

MEETING NOTICE

A meeting of the

Bayside Local Planning Panel

will be held in the Committee Room, Botany Town Hall

Corner of Edward Street and Botany Road, Botany

rner of Edward Street and Botany Road, Botany on **Tuesday 23 October 2018** at **6.00 pm**

ON-SITE INSPECTIONS

On-site inspection/s will precede the meeting.

AGENDA

1 ACKNOWLEDGEMENT OF TRADITIONAL OWNERS

Bayside Council respects the traditional custodians of the land, and elders past and present, on which this meeting takes place, and acknowledges the Gadigal and Bidjigal Clans of the Eora Nation.

- 2 APOLOGIES
- 3 DISCLOSURES OF INTEREST
- 4 MINUTES OF PREVIOUS MEETINGS
 - 4.1 Minutes of the Bayside Local Planning Panel Meeting 9 October 2018 3
- 5 REPORTS PLANNING PROPOSALS

Nil

6 REPORTS – DEVELOPMENT APPLICATIONS

6.1	DA-2016/68 - 19 Dowling Street, Arncliffe13
6.2	DA-2016/117/02 - 671-683 Gardeners Road, Mascot189
6.3	DA-2017/1022/03 - 130-150 Bunnerong Road, Eastgardens257
6.4	DA-2016/143/05 - 130-150 Bunnerong Road, Eastgardens313
6.5	DA-2015/173/C - 105 Ramsgate Road, Ramsgate360
6.6	DA-14/214/04 - Supplementary Planning Assessment Report - 5 Myrtle Street, Botany421
6.7	DA-2017/517 - Supplementary Planning Assessment Report - 1B Park Road Sans Souci 513

Members of the public, who have requested to speak at the meeting, will be invited to address the Panel by the Chaiperson.

The meeting will be video recorded and live streamed to the community via Council's Facebook page.

Meredith Wallace General Manager



Bayside Local Planning Panel

23/10/2018

Item No 4.1

Subject Minutes of the Bayside Local Planning Panel Meeting - 9 October

2018

Report by Michael McCabe, Director City Futures

File SC17/818

Recommendation

That the Minutes of the Bayside Local Planning Panel meeting held on 9 October 2018 be confirmed as a true record of proceedings.

Present

Marcia Doheny, Chairperson Robert Montgomery, Independent Specialist Member Robert Furolo, Independent Specialist Member Thomass Wong, Community Representative

Also present

Luis Melim, Manager Development Services
Bruce Cooke, Coordinator Governance
Pascal Van de Walle, Coordinator Development Assessment
Christopher Mackay, Coordinator Development Assessment
Ben Tesoriero, Consultant, CPS Planning
Matt Torta, IT Technical Support Officer
Anne Suann, Governance Officer

The Chairperson opened the meeting in the Committee Room, Botany Town Hall, corner of Edward Street and Botany Road, Botany at 6.00 pm.

1 Acknowledgement of Traditional Owners

The Chairperson affirmed that Bayside Council respects the traditional custodians of the land, elders past and present and future leaders, on which this meeting takes place, and acknowledges the Gadigal and Bidjigal Clans of the Eora Nation.

2 Apologies

There were no apologies received.

3 Disclosures of Interest

There were no disclosures of interest.

4 Minutes of Previous Meetings

4.1 Minutes of the Bayside Local Planning Panel Meeting - 11 September 2018

Decision

That the Minutes of the Bayside Local Planning Panel meeting held on 11 September 2018 be confirmed as a true record of proceedings.

4.2 Minutes of the Bayside Local Planning Panel Meeting - 25 September 2018

Decision

That the Minutes of the Bayside Local Planning Panel meeting held on 25 September 2018 be confirmed as a true record of proceedings.

5 Reports – Planning Proposals

Nil

6 Reports – Development Applications

6.1 DA-2015/272 - 369E Bexley Road, Bexley

An on-site inspection took place at the property earlier in the day.

The following people spoke:

- Mr Grant Marley, affected neighbour, spoke against the officer's recommendation.
- Mr Wayne Medakovic, representing the applicant, spoke for the officer's recommendation and responded to the Panel's questions.
- Mr Terry Palapanis, representing the applicant, spoke for the officer's recommendation.
- Mr Dean Ponteing, interested neighbour, spoke to the officer's recommendation.

Determination

That the Development Application No.DA-2015/272 for the proposed change of use of two (2) of the four (4) existing tennis courts to two (2) mini football fields/multi-purpose sports fields (including field lighting), conversion of one (1)

tennis court to car parking to provide a total of 38 off-street parking spaces, convert existing brick structure to kiosk/office to heritage item (former quarry) at 369E Bexley Road, Bexley is APPROVED subject to the conditions attached to this report, as modified below:

- A. Amend condition 12:
- 12. Hours of operation are limited to 8.00 am to 10.00 pm Monday to Saturday and 8.00 am to 9.00 pm Sunday. All activities are to cease, all external lighting is to be switched off and all patrons are to leave the site by 10.00 pm Monday to Saturday and by 9.00 pm on Sundays. The Plan of Management shall be amended to demonstrate appropriate practices to achieve this condition.
- B. New condition 12A:
- 12A. This development consent approves the use of two mini football fields/multi purpose sports fields for a period of 12 months from the date of issue of an Occupation Certificate, after which time the use of the premises is limited to one mini football field/multi-purpose sports field, along with the kiosks and amenity room, unless further approval is obtained by way of a Section 4.55 Modification Application to retain the operation of the two courts.

The Section 4.55 Modification Application is to be lodged with Council no sooner than 6 months following commencement and no later than 9 months following issue of an Occupation Certificate. The application is to be accompanied by a report prepared by a suitably qualified acoustic engineer which assesses the noise impact associated with the development against the intrusive noise criterion and noise amenity criteria established within the Acoustic Assessment prepared by Koikas Acoustics Pty Ltd dated 27 July 2015.

- C. Delete condition 22 and insert a new condition 51A:
- 51A. A validation report must be obtained from a suitably qualified and experienced lighting engineer prior to the issue of any Occupation Certificate. The report shall demonstrate and certify that light spill impacts comply with the Australian Standard AS4282-1997 'Control of Obtrusive Effects of Outdoor Lighting'.
- 2 That the objectors be advised of the Bayside Local Planning Panel's decision.

Name	For	Against
Marcia Doheny	\boxtimes	
Robert Montgomery	\boxtimes	
Robert Furolo	\boxtimes	
Thomass Wong	\boxtimes	

Reason for Determination

The Development Application complies with the applicable planning controls, and the site is suitable for its intended use. The panel is satisfied that the conditions of consent, including a detailed Plan of Management, requires the operation of the facility to be conducted in a manner that appropriately manages impacts.

It is also noted that the modified conditions effectively allow for a trial period of the operation of the facility and at the end of the trial period Council will have an opportunity to assess whether the requirements have been complied with and whether the use of two courts should be continued.

The panel has carefully considered the submissions made in relation to the Development Application and has determined that the issues raised have been appropriately addressed by the conditions of consent.

6.2 SF18/1972 - DA-2018/1068 - 11/30-32 Stephen Road, Botany

An on-site inspection took place at the property earlier in the day.

Determination

- The Bayside Local Planning Panel has considered the Clause 4.6 request to vary the height standard contained in Clause 4.3 of the Botany Bay Local Environmental Plan 2013 and is satisfied that the variation will result in consistency with the objectives of the height standard and the objectives of the R2 Low Density Residential zone and it is therefore in the public interest to vary the control.
- That Development Application No. DA-2018/1068, for conversion of the existing attic storage to a bedroom, at 32 Stephen Road, Botany, be APPROVED, subject to conditions of consent.

Name	For	Against
Marcia Doheny	\boxtimes	
Robert Montgomery	\boxtimes	
Robert Furolo	\boxtimes	
Thomass Wong	\boxtimes	

Reason for Determination

The Clause 4.6 request is well founded. The proposed development does not further breach the current height standard, which has been imposed since the construction of the building. There are no adverse impacts to adjoining residents and the proposed development appears to be a good use of the space. It is in the public interest to grant consent. There were no submissions in relation to this Development Application.

6.3 SF18/1978 - DA-2018/1078 - 20/30 Stephen Road, Botany

An on-site inspection took place at the property earlier in the day.

Determination

- The Bayside Local Planning Panel has considered the Clause 4.6 request to vary the height standard contained in Clause 4.3 of the Botany Bay Local Environmental Plan 2013 and is satisfied that the variation will result in consistency with the objectives of the height standard and the objectives of the R2 Low Density Residential zone and it is therefore in the public interest to vary the control.
- That Development Application No. DA-2018/1078, for conversion of the existing attic storage to a bedroom, at 20/30 Stephen Road, Botany, be APPROVED, subject to the recommended conditions of consent.

Name	For	Against
Marcia Doheny	\boxtimes	
Robert Montgomery	\boxtimes	
Robert Furolo	\boxtimes	
Thomass Wong	\boxtimes	

Reason for Determination

The Clause 4.6 request is well founded. The proposed development does not further breach the current height standard, which has been imposed since the construction of the building. There are no adverse impacts to adjoining residents and the proposed development appears to be a good use of the space. It is in the public interest to grant consent. There were no submissions in relation to this Development Application.

6.4 DA-2018/93 - 178 Frederick Street, Rockdale

An on-site inspection took place at the property earlier in the day.

The following people spoke:

- Mr Akram Masri, applicant, spoke against the officer's recommendation of refusal and responded to the Panel's questions.
- Mr Johnathan Zymaras, designer, spoke against the officer's recommendation of refusal and responded to the Panel's questions.

Determination

That the Development Application No. DA-2018/93 for the proposed conversion of the existing garage to a secondary dwelling at 178 Frederick Street, Rockdale is REFUSED pursuant to Section 4.16(1)(b) of the Environmental Planning and Assessment Act 1979 for the following reason:

The Bayside Local Planning Panel is not in a position to grant consent to this Development Application because no request pursuant to Clause 4.6 of the Rockdale Local Environmental Plan 2011 to vary the height standard contained in Clause 4.4(2) of the Rockdale Local Environmental Plan 2011 has been submitted by the applicant. In the absence of an appropriate Clause 4.6 request the panel has no power to approve the Development Application. Had a valid Clause 4.6 request been submitted there are a number of merit reasons why the Panel would not have granted consent, namely:

- a Pursuant to the provision of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed conversion of the existing outbuilding into a secondary dwelling will result in a floor space ratio of 0.57:1 or 57% which is exceeding the allowable 50% by 14% and will also set an undesirable precedence in the area.
- b Pursuant to the provisions of Section 4.15(1)(b) and Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, insufficient information has been provided by the applicant to allow a proper and thorough assessment of the impacts of the proposed development and the suitability of the site for the development.
- c Pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development is unsatisfactory in terms of its standard of design, siting and location and would adversely impact upon the existing and likely future amenity of the neighbouring property owners and locality.
- d Having regard to the previous reasons noted above, pursuant to the provisions of Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposal would result in an undesirable precedent and approval of the Development Application is not in the public interest.
- e Pursuant to the provisions of Section 4.2(1) of the Environmental Planning and Assessment Act 1979, the works to which this application are related have been carried out without first obtaining a development consent and without a development consent being in force.
- That Council investigates the unauthorised works and takes further action as necessary.
- That the objector be advised of the Bayside Local Planning Panel's determination.

Name	For	Against
Marcia Doheny	\boxtimes	

Robert Montgomery	\boxtimes	
Robert Furolo	\boxtimes	
Thomass Wong	\boxtimes	

Reason for Determination

Refer to the Panel's determination.

6.5 DA-2015/289/C - 533-537 Princes Highway, Rockdale

An on-site inspection took place at the property earlier in the day.

The following people spoke:

 Mrs Susan Gough, affected neighbour, spoke against the officer's recommendation.

Determination

- 1 That the Bayside Local Planning Panel is satisfied that the proposed modification will result in substantially the same development as the development that was originally approved.
- That Development Application No 2015/289/C, being a Section 4.55(1A) application to amend Development Consent Number 2015/289, for modifications to plans including internal reconfiguration to Levels 6, 7 & 8, resulting in the creation of one (1) additional unit at 533-537 Princes Highway Rockdale is APPROVED and the consent amended in the following manner:
 - A. By amending conditions 2 & 5 to read as follows:
 - 2. The development must be implemented substantially in accordance with the plans listed below, the application form and on any supporting information received with the application, except as may be amended in red on the attached plans and by the following conditions.

Plan / Dwg No.	Drawn by	Dated	Received by Council
Landscape Plan LS-102 Rev A	greenplan pty ltd	10/05/2018	16/05/2018
Basement 2 Plan Rev D	Bechara Chan & Associates Pty Ltd	15/05/2018	16/05/2018
Basement 1 Plan Rev D	Bechara Chan & Associates Pty Ltd	15/05/2018	16/05/2018
Ground Floor Plan Rev C	Bechara Chan & Associates Pty Ltd	14/05/2018	16/05/2018
Level 1 Plan Rev B	Bechara Chan & Associates Pty Ltd	11/05/2018	16/05/2018

Level 2 Plan Rev B	Bechara Chan & Associates Pty Ltd	11/05/2018	16/05/2018
Level 3 Plan Rev B	Bechara Chan & Associates Pty Ltd	11/05/2018	16/05/2018
Level 4 Plan Rev B	Bechara Chan & Associates Pty Ltd	11/05/2018	16/05/2018
Level 5 Plan Rev B	Bechara Chan & Associates Pty Ltd	11/05/2018	16/05/2018
Level 6 Plan Rev A	Bechara Chan & Associates Pty Ltd	03/07/2018	29/08/2018
Level 7 Plan Rev A	Bechara Chan & Associates Pty Ltd	03/07/2018	29/08/2018
Level 8 Plan Rev A	Bechara Chan & Associates Pty Ltd	03/07/2018	29/08/2018
Level 9 Plan Rev B	Bechara Chan & Associates Pty Ltd	11/05/2018	16/05/2018
Roof Plan Rev A	Bechara Chan & Associates Pty Ltd	03/07/2018	29/08/2018
North Elevation Rev G	Bechara Chan & Associates Pty Ltd	07/08/2018	29/08/2018
South Elevation Rev C	Bechara Chan & Associates Pty Ltd	-	29/08/2018
East Elevation (Princes Highway) Rev A	Bechara Chan & Associates Pty Ltd	03/07/2018	29/08/2018
West Elevation (Keats Ave) Rev A	Bechara Chan & Associates Pty Ltd	03/07/2018	29/08/2018
Side Elevation East Rev A	Bechara Chan & Associates Pty Ltd	03/07/2018	29/08/2018
Side Elevation West Rev B	Bechara Chan & Associates Pty Ltd	03/07/2018	29/08/2018
Section AA Rev E	Bechara Chan & Associates Pty Ltd	04/09/2018	05/09/2018

[Amendment C - 4.55(1A) amended on 09/10/2018]

5. The development must be implemented and all BASIX commitments thereafter maintained in accordance with BASIX Certificate Number 584079M_05 other than superseded by any further amended consent and BASIX certificate.

Note: Clause 145(1)(a1) of the Environmental Planning & Assessment Regulation 2000 provides: A certifying authority must not issue a construction certificate for building work unless it is satisfied of the following matters:

• (a1) that the plans and specifications for the building include such matters as each relevant BASIX certificate requires.

