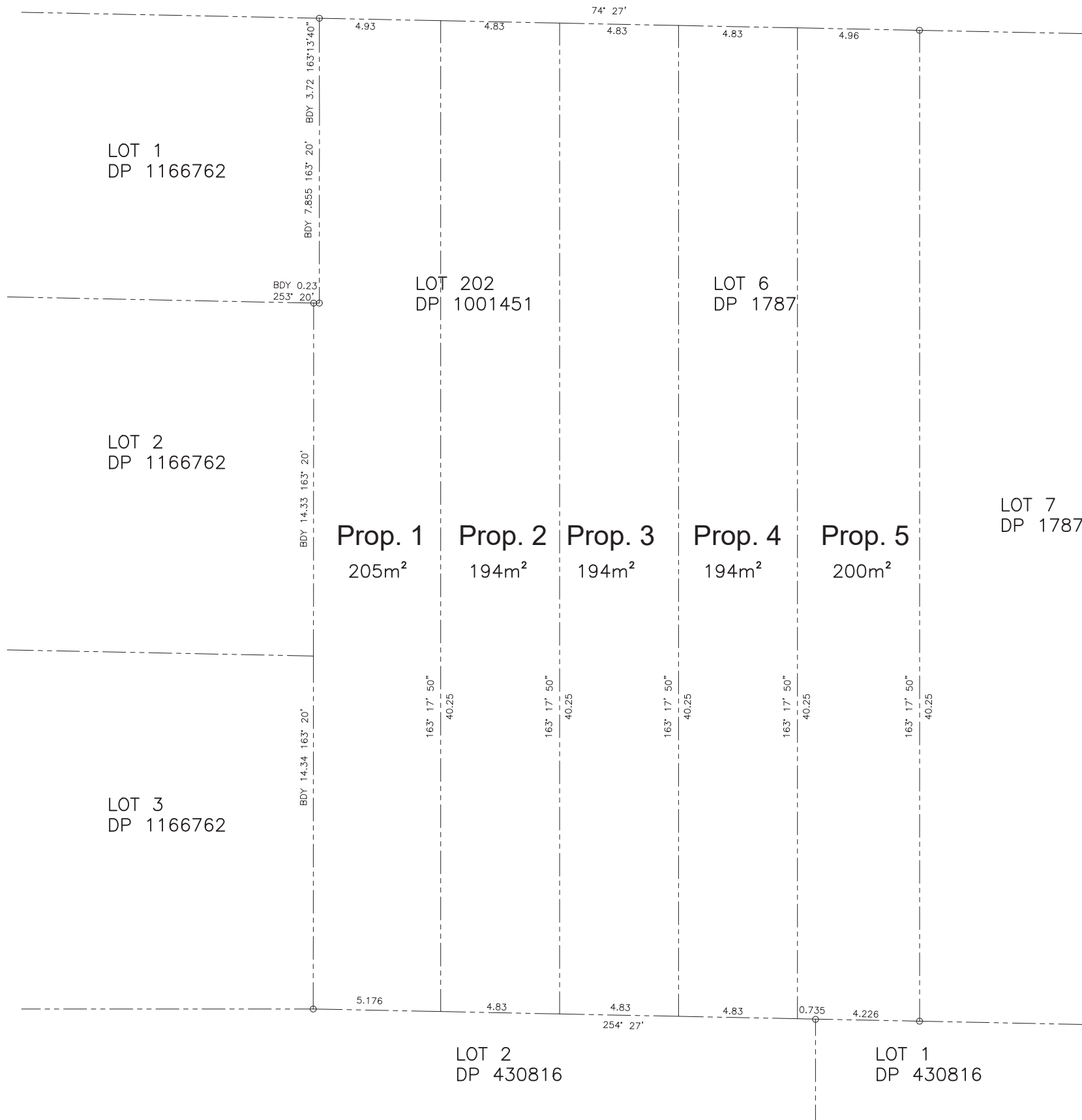
RESIDENTIAL DEVELOPMENT
Lot 202 D.P. 1001451, 37A-39 DAPHNE STREET
BOTANY, NSW 2019

Title

EXTERNAL FINISHES

DA SUBMISSION			
Scale	Drawn/Checked	Drawing No.	
1:100@A1, 1:200@A3	DR	06	
Project No.	Revision		
D1723	7		

DAPHNE STREET



BOUNDARY DIMENSIONS AND AREAS
SUBJECT TO CHANGE UPON FINAL
APPROVAL AND PLAN OF REDEFINITION



No. 41, 39, 37A & 37 DAPHNE STREET

No. 41, 39, 37A & 37 DAPHNE STREET

No. 12 & 41 DAPHNE STREET

No. 39 DAPHNE STREET

7	FEB 2018	ISSUE TO COUNCIL	AL	
6	DEC 2017	DEVELOPMENT APPLICATION	DR	
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1	OCT 2017	INITIAL CONCEPT	DR	
amend	date	description	by	amend date description by