Note: Clause 154B(2) of the Environmental Planning & Assessment Regulation 2000 provides: "A certifying authority must not issue a final Occupation Certificate for a BASIX affected building to which this clause

applies unless it is satisfied that each of the commitments whose fulfilment it is required to monitor has been fulfilled."

Note: For further information please see http://www.basix.nsw.gov.au.

[Amendment C - 4.55(1A) amended on 09/10/2018]

- B. Condition 72A is proposed to be imposed as follows:
- 72A. An additional Section 7.11 contribution of \$5,711.12 shall be paid to Council given the additional unit created by DA-2015/289/C. Such contributions are only used towards the provision or improvement of the amenities and services identified below. The amount to be paid is adjusted at the time of payment, in accordance with the contribution rates contained in Council's current Adopted Fees and Charges. The contribution is to be paid prior to the issue of any Occupation Certificate for the development.

Copies of Council's Section 94 (Section 7.11) Contribution Plans may be inspected at Council's Customer Service Centre, Administration Building, 444-446 Princes Highway, Rockdale.

[Amendment C - 4.55(1A) amended on 09/10/2018]

Reason for additional condition 72A is:

- To ensure additional 7.11 contributions are payable prior to the issue of the Occupation Certificate for the additional residential unit created on site.
- 3 That the objectors be notified of the Bayside Local Planning Panel's determination.

Name	For	Against
Marcia Doheny	\boxtimes	
Robert Montgomery	\boxtimes	
Robert Furolo	\boxtimes	
Thomass Wong	\boxtimes	

Reason for Determination

The proposed modification will result in substantially the same development as the development that was originally approved.

The application has been assessed against the applicable controls and found to be in compliance with those controls.

The site is suitable for the proposed development.

The proposal represents an improvement in internal amenity with no adverse impacts and for those reasons it is in the public interest to approve the Modification Application.

As recorded above, Mrs Susan Gough attended the panel meeting to speak to the panel about the proposed devleopment and acknowledged that the proposed moification will not result in any change to the height of the building.

6.6 SF18/2111 - DA-2017/1224/02 - 130-150 Bunnerong Road, Pagewood

An on-site inspection took place at the property earlier in the day.

Determination

That the Bayside Local Planning Panel approve the Section 4.55(1) Modification Application to modify Development Consent No. 2017/1224 to correct an error in the Section 7.11 Contributions at 130-150 Bunnerong Road, Eastgardens as follows:

a Amend Conditions 24 and 25 to reflect amended Section 7.11 contributions.

Name	For	Against
Marcia Doheny	\boxtimes	
Robert Montgomery	\boxtimes	
Robert Furolo	\boxtimes	
Thomass Wong	\boxtimes	

Reason for Determination

The modification application is simply correcting an error in the consent.

The Chairperson closed the meeting at 7.17 pm.

Certified as true and correct.

Marcia Doheny **Chairperson**



Bayside Local Planning Panel

23/10/2018

Item No 6.1

Application Type Development Application

Application No DA-2016/68 Lodgement Date 19/08/2015

Property 19 Dowling Street, Arncliffe

Ward Mascot

Owner Life Centre International Limited
Applicant Life Centre International Limited

Proposal Demolition of existing small hall, retention of the existing

Auditorium and heritage dwelling, extension of existing basement carpark and addition of a new two storey building to accommodate 6 new classrooms for a maximum of 200 students to the existing school and continued church use.

No. of Submissions Thirteen (13) submissions from 11 individuals /

families objecting to the proposal in response to the initial

notification period.

Thirteen (13) individual submissions objecting to the

amended proposal.

Cost of Development \$2,982,007.00

Report by Michael McCabe, Director City Futures

Officer Recommendation

- That the panel considers the Clause 4.6 request to vary the height standard contained in Clause 4.3 of the RLEP 2011 and that it be satisfied that the variation will result in consistency with the objectives of the height standard contained in Clause 4.3 and the objectives of the R2 Low Density Residential zone and it is therefore in the public interest to vary the control.
- That the panel considers the Clause 4.6 request to vary the floor space ratio (FSR) standard contained in Clause 4.4 of the RLEP 2011 and that it be satisfied that the variation will result in consistency with the objectives of the FSR standard contained in Clause 4.4 and the objectives of the R2 Low Density Residential zone and it is therefore in the public interest to vary the control.
- That the Development Application No. DA-2016/68 for the demolition of existing small hall, retention of the existing Auditorium and heritage dwelling, extension of existing basement carpark and addition of a new two storey building to accommodate 6 new classrooms for a maximum of 200 students for use by the existing school and continued church operations at 19 Dowling Street, Arncliffe, be APPROVED pursuant to Section 4.16(1)(a) of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report.
- 4 That the objectors be advised of the Bayside Local Planning Panel's decision.

Item 6.1

Location Plan



Attachments

- 1 Planning Assessment Report J.
- 2 Site Plan J
- Front Elevation (Kembla Street) <u>1</u> 3
- 4 North Elevation (Hirst Street) J
- 5 South Elevation J
- Basement Floor Plan J 6
- Noise Management Plan <u>U</u> Plan of Management <u>U</u> 7
- 8
- Acoustic Report <u>J</u> 9
- Clause 4.6 Floor Space Ratio & 10
- Clause 4.6 Building Height J 11

Item 6.1 14

BAYSIDE COUNCIL

Planning Assessment Report

Application Details

Application Number: DA-2016/68 **Date of Receipt:** 19 August 2015

Property: 19 Dowling Street, ARNCLIFFE (Lot 100 DP 859517)

Owner: Life Centre International Limited
Applicant: Life Centre International Limited

Proposal: Demolition of existing small hall, retention of the existing Auditorium and

heritage dwelling, extension of existing basement carpark and addition of a new two storey building to accommodate 6 new classrooms for a maximum of 200 students to the existing school and continued church

operations

Recommendation: Approved

No. of submissions: Thirteen (13) submissions from 11 individual / families objecting to the

proposal in response to the initial notification period.

Thirteen (13) individual submissions objecting to the proposal in

response to the amended proposal.

Author: Pascal van de Walle

Date of Report: 11 October 2018

Key Issues

The key issues related to this application are:

- Intensification of the use of the site located within the R2 Low Density Residential zone;
- Car parking, particularly during peak drop off / pick-up times for school children;
- Traffic generation;
- Safety issues, particularly safety of pick-up and drop-off for school children in the basement parking area;
- Noise impacts resulting from site operations, including the proposed roof top terrace.
- Heritage Impacts to the existing local heritage item (I7) known as 'Mimosa' or 'The Fairleigh Dwelling';
- Design and appearance of the building;

- Overshadowing of adjoining dwelling houses, particularly No. 20 Kembla Street;
- · Flooding and stormwater;
- Surrender of existing consents and consolidation of existing church and school approvals into
 one single consent; and,
- Significant concerns raised by the local community.

Recommendation

- (1) That the panel consider the Clause 4.6 request to vary the height standard contained in Clause 4.3 of the RLEP 2011 and that it be satisfied that the variation will result in consistency with the objectives of the height standard contained in Clause 4.3 and the objectives of the R2 Low Density Residential zone and it is therefore in the public interest to vary the control.
- (2) That the panel consider the Clause 4.6 request to vary the floor space ratio (FSR) standard contained in Clause 4.4 of the RLEP 2011 and that it be satisfied that the variation will result in consistency with the objectives of the FSR standard contained in Clause 4.4 and the objectives of the R2 Low Density Residential zone and it is therefore in the public interest to vary the control
- (3) That the Development Application No. DA-2016/68 for the demolition of existing small hall, retention of the existing Auditorium and heritage dwelling, extension of existing basement carpark and addition of a new two storey building to accommodate 6 new classrooms for a maximum of 200 students for use by the existing school and continued church operations at 19 Dowling Street, Arncliffe, be APPROVED pursuant to Section 4.16(1)(a) of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report.
- (4) That the objectors be advised of the Bayside Planning Panel's / Council's decision.

Background

History

The following applications have previously been considered by Council and are relevant in relation to the subject property and the proposed development:



- (1) **DA-1992/55** New brick and tile hall for the existing church use Refused by Council on 10 December 1992
- (2) Land and Environment Court Appeal of DA-1992/55 Noel Bell, Ridley Smith & Partners v Rockdale Municipal Council [1993] NSWLEC 103.

The appeal was upheld and approval granted by the Court on 14 July 1993 for retention of the existing church hall and erection of a larger hall serving multiple functions, provision of surface and underground parking and retention of the existing heritage residence (Mimosa) for accommodation for the pastor.

The key modifications made throughout the Court process was in relation to the setbacks of the

church hall to minimise impacts to the adjoining properties to the south, including No. 17 Dowling Street. The judgement required a minimum set-back of 2.5m (at the closest point to the common boundary) increasing to a setback of 3.5m on each vestry wing.

The Court approval included the following key operational requirements / restrictions:

- (i) maximum 400 persons at any one time (Condition 42);
- (ii) Hours of operation -
 - (a) 8:00am 10:00pm, with all non-residents having left the site or the vicinity of the site by 10:00pm except visitors to the pastor's residence (Condition 8);
 - (b) 10:00am 10:00pm for all noise generating activities, e.g. bands, music and signing (Condition 44);
 - (c) No more than two services on Sundays (Condition 43).
- (iii) Car Parking:
 - (a) 47 parking spaces (Condition 5). Note: parking reduced to 46 spaces by DA-1992/55/A;
 - (b) 10 overflow parking spaces in addition to those spaces required by Condition 5 (Condition 9);
 - (c) parking of vehicles to be supervised to minimise impacts from those attending the site (Condition 49);
 - (d) Note: The commissioner found, in his judgement, that combined with 22 on-street spaces, 79 car spaces would be available for the church use.
- (iv) No use which is not ordinarily incidental or subsidiary to the church use being permitted without prior consent of the Council, other than (Condition 46):
 - * Creche (nursery); * Sunday school;
 - * Bible training; * Christian training;

 - * general storage; * residence for pastor; * carparking; * sporting activities;
 - * social activities; * office/study/counselling area;
 - * Church band practice; * Church concert;
 - * toilets.
- The church, church hall or residence not to be let out for any commercial purpose (Condition 47) or facilities not hired out to the general public (Condition 43);
- (vi) The mission building and the existing church being and existing dwelling not being used concurrently (Condition 44);
- (3) **BA-1993/803 -** Church Two Storey Class 9 Approved 18 October 1994.
- (4) **DA-2000/864** Modify Existing Portion of Church Hall for Radio Broadcasting Studio Approved 18 October 2000.
- (5) **DA-2000/1247 C**onstruction of a new 1.8 metre brick boundary fence Approved on 28 August 2001;
- (6) **CC-2000/939 R**elating to DA-2000/1247 Approved on 19 April 2001;
- (7) **DA-2000/864** Modification the existing portion of the Church Hall for purposes of a radio broadcasting studio Approved;

- (8) **CC-2000/646 R**elating to DA-2000/864 Approved on 28 October 2000;
- (9) DA-2014/295 Extension of church use to include utilisation of auditorium as a school for Kindergarten to Year 6 - Approved on 23 July 2014.

The school was approved with a maximum capacity of 60 children and operated Monday to Friday from 8:30am to 3:30pm. The use involved the use of 39 car parking spaces, including those at basement level and one (1) accessible space within the front setback to Kembla Street.

The applicant advises Council in their Statement of Environmental Effects that Kingdom Culture Christian School (KCCS) commenced operations in 2015.

(10) **DA-1992/55/A** - Modification to L&E Court Approval including amendment of Condition 5 reducing the total car parking from 47 to 46 spaces - Approved on 30 October 2014.

The applicant considered that this was to correct an error in relation to the number of spaces to be provided within the site as one car space must be dedicated as a 'shared zone' adjacent to an existing space to provide for people with a disability. The report concluded that the loss of parking was acceptable and Condition 5 was amended to read as follows:

- 5. A total of forty-six (46) car parking spaces being provided in accordance with plan marked Exhibit 10 and with a notice to be displayed requiring all cars parking in the north western corner of the site to park with their lights away from Kembla Street.:
- (11) **DA-2014/295/A** Modification of Condition 15 relating to the number of off-street parking spaces Approved on 30 October 2014;
- (12) DA-2014/295/B Modification to include Years 7 and 8 students Approved on 7 July 2015.

Proposal

The proposal includes alterations and additions to the approved church and school including demolition of the existing small hall (including existing storage rooms), construction of a new two (2) storey building and extension of the basement level car park to increase capacity of the school from 60 to 200 students from Kindergarten to Year 12. The school will operate between the hours of 8:30am to 3:30pm, Monday to Friday.

The proposal includes retention of the existing Auditorium building and heritage dwelling (known as 'Mimosa' or 'The Farleigh Dwelling' and which is approved as a residence for the Pastor).

The proposal also includes continued operation of the approved church operations on the site, however with a reduction in the maximum capacity of the church use from 400 to 380 patrons and a reduction in the hours of the church use so that the school and church uses will not be carried out concurrently. The applicant has agreed to surrender the existing church and school approvals and to operate under a single consolidated consent as part of this proposal.

Specifically, the proposal includes:

Demolition

Demolition of the following:

· small hall, including associated storage rooms, located immediately east of the existing

Auditorium building;

- foyer to Auditorium building;
- ramp & driveway; and
- walls and stairs to basement level.

Tree removal and relocation

- Removal of five (5) site trees;
- Relocation of existing palm tree;

Excavation

 Excavation to a depth of up to 1.5 metres to accommodate an extended basement level car park area and additional storage space.

Construction

Constriction of the following new building works:

- Entry forecourt to Kembla Street;
- Stairs and access ramp from Kembla Street to new open entry portico (school building cantilevered above);
- New black palisade perimeter fencing to Kembla Street, parts of Hirst Street and Dowling Street. Retention of remainder of the existing boundary fencing;
- Extension to existing basement, including provision of five additional parking spaces, lift, foyer, detention tank and store room;
- Construction of a two (2) storey building with rooftop terrace to Kembla Street including:
 - Ground Floor Level
 - Foyer to Auditorium;
 - Two (2) studios / classrooms (studios 1 & 2) and associated break-out spaces;
 - Lift and stairs between all levels;
 - terrace and stairs to new playground;
 - toilet & store rooms adjacent to foyer;
 - First Floor Level
 - Four (4) studios / classrooms (studios 3 6)
 - · Balconies / break-out spaces
 - · Toilet & store area
 - Roof top outdoor passive outdoor space;
- Outdoor playgrounds at ground level;

Access and Car Parking

- Relocation of existing vehicular access driveway to the south adjacent to No. 20 Kembla Street.
 The applicant advises that the driveway relocation is to resolve the existing conflict between pedestrians and vehicular traffic resulting from the location and design of the basement access.
- Basement parking for 44 vehicles and new storage areas.
 (Note: The site currently accommodates 46 car spaces plus 10 overflow spaces in accordance with DA-1992/55 (as modified), which was approved by the Land and Environment Court).

Landscape Planting

 Associated landscaping and playground design in accordance with the submitted landscape plan;

School Operations

- Increase from 60 children to a maximum of 200 students, including 150 children from Kindergarten to Year 6 and fifty (50) children from Year 7 to Year 12;
- Hours of operation 8:30am to 3:30pm.

The proposal does not include before or after school care, or any other school related uses outside of the school hours. Activities that are ordinarily incidental or subsidiary to the approved 'place of public worship' use will, however, be available to students outside of approved school times.

The applicant has also requested approval for two parent teacher nights and a maximum of four (4) presentation nights per calendar year.

Existing Place of Public Worship (Church) Use (DA-1992/55) as amended by this application - Key Operational Conditions

The applicant has advised that approved church and proposed school uses will not operate concurrently, and that the maximum number of church patrons is to be reduced from 400 to 380. The approved church use, as amended by this proposal, is therefore proposed to operate as follows:

- (a) Capacity Maximum 380 persons at any one time;
- (b) Hours of operation:
 - 8:00am 10:00pm, seven days, with all non-residents having left the site or the vicinity of the site by 10:00pm except visitors to the pastor's residence [Condition 8 of DA-1992/55]:
 - (ii) Notwithstanding (i) above:
 - A. The school and church uses will not be carried out concurrently at any time;
 - B. Noise Generating Activities permitted only between 10:00am 10:00pm, e.g. bands, music and singing [Condition 44 of DA-1992/55];
 - C. No more than two services on Sundays [Condition 43 of DA-1992/55].
- (c) Car Parking
 - (a) 44 parking spaces [a reduction of 2 car spaces from DA-1992/55];
 - (b) 10 overflow parking spaces in addition to those spaces required by [Condition 9 of DA-1992/551:
 - (c) Parking of vehicles to be supervised to minimise impacts from those attending the site [Condition 49 of DA-1992/55].
- (d) Incidental Uses No use which is not ordinarily incidental or subsidiary to the church use being permitted without prior consent of the Council, other than [Condition 46 of DA-1992/55]):

 - * social activities; * office/study/counselling area;
 - * Church band practice; * Church concert;
 - * toilets.
- (e) No public use / commercial hire of premises The church, church hall or residence not to be let out for any commercial purpose [Condition 47 of DA-1992/55] or facilities not hired out to the

- general public [Condition 43 of DA-1992/55];
- No concurrent uses The mission building and the existing church building and existing dwelling not being used concurrently [Condition 44 of DA-1992/55];

Refer to the 'History' section above for further details regarding the approved church operations.

Site location and context

The subject site is formally identified as Lot 100 DP 859517, and commonly known as 19

Dowling Street. It has three (3) street frontages including Dowling Street (41.82m), Kembla Street (47.82m) and Hirst Street (69.795m). The site has a total site area of 3,315sqm (by Survey) and is currently occupied by three (3) buildings being 'Mimosa' (heritage dwelling), the church hall and the auditorium (which are connected). The site also contains associated structures, basement level car parking accommodating 38 vehicles and the remaining eight (8) parking spaces and ten (10) overflow parking spaces provided at the north-eastern corner of the site. The topography of the site is generally flat with a 2.75 metre cross fall in an easterly direction towards Kembla Street.

The existing local heritage item (I7) known as 'Mimosa' or 'The Fairleigh Dwelling' abuts Hirst Street and is approved for use as a residence for the Pastor. The Heritage Impact Assessment (HIA) describes the building as follows: "'Mimosa" is a free standing Victorian period dwelling with a single storey Federation addition to the front (western side) and an Inter-war addition to the rear (eastern side)... Further ad-hoc rear additions have taken place since 1943 including a pergola to connect the earlier outbuildings and an addition to convert a portion of the service wing into a single garage". Commissioner J Stein in his 1992 judgement found the item to be 'a handsome element in the local landscape' and determined it 'necessary that the church respect the residence and not impair its presentation to the surrounding locality'. The commissioner found that 'it's most attractive aspect is undoubtedly the western facade and verandah facing Dowling Street'.

Surrounding development is characterised predominantly of single and two-storey residential dwellings located within the R2 Low Density Residential zone. South of the subject site is the Kinderoo Child Care Centre (2 Dowling Street) and Athelstane Public School (Athelstane Avenue). Approximately 275 metres north east of the site is Arncliffe Park and north is the M5 East Motorway Tunnel. Wollongong Road, a 'Classified Road', is approximately 160 metres south of the site and contains a mix of uses including residential dwellings; shop top housing and various commercial and retail developments.



Figure 1 - Site Plan



Figure 2 - Aerial photo of the site



Figure 3 - Site zoning context

Statutory Considerations

Environmental Planning and Assessment Act, 1979

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

S4.15 (1) - Matters for Consideration - General

S4.15 (1)(a)(i) - Provisions of Environmental Planning Instruments

The following Environmental Planning Instruments are relevant to this application:

State Environmental Planning Policy (Infrastructure) 2007



Division 3 - Educational Establishments

The application was lodged before *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017* (Educational Establishments SEPP) came into force. The new SEPP does not apply to this development in accordance with the savings provisions contained in Clause 1(1) of Schedule 5 of the SEPP. Therefore the relevant controls and guidelines in *State Environmental Planning Policy (Infrastructure) 2007* (Infrastructure SEPP) are applicable for the development and expansion of this education establishment.

Nevertheless, the applicant has considered the seven (7) design quality principles established within Schedule 4 of the SEPP. This has been considered further below and in the 'Public Interest' section of this report.

The relevant aims of the SEPP (Infrastructure) are as follows:

- (a) improving regulatory certainty and efficiency through a consistent planning regime for infrastructure and the provision of services, and
- (b) providing greater flexibility in the location of infrastructure and service facilities, and (c) identifying the environmental assessment category into which different types of infrastructure and services development fall (including identifying certain development of minimal environmental impact as exempt development), and

Clause 32(2) of the SEPP (Infrastructure) states the following:

- (2) Before determining a development application for development for the purposes of a school, the consent authority must take into consideration all relevant standards in the following State government publications (as in force on the commencement of this Policy):
- (a) School Facilities Standards Landscape Standard Version 22 (March 2002),
- (b) Schools Facilities Standards Design Standard (Version 1/09/2006),
- (c) School Facilities Standards Specification Standard (Version 01/11/2008).
- (3) If there is an inconsistency between a standard referred to in subclause (2) and a provision of a development control plan, the standard prevails to the extent of the inconsistency.
- (4) Copies of the standards referred to in subclause (2) are available for inspection by the public at the head office of the Department of Planning and such other offices of the Department (if any) as the Director-General may determine.

Council has received written confirmation from Mr Robert Fraser, Manager of Education Facilities Standards at the Department of Education and Communities (DEC), which confirms that the above mentioned development compliance documents are no longer issued by the DEC, nor is it a requirement they be taken into consideration of a development application for the purposes of a school. The applicant submits in the accompanying SEE the DEC is currently in consultation with the NSW Department of Planning in relation to amending the SEPP (Infrastructure) and 'the above controls have been replaced by the "Education and Facilities Standards and Guidelines". Where appropriate, the applicant submits the replacement Guidelines have been considered in the proposed development, although it has little determinative weight.

The applicant has now also provided an assessment against the seven (7) design quality principles established under the new Educational Establishments SEPP. In summary, the applicant considers that:

- the proposal has been designed to respond appropriately to its setting, landscape and heritage.
- measures have been incorporated to reduce water consumption and minimise waste as demonstrated by the submitted Water Management Statement prepared by Whipps Consulting Group and the WMP submitted by FUSE architecture.
- the design is accessible and inclusive of people with differing needs and capabilities as demonstrated by the submitted DA Access Report prepared by Wall to Wall Design + Consulting which concludes that the design is capable of complying with the BCA and relevant policies.
- the design optimises health, safety and security within its boundaries and the surrounding public domain, while ensuring the site remains accessible.
- a high level of amenity will be provided to future students while minimising impacts to the amenity
 of adjacent development and the local neighbourhood.
- the buildings will be aesthetically pleasing and achieves a built form that has good proportions and a balanced composition of elements.

Consideration has been given to potential impacts to adjoining properties, the streetscape and other impacts elsewhere in the report, which have been found to be acceptable following amendments made. The proposal is considered to provide an acceptable streetscape outcome and be of an acceptable intensity for the site, however at the sites maximum limits of intensity. The proposed development is therefore acceptable with regards to the relevant provisions of Division 3 of the Infrastructure SEPP.

Clause 104 Traffic-generating development

The application is considered under the remit of Clause 104 of the SEPP (Infrastructure) which, at the time of lodgement, required educational establishments with 50 or more students to be referred to the Roads and Maritime Services (RMS) for concurrence. RMS has reviewed the development application and associated documentation and granted concurrence to the proposed development by letter dated 23 September 2015.

Before determining the application, Council is also required to take into consideration the following matters contained in Clause 104(b)(ii) & (iii) of the Infrastructure SEPP:

- (ii) the accessibility of the site concerned, including:
- (A) the efficiency of movement of people and freight to and from the site and the extent of multi-purpose trips, and
- (B) the potential to minimise the need for travel by car and to maximise movement of freight in containers or bulk freight by rail, and
 - (iii) any potential traffic safety, road congestion or parking implications of the development.

Assessment

The proposal will increase traffic generation to and within the local road network. The site is also located nearby other traffic generating uses, including Athelstane Public School and Kinderoos child care centre. Traffic impacts have therefore been a key issue raised by local residents in their submissions. One submission includes photos of cars currently double parked in the street during peak school drop-off / pick-up times.

An existing 40km/hour school zone currently exists in surrounding streets including Kembla Street, Dowling Street and Hirst Street to improve the safety of children. This was established under the original approval for the school at the site. Other nearby / surrounding streets are all subject to school zone speed limits for Athelstane Public School.

The application was accompanied by a Traffic and Parking Impact Assessment Report prepared by ML Traffic Engineers. Amended reports have been submitted to address issues raised. The final report prepared by GTA Consultants was submitted to Council on 11 October 2018.

As noted above, the application was identified as traffic generating development under the Infrastructure SEPP and referred to Roads and Maritime (RMS) for their concurrence. RMS raised no objection to the proposal.

The proposal has been referred to Council's Traffic Development Advisory Committee. In response, the applicant's Traffic Assessment Report was amended to include comparison with similar schools, and recommended conditions require construction of a pedestrian refuge island in Kembla Street east of Hirst Street. The Traffic Development Advisory Committee recommended exploring bus parking and parking for Provisional drivers. The applicant advises that they have an existing arrangement to utilise Arncliffe Park for sporting activities and will only utilise larger buses for swimming & athletics carnivals and for some excursions. Shuttle bus parking is provided in the basement. Therefore, provision of a bus parking area is not considered warranted in this case. In addition, parking for Provisional drivers was not found to be necessary due to the low number of high school age students.

The applicant has also provided the following assessment regarding traffic impacts from the proposal to be acceptable:

"The proposed use will generate additional traffic to and from the site that is not considered likely to reduce road safety or the free flow of traffic within the surrounding road network. In this regard, the proposal is not considered likely to result in any adverse traffic impacts and the anticipated traffic volumes can easily be accommodated within the surrounding road network.

The proposal will include 39 car parking spaces within the basement parking level and use of 1 disabled space at natural ground level in front of the existing dwelling house on the site (Mimosa). A Traffic and Parking report was submitted with the application which concluded that "the proposed school is a moderate traffic generating development" and will have "adequate parking for the school and the Church staff". The report further concludes that "the additional development trips can be accommodated in the nearby intersection without significantly affecting the performance with any noticeable delays or queues." The application was referred to Council's Development Engineer who raised no objection to the provision of car parking on the site subject to the recommended conditions of development consent to be imposed on the scheme.

It is acknowledged that in considering the application to construct the auditorium, the original Court judgement states "In addition to the site itself, it is agreed that 22 on street spaces are available on the 3 street frontages adjoining to the land without taking up any spaces outside dwellings. It is also conceivable that additional parking will be able to be leased or licensed from the nearby public school, although no formal agreement has been entered at this time." This acknowledgement of the parking provision on the site and surrounds for the auditorium (the subject of the then application) confirms that the use of the building in addition to church purposes is sustainable and not likely to

result in any adverse impacts on the surrounding locality in respect to parking.

Given the above, it is acknowledged that the proposed use is not likely to result in any adverse impacts on the availability of car parking on the site and surrounding lands during the week. Similarly, it will not impact on these properties during the weekend given the school will not operate during this time. As such, the proposal is considered acceptable in respect to traffic and parking".

Detailed consideration has been given to parking impacts separately below in response to Clause 4.4.6 of RDCP 2011, which demonstrates that parking impacts will occur but are found to be acceptable subject to compliance with the recommended conditions, including the submitted management plans which are required to be reviewed following commencement of site operations.

Council's Engineers, Local Traffic Development Advisory Committee and the RMS have considered the proposal and provided relevant requirements and recommended conditions of consent. The proposal has been amended, where necessary, and the school will utilise a mini bus to reduce car dependency. Potential traffic impacts, road safety, road congestion and parking implications of the development are therefore found to be acceptable.

Subject to imposition of recommended conditions, the proposed development is acceptable with regards to Clause 104 of the SEPP (Infrastructure).

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP) applies to the proposal. The site contains trees that are subject to approval by Council under clause 4.1.7 of Rockdale Development Control Plan 2011, conferred by:

- (a) development consent, or
- (b) a permit granted by Council.

Consideration has been given to the impacts of the proposed development in relation to the preservation of trees and vegetation on the subject site. Accordingly, the development was referred to Council's Tree Management Officer for review and comment. In particular, the existing Canary Island Date Palm is identified as being of significance and is approved to be transplanted on site. Approval has also been granted for the removal of five (5) trees identified in the 'Existing Tree Plan' as being for removal. Many significant trees on site will be retained and those proposed to be removed were found to be in fair to poor condition only, are inappropriately located near more significant trees or located within the area of the proposed works. The trees proposed to be removed are identified as trees 4, 7, 8, 23 and 25 in the Existing Tree Plan.

The remaining 20 site and street trees are proposed to be retained including the prominent 18m tall Norfolk Island Pine located to the north-eastern corner of the site and the trees to the north-western corner and the western (Dowling Street) frontage.

It is noted that since lodgement of this application, some trees within the site have already been pruned in accordance with a Permit issued by Council.

Council's Heritage Officer has also confirmed that the trees to be removed do not appear to have any heritage impact, and would not need to be included in the heritage report.

Council's Tree Management Officer has recommended appropriate conditions that have been imposed

in the draft Notice of Determination, regarding the protection and retention of existing trees and the removal of site trees subject to suitable replacement trees being planted in appropriate locations. Subject to compliance with the conditions of consent, the proposal is satisfactory in relation to SEPP (Vegetation in Non-Rural Areas) 2017 and Clause 4.1.7 of the Rockdale DCP2011

State Environmental Planning Policy No 55—Remediation of Land

The provisions of SEPP 55 have been considered in the assessment of the development application. The applicant has provided the following consideration of SEPP 55 in their SEE:



"Given the development is located within an existing residential area which is historically detailed within the submitted Heritage Impact Assessment it is considered unlikely that the subject site is likely to have contamination".

The likelihood of encountering contaminated soils on the subject site is considered to be extremely low, given the following, and therefore the site is considered to be suitable for the ongoing use as a school and place of public worship:

- 1. The site appears to have been continuously used for residential and place of public worship purposes;
- 2. The adjoining and adjacent properties are currently zoned and used for residential purposes;
- 3. The site and surrounding land were not previously zoned for purposes identified under Table 1 of the contaminated land-planning guide in State Environmental Planning Policy 55, in particular industrial, agricultural or defence uses.