PLAN FORM 6A (2017)	DEPOSITED PLAN ADMINISTRATION SHEET	Sheet 2 of 2 Sheet(s)																														
Office Use Only	Office Use Only																															
Registered :																																
PLAN OF																																
SUBDIVISION OF LOT 6 OF SEC.E IN D.P.1787 & LOT 202 IN D.P.1001451																																
Subdivision Certificate Number :	<div>This sheet is for the provision of the following information as required :<ul style="list-style-type: none">A schedule of lots and addresses - See 60(c) SS1 Regulation 2017Statement of intention to create and release affecting interests in accordance with section 88B Conveyancing Act 1919Signatures and seals - see 195D Conveyancing Act 1919Any information which cannot fit in the appropriate panel of sheet 1 of the administration sheets.</div>																															
Date of Endorsement :																																
<table><thead><tr><th>LOT</th><th>STREET No.</th><th>STREET NAME</th><th>STREET TYPE</th><th>LOCALITY</th></tr></thead><tbody><tr><td>1</td><td>XX</td><td>DAPHNE</td><td>STREET</td><td>BOTANY</td></tr><tr><td>2</td><td>XX</td><td>DAPHNE</td><td>STREET</td><td>BOTANY</td></tr><tr><td>3</td><td>XX</td><td>DAPHNE</td><td>STREET</td><td>BOTANY</td></tr><tr><td>4</td><td>XX</td><td>DAPHNE</td><td>STREET</td><td>BOTANY</td></tr><tr><td>5</td><td>XX</td><td>DAPHNE</td><td>STREET</td><td>BOTANY</td></tr></tbody></table>			LOT	STREET No.	STREET NAME	STREET TYPE	LOCALITY	1	XX	DAPHNE	STREET	BOTANY	2	XX	DAPHNE	STREET	BOTANY	3	XX	DAPHNE	STREET	BOTANY	4	XX	DAPHNE	STREET	BOTANY	5	XX	DAPHNE	STREET	BOTANY
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<div>PURSUANT TO SEC. 88B OF THE CONVEYANCING ACT 1919 IT IS INTENDED TO CREATE :</div> <div>1. RIGHT OF CARRIAGEWAY 3.4 WIDE & VARIABLE (LIMITED IN HEIGHT, UNLIMITED IN DEPTH)</div>																																
If space is insufficient use additional annexure sheet																																
Surveyor's Reference: xxxxx-13																																

APPENDIX 1

CLAUSE 4.6

EXCEPTION TO DEVELOPMENT STANDARD

BUILDING HEIGHT STANDARD - CLAUSE 4.3 OF BOTANY BAY LEP 2013

Demolition of the existing structures and construction of a townhouse development comprising of 5 x 3-storey townhouses, a basement level car park containing 10 car parking spaces and Torrens title subdivision of the 5 townhouses and stratum subdivision of the basement

37A-39 DAPHNE STREET, BOTANY

SUBMITTED TO

BAYSIDE COUNCIL

PREPARED BY

ABC PLANNING PTY LTD

April 2018

CLAUSE 4.6 EXCEPTION TO DEVELOPMENT STANDARDS UNDER BOTANY BAY LEP 2013

This Clause 4.6 submission has been prepared to accompany the development proposal submitted to Bayside Council for the demolition of the existing structures and construction of a townhouse development comprising of 5 x 3-storey townhouses, a basement level car park containing 10 car parking spaces and Torrens title subdivision of the 5 townhouses and stratum subdivision of the basement at 37A-39 Daphne Street, Botany.

Clause 4.6 of Botany Bay LEP 2013 allows Council to grant consent for development even though the development contravenes a development standard imposed by the LEP. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for developments.

Clause 4.6 Exceptions to development standards

- (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) *Development 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 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.*

Development Standard to be Varied

This Clause 4.6 variation request seeks to justify contravention of the building height development standard set out in Clause 4.3 of the Botany LEP 2013. Clause 4.3 provides that the maximum building height for development on the subject site is 10m. Refer to the extract of the Botany Bay LEP 2013 Building Height Map below.

The proposed development has a maximum building height of 11.98m, which does not comply with the building height standard of 10m for the site. The proposal seeks a 17.8% variation to the building height standard.

This submission contends that strict compliance with the building height development standard is unreasonable and/or unnecessary in the circumstances of the case and that the variation sought can be supported and that the Clause 4.6 exception to the development standards should be upheld.

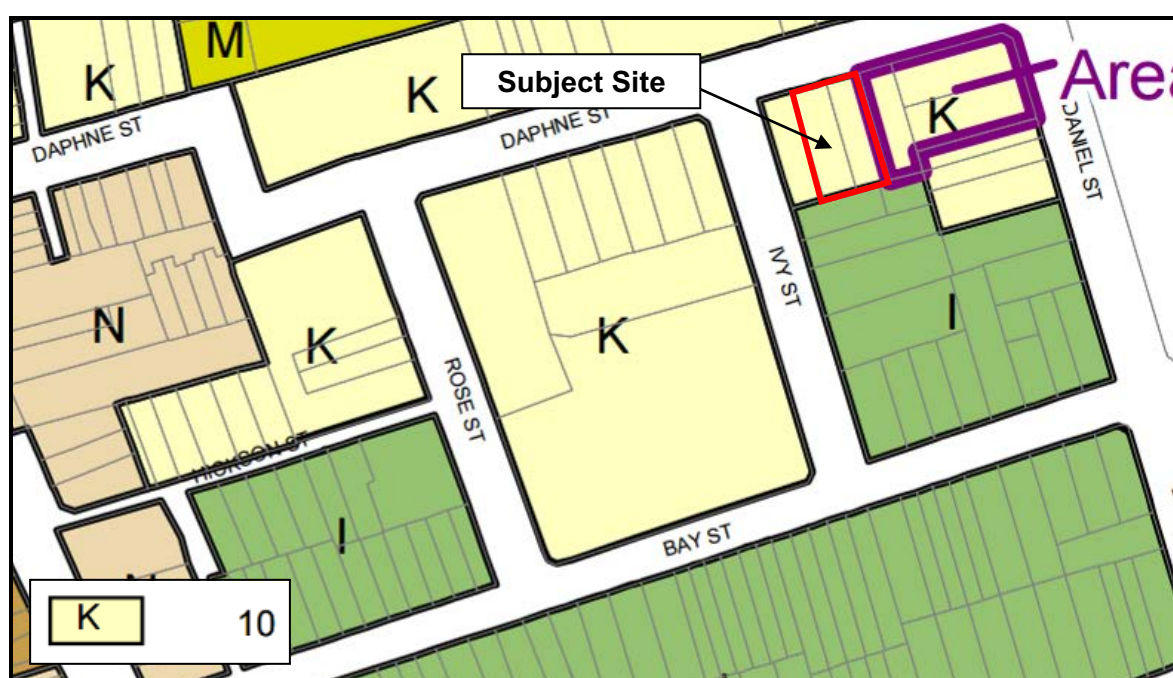


Figure 25: Building Height Map

Justification for Contravention of the Development Standard

- Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

In *Wehbe v Pittwater Council* [2007] NSW LEC 827, Preston CJ of the Land and Environment Court provided relevant assistance by identifying five traditional ways in which a variation to a development standard had been shown as unreasonable or unnecessary.

While *Wehbe* related to objections made pursuant to State Environmental Planning Policy No. 1 – Development Standards (SEPP 1), the analysis can assist in considering variations made under clause 4.6.

The five methods outlined in *Wehbe* include:

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 or 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.

Below is a response to the five methods. The below assessment demonstrates that, in the circumstances of the case, strict numerical compliance would be unreasonable and unnecessary.

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard.

Assessment: The first point when following Wehbe is to establish whether compliance with the development standard is unreasonable or unnecessary.

The table below identifies that the proposed variation to the building height development standard will still achieve a development that satisfies the objectives of the building height development standard.

Table 5: Assessment against the objectives of the building height development standard

Clause 4.3 – Building Height Development Standard of Botany Bay Local Environmental Plan 2013

Objective	Proposal
Clause 4.3(1)(a) <i>To ensure that the built form of Botany Bay develops in a coordinated and cohesive manner</i>	<p>The proposal provides for a built form that is consistent and compatible with the character of the local area in that it provides a development that is of a similar scale and type to surrounding development and recently approved development. Refer to the photos and description of surrounding development in Section 3 of the SEE.</p> <p>The proposal provides for a built form that is consistent and compatible with the character of the local area in that it provides a development that is of a similar scale and type to surrounding development and recently approved development. Refer to the photos and description of surrounding development in Section 3 of the SEE.</p> <p>The proposed built form of the development is of a lesser scale than that already approved on the subject site (DA-2015/253 approved a four storey residential flat building containing 21 units).</p> <p>The recessed nature of the upper-most level achieves a modest form of development. The recessed nature of the upper level and its lightweight construction and appearance also ensures that the</p>

	proposal will not adversely affect the streetscape and will also not affect the amenity of surrounding properties in regard to solar access, privacy and view loss.
<p>Clause 4.3(1)(b)</p> <p><i>To ensure that taller buildings are appropriately located</i></p>	Refer to comments above.
<p>Clause 4.3(1)(c)</p> <p><i>To ensure that building height is consistent with the desired future character of an area</i></p>	<p>The subject site is located in an area of mixed character including both low and medium density residential development and some industrial sites to the north, east and west of the site. There are two and three storey medium density townhouse style residential developments along Daphne Street and Ivy Street to the west of the site.</p> <p>The site is located within the R3 Medium Density Residential zone with a frontage to Daphne Street. It is anticipated that the area will continue to undergo a transition from a light industrial area to a medium density residential area. This has begun to occur following redevelopment of other light industrial sites along Daphne Street.</p> <p>The proposal represents a desirable form of development which significantly enhances the appearance of the subject site.</p> <p>The proposed development aims to enhance the public domain and streetscape presentation of the subject site by demolishing the existing outdated commercial buildings on the site and replacing these with a high quality and attractive townhouse development in a landscaped setting.</p>
<p>Clause 4.3(1)(d)</p> <p><i>To minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,</i></p>	<p>The proposal has been carefully designed to minimise amenity impacts.</p> <p>The proposed development will not be visually obtrusive and will not result in adverse amenity impacts in terms of overshadowing, privacy or view loss to a greater degree than a complying development.</p>
<p>Clause 4.3(1)(e)</p> <p><i>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</i></p>	<p>The proposed development will not adversely affect the streetscape as demonstrated in the photomontage below. The proposed bulk and scale will sit comfortably in its context which includes buildings of a similar and greater scale and bulk. The proposal represents a desirable form of development which significantly enhances the appearance of the subject site.</p> <p>The provision of landscaping in the front and rear setbacks softens the appearance of the built form and retains the character of the area as intended by the controls. The proposed height would not be visually obtrusive when viewed from any public or private vantage point.</p>



Figure 26: Photomontage of the proposed development as viewed from Daphne Street

2. **The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.**

Assessment: Not applicable in this instance.

3. **The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.**

Assessment: It is noted that the proposal is consistent with a number of recent approvals and recently constructed developments in the immediate surrounding area, refer to the photos and description of surrounding development in Section 3 of the SEE.