Rockdale Local Environmental Plan 2011

Relevant clauses	Compliance with objectives	Compliance with standard/provision	
2.3 Zone R2 Low Density	Yes	Yes - see discussion	5
Residential			
2.7 Demolition requires consent	Yes	Yes - see discussion	5
4.3 Height of buildings	Yes - see discussion	No - see discussion	5
4.4 Floor space ratio - Residential	Yes	Yes - see discussion	5
zones			
4.6 Exceptions to development	Yes	Yes - see discussion	5
standards			
5.10 Heritage conservation	Yes	Yes - see discussion	5
6.1 Acid Sulfate Soil - Class 5	Yes	Yes - see discussion	5
6.2 Earthworks	Yes	Yes - see discussion	5
6.6 Flood Planning Land	Yes	Yes - see discussion	5
6.7 Stormwater			5
6.12 Essential services	Yes	Yes - see discussion	5

2.3 Zone R2 Low Density Residential

The subject site is zoned R2 - Low Density Residential under the provisions of Rockdale Local Environmental Plan 2011 (RLEP 2011). The proposed development is defined as an *educational establishment*, which is a permissible form of development, with Council consent. The objectives of the zone are as follows:

- To provide for the housing needs of the community within a low density residential
- To enable other land uses that provide facilities or services to meet the day to day needs of
- To ensure that land uses are carried out in a context and setting that minimises any impact on the character and amenity of the area.

The first objective relates to the provision of additional housing and is not relevant for this proposal. The proposed development, as amended, is consistent with the remaining two objectives of the zone as the expanded educational establishment provides additional facilities to respond to the needs of residents, in a manner which, subject to recommended conditions, minimises potential impacts on the character and amenity of the immediate and surrounding area. Detailed consideration has been given to character and potential impacts of the development throughout the report, including cumulative impacts associated with the intensification of the use of this site in the R2 Low Density Residential zone.

2.7 Demolition requires consent

The application is accompanied by the following Demolition Plans:



- Demolition Basement, Drawing No. DA111, Revision B and dated 14.08.2015;
- Demolition Ground Floor, Drawing No. DA112, Revision B and dated 14.08.2015;
- Demolition First Floor, Drawing No. DA113, Revision B and dated 14.08.2015; and
- Demolition Roof, Drawing No. DA114, Revision B and dated 14.08.2015.

The above mentioned Demolition Plans identify existing structures which are nominated for demolition in accordance with the provisions of this Clause. The proposed development is acceptable in this regard.

4.3 Height of buildings

Clause 4.3 permits a maximum building height of 8.5 metres as measured from NGL (existing). 🛾 📗 📓 The objectives of the Clause are as follows:



- (a) to establish the maximum limit within which buildings can be designed and floor space can be
- (b) to permit building heights that encourage high quality urban form,
- (c) to provide building heights that maintain satisfactory sky exposure and daylight to buildings, key areas and the public domain,
- (d) to nominate heights that will provide an appropriate transition in built form and land use intensity.

The proposed development seeks consent for a maximum building height of 9.87m (+1.37m) to the top of the parapet at the southern (lower) side of the site and a maximum height of 11.9m (+3.4m) to the top of the lift & overrun providing access to the roof terrace. The proposal therefore fails to satisfy the numerical provisions of this Clause. The applicant has submitted a written request to justify contravening the development standard in accordance with Clause 4.6 of the RLEP 2011, the merits of which are discussed below in consideration of clause 4.6 of RLEP 2011.

4.4 Floor space ratio - Residential zones

A maximum FSR of 0.5:1 aplies to the subject site. This equates to a maximum gross floor area 🛭 💆 📓 (GFA) of 1,657.5m² based on the site area of 3,315m². The proposal has a GFA of 1,690m² and a corresponding FSR of 0.5098:1, which exceeds the maximum FSR by 32.5m2 (1.9%). The applicant

has submitted a clause 4.6 variation to development standard in relation to the proposed variation to Clause 4.4 of RLEP 2011 which has been addressed in the consideration of Clause 4.6 in this report. The proposal subject to conditions is deemed to be consistent with the objectives of clause 4.4 FSR.

4.6 Exceptions to development standards

Clause 4.6 allows a variation to a development standard subject to a written request by the applicant justifying the variation. The written request must deal adequately with the requirements of Clause 4.6, particularly with regards to Clause 4.6(3) which reads as follows:

- (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
 - that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and
 - (b) that there are sufficient environmental planning grounds to justify the variation.

In considering the applicant's submission, the consent authority must be satisfied of the following matters in Clause 4.6(4):

- (4) Development consent must not be granted for development that contravenes a development standard unless:
 - (a) the consent authority is satisfied that:
 - the applicant's written request is satisfactory in regards to addressing subclause
 above, and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives of the relevant zone, and
 - (b) the concurrence of the Secretary has been obtained.

In accordance with clause 4.6(5)(a) the consent authority must also consider whether contravention of the development standard raises any matter of significance for State or Regional environmental planning, and in accordance with clause 4.6(5)(b) the public benefit of maintaining the development standard.

The assessment of Clause 4.6 below has been undertaken in accordance with the principles established by the Chief Judge in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] **NSWLEC 118**. While the applicant's requests to vary the 'height' and 'FSR' development standards were prepared prior to this case, they have been found to address the relevant matters established in the case.

The height and FSR variations are discussed separately below:

1. Proposed variation to 'height'

The proposal exceeds the maximum 8.5m building height permitted under Clause 4.3 of RLEP 2011 as follows:

- Top of the parapet at south-eastern side = 9.87m (+ 1.37m)
- The height of the lift overrun = 11.9m (+3.4m).



Figure 4 - Eastern elevation showing height of proposed building

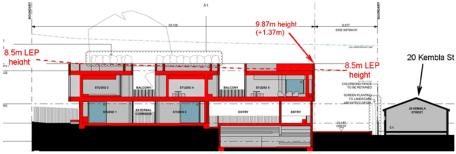


Figure 5 - Section showing height of building & maximum 8.5m LEP Height

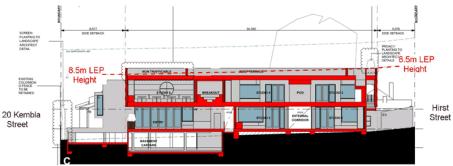


Figure 6 - Section showing height of building & maximum 8.5m LEP Height

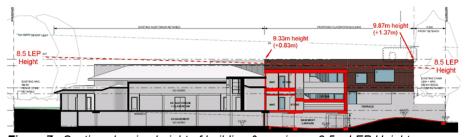


Figure 7 - Section showing height of building & maximum 8.5m LEP Height

Objectives of 'Height' Clause 4.3

- (a) to establish the maximum limit within which buildings can be designed and floor space can be achieved,
- (b) to permit building heights that encourage high quality urban form,
- (c) to provide building heights that maintain satisfactory sky exposure and daylight to buildings, key areas and the public domain,
- (d) to nominate heights that will provide an appropriate transition in built form and land use intensity.

Applicant's Submission

The applicant has submitted a detailed justification to the proposed variation of the height development standard in accordance with Clause 4.6 of RLEP 2011.

The submission was prepared prior to the recent *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 case, however has been found to address all matters identified in the Chief Judge's decision.

A summary of the key rationale provided by the applicant includes:

- The proposal is consistent with the objects of the Height development standard for the following key reasons:
 - The components of the building which breach the building height limit do not
 contribute to the floor space ratio of the development. This is because the offending
 elements of the building which breach the buildings height limit are confined to the
 lift overrun and the planter boxes/balustrades for the roof terrace area.
 - The proposal will result in a built form outcome that is sympathetic to the local area, including the flat roof which is consistent with other non-residential development in the locality. In addition planting in the roof top planter boxes will contribute positively to the buildings aesthetic presentation.
 - The proposal will obtain good solar access and have minimal impacts on solar access to adjoining properties.
 - The proposed building height maintains a two storey built form across the site. The proposed building is positioned over 8m from the adjoining residential boundary, and as such is considered to represent sufficient separation to allow an orderly transition of the built form from the north to the south. The former 'special uses' zone was not subject to a numerical control and the State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 permits buildings up to 12m high being undertaken as complying development.
- The proposal is consistent with the objectives of the R2 Low Density Residential Zone (refer to previous discussion in response to the R2 zone)
- Strict compliance with the numerical height standard is unreasonable and unnecessary in this case for the following key reasons:
 - It has been demonstrated that the variation to the building height development standard does not result in any additional impacts on the amenity afforded to neighbouring properties, and does not contribute negatively to the cohesiveness of the streetscape. While it is acknowledged that even a development complying with this development standard may otherwise result in the same impacts, it important nonetheless to establish the level of impact resulting from the variation is not significantly greater, and no more than what a potentially complying building height would achieve if it were positioned closer to the southern boundary. This clause 4.6 written request has demonstrated this with regard to traffic and parking, solar

- access/overshadowing, visual and acoustic privacy, noise impacts and outlook.
- By allowing the construction of a new building on the subject site, the school is able
 to meet the demand for new placements without having to augment the existing
 heritage buildings. This means that the heritage buildings are able to be preserved
 without being subjected to more intense school uses that may otherwise impede on
 the fabric of these heritage buildings.
- If it were not for a heritage item being located on the site, the complying development provisions of State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 would prescribe that a new school building could theoretically be built to a height of 22m within 10m of the boundary. The maximum height of this building has been assessed to be 11.9m at the lift overrun which is a relatively minor portion of the roof, and according to the complying development provisions, such a building could be constructed within 5m of the boundary. Furthermore, under the provisions of the aforementioned SEPP no floor space ratio limits apply for complying development. In such circumstances a considerably greater shadow would be cast over adjoining development and deemed to be within acceptable limits by the complying development standards of the SEPP.'
- Consideration of the principles established in the Wehbe v Pittwater Council [2007]
 NSWLEC 827 case demonstrate that strict compliance with the control is unreasonable
 and unnecessary in this case, particularly as the proposal complies with the objectives of
 the height standard. In addition, the zone of the land is unreasonable or inappropriate for
 the land. The site was preivously zoned 'special uses' and has been amended to an R2
 Low Density Residential Zone.
- That there are sufficient environmental planning grounds to support the variation, particularly the absence of undue impacts, the use is of an appropriate intensity for the site and retention of the existing heritage dwelling.
- The proposal will result in a public benefit through the ability to meet demand for school placements and in that the proposal satisfies the objectives of the zone.
- Consideration of Height Variation

The applicant's written submission adequately deals with the requirements of clause 4.6 in accordance with the principles established by the Chief Judge in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.* Particularly, the applicant's submission:

- demonstrates why compliance with the development standard is unreasonable or unnecessary, including use of the Wehbe test; and
- includes sufficient environmental planning grounds to justify contravening the development standard.

Consideration may therefore be given to merits of the request.

The proposed variation to the height standard is supported in this case in context of clause 4.6 for the following reasons:

 The proposed height variation is restricted to the lift, which is located centrally within the site, and to a minor portion of the top parapet for part of the building which is setback from the main building alignment by 5m and setback 8m from the adjoining neighbour at 20 Kembla Street;

- The additional height proposed is minor in the context of the development and is not
 considered to result in a detrimental environmental planning outcome as it does not give
 rise to adverse solar access, view loss or visual or acoustic privacy impacts on site or to
 neighbouring properties.
- The proposal is consistent with the objectives of Clause 4.3 Height of Buildings of Rockdale LEP 2011, in that the development retains appropriate sky exposure and solar access on site and to neighbouring properties.
- The proposal is consistent with the relevant objectives of the R2 Low Density Residential zone, providing school services to meet the needs of the residents while minimising impacts to adjoining residents.
- Compliance with the standard is unreasonable and unnecessary in the circumstances of this case for the reasons provided above, particularly in that the proposal will satisfy the objectives height development standard notwithstanding the variation. This meets the first of the Wehbe tests.
- There are sufficient environmental planning grounds to support the variation. The proposed building(s) must match the existing basement and ground floor levels on the site and the parapet forms an integral part of the building design and lowering this would impact on the streetscape appearance with no real benefit. In addition, the proposed lift provides equitable access to the roof top level to permit this area to be used by all school students. Consideration has been given to the elements of the development that contravenes the development standard, not the development as a whole, in accordance with the principles established in Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 to determine whether there are sufficient environmental planning grounds to vary the control.
- The proposal will be in the public interest because it is consistent with the objectives of the height standard and the objectives of the R2 Low Density Residential zone in which the site is located. Consistency with the standard and the zone objectives has been dealt with previously (refer above to assessment of the R2 zone and clause 4.4 of RLEP 2011).
- The proposal exceeds the maximum 10% variation to the height standard and Council may not assume the Secretary's concurrence in accordance with Planning Circular PS 18-003 dated 21 February 2018. However, this restriction does not apply to the Bayside Planning Panel, an independent hearing and assessment panel, who are not required to obtain the concurrence of the Secretary.
- The proposal will provide a public benefit in that it will provide additional places for students.

• Conclusion - height variation

It is considered that, in this instance, the applicant's clause 4.6 variation to the 'height' development standard is well founded and adequately deals with the requirements of clause 4.6 in accordance with the principles established by the Chief Judge in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118. The proposal variation is would be in the public interest because it is consistent with the objectives of the height standard and the objectives for development within the R2 zone. The variation to the maximum 8.5m height standard is therefore found to be acceptable in this case.

2. Proposed variation to 'FSR'

The proposal has an FSR of 0.5098:1 which exceeds the maximum 0.5:1 FSR permitted under Clause 4.4 of RLEP 2011 by 32.5m² (1.9%). The proposed GFA is 1,690m², while the maximum GFA permitted is 1657.5m² for this site with an area of 3,315m².

- Objectives of 'FSR' Clause 4.4
 - (a) to establish the maximum development density and intensity of land use, accounting for the availability of infrastructure and generation of vehicular and pedestrian traffic, in order to achieve the desired future character of Rockdale,
 - (b) to minimise adverse environmental effects on the use or enjoyment of adjoining properties,
 - (c) to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing or likely to undergo a substantial transformation,

Applicant's Submission

The applicant has submitted a detailed justification to the proposed variation of the FSR development standard in accordance with Clause 4.6 of RLEP 2011. The submission was prepared prior to the recent *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* case, however has been found to address all matters identified in the Chief Judge's decision.

A summary of the key rationale provided by the applicant includes:

- The proposal is consistent with the objects of the Floor Space Ratio development standard for the following key reasons (Assessing officer's note: the reasons below are summarised):
 - All existing services required to operate the new school buildings are available;
 - Public transport services are available in vicinity to the site;
 - The updated Traffic and Parking Impact Assessment Review prepared by GTA Consultants demonstrates that proposal is capable of satisfying the objective of the development standard, particularly in that car parking and traffic for the proposed expansion can be effectively managed on-site and accommodated in the road network immediately surrounding the site if required without any adverse impacts, that there is sufficient on-site parking available, that the amended car park layout has been amended to improve the safety and operation of the basement car park, and that overflow parking required for the church can be provided within the basement.
 - "A considerable amount of floor space accross the site is attributable to the underutilised area of the heritage listed villa (341.7m2 or 20.6% of the allowable GFA). In this regard when offsetting the 32.59m2 or 1.95% variation to the control agains the 341.7m2 or 20.6% of the underutilised area of the site, it is evident the proposed variation does not contribute to the intensity of the school or church land use on the site".
 - Adverse impacts on adjoining properties have been minimised.
 - The proposed development is of an appropriate scale and appearance so as to be compatible with the surrounding streetscape based on the planning principles contained wihtin Project Venture Development v Pittwater Council [2005] NSWLEC 191 "whereby compatibility was summarised as meaning 'capable of existing together in harmony'.
 - The variation helps support retention of the heritage buildings on the site.
- The proposal is consistent with the objectives of the R2 Low Density Residential Zone (refer to previous discussion in response to the R2 zone).