The proposed built form of the development is of a lesser scale than that already approved on the subject site (DA-2015/253 approved a four storey residential flat building containing 21 units).

Compliance with the development standard is unreasonable or unnecessary in the circumstances of this case because the exceedance is not considered to result in any adverse impacts as a result of the additional height. The additional building height is not responsible for any greater environmental impacts than a proposal with a compliant building height.

Given the lack of aural and visual privacy impacts, and overshadowing impacts above and beyond a compliant building envelope, there is no sound planning justification to reduce the proposed building height.

The proposed building height achieves a better planning outcome as it allows for the provision of a high quality and attractive townhouse development in a landscaped setting on the site in a manner which is appropriate and compatible with the existing and likely future character of the area. The proposed design will result in a reduced built form and less occupants on the site compared to the approved development on the subject site (DA-2015/253).

The non-compliant building height will not be visually obtrusive. The proposal achieves a reasonable streetscape outcome which retains and contributes to a desirable future character.

The recessed nature of the upper-most level achieves a modest form of development. The recessed nature of the upper level and its lightweight construction and appearance also ensures that the proposal will not adversely affect the streetscape and will also not affect the amenity of surrounding properties in regard to solar access, privacy and view loss.

Given there are no detrimental environmental impacts associated with the additional building height, it is confirmed that the additional building height is therefore associated with a better planning outcome on this site.

As such this underlying objective or purpose would be thwarted if compliance was required in this case with the consequence that compliance is unreasonable in the circumstances of this case.

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.

Assessment: Not applicable in this instance; the development standards of height and FSR cover a wide area and whilst they are not appropriate to this site they are appropriate to other sites elsewhere in the locality. There are numerous instances where consents departing from the standard have been approved and others where the standard have been upheld. This is more an indication of the inappropriateness of particular standards to some sites rather than a comment on Council's actions.

It is noted that the proposed built form of the development is of a lesser scale than that already approved on the subject site (DA-2015/253 approved a four storey residential flat building containing 21 units).

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.

Assessment: The subject site is zoned R3 Medium Density Residential under Botany LEP 2013. The locality comprises a mix of commercial/light industrial and residential uses of varying building heights, building bulk and architectural design. Refer to the photos and description of surrounding development in Section 3 of the SEE.

The zoning of this site is not considered to be inappropriate. The proposed development is considered to satisfy the zone objectives as it provides for the housing needs of the community within a medium density residential environment. The proposed townhouses will provide for a variety of housing types within the surrounding medium density residential environment.

- Clause 4.6(3)(b): There are sufficient environmental planning grounds to justify contravening the development standard

There are considered to be sufficient planning grounds to justify varying the building height development standard, which include:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances of this case because the exceedance is not considered to result in any adverse impacts as a result of the additional height.
- The proposed built form is considered to satisfy the objectives of the Clause as it provides for a built form which is consistent and compatible with the character of the local area in that it provides a development that is of a similar scale and type to surrounding development and recently approved development.
- The proposed built form of the development is of a lesser scale than that already approved on the subject site (DA-2015/253 approved a four storey residential flat building containing 21 units).
- The non-compliant height will not be visually obtrusive and will not result in adverse amenity impacts in terms of overshadowing, privacy or view loss.
- The proposal is compliant in regard to the DCP length of building, width of townhouses, site coverage, basement excavation, private open space, front and rear setback, solar access, car parking, dwelling size and storage controls.
- The recessed nature of the upper-most level achieves a modest form of development. The recessed nature of the upper level and its lightweight construction and appearance also ensures that the proposal will not adversely affect the streetscape and will also not affect the amenity of surrounding properties in regard to solar access, privacy and view loss.
- The exceedance of the height control will have a minimal impact on the streetscape.
- The proposal represents a desirable form of development which significantly enhances the appearance of the subject site.
- The additional height is not responsible for any greater environmental impacts than a proposal with a compliant height.
- Given the lack of aural and visual privacy impacts, and overshadowing impacts above and beyond a compliant building envelope, there is no sound planning justification to reduce the proposed height.
- The proposed height achieves a better planning outcome as it allows for the provision of a high quality and attractive townhouse development in a landscaped setting on the site in a manner which is appropriate and compatible with the existing and likely future character of the area. The proposed design will result in a reduced built form and less occupants on the site compared to the approved development on the subject site (DA-2015/253).

- There are sufficient planning grounds to justify varying the development standard as the building responds to character statement for the area and provides additional housing as part of the urban renewal within the Botany Precinct.
- The proposal satisfies the zone and development standard objectives, as well as the relevant DCP objectives.
- It has also been demonstrated that the proposed height meets the objective to an equal or better degree than a development with a compliant height, given the positive streetscape outcome and consistency with the established and future pattern of development.
- Clause 4.6(4)(a)(ii): In the public interest because it is consistent with the objectives of the zone and development standard

As outlined above, the proposed development is consistent with the development standard.

The subject site is located within the R3 Medium Density zone under the Botany Bay LEP 2013.

The proposed townhouse development is permissible within the R3 Medium Density zone.

The objectives of the R3 Medium Density Residential zone are as follows:

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.

The proposed development is considered to satisfy the zone objectives as it provides for the housing needs of the community within a medium density residential environment. The proposed townhouses will provide for a variety of housing types within the surrounding medium density residential environment.

The development promotes alternative means of transport including walking and cycling as the site is located within close proximity to reliable and frequent bus services.

It is noted that the proposed built form of the development is of a lesser scale than that already approved development on the subject site (DA-2015/253 approved a four storey residential flat building containing 21 units).

The proposal is therefore considered that the proposal satisfies the zone objectives.

It is considered that the proposed development is in the public interest as it will contribute positively within the streetscape and provide for additional local housing within the area. The non-compliance with the building height development standard is not considered to have a significant impact on the overall public benefit delivered as part of the development.

Other Matters for Consideration

Clause 4.6(5) of the Botany Bay LEP requires the following additional matters to be considered.

- Clause 4.6(5)(a): Whether contravention of the development standard raises any matter of significance for State or regional environmental planning

The proposed exceedance to the building height development standard will not result in any matters of significance for State or regional environmental planning.

The proposed building height on the subject site is entirely reasonable and appropriate given its proximity to a host of services including shops and public transport. The proposal is therefore consistent with the State Government's Urban Consolidation Policy which seeks to provide greater heights and densities in areas close to public transport, shops and services.

- Clause 4.6(5)(b): The public benefit of maintaining the development standard

There is not considered to be a public benefit in maintaining the development standard in this situation. It is considered that the proposed development is in the public interest as it will contribute positively within the streetscape and provide for additional local housing within the area. The non-compliance with the building height development standard is not considered to have a significant impact on the overall public benefit delivered as part of the development.

- Clause 5.6(5)(c): Any other matters required to be taken into consideration by the Secretary before granting concurrence.

There are not considered to be any additional matters to consider beyond those discussed above.

Conclusion

The above assessment has demonstrated that the building height development standard is unreasonable and unnecessary in the circumstances and that there would be no public benefit in maintaining the development standard in this instance.

It has also been demonstrated that the proposed building height meets the objective to an equal or better degree than a compliant development.

This is due to the demonstration that the proposed additional building height will provide for improved amenity to the development whilst having no adverse visual, streetscape or amenity impacts that would preclude support of the proposal. This is displayed by the recessed nature of the upper-most level.

The proposed building height achieves a better planning outcome as it allows for the provision of a high quality and attractive townhouse development in a landscaped setting on the site in a manner which is appropriate and compatible with the existing and likely future character of the area. The proposed design will result in a reduced built form and less occupants on the site compared to the approved development on the subject site (DA-2015/253).

Given there are no detrimental environmental impacts associated with the additional building height, it is confirmed that the additional building height is therefore associated with a better planning outcome on this site.

For reasons mentioned herein, this Clause 4.6 variation is forwarded to Council in support of the variation to the building height associated with the development proposal at 37a-39 Daphne Street, Botany and is requested to be looked upon favourably by Council.

APPENDIX 2

CLAUSE 4.6

EXCEPTION TO DEVELOPMENT STANDARD

FLOOR SPACE RATIO STANDARD - CLAUSE 4.4 OF BOTANY BAY LEP 2013

Demolition of the existing structures and construction of a townhouse development comprising of 5 x 3-storey townhouses, a basement level car park containing 10 car parking spaces and Torrens title subdivision of the 5 townhouses and stratum subdivision of the basement.

37A-39 DAPHNE STREET, BOTANY

SUBMITTED TO

BAYSIDE COUNCIL

PREPARED BY

ABC PLANNING PTY LTD

April 2018

CLAUSE 4.6 EXCEPTION TO DEVELOPMENT STANDARDS UNDER BOTANY BAY LEP 2013

This Clause 4.6 submission has been prepared to accompany the development proposal submitted to Bayside Council for the demolition of the existing structures and construction of a townhouse development comprising of 5 x 3-storey townhouses, a basement level car park containing 10 car parking spaces and Torrens title subdivision of the 5 townhouses and stratum subdivision of the basement at 37A-39 Daphne Street, Botany.

Clause 4.6 of Botany Bay LEP 2013 allows Council to grant consent for development even though the development contravenes a development standard imposed by the LEP. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for developments.

Clause 4.6 Exceptions to development standards

- (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) *Development 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 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.*

Development Standard to be Varied

This Clause 4.6 variation request seeks to justify contravention of the floor space ratio (FSR) development standard set out in Clause 4.4 of the Botany LEP 2013. Clause 4.4 provides that the maximum FSR for development on the subject site is 0.85:1. Refer to the extract of the Botany Bay LEP 2013 FSR Map below.

The proposed development will result in the following GFAs and FSRs for the overall site and proposed lots:

	Site Area	Control	Proposed FSR and GFA	Compliance	Variation
Overall Site	987.5sqm	0.85:1 (839.375sqm)	1.01:1 (1,002sqm)	No	16.5%
Lot 1	203.27sqm	0.85:1 (172.8sqm)	0.98:1 (200sqm)	No	13.38%
Lot 2	194.43sqm	0.85:1 (165.26sqm)	0.99:1 (193sqm)	No	14.27%
Lot 3	194.44sqm	0.85:1 (165.77sqm)	1:1 (195 sqm)	No	17.6%
Lot 4	194.44sqm	0.85:1 (165.77sqm)	1.02:1 (199sqm)	No	20.05%
Lot 5	199.69sqm	0.85:1 (169.74sqm)	1.08:1 (215sqm)	No	22.67%

This submission contends that strict compliance with the FSR development standard is unreasonable and/or unnecessary in the circumstances of the case and that the variation sought can be supported and that the Clause 4.6 exception to the development standards should be upheld.