- Strict compliance with the numerical height standard is unreasonable and unnecessary in this case for the following key reasons:
 - the level of impact resulting from the variation is no greater than a development that is compliant with the maximum FSR;
 - the construction of new buildings on the site allows the school to meet demand for new placements without having to augment the existing heritage buildings;
 - SEPP Infrastructure 2007 would permit a building with a maximum height of 22m to be constructed on the site as Complying Development if it were not for a the heritage item being located on the site;
- Consideration of the principles established in the Wehbe v Pittwater Council [2007]
 NSWLEC 827 case demonstrate that strict compliance with the control is unreasonable
 and unnecessary in this case, particularly as the proposal complies with the objectives of
 the FSR standard. In addition, the zone of the land is unreasonable or inappropriate for the
 land. The site was preivously zoned 'special uses' and has been amended to an R2 Low
 Density Residential Zone.
- That there are sufficient environmental planning grounds to support the variation, particularly the absence of undue adverse impacts, the church would not operate concurrently with the school, the church operations have been reduced from 400 to 380 patrons, and the use is of an appropriate intensity for the site and retention of the existing heritage dwelling.
- The proposal will result in a public benefit through the ability to meet demand for school placements and in that the proposal satisfies the objectives of the zone.
- The proposal will result in a public benefit through provision of additional school placements.

Consideration of FSR Variation

The applicant's written submission adequately deals with the requirements of clause 4.6 in accordance with the principles established by the Chief Judge in Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118. Particularly, the applicant's submission:

- demonstrates why compliance with the development standard is unreasonable or unnecessary, including use of the Wehbe test; and
- (ii) includes sufficient environmental planning grounds to justify contravening the development standard.

Consideration may therefore be given to merits of the request.

The proposed variation to the FSR standard is supported in this case in context of clause 4.6 for the following reasons:

- The additional 1.9% FSR proposed is minor in the context of the development and is not
 considered to result in a detrimental environmental planning outcome as it does not give
 rise to any additional adverse solar access, view loss or visual or acoustic privacy impacts
 on site or to neighbouring properties.
- The proposal is consistent with the objectives of Clause 4.4 Floor Space Ratio of Rockdale LEP 2011 as discussed previously in response to Clause 4.4.
- The proposal is consistent with the relevant objectives of the R2 Low Density Residential zone, providing school services to meet the needs of the residents while minimising impacts to adjoining residents.

- Compliance with the standard is unreasonable and unnecessary in the circumstances of this case for the reasons provided above, particularly in that the proposal will satisfy the objectives of the FSR development standard notwithstanding the variation. This meets the first of the Wehbe tests.
- There are sufficient environmental planning grounds to support the variation. The proposal permits the reuse of existing buildings, and does not use the heritage building to its capacity. Consideration has been given to the element of the development that contravenes the development standard, not on the development as a whole, in accordance with the principles established in Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 to determine whether there are sufficient environmental planning grounds to vary the control.
- The proposal will be in the public interest because it is consistent with the objectives of the FSR standard and the objectives of the R2 Low Density Residential zone in which the site is located. Consistency with the standard and the zone objectives has been dealt with previously (refer above to assessment of the R2 zone and clause 4.4 of RLEP 2011).
- The proposed variation to FSR does not exceed the maximum 10% and Council could
 assume the Secretary's concurrence in accordance with Planning Circular PS 18-003
 dated 21 February 2018. However, the proposal is required to be determined by the
 Bayside Planning Panel, and they are not required to obtain the concurrence of the
 Secretary for any variations to development standards.
- The proposal will provide a public benefit in that it will provide additional places for students.

Conclusion - FSR variation

It is considered that, in this instance, the applicant's clause 4.6 variation to the 'FSR' development standard is well founded and adequately deals with the requirements of clause 4.6 in accordance with the principles established by the Chief Judge in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118. The proposal variation is would be in the public interest because it is consistent with the objectives of the height standard and the objectives for development within the R2 zone. The 1.9% variation to the maximum 0.5:1 FSR standard is therefore found to be acceptable in this case.

5.10 Heritage conservation

The subject site contains a locally listed heritage item, known as 'Mimosa' - Item I7, as contained within Schedule 5 of the Rockdale Local Environmental Plan and is therefore considered under the remit of Clause 5.10 - Heritage conservation. Accordingly, the application is accompanied by a Heritage Impact Statement dated July 2015 and prepared by Weir Phillips Heritage which has been prepared to assess the potential impacts of the proposed development in relation to the heritage value of 'Mimosa'.

A further Heritage Letter Report prepared by Weir Phillips Heritage (dated 25 May 2018) and a Letter report from Fiona Robbe Landscape Architect addresses compliance with Condition 9 and Condition 10 of the LEC Approval (DA-1992/55). Condition 9 required that site landscaping plans ensure the open view of "Mimosa" from the Dowling and Hirst Street frontage between the dwelling and Dowling Street, while Condition 10 requires the ground level between the existing residence on the land and Dowling Street to be at a level which maintains the existing steps from the verandah of Mimosa to this are and preserves the existing ground levels so far as reasonably practicable. In addition, landscaping of this area should be provided and maintained, so far as practicable, to provide public viewing of Mimosa from surrounding streets.

The application, associated Heritage Impact Statement and additional Letter Report were referred to Council's Heritage Advisor for comment and review. Council's Heritage Adviser concludes that the value of the heritage item is significant and that the proposed development, including proposed landscaping, is acceptable on the basis of the below:

- There is sufficient building separation between the heritage item and proposed development;
- The proposed development does not seek to alter the existing heritage item and its significant fabric shall be retained;
- The proposed development does not impact upon views to Dowling Street; and
- The contemporary detailing is clearly distinguishable from the architectural detailing of the heritage item.
- The proposed landscape plan and playground is not supported due to the adverse heritage impact upon the significance of the heritage item, Mimosa. The plan should be redesigned to be more sympathetic with the Victorian character of Mimosa.
- Details of the fence should be provided including elevations showing materials and dimensions.

It is noted that the landscape plans have been amended to delete play equipment that may impact on the significant views of the heritage item and impact compliance with Conditions 9 and 10 of the previous LEC approval. In addition, fencing details have been provided and existing fencing will be retained in this part of the site and repaired where necessary.

The proposed development is therefore acceptable with regards to this Clause.

6.1 Acid Sulfate Soil - Class 5

Acid Sulfate Soils (ASS) – Class 5 affects the property. However, development consent is not required as the site is not within 500 metres of adjacent Class 1, 2, 3 or 4 that is below 5 AHD.



6.2 Earthworks

Earthworks including excavation are required on site for extension of the basement and footings of the new buildings. The objectives and requirements of Clause 6.2 of RLEP 2011 have been considered in the assessment of this application. It is considered that the proposed earthworks and excavation will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land. However, notwithstanding, relevant conditions are included in the draft Notice of Determination to ensure that the environmental amenity of surrounding land is maintained, and soil erosion, sedimentation, and drainage impacts are minimised.

6.6 Flood Planning Land

The site and surrounding street is affected by flooding and the proposal has therefore been designed to ensure that the driveway crest level, building floor levels and other relevant components of the development are in accordance with the requirements contained in Council's Flood Advice Letter and subsequent assessment. The plans have been assessed by Council's Development Engineer and Flooding Engineers, and appropriate conditions of consent have been incorporated in the draft Notice of Determination, including compliance with the submitted Flood Management Plan. Subject to compliance with these conditions, the proposal is satisfactory in regards to flooding.

6.12 Essential services

Services will generally be available on the site. Additional conditions have been incorporated in the draft Notice of Determination requiring consultation with relevant utility providers in regards to any

specific requirements for the provision of services on the site.

S4.15(1)(a)(ii) - Provisions of any Draft EPI's

There are no relevant draft EPI's in relation to this proposal.



S4.15 (1)(a)(iii) - Provisions of any Development Control Plan

The following Development Control Plan is relevant to this application:

Rockdale Development Control Plan 2011

The application is subject to Rockdale DCP 2011. A compliance table for the proposed development is provided below:

Relevant clauses		Compliance with	Compliance with
		objectives	standard/provision
4.1.1 Views and Vista		Yes	Yes - see discussion
4.1.2 Heritage Conservation		Yes	Yes
4.1.3 Water Management		Yes	Yes
4.1.3 Flood Risk Management		Yes	Yes
4.1.4 Soil Management		Yes	Yes - see discussion
4.1.7 Tree Preservation		Yes	Yes
4.2 Streetscape and Site Context -	4	Yes	Yes - see discussion
General			
4.2 Streetscape and Site Context -		Yes	Yes - see discussion
Fencing	Two S		
4.3.1 Open Space and Landscape		Yes	Yes - see discussion
Design			
4.4.2 Solar Access - General Controls	_	Yes	Yes - see discussion
4.4.4 Glazing - General Controls		Yes	Yes
4.4.5 Visual privacy		Yes	Yes - see discussion
4.4.6 Noise Impact - Non-residential		Yes	Yes - see discussion
4.5.2 Social Equity - Equitable Access		Yes	Yes - see discussion
4.6 Parking Provisions - Alterations and additions		Yes	Yes
4.6 Car Park Location and Design		Yes	Yes - see discussion
4.6 Vehicles Enter and Exit in a Forward		Yes	Yes
Direction			
4.6 Basement Parking - General		Yes	Yes
4.6 Driveway Widths		Yes	Yes
4.6 Access to Parking	-	Yes	Yes
4.7 Air Conditioning and Communication		Yes	Yes - see discussion
Structures			
4.7 Waste Storage and Recycling		Yes	Yes - see discussion
Facilities			

4.1.1 Views and Vista

The siting of the proposed building will ensure that there is minimal adverse impact on the surrounding views presently enjoyed by adjacent residents.



4.1.4 Soil Management

The application is accompanied by a Soil and Water Management Plan, Drawing No. DA623, Revision A and dated 14 August 2015. The Plan provides general erosion and sediment control strategies to ensure that the potential for impact on adjoining land and surrounding waterways is minimised. Subject to conditions, the proposed development is acceptable with regards to the provisions of this Clause.

5

4.2 Streetscape and Site Context - General

The proposal includes new non-residential buildings with a flat roof design. Control 4 of Part 4.2 🛭 💹 📓 of RDCP 2011, requires that roof forms and architectural styles have regard to surrounding development. This clause reads as follows:



"The building design and use of materials, roof pitch and architectural features and styles must have regard to those of surrounding buildings to ensure a cohesive streetscape".

The architect has addressed this non-compliance in their written letter dated 1 June 2018, and the consultant town planner has provided the following justification in their submission dated 6 June 2018:

"A detailed response has been provided by the project architect in response to the flat roof design of the proposed development. This is contained in their written letter dated 1 June 2018. Their submission includes numerous examples of flat roofed buildings within the local area, notably all within the R2 Low Density Residential Zone.

Notably, there is a general distinction between residential land uses and non-residential land uses when it comes to roof design. As evidenced in the photographs contained within the architect's submission, the neighbourhood shop on Kembla Street, the neighbourhood shop on Dowling Street, and the newly constructed child care centre on Dowling Street all include flat roofs. This helps support the notion that a flat roof design for non-residential buildings is a defining characteristic of the local area.

In this regard, it is contended that the proposed development is consistent with the provisions of Control 4 of Part 4.2 of RDCP2011 in that the proposed school building design, particularly in terms of its roof design, is an architectural style that will be compatible with non-residential buildings in the local areas, and similarly ensure cohesiveness in the streetscape".

Comment:

The proposal is for a non-residential land use located within the R2 Low Density Residential zone. The primary frontage for the additional built form is to Kembla Street, with no real changes apparent when viewed from the Dowling Street frontage and for parts of the Hirst Street frontage of the site.

The proposed development utilises a mix of materials, including face brick, which respect materials used in residential dwellings in the area. The proposed building is setback between 4.2m - 8.8m from the adjoining residential dwelling at 20 Kembla Street and provides a 5m setback to Kembla Street and Hirst Street which provides adequate space to retain the existing 18m Norfolk Island Pine and the 8m Peppercorn tree that will retain the character of the corner position and soften the new development. The front facade to Kembla Street is broken up into three (3) face brick sections which is generally respectful of the width and pattern of residential dwellings in the street.

The proposed roof form is flat and is not in character with the surrounding development. The applicant's

submission is generally agreed with in this case, being that the proposal is non-residential and this reflects the nature and design of other non-residential development in the area with flat roof designs. Strict conditions are proposed that would prevent the applicant from erecting any further elements at roof top level, including shade cloth structures for the proposed roof terrace area.

Front fencing has been given detailed consideration and the applicant's amended plans show that existing fencing is retained for Dowling and Hirst Streets, and that fencing to Kembla Street will be open form black palisade style fencing which is considered acceptable for the proposed use in this context.

Therefore, while the proposal does not include all architectural elements of the adjoining dwelling houses, the building has been designed so that it adequately relates to its surrounding context. The proposal meets the objectives of the controls and is acceptable in this case.

4.2 Streetscape and Site Context - Fencing

New black palisade fencing is proposed to the Kembla Street frontage (2.2m height). Existing fencing will be retained for all other site boundaries as shown in the submitted plans (*Figure 8*).



The proposed open form palisade fencing to Kembla Street will permit passive surveillance to and from the site, not restrict overland flows and is generally acceptable in the context of the site for the proposed use subject to a recommended condition restricting the height to a maximum of 2.0m. This proposed maximum height matches the height of the existing Hirst Street fencing, better respect the low density residential character of the surrounding area and will permit the fence to be stepped with the slope of the land. The fence will generally be less than 2.0m due to the slope of the land.

The retention of existing low scale fencing at the corner of Hirst Street and Dowling Street is important to ensure sight lines are, to some extent through existing boundary planting, retained to the existing heritage dwelling. This has been discussed previously in response to the LEP Heritage provisions.

In summary, fencing is as follows:

- Kembla Street

 New Palisade fencing, 2.2m

 black (reduced to max. 2m by condition)
- Southern Boundary (adjacent 20 Kembla St & 17 Dowling Street) Retain existing fencing (timber paling, colorbond & low brick)
- Hirst Street Retain existing fencing (arc mesh, chainlink & brick wall)
- Dowling Street Retain existing fencing (arc mesh).



Figure 8 - Proposed boundary fencing

Subject to imposition of the recommended condition, the proposed fencing is satisfactory with regards to RDCP 2011.

4.3.1 Open Space and Landscape Design

The application was accompanied by a Landscape Plan prepared by a qualified Landscape Architect. The proposal retains landscaping to 50% of the sites Kembla Street frontage, and does not affect existing landscape planting along the Dowling Street and Hirst Street frontages. A majority of existing site trees are retained. The landscape plan has been amended to address heritage concerns, include planter boxes at roof top level, and recommended conditions require planting of suitable screen species along the sites southern boundary adjacent to No. 20 Kembla Street. The additional area of basement car park will, with exception of the new driveway access, be located beneath the building footprint. The proposal is considered satisfactory with regards to landscape provision and design.

4.4.2 Solar Access - General Controls

The proposal will result in additional overshadowing to windows located in the northern elevation like adjoining residence, No. 20 Kembla Street, Arncliffe. The existing dwelling is impacted by overshadowing resulting from existing buildings located on the site.

Part 4.4.2 of RDCP 2011 requires that proposed developments be designed to minimise the extent of shadows that it casts on adjoining properties, and particularly the private open space areas and habitable rooms within dwellings on adjoining sites. Windows to habitable rooms and 50% of the private open space area are required to retain 3 hours solar access at mid-winter. Where existing adjoining properties currently received less sunlight than these standards, sunlight must not be reduced by more than 20%.

The applicant has provided the following justification for the additional impacts:

"The subject development will slightly reduce solar access to the neighbouring dwelling to the south at No. 20 Kembla Street. However, as demonstrated within the set of submitted shadow diagrams any existing living areas to the rear of the dwelling would currently be in shadow for 100% of the time between 9am and 3pm. An analysis of the rear yard has revealed that it currently receives 50% (3hrs) solar access to 50% of the private open space area.

The shadow diagrams illustrate that there will be a minor reduction in solar access to the internal living areas of the dwelling at 20 Kembla Street on 21 June.

In terms of solar access to the rear private open space of 20 Kembla Street an analysis of the existing and proposed shadows has revealed that the existing private open space receives approximately 3 hours sunlight on 21 June to 50% of the rear yard. The proposed new building has been assessed to slightly reduce the solar access to the rear yard by 16.6% to approximately 41.66% or 2.5hrs, this is less than the 20% maximum reduction specified within the RDCP2011.

The existing shadows are being cast by the existing hall on the subject site (to be demolished) which has a height RL31.27 and is approximately 10.5m from the boundary. The proposed shadows are increased because the overall parapet height has been increased by approximately 2.25m to the top of the 1m safety balustrades and approximately 8.72m from the boundary. It is considered that lift overrun which rises to an overall height of 11.9m, is a relatively minor component of the non-compliance and its location (18m from the southern boundary) is not considered to contribute to this increase in overshadowing.

This reduction in solar access is considered justifiable for the following reasons.

- The proposed building does not significantly reduce the level of existing solar access to habitable areas within the dwelling – refer to Figure 3 below which includes an elevation shadow diagram of the adjoining property at 20 Kembla Street.
- The increase in overshadowing to the rear yard is less than the 20% maximum reduction specified within the RDCP2011.
- The roofline has been stepped from the boundary to provide greater setbacks to the upper levels from this side boundary.
- If it were not for the heritage item located on the site, the development could potentially be undertaken as complying development pursuant to State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017, a new school building could theoretically be built to a height of 22m within 10m of the boundary. The maximum height of this building has been assessed to be 11.9m at the lift overrun which is a relatively minor portion of the roof, and according to the complying development provisions, such a building could be constructed within 5m of the boundary. Furthermore, under the provisions of the aforementioned SEPP no floor space ratio limits apply for complying development. In such circumstances a considerably great shadow would be cast over adjoining development and deemed to be within acceptable limits by the complying development standards of the SEPP.
- At 8.72m the building setbacks provided to the upper levels of the proposed new school building to the southern boundary are greater than 5m which is permitted under the aforementioned SEPP.

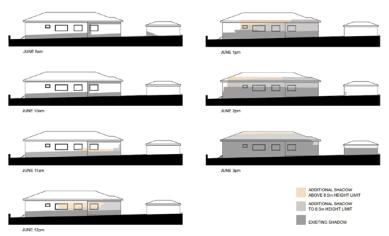


Figure 10 - Overshadowing plans in elevation on No. 20 Kembla Street at mid-winter

Assessment

The neighbouring property at 20 Kembla Street is located immediately to the south of the subject site. The two storey element of the proposed development is setback between 4.2m and 8.7m from the sites southern boundary, however will result in some additional overshadowing impacts to the windows located in the northern elevation and the private open space area of this adjoining residential site as shown in the submitted overshadowing diagrams.

The windows located in the northern elevation of No. 20 Kembla Street that will be impacted include an ensuite bathroom, lounge room, dining room and kitchen.

At 9am at mid-winter, the existing windows located in the northern elevation of the dwelling are in full sun, however the dwelling on No. 20 overshadows approximately 75% of its own rear yard.

The windows in the northern elevation of No. 20 remain in full sunlight until approximately 11am, when overshadowing impacts commence. Therefore, the windows located in the dwellings northern elevation will continue to obtain at least 2 hours sunlight at mid-winter.

At midday, the kitchen, lounge and dining room windows in the northern elevation are overshadowed. These windows are overshadowed by that part of the development that exceeds the maximum height limit. The key element resulting in the non-compliance is the parapet that was originally used as a balustrade for the roof terrace. This area of roof is no longer trafficable and therefore a condition recommends its deletion beyond the front 3 metres. This will reduce overshadowing impacts and will permit the windows to achieve additional sunlight. The proposed development will also impact approximately 50% of the primary area of private open space at this time.

After 1pm at mid-winter all windows located in the northern elevation of No. 20 will be in shadow of the proposed development, and impacts to the rear yard of No. 20 continue to increase.

The proposal will, subject to imposition of the recommended condition to delete part of the parapet, continue to allow the windows in the northern elevation of No. 20 Kembla Street to receive in excess of 2 hours, and it is expected close to 3 hours, direct sunlight at mid-winter and additional impacts to the rear yard are less than 20% as permitted by RDCP 2011. In addition, the overshadowing plans at

equinox demonstrate that the windows and private open space area of the dwelling will not be impacted by the proposal until just before 3pm at March / September. The proposed building provides a large southern side setback of between 4.2m and 8.72m for the two storey element of the building and, as noted by the applicant, the developable area of the site is constrained by the existing heritage item. Furthermore, the kitchen window is located within the rear open plan portion of the dwelling which obtains daylight via windows from three elevations.

Therefore, despite the non-compliance with the 3 hours solar access required to habitable windows and 50% of the rear private open space area, the proposal is considered to satisfy to provide a satisfactory design response that minimises impacts and meets the objectives of the control and are acceptable in this case.

4.4.5 Visual privacy

The application retains the existing church hall and proposes new buildings primarily fronting the Kembla Street frontage. The primary neighbour that may be impacted by overlooking is No. 20 Kembla Street, located immediately south of the site. Impacts to this property have been minimised by proposed side setbacks of between 4.2m and 8.8m from this southern side, combined with deletion of the trafficable roof over the basement entrance and reduction of the trafficable portion of the roof top terrace away from this southern side. A proposed condition requires provision of a privacy screen along the southern side of the planter box adjacent to the new 'Entry' area which leads into the new Foyer and existing auditorium to minimise overlooking toward the southern neighbour. The southern elevation contains one toilet window at ground floor level and a toilet window and two (2) classroom windows at first floor level. These windows are located behind proposed benches and privacy impacts to the adjoining residence at 20 Kembla Street is considered minimal due to the height and setback of the windows. The applicant's Noise Management Plan also commits to keeping the windows in the southern elevation closed during noisy operations. Subject to imposition of recommended conditions the proposal is considered to be acceptable in terms of visual privacy.

4.4.6 Noise Impact - Non-residential

The proposal includes the expansion of the existing school from 60 to 200 children. External play areas are provided at three (3) ground floor locations and at roof top level, and the driveway access is relocated to the sites southern boundary adjacent to No. 20 Kembla Street. Balconies to classrooms face toward Kembla Street and Hirst Street. Significant concerns have been raised by surrounding residents with regards to potential adverse noise impacts.

Control 3, Part 4.4.6 of RDCP 2011 requires that non-residential development "not adversely affect the amenity of adjacent residential development as a result of noise, hours of operation and/or service deliveries".

The applicant has submitted an amended Acoustic Report prepared by AECOM (dated 18 August 2016), a Noise Management Plan prepared by AECOM (dated 25 January 2018), a letter report regarding noise from vehicles accessing the site prepared by AECOM (dated 24 May 2018), and a Plan of Management prepared by CPS (dated August 2018).

The acoustic reports have considered the potential impacts of noise on the locality, including noise from the use of the external play areas (including use of the roof top area), noise impacts from the driveway adjacent to the residential cottage at No. 20 Kembla Road, and noise from mechanical plant and equipment.

The applicant has provided the following additional response with regards to noise impacts from the facility:

"Submitted with the DA was an acoustic report prepared by AECOM dated 9 September 2015. This report included an assessment of the existing noise environment by undertaking continuous measurements over the course of a week in March 2015 at two sample locations at the site.

In order for the proposal to be satisfactory when having regard to the established environmental noise criteria, a suite of recommendations have been included within the acoustic report covering all aspects of environmental noise emission. These include recommendations on noise emissions from plant, car-parking, road traffic, internal activities, and external activities (including the roof-top terrace).

The acoustic report also outlines noise control recommendations be incorporated into management procedures at the school, along with advice on complaint management.

Supplementary to the acoustic report, the applicant has prepared and submitted a detailed Noise Management Plan dated 28 January 2018. The noise management plan outlines in more detail the management strategies that will be implemented to mitigate noise emission to the surrounding environment, and proposes management practices/administrative measures to assist in reducing operational noise impact upon surrounding properties. The conclusions of the acoustic assessment outline that with the recommendations implemented, then it is unlikely that nearby residents will be adversely affected by noise from the proposal.

Having regard to the above, it is therefore considered the acoustic impact of the development on the existing residential amenity is acceptable.

As part of Council's correspondence dated 3 April 2018, it was requested that the acoustic consultant consider the potential noise impacts resulting from vehicles entering and leaving the site and provide a statement/comments that the proposed new driveway and vehicle noises entering and exiting of the premises will not impact on the surrounding neighbours.

Submitted as part of the additional information response is an updated acoustic report prepared by AECOM. The findings of this report are that the proposed development is capable of achieving consistency with the assessment criteria, therefore appropriating the proposed development in the context of the local area from a noise perspective".

Council's Environmental Health Team have assessed the submitted reports and found that the impacts from the proposal would be acceptable subject to imposition of relevant conditions of consent, including compliance with the Noise Management Plan.

The reports commit to the roof top area being used for 'passive play' only, and that this area would be supervised at a minimum of 1 staff member to 30 children. The reports find that the acoustic impacts from outdoor play areas would be reduced if the roof terrace is utilised as a result of lower student numbers in the ground floor play areas and noise mitigation provided by the balustrade of the terrace and the geometry of the building. An additional condition recommends restricting use of the roof top area to a maximum of 50 school children. Furthermore, a condition restricts use of the roof top area for the school to between 8:30am and 3:30pm and to between 10am and 6pm for church operations (with maximum 50 persons).

The key recommendations contained in the Acoustic Report and Noise Management Plan (NMP) are

as follows:

- Hours of the carpark gate / shutter will be minimised to secured hours only;
- Metal drainage grates must be mounted on resilient pads to reduce impact noise as vehicles pass over them.
- No amplified/ stereo/ music/ speakers/ assembly speeches are permitted in outdoor play areas.
- Outdoor play areas to be used for a maximum of 2 hours per school day.
- Outdoor play areas to be supervised by staff at all times.
- Roof terrace to be used for passive recreation only.
- The maximum number of students in the outdoor play areas will be 50 (north-east), 50 (central courtyard) and 100 (north-west);
- Louder activities must be directed to the central play area where feasible and reasonable;
- Parents and guardians will be informed of the importance of noise minimisation when entering the site, dropping off or picking up students;

The NMP commits to noise monitoring within the first six (6) months to assess compliance with the established noise emission criteria, and includes a complaints handling procedure.

The relevant noise conditions from original church approval (DA-1993/55, approved by the Land and Environment Court) have also been included in the consent, including the following:

All activity being conducted on the site to ensure that noise levels emitted from the site are no greater than 5dB(A) above background noise level measured at the boundary of the nearest residential property.

Noise from waste collection will be minimised, with waste collected from the Dowling Street frontage in accordance with the current operations. Deliveries will be by van only and will take place at basement level

An additional recommended condition requires that the Noise Management Plan, and the overall Plan of Management for the site, be reviewed within the first six (6) months of operation, updated where required and submitted to Council for approval. The review is to consider any complaints received.

Based on the above it is found that the proposed noise impacts from the site will be minimised in accordance with RDCP 2011 objectives and requirements.

4.5.2 Social Equity - Equitable Access

The proposal was accompanied by an Access Report prepared by Wall to Wall Design and Consulting. The proposal includes an accessible parking space at basement level, lift access to all levels and accessible toilet facilities. The report concludes that the proposed design is capable of complying with the relevant performance requirements of the BCA and the DDA (Access to Premises - Buildings) Standards. Relevant conditions are included in the consent, including compliance with the BCA. Therefore, the proposal is satisfactory in this regard.

4.6 Car Park Location and Design

The proposal includes the extension of the existing basement car park, relocation of the basement entry, continued use by the church and intensified use of the site by the school. The proposal also results in the loss of existing at-grade parking at the north-eastern corner of the site, including the ten (10) overflow parking spaces required by the original church approval.

The applicant has submitted an amended Transport and Parking Impact Assessment Review which includes detailed plans and operational procedures for both church and school operations to minimise

parking and traffic impacts in the local streets. The detailed plans included in the report show parking allocation for each use, line marking, signage, installation of kerb and speed humps, and other measures which aim to maximise use of the basement car park and minimise impacts to nearby residents. In addition, the plan has been prepared to maximise safety of children and users of the basement car park.

Proposed parking will be provided as follows:

Church Operations

The proposed basement, as amended, will provide forty-four (44) parking spaces (including one accessible space) and 10 overflow parking spaces for the church operations. This is a reduction of two (2) off-street parking spaces when compared to the existing church approval and, as a result, the applicant proposes a reduction to the maximum number of church patrons from 400 to 380.

A number of church members will be trained to manage on-site parking, including overflow parking once all parking in the basement is filled, in accordance with the Plan of Management. A recommended condition also requires that the Plan of Management be updated to include a requirement that the applicant supervise the parking of vehicles in accordance with Condition 49 of the original church approval, which reads as follows:

"The applicant to supervise the parking of vehicles on and in the vicinity of the site and to minimize the impact and use of vehicles of those attending the site".

Council's Engineers have assessed the proposal and found it to be acceptable, including the use of the aisles for overflow car parking. The Applicant's swept path analysis has demonstrated that vehicles can all access and leave the site in a forward direction, including those using the aisle for overflow parking.

School Operations

Parking for the proposed school will be provided as follows:

- eight (8) spaces for school staff;
- seventeen (17) spaces for drop-off / pick-up purposes, including one (1) accessible space;
 and
- one (1) shuttle drop-off / pick-up space.

During school times, two (2) parking spaces shall operate as dedicated 'turn-around' bays, and parking within the shuttle bus space will not be permitted. The proposed basement will be line-marked, sign-posted, and include kerb and speed humps to clearly identify parking spaces and maximise safety of children and other users of the basement car park. For example, the proposal includes line-marking safe paths for children to utilise to move from the drop-off spaces into the school building, and these paths are protected by bollards that are to be in place prior to commencement of school operations each day. In addition, an appropriately trained traffic controller will be situated at the pedestrian crossing at the basement level during before and after school times to maximise safety of children and permit vehicles to enter and leave the basement car park. An additional condition recommends that an appropriately trained staff member be present at the entry to the basement during peak times to guide parents into the basement car park.

The applicant, in their Plan of Management, has committed to:

 providing parents of students with an email and/or information sheet at the start of each term that details drop-off / pick-up arrangements, shuttle bus arrangements (Page 11);

 a shuttle service between local train stations and the subject site (to be booked in advance by parents).

Basement access gates are proposed to be kept open during all peak times to permit unrestricted access into and out of the basement. The applicant intends to close the basement access gate out of peak times to control access of unrelated persons to the site, particularly during school times. An intercom system is proposed to be installed at the basement entry to permit access for persons outside of peak times, including for deliveries to the site. A proposed condition requires that the Plan of Management be updated to address basement access operations.