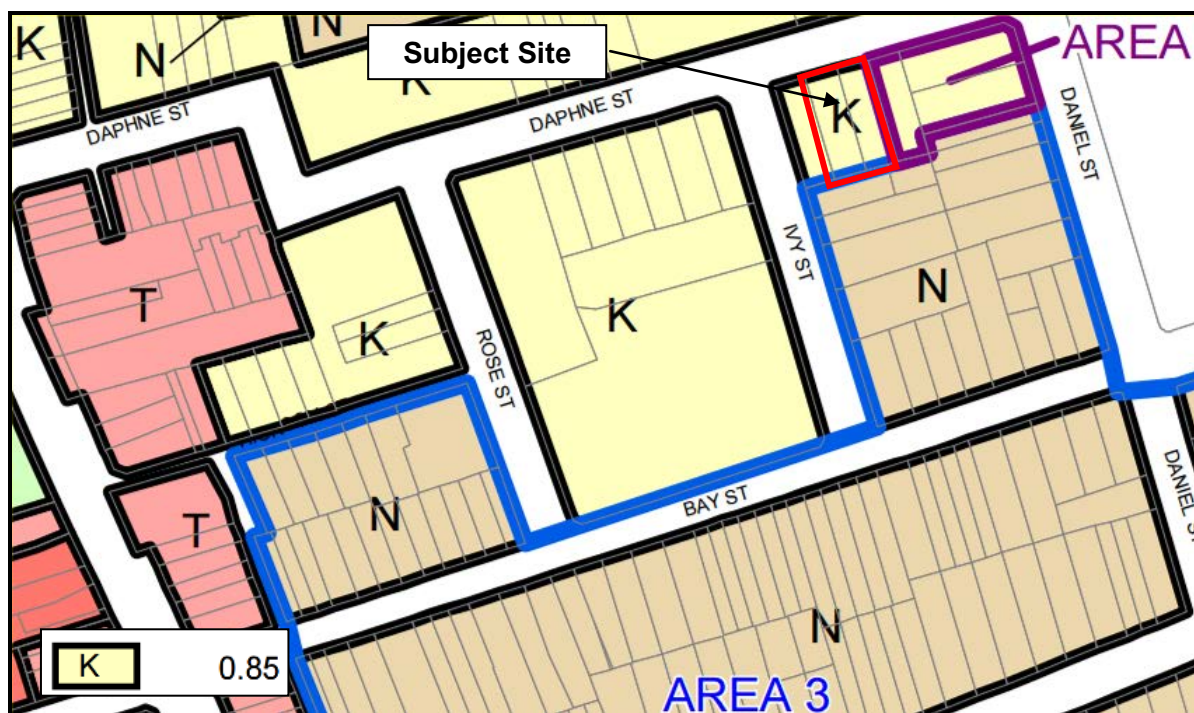


Figure 27: Floor Space Ratio Map

Justification for Contravention of the Development Standard

- Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

In *Wehbe v Pittwater Council* [2007] NSW LEC 827, Preston CJ of the Land and Environment Court provided relevant assistance by identifying five traditional ways in which a variation to a development standard had been shown as unreasonable or unnecessary.

While *Wehbe* related to objections made pursuant to State Environmental Planning Policy No. 1 – Development Standards (SEPP 1), the analysis can assist in considering variations made under clause 4.6.

The five methods outlined in *Wehbe* include:

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 or 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.

Below is a response to the five methods. The below assessment demonstrates that, in the circumstances of the case, strict numerical compliance would be unreasonable and unnecessary.

6. The objectives of the standard are achieved notwithstanding non-compliance with the standard.

Assessment: The first point when following *Wehbe* is to establish whether compliance with the development standard is unreasonable or unnecessary.


The table below identifies that the proposed variation to the FSR development standard will still achieve a development that satisfies the objectives of the FSR development standard.

Table 6: Assessment against the objectives of the FSR development standard

Clause 4.4 – FSR Development Standard of Botany Bay Local Environmental Plan 2013

Objective	Proposal
Clause 4.4(1)(a) <i>To establish standards for the maximum development density and intensity of land use</i>	Noted.
Clause 4.4(1)(b)	The proposal provides for a built form that is consistent and compatible with the character of the local area in that it provides a

<p><i>To ensure that buildings are compatible with the bulk and scale of the existing and desired future character of the locality</i></p>	<p>development that is of a similar scale and type to surrounding development and recently approved development. Refer to the photos and description of surrounding development in Section 3 of the SEE.</p> <p>The proposed built form of the development is of a lesser scale than that already approved on the subject site (DA-2015/253 approved a four storey residential flat building containing 21 units which had an FSR of 1.35:1).</p> <p>The recessed nature of the upper-most level achieves a modest form of development. The recessed nature of the upper level and its lightweight construction and appearance also ensures that the proposal will not adversely affect the streetscape and will also not affect the amenity of surrounding properties in regard to solar access, privacy and view loss.</p>
<p>Clause 4.4(1)(c)</p> <p><i>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</i></p>	<p>The subject site is located in an area of mixed character including both low and medium density residential development and some industrial sites to the north, east and west of the site. There are two and three storey medium density townhouse style residential developments along Daphne Street and Ivy Street to the west of the site.</p> <p>The site is located within the R3 Medium Density Residential zone with a frontage to Daphne Street. It is anticipated that the area will continue to undergo a transition from a light industrial area to a medium density residential area. This has begun to occur following redevelopment of other light industrial sites along Daphne Street.</p> <p>The proposal represents a desirable form of development which significantly enhances the appearance of the subject site.</p> <p>The proposed development aims to enhance the public domain and streetscape presentation of the subject site by demolishing the existing outdated commercial buildings on the site and replacing these with a high quality and attractive townhouse development in a landscaped setting.</p>
<p>Clause 4.4(1)(d)</p> <p><i>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</i></p>	<p>The proposed development will not adversely affect the streetscape as demonstrated in the photomontage below. The proposed bulk and scale will sit comfortably in its context which includes buildings of a similar and greater scale and bulk. The proposal represents a desirable form of development which significantly enhances the appearance of the subject site.</p> <p>The provision of landscaping in the front and rear setbacks softens the appearance of the built form and retains the character of the area as intended by the controls. The proposed FSR would not be visually obtrusive when viewed from any public place.</p>