Furthermore, the submitted Transport and Parking Impact Assessment Report also includes an additional parking demand survey undertaken on Tuesday 1 may 2018 between 8am and 9am which identified a total of 124 on-street spaces (including 116 spaces that were unrestricted during business hours) within local streets.

Council's Engineers have reviewed the amended report and plans for the basement level and have found the proposed arrangement for the site operations to be acceptable. While it is acknowledged that the proposed increase in student numbers will have an impact on available on-street parking, the proposal has been designed to minimise impacts by accommodating parking and drop-off / pick-up within the site. In addition, there is capacity within the local road network (particularly along the site frontages) to accommodate additional vehicle parking demand which will be short term, and primarily confined to school drop-off and pick-up times.

Therefore, while the proposal will result in some impacts to on-street parking, it is considered that impacts resulting from the school operations will be minimised and acceptable within the confines of the original approval and the requirements and objectives of RDCP 2011 subject to compliance with recommended conditions.

4.7 Air Conditioning and Communication Structures

Relevant conditions are included in the consent to ensure that impacts of any mechanical plant and/or equipment are minimised in accordance with the relevant standards and the applicant's acoustic report.

4.7 Waste Storage and Recycling Facilities

The applicant has submitted a Waste Management Plan with the proposal. Garbage bins are currently stored and collected from the Dowling Street frontage using a private contractor, and the applicant intends to continue with these existing arrangements. The proposal is acceptable in this regard.

S4.15(1)(a)(iv) - Provisions of regulations

The proposed development is not inconsistent with the relevant provisions of the *Environmental*

Planning and Assessment Regulation, 2000.

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

Potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls. The impacts that have not already been addressed are as follows

Intensification of the use of the site

The site is located within the R2 Low Density Residential zone and currently has approval to operate as a church with capacity for 400 patrons (7:00am and 10:00pm, seven days), and a school with capacity of 60 children from Kindergarten to Year 8 (8:30am - 3:30pm, Monday to Friday).

The proposed expansion of the school use, including construction of new classrooms and school buildings and an increase in student numbers to 200, results in an intensification of the use of this site in the R2 Low Density Residential zone, particularly during the weekdays while the church operations will continue to be at their maximum intensity during the weekends. Therefore the proposal will result in a development that will have a potential for 200 - 400 persons to be present at the site seven (7) days a week

The site is also located within 100m of the Athelstane Public School and Kinderoos Childcare Centre, and consideration must be given to these nearby operations when considering the acceptability of the propose intensified site operations.

This has been a key issue in the assessment of this proposal, and is an issue raised by local residents in their submissions who consider that the proposed intensification of the use of the site will result in an unacceptable level of amenity impacts.

The applicant's additional letter report prepared by CPS Planning (dated 6 June 2018) is the first time that the issue of intensification has been properly considered (see Annexure A of that report). In order to establish whether the proposal is actually an enlargement, expansion or intensification of the use of the site the applicant has provided a detailed analysis of approved uses and undertaken an assessment against the relevant Planning Principles established by the Land and Environment Court in Randall Pty Ltd v Leichhardt Council [2004] NSWLEC 277 as revised in Davies v Penrith City Council [2013] NSWLEC 1141 at [116] to [121].

The submission provides some clarity to the applicants position on the matter and reasonableness of intensification of the use of the site, and provides a proper framework for the assessing the potential impacts.

The applicant characterises the current intensity of site operations as follows:

- "The LEC approval permits 400 persons at any one time using the then proposed or existing church hall between 8.00am and 10.00pm Monday to Saturday. These uses can also include church related social activities, sporting activities, band practice, concerts, kids clubs and a library etc.
- The consents under DA-1992/55 and DA-2014/255 operate concurrently, meaning that a total of 460 people are permitted on-site at any one time. As such, any intensification of the permitted land uses must be assessed in the context of the current approved arrangements for the site being an increase in the total number of people from 460 to 600.
- It is important not to misconceive the current use of the site for the approved use of the site. It
 is evident the existing church is operating well within the intensity permitted under the LEC
 approval, as previously covered by FUSE in Table 1 of their letter to Council dated 1 February
 2018".

The applicant considers that, based on commitments made to reduce church patrons from 400 to 380,

to ensure that church and school operations are not carried out concurrently (e.g. the church operations will not be carried out between 8:30 and 3:30pm on school days), and subject to conditions and proper management in accordance with submitted management plans, that the proposal goes beyond a commensurate reduction in the site's current approved usage intensity by reducing the current number of persons on-site from a maximum of 460 to a maximum of 200 between 8:30am and 3:30pm on school days.

There is some disagreement about the applicant's characterisation of intensification, particularly the cumulative impacts and the ability for the church operation to provide activities for school students after school hours and intensify the church use beyond that anticipated by the Commission in the original approval. For example, if there were no school then it would be unlikely that the church would attract up to 200 people to the site during weekdays and/or to participate in church activities after school hours. Also, a larger school with a increased range and older age of students may permit a more diverse range of activities to be offered by the church before and after school hours - e.g school band, sports, kids club, and other uses that are permitted in accordance with Condition 9 of the existing church approval. These uses could be characterised as church related and could operate up to 10:00pm at night. It would be impossible for Council or the local community to reasonably distinguish between the uses, and it would be open for the church to characterise the use as church related despite it being offered to students that would otherwise not be in attendance at the site.

In addition, consideration is given to the fact that the initial school use for 60 children utilised the existing buildings and was considered a low intensity operation that was provided for within the existing church buildings. The applicant has indicated that the site was not operating at its capacity, and this may be the result of using buildings not designed for the school purpose. The proposal now involves redevelopment of the site to provide state of the art classrooms with break out spaces to permit a proper school operation. It is therefore reasonable to expect that the school will attract the maximum number of students to the site.

Therefore, to minimise potential impacts the applicant has also agreed to the following:

- (i) Limit the number of church patrons / persons attending the site on weekday evenings to a maximum of 100. This is a 280 person reduction from the potential 380 persons. It will be included in the Plan of Management for the site.
- (ii) Consolidate the two existing consents for the church and school operations into a single consent. Therefore, all operational conditions including hours of operation, noise requirements, parking and so on, will be contained within a single consent. This will assist the applicant, community and Council to understand, and ensure compliance with, the approved site operations.

The application has also been accompanied by a Noise Management Plan and a Plan of Management for the operation of both the church and school uses, and recommended conditions require the review of the Plan of Management and Noise Management Plan after six months of operations, and before nine months of operations. A second review will be required once the school reaches 90% capacity. The reviews will include noise monitoring in accordance with the submitted Noise Management Plan, and will require consideration of any complaints received. The reviews will require updates to be made to the Management Plans which must also be submitted to, and approved by, Council and then implemented during ongoing operations.

Based on the above, and consideration of other issues elsewhere in the report (e.g. traffic and parking), it is considered that the site is capable of operating at the proposed capacity. The site is, however,

considered to be at its maximum intensity for a site located within the R2 Low Density Residential zone and which contains an existing heritage item.

Safety and Security

Safer by Design principles of crime prevention through environmental design are incorporated into Rockdale's DCP and this aspect is included in the assessment of this proposal. The proposal includes appropriate open form fencing along boundaries, and basement access will be managed to ensure that on-site parking is while preventing unauthorised access to the site. The proposed development will provide an open relationship with Kembla Street to ensure passive surveillance to and from the site. The proposal is therefore considered acceptable in this regard.

Construction

The development will involve demolition, excavation and construction works in proximity to adjoining residences. Standard conditions are proposed regarding hours of construction, stabilising adjoining properties and other measures to minimise impacts to surrounding residents and the locality.

S4.15(1)(c) - Suitability of the site

The relevant matters pertaining to the suitability of the site for the proposed development have been considered in the assessment of the proposal. Additional conditions of consent are proposed to further minimise any impacts on neighbouring properties. There are no known major physical constraints, environmental impacts, natural hazards or exceptional circumstances that would hinder the suitability of the site for the proposed development.

S4.15(1)(d) - Public submissions

The development was notified in accordance with the provisions of Rockdale DCP 2011 on 8 September 2015 for a 14 day period and Council and 13 submissions were received from 11 individual / families objecting to the proposal. The amended application was notified on 14 March 2018 and 13 individual submissions were received. The issues raised in the submission are discussed below:

Issue 1: Parking – adverse impacts on availability of on-street parking for local residents, particularly in regards to:

- Reduction in on-site parking due to loss of 16 at above ground spaces (including the 10 overflow spaces required by the Land and Environment Court).
- Basement design will not be able to function adequately to accommodate the school use, and will result in student drop-offs and pick-ups being carried out on the street.
- Bus zone will reduce parking availability in surrounding streets
- Parents will park in driveways, which is currently an issue.
- People using the trains, Sydney Airport and other church uses in the area park in the local streets which causes impacts at present.

Comment: This matter has been addressed in detail in the assessment of Part 4.4.6 of Rockdale Development Control Plan (RDCP) 2011. As discussed, it is considered that the proposal as amended provides adequate, and safe, parking and drop-off space within the basement for school and church operations, subject to compliance with recommended conditions and the submitted Plan of Management (PoM). This includes the ten (10) overflow parking spaces required by the Land and environment Court for the church approval. The school has committed to utilising a minivan to collect

children from the local train stations, and on-street bus zones are not proposed. The applicant has committed to providing a copy of the PoM to parents and educating them on appropriate drop-off and pick-up protocol to minimise impacts to neighbouring properties, including not parking in driveways. Parking in front of driveways is a compliance matter and Council Rangers may need to be contacted in these cases. While some impacts will occur, the proposal is found to be acceptable in this regard. Refer to Part 4.4.6 of RDCP 2011 for further details.

Issue 2: Traffic impacts – adverse impacts resulting from increased traffic generation, particularly in regards to:

- The existing school already causes congestion and traffic problems, including double parking
 in Kembla Street, and the proposal will worsen the existing problem where police are routinely
 called to ensure the free flow of traffic. One submission included a photo of a vehicle double
 parked.
- Cumulative impacts from proximity of existing Athelstaine Public School and adjacent child
 care centre will result in unacceptable traffic impacts in the local streets including entry and
 exit points from Arncliffe which are already congested and unsafe.
- Nowhere for safe bus drop-off, truck delivery & garbage / skip bin removal;
- Buses from Athelstane Public School have double parked in Kembla Street with engines running. Where will buses for this school park?

Comment: These issues have been addressed previously in the assessment of *State Environmental Planning Policy (Infrastructure) 2007*. The proposal will result in additional traffic generation, however the impacts have been found to be acceptable subject to compliance with recommended conditions.

Issue 3: Noise Impacts resulting from the intensification of the use of the site, particularly in regards to:

- Additional use of the outdoor play areas, including play area in the Kembla Street setback;
- Use of the roof top level for outdoor play;
- Noise from balconies fronting Kembla Street & Hirst Street;
- The position and intensity of the use of the vehicle ramp to the basement car park, particularly resulting from the elevated crest level of the driveway
- Existing noise impacts from the church operations commencing at 8:00am on Sundays.

Comment: This matter has been addressed in response to Clause 4.4.6 of RDCP 2011. Noise impacts have been found to be acceptable subject to recommended conditions, including management of the site in accordance with the submitted Noise Management Plan (NMP) and Plan of Management.

Issue 4: Over-development of the site. The large block of land originally contained only an old weatherboard church hall. Subsequently the Auditorium / church for 400 people was approved with underground parking, and then the school for 60 pupils added.

Comment: Thorough consideration has been given to the issue of overdevelopment and intensification of the use of the site. It is considered that the proposal will result in a development that is at its maximum intensity. The proposal marginally exceeds Council's policies for Floor Space Ratio (FSR) and height. The applicant has reduced the maximum number of church patrons from 400 to 380, and committed to a maximum of 100 persons being present during the weekday evenings. The amended plans demonstrate that the proposal can provide adequate car parking within the site, and that the development will result in an acceptable built form in the streetscape. The proposal has been considered by Council's Heritage Officer who has found that the development will not result in adverse

amenity impacts to the existing heritage item. Further issues have also been considered previously in the report. The proposal is considered satisfactory subject to recommended conditions.

Issue 5: Intensification of the use of the site - This will result in unacceptable adverse impacts to neighbouring properties and the locality within the R2 Low Density Residential zone. If the application is approved to "increase to 200 pupils this would increase the capacity of use to 600 people at any given time", and operations would be carried out seven (7) days per week.

Comment: The residents' position has been given substantial consideration in the assessment as previously discussed in the report (Refer to previous discussion under Section 4.15(c) of the EP&A Act 1979). School and church operations will not be carried out at the same time, and the maximum number of church patrons has been reduced to 380. In addition, the applicant has agreed to a maximum of 100 persons being present at the site in the evenings on school days. On balance it has been found that the potential impacts of the proposed development have been minimised or can be satisfactorily managed to minimise impacts to surrounding residents and the locality. The applicant has submitted an operational Plan of Management and a Noise Management Plan that are required to be reviewed and amended following commencement of operations, and they have agreed to consolidate the existing church and school approvals with the current proposal so that there is a single consent that would manage all site operations. This will provide the applicant, community and Council with a clearer understanding of approved site operations. Based on the above, and the previous considerations in the report, the proposal is considered to be of an acceptable intensity for the site.

Issue 6: Development creep – use of the site continues to intensify. "What is going to happen when the 150 [primary school age] students get to high school age? Will they then want to increase the size and use of their buildings again?"

Comment: The applicant has advised Council officers that they do not intend to intensify the use of the site, however Council cannot prevent the applicant from lodging a further application which must be considered on its merit.

Issue 7: The proposal will result in an unsafe environment for road users, particularly pedestrians (including children and persons in a wheelchair), and children being dropped off in the basement car park.

Comment: The proposal includes a recommended condition requiring installation of a pedestrian island in Kembla Street east of Hirst Street to improve safety of pedestrians crossing at this intersection (including persons with prams and/or persons in wheel chairs). The local streets are already subject to 40km/h school day speed restrictions that were imposed under the previous application for the school. The proposal has been significantly amended to improve safety in the basement car park as discussed previously in the report, including provision of pedestrian paths that protected from vehicles by bollards. It is unlikely that the pedestrian movements would meet the criteria to allow installation of a pedestrian crossing, however this could be considered in future if required. Safety impacts associated with the development have also been addressed in the body of the report, and it is considered that the proposal would not result in an unsafe environment for motorists, pedestrians and/or persons utilising the basement car park subject to compliance with the recommended conditions.

Issue 8: Streetscape / Character - The proposed buildings do not fit with the existing character of the street and locality.

Comment: This matters has been addressed in response to Part 4.2 of RDCP 2011. The proposal is found to be acceptable in this regard.

Issue 9: Stormwater, flooding and overland flow impacts - One submitter advises that flooding has been a problem in the area for well of 95 years, including flooding of the dwelling and / or private open space areas of 18 Kembla Street and the street on numerous occasions. In addition, the existing drain can't cope with the intact of stormwater and water spurts out of it on occasion, and overland flows travel down Kembla Street from Hirst Street.

Comment: This issue has been considered in detail during the assessment. The driveway crest level has been raised to prevent flood waters entering the basement, the proposed development includes an on-site stormwater detention system that will retain stormwater and minimise impacts on existing flooding in the area. The system is generally in accordance with Council's guidelines and relevant conditions require that it be constructed and certified prior to issue of any Occupation Certificate. Relevant conditions require submission of a Flood Management Plan. Therefore, Council's Engineers are satisfied that the proposal will not result in any real change to the existing situation, and that the proposal will not be adversely impacted by stormwater from major storm events.