	 <p>Figure 28: Photomontage of the proposed development as viewed from Daphne Street</p>
<p>Clause 4.4(1)(e)</p> <p><i>To minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain</i></p>	<p>The proposal has been carefully designed to minimise amenity impacts.</p> <p>The proposed development will not be visually obtrusive and will not result in adverse amenity impacts in terms of overshadowing, privacy or view loss to a greater degree than a complying development.</p> <p>The proposed built form will not dominate the streetscape or be visually bulky when viewed from any public or private vantage point.</p>
<p>Clause 4.4(1)(f)</p> <p><i>To provide an appropriate correlation between the size of a site and the extent of any development on that site</i></p>	<p>The proposed development represents a reasonable and orderly use of the site and will provide for a compatible and integrated outcome with the existing and desired character for the site and its context.</p> <p>The proposal is compliant in regard to the DCP length of building, width of townhouses, site coverage, basement excavation, private open space, front and rear setback, solar access, car parking, dwelling size and storage controls, thereby demonstrating that the proposed bulk and scale of the development is appropriate for the site.</p>
<p>Clause 4.4(1)(g)</p> <p><i>To facilitate development that contributes to the economic growth of Botany Bay.</i></p>	<p>The proposed development will provide for the housing needs of the community within a medium density residential environment. The proposed townhouses will provide for a variety of housing types within the surrounding medium density residential environment.</p>

7. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.

Assessment: Not applicable in this instance.

8. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.

Assessment: It is noted that the proposal is consistent with a number of recent approvals and recently constructed developments in the immediate surrounding area, refer to the photos and description of surrounding development in Section 3 of the SEE.

The proposed built form of the development is of a lesser scale than that already approved on the subject site (DA-2015/253 approved a four storey residential flat building containing 21 units which had an FSR of 1.35:1).

Compliance with the development standard is unreasonable or unnecessary in the circumstances of this case because the exceedance is not considered to result in any adverse impacts as a result of the additional floor area. The additional FSR is not responsible for any greater environmental impacts than a proposal with a compliant FSR.

Given the lack of aural and visual privacy impacts, and overshadowing impacts above and beyond a compliant building envelope, there is no sound planning justification to reduce the proposed FSR.

The proposed FSR achieves a better planning outcome as it allows for the provision of a high quality and attractive townhouse development in a landscaped setting on the site in a manner which is appropriate and compatible with the existing and likely future character of the area. The proposed design will result in a reduced built form and less occupants on the site compared to the approved development on the subject site (DA-2015/253).

The non-compliant FSR will not be visually obtrusive. The proposal achieves a reasonable streetscape outcome which retains and contributes to a desirable future character.

The recessed nature of the upper-most level achieves a modest form of development. The recessed nature of the upper level and its lightweight construction and appearance also ensures that the proposal will not adversely affect the streetscape and will also not affect the amenity of surrounding properties in regard to solar access, privacy and view loss.

Given there are no detrimental environmental impacts associated with the additional FSR, it is confirmed that the additional FSR is therefore associated with a better planning outcome on this site.

As such this underlying objective or purpose would be thwarted if compliance was required in this case with the consequence that compliance is unreasonable in the circumstances of this case.

9. 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.

Assessment: Not applicable in this instance; the development standards of height and FSR cover a wide area and whilst they are not appropriate to this site they are appropriate to other sites elsewhere in the locality. There are numerous instances where consents departing from the standard have been approved and others where the standard have been upheld. This is more an indication of the inappropriateness of particular standards to some sites rather than a comment on Council's actions.

It is noted that the proposed built form of the development is of a lesser scale than that already approved on the subject site (DA-2015/253 approved a four storey residential flat building containing 21 units which had an FSR of 1.35:1).

- 10. 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.**

Assessment: The subject site is zoned R3 Medium Density Residential under Botany LEP 2013. The locality comprises a mix of commercial/light industrial and residential uses of varying building heights, building bulk and architectural design. Refer to the photos and description of surrounding development in Section 3 of the SEE.

The zoning of this site is not considered to be inappropriate. The proposed development is considered to satisfy the zone objectives as it provides for the housing needs of the community within a medium density residential environment. The proposed townhouses will provide for a variety of housing types within the surrounding medium density residential environment.

- Clause 4.6(3)(b): There are sufficient environmental planning grounds to justify contravening the development standard

There are considered to be sufficient planning grounds to justify varying the FSR development standard, which include:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances of this case because the exceedance is not considered to result in any adverse impacts as a result of the additional floor area of the overall site and propose lots.
- The proposed built form is considered to satisfy the objectives of the Clause as it provides for a built form which is consistent and compatible with the character of the local area in that it provides a development that is of a similar scale and type to surrounding development and recently approved development.
- The proposed built form of the development is of a lesser scale than that already approved on the subject site (DA-2015/253 approved a four storey residential flat building containing 21 units which had an FSR of 1.35:1).
- The non-compliant FSR will not be visually obtrusive and will not result in adverse amenity impacts in terms of overshadowing, privacy or view loss.
- The proposal is compliant in regard to the DCP length of building, width of townhouses, site coverage, basement excavation, private open space, front and rear setback, solar access, car parking, dwelling size and storage controls.
- The recessed nature of the upper-most level achieves a modest form of development. The recessed nature of the upper level and its lightweight construction and appearance also ensures that the proposal will not adversely affect the streetscape and will also not affect the amenity of surrounding properties in regard to solar access, privacy and view loss.
- The exceedance of the FSR control will have a minimal impact on the streetscape.
- The proposal represents a desirable form of development which significantly enhances the appearance of the subject site.

- The additional FSR is not responsible for any greater environmental impacts than a proposal with a compliant FSR.
- Given the lack of aural and visual privacy impacts, and overshadowing impacts above and beyond a compliant building envelope, there is no sound planning justification to reduce the proposed FSR.
- The proposed FSR achieves a better planning outcome as it allows for the provision of a high quality and attractive townhouse development in a landscaped setting on the site in a manner which is appropriate and compatible with the existing and likely future character of the area. The proposed design will result in a reduced built form and less occupants on the site compared to the approved development on the subject site (DA-2015/253).
- There are sufficient planning grounds to justify varying the development standard as the building responds to character statement for the area and provides additional housing as part of the urban renewal within the Botany Precinct.
- The proposal satisfies the zone and development standard objectives, as well as the relevant DCP objectives.
- It has also been demonstrated that the proposed FSR meets the objective to an equal or better degree than a development with a compliant FSR, given the positive streetscape outcome and consistency with the established and future pattern of development.
- Clause 4.6(4)(a)(ii): In the public interest because it is consistent with the objectives of the zone and development standard

As outlined above, the proposed development is consistent with the development standard.

The subject site is located within the R3 Medium Density zone under the Botany Bay LEP 2013.

The proposed townhouse development is permissible within the R3 Medium Density zone.

The objectives of the R3 Medium Density Residential zone are as follows:

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.

The proposed development is considered to satisfy the zone objectives as it provides for the housing needs of the community within a medium density residential environment. The proposed townhouses will provide for a variety of housing types within the surrounding medium density residential environment.

The development promotes alternative means of transport including walking and cycling as the site is located within close proximity to reliable and frequent bus services.

It is noted that the proposed built form of the development is of a lesser scale than that already approved development on the subject site (DA-2015/253 approved a four storey residential flat building containing 21 units).

The proposal is therefore considered that the proposal satisfies the zone objectives.

It is considered that the proposed development is in the public interest as it will contribute positively within the streetscape and provide for additional local housing within the area. The non-compliance with the FSR development standard is not considered to have a significant impact on the overall public benefit delivered as part of the development.

Other Matters for Consideration

Clause 4.6(5) of the Botany Bay LEP requires the following additional matters to be considered.

- Clause 4.6(5)(a): Whether contravention of the development standard raises any matter of significance for State or regional environmental planning

The proposed exceedance to the FSR development standard will not result in any matters of significance for State or regional environmental planning.

The proposed FSR on the subject site is entirely reasonable and appropriate given its proximity to a host of services including shops and public transport. The proposal is therefore consistent with the State Government's Urban Consolidation Policy which seeks to provide greater heights and densities in areas close to public transport, shops and services.

- Clause 4.6(5)(b): The public benefit of maintaining the development standard

There is not considered to be a public benefit in maintaining the development standard in this situation. It is considered that the proposed development is in the public interest as it will contribute positively within the streetscape and provide for additional local housing within the area. The non-compliance with the FSR development standard is not considered to have a significant impact on the overall public benefit delivered as part of the development.

- Clause 5.6(5)(c): Any other matters required to be taken into consideration by the Secretary before granting concurrence.

There are not considered to be any additional matters to consider beyond those discussed above.

Conclusion

The above assessment has demonstrated that the FSR development standard is unreasonable and unnecessary in the circumstances and that there would be no public benefit in maintaining the development standard in this instance.

It has also been demonstrated that the proposed FSR meets the objective to an equal or better degree than a compliant development.

This is due to the demonstration that the proposed additional FSR will provide for improved amenity to the development whilst having no adverse visual, streetscape or amenity impacts

that would preclude support of the proposal. This is displayed by the recessed nature of the upper-most level.

The proposed FSR achieves a better planning outcome as it allows for the provision of a high quality and attractive townhouse development in a landscaped setting on the site in a manner which is appropriate and compatible with the existing and likely future character of the area. The proposed design will result in a reduced built form and less occupants on the site compared to the approved development on the subject site (DA-2015/253).

Given there are no detrimental environmental impacts associated with the additional FSR, it is confirmed that the additional FSR is therefore associated with a better planning outcome on this site.

For reasons mentioned herein, this Clause 4.6 variation is forwarded to Council in support of the variation to the FSR associated with the development proposal at 37a-39 Daphne Street, Botany and is requested to be looked upon favourably by Council.