Issue 9: Adverse impacts to the existing heritage item

Comment: This matter has been addressed previously in response to Clause 5.10 of RLEP 2011. In summary, Council's Heritage Advisor has found that the proposed development will not have adverse impacts on the setting of the item and that the proposal will permit compliance with the relevant conditions imposed in the Land and Environment Court approval.

Issue 10: Privacy impacts, particularly from the outdoor terraces and the roof terrace

Comment: The outdoor terrace at the southern side ground level has been deleted and the trafficable portion of the roof terrace reduced in size and relocated to the northern side of the site. A recommended condition includes screening adjacent to the entrance terrace and

Issue 11: Overshadowing impacts of No. 20 Kembla Street (adjacent property)

Comment: This matters has been addressed previously in the assessment of Part 4.5.5 of RDCP 2011. The building has been stepped at the southern side and overshadowing impacts were found to be acceptable in the circumstances of this case.

Issue 12: Inadequate outdoor play area and classroom space for use by the additional school student numbers. Use of the entry foyer would appear to be inappropriate for use as a classroom, and studies recommend a minimum of 5m² per child as an adequate outdoor play area, requiring a total of 1,000m² of outdoor play area.

Comment: Policies exist for the minimum provision of outdoor and indoor space for child care centres, but not for schools. Therefore, this is a matter for the applicant and the Department of Education.

Issue 13: Inadequate space for physical education on site that will place addition demand on other local parks / sporting facilities and/or require buses to transport students to off-site recreation areas.

Several submissions object strongly to the increased use of Arncliffe Park for school sporting activities

Comment: Kingdom Culture Christian School currently has a regular Friday booking for the upper part of Arncliffe Park between 1pm and 3pm. Schools are currently not permitted to utilise the oval section of the park due to potential damage to the grass, however the oval will be resurfaced with synthetic turf in the near future and will then be available for use by schools and other users. On this basis, and based on discussions with Council's Community Services team, there is no reason to believe that the school use will result in over-utilisation of the park.

Issue 14: Inadequate toilet provision for the proposed number of children and staff.

Comment: The Building Code of Australia (BCA) includes requirements for toilet provision, and is based on the number of male students / employees and female students / employees and also includes deemed to satisfy provisions. Therefore this matter is dealt with at the Construction Certificate stage, however it is possible the number of toilets provided could comply with the BCA requirements.

Issue 15: Headlights from vehicles exiting the basement will impact the dwelling at 19 Kembla Street across the road.

Comment: The existing driveway is located opposite No. 21 Kembla Street. The proposed driveway is opposite No. 19 Kembla Street. Impacts from headlights during the night time hours will therefore move from No. 21 to No. 19. The intensification of the school use will have minimal additional impacts in terms of car headlights as operations are primarily between 8:30am and 3:30pm. There are no known measures that can be implemented within the site to minimise impacts, only measures within the street verge and/or property of No. 21 (e.g. landscape planting). Conditions are not able to be imposed to require such off-site works. The proposal will therefore result in impacts from headlights to No. 21 during night time hours, however overall impacts are not expected to increase when compared to the approved development. The proposal is therefore found to be acceptable and this is not adequate reason to refuse the development.

Issue 16: Visual Impact – the proposed buildings will block sight of the old home from Kembla Street which has always been part of the community.

Comment: The proposal retains the primary view of the heritage dwelling being from Dowling & Hirst Streets, and Council's Heritage Officer has not objected to the proposed development. The proposal will increase development on the site and block views of the dwelling from Kembla Street, however the proposal is generally in accordance with Council's policy requirements in terms of height and scale, and is found to be acceptable in this regard.

Issue 17: Additional structures will be erected at roof top level if this area is permitted to be used for outdoor play, including shade structures, mesh to prevent objects being thrown over the edge and other structures that would cause further shadow and be an eyesore.

Comment: The applicant intends to use the roof top area for passive recreation purposes in accordance with the submitted Plan of Management and Noise Management Plan. A minimum of 1 teacher per 30 students is proposed to monitor the children. A recommended condition restricts the erection of further structures at roof top level, including mesh and shade structures (including temporary

structures). Therefore it is considered that no additional structures will be erected at the roof top level to increase the height / scale of the proposed development.

Issue 18: Litter - currently residents have to collect rubbish on a daily basis

Comment: The applicant has prepared an operational Plan of Management (PoM) for the site. A condition has been proposed requiring that the PoM be updated to include collection of litter around the street in front of their site.

Issue 19: Property values will be adversely impacted

Comment: The matter of devaluation is not a consideration for Council in the assessment of a development application against the provisions of S79C of the Environmental Planning & Assessment Act, 1979.

S4.15(1)(e) - Public interest

The proposal has been assessed against the relevant planning policies applying to the site having regard to the objectives of the controls. As demonstrated in the assessment of the development application, the proposal will allow the development of the site in accordance with its environmental capacity. The proposal provides additional places for school students and does not create unacceptable impacts on surrounding properties. As such it is considered that the development application is in the public interest.

S7.12 Fixed development consent levies

Section 94A of the Environmental Planning and Assessment Act 1979 (as amended) applies to the proposal. In this regard, a standard condition of development consent has been imposed in respect to a levy applied under this section.

Schedule 1 - Draft Conditions of consent

General Conditions

following conditions.

The following conditions restrict the work to the detail provided in the Development Application and are to ensure that the development is complete.

- 1. The term of this consent is limited to a period of five (5) years from the date of approval. The consent will lapse if the development does not commence within this time.
- The development must be implemented substantially in accordance with the plans listed below, the application form and on any supporting information received with the application, except as may be amended in red on the attached plans and by the



DA001 (Rev B)	Fuse	-	19/08/15
Site Plan	Architecture		
DA002 (Rev B)	Fuse	30/05/18	08/06/18
Material Board	Architecture		
DA111 (Rev B)	Fuse	14/08/15	19/08/15
Demolition -	Architecture		
Basement			
DA112 (Rev B)	Fuse	14/08/15	19/08/15
Demolition – Ground	Architecture		
Floor			
DA113 (Rev B)	Fuse	14/08/15	19/08/15
Demolition – First	Architecture	1 1/00/10	10,00,10
Floor	, a si incostar o		
DA114 (Rev B)	Fuse	14/08/15	19/08/15
Demolition - Roof	Architecture	14700/10	10/00/10
DA-121 (Rev G)	Fuse	21/9/18	11/10/18
New - Basement	Architecture	21/3/10	11710/10
DA122 (Rev G)	Fuse	19/07/18	20/07/18
1 '	Architecture	19/01/10	20/01/10
DA223 (Rev B)	Fuse	01/02/18	08/02/18
New – First Floor	Architecture	01/02/16	06/02/16
	Fuse	30/05/18	08/06/18
DA124 (Rev D)		30/05/16	06/06/16
New – Roof	Architecture	20/05/40	00/00/40
DA203 (Rev C)	Fuse	30/05/18	08/06/18
Section – C	Architecture	00/05/40	00/00/40
DA204 (Rev D)	Fuse	30/05/18	08/06/18
Section – D	Architecture	00/05/40	00/00/40
DA205 (Rev D)	Fuse	30/05/18	08/06/18
Section – Driveway	Architecture		
Profile	_	20/25/40	20/20//2
DA206 (Rev A)	Fuse	30/05/18	08/06/18
Section - E	Architecture		
DA301 (Rev D)	Fuse	21/9/18	11/10/18
Elevation – East	Architecture		
DA302 (Rev C)	Fuse	30/05/18	08/06/18
Elevation – North	Architecture		
DA303 (Rev D)	Fuse	30/05/18	08/06/18
Elevation – West	Architecture		
DA304 (Rev C)	Fuse	30/05/18	08/06/18
Elevation – West	Architecture		
Internal			
DA305 (Rev C)	Fuse	30/05/18	08/06/18
Elevation - South	Architecture		
DA307 (Rev 01)	Fuse	21/9/18	11/10/18
Elevation - South	Architecture		
DA308 (Rev 01)	Fuse	21/9/18	11/10/18
Elevation - South	Architecture		

Existing Tree Plan	Fiona Robbe	July 2015	08/06/18
1	I IONA I TODDE	Duly 2015	00/00/10
Dwg No. DA-01			
Planting Schedule	Fiona Robbe	April 2018	08/06/18
Dwg No. DA-04 D			
Concept Plan 2 -	Fiona Robbe	April 2018	08/06/18
Roof			
Dwg No. DA-03 D			
Fencing Plan –	Fiona Robbe	Oct 2018	11/10/18
Plan No. DA-05			

- PAll new building work must be carried out in accordance with the provisions of the Building Code of Australia (BCA).
- 4.

 A Construction Certificate must be obtained from Council or an Accredited Certifier prior to any building work commencing.
- 5. PAll of the works required to be carried out under the conditions of this Consent being maintained at all times in good order and repair and to the satisfaction of Council. [Condition 3 of DA-1992/55]
- 6. Further alterations and/or additions to the subject building shall not be undertaken without first obtaining approval. This includes:
 - (i) the provision of a electricity substation (if required);
 - (ii) any changes to fencing and landscaping that would impact on the views and the heritage value of the heritage dwelling 'Mimosa' as determined in Conditions 9 and 10 of the Land and Environment Court approval (DA-1992/55) and as committed to in this application (refer to Heritage Letter Report prepared by Weir Phillips Heritage, dated 25 May 2018). This includes amendments to boundary fencing, installation of play equipment and landscape treatment along the north-western side of the site (Dowling Street & Hirst Street).
- 7. This application does not approve any signage. All signs being subject to a separate Development Application, unless permitted to be erected as 'exempt' or 'complying' development.
- 8. Poof Terrace
 - The roof top terrace shall not be enclosed at any time in future without prior development consent. In addition, no structures, other than those shown in the approved plans, may be constructed on the roof top terrace without prior development consent. This includes any shade structures, mesh netting, lighting, umbrellas and/or any other temporary or permanent structure.
- This approval is not to be construed as permission to erect any structure on or near a boundary contrary to the provisions of the Dividing Fences Act.
- 10. Excavation, filling of the site (with the exception of the area immediately under the building envelope), or construction of retaining walls are not permitted unless shown on the approved plans and authorised by a subsequent construction certificate.

Development specific conditions

The following conditions are specific to the Development Application proposal.

11. <u>Managements / Additional Information Required</u>
The following items must be addressed in plans and/or documentation submitted

with the Construction Certificate Application, and must be to the satisfaction of the Principal Certifier or Council (as specified):

- (a) Fencing Plans submitted with the construction certificate must comply with the approved plans listed in Condition 2, and the following:
 - (i) The proposed palisade boundary fence to Kembla Street must be stepped and have a maximum height of 2.0m at any point.
 - (ii) The Fencing Plan submitted by Fiona Robbe (DA-05, dated May 2018) must be consistent with the fencing shown in the architectural plans.
- (b) The driveway area being treated with a variation of paving to give a visual break to these areas with details of materials to be included in the amended architectural plans. [Condition 7 of DA-1993/55]
- (c) Removable and adjustable bollards shall be provided to protect the proposed pedestrian paths within the basement to the satisfaction of the Principal Certifying Authority.
- (d) Fire Boosters Any fire hydrant booster valves must be integrated within the development and enclosed in a cabinet to minimise visual impacts on the streetscape. The cabinet must be provided with appropriate locks and signage in accordance with AS2419.1.
- (e) Substation where a substation is required the proposed location must be subject to a s4.55 application. It must be provided in an location that does not adversely impact the value of the heritage item nor adversely impact the streetscape appearance.
- (f) Mechanical ventilation Any mechanical ventilation system for the basement car park, buildings and / or other elements of the development must comply in all respects with the requirements of Australian Standard 1668, Part 1 & 2, as well as the Acoustic Reports and Noise Management Plan submitted with this application. The vents for any system must be located within the roof top level and must be appropriately designed and screened from view.
- (g) Privacy screening to a minimum height of 1.8m to be provided along the southern side of the ground level planter box that is located to the "Entry" area of the approved ground floor plan to minimise privacy impacts to the adjoining residence at 20 Kembla Street. Such privacy screening to be installed prior to issue of the Occupation Certificate and maintained for the lifetime of the development.
- (h) If an access gate is required from the trafficable section of the roof terrace to maintain the existing airconditioning plant, the gate must be locked and only used for maintenance purposes, to ensure access to the non-trafficable area cannot be obtained school children and users of the roof terrace area.
- (i) Deletion of the building parapet for that part of the buildings southern elevation located beyond 3m from the front setback of the site (i.e. the first 3m of the parapet as measured from the front elevation in a westerly direction to be retained). A safety barrier / fence / balustrade with a maximum height of 1m may be erected, if required to ensure safety of persons maintaining the roof top and/or plant provided at roof top level, however this structure must be located at least 1m north of the buildings southern edge. This requirement is to minimise overshadowing impacts to No. 20 Kembla Street.
- 12. <u>Poperational Management</u>
 Operations at the site must be undertaken in accordance with the submitted Plan of

Management dated August 2018 (Version 4.0), received by Council on 27 August 2018, as amended in accordance with the requirements of Condition 64 of this consent. In particular, the site must comply with the following key operational requirements:

- (a) Hours of operation
 - (i) Church Hours of operation to be restricted as follows: [Condition 8 of DA-1993/55, as modified by this consent DA-2016/68]
 - (A) 8:00am 10:00pm, seven days, with all non-residents having left the site or the vicinity of the site by 10:00pm except visitors to the pastor's residence [Condition 8 of DA-1993/55];
 - (B) Notwithstanding (A) above:
 - (1) The school and church uses must not be carried out concurrently at any time.
 - (2) Noise Generating Activities permitted only between 10:00am - 10:00pm, e.g. bands, music and singing [Condition 44 of DA-1993/55];
 - (3) No more than two services on Sundays [Condition 43 of DA-1993/55].
 - (4) For church operations, the existing Auditorium, existing dwelling and classrooms / studio rooms not being used concurrently [Condition 44 of DA-1993/55, as modified];
 - (ii) School hours of operation restricted to between the following hours:
 - (A) 8:30am and 3:30pm, Mondays to Fridays, with no operations on Saturdays, Sundays and Public Holidays.
 - (B) Parent Teacher Nights Maximum two (2) times per year outside of standard school hours, but no later than 10:00pm.
 - (C) Presentation Nights Maximum four (4) times per calendar year (one per school term), but not later than 10:00pm.
 - (iii) Roof Terrace Restricted to passive play associated with the approved school use only for a maximum of 2 hours between 8:30am and 3:30pm on school days in accordance with the submitted Noise Management Plan.
- (b) <u>Capacity</u> the maximum number of persons attending the site for each use is restricted as follows:
 - (i) Church Seating and the number of persons permitted within the proposed and existing buildings being limited to a total of 380 persons at any one time [Condition 42 of DA-1993/55, as modified by this consent].
 - (ii) School
 - (A) Maximum 200 students, including 150 students of primary school age (Kindergarten to Year 6) and fifty (50) students of high school age;
 - (B) Maximum 10 teaching / support staff.
- (c) Waste Collection / Deliveries
 - (i) Waste collection and/or deliveries must be undertaken between 7:00am and 6:00pm Monday to Friday, with no deliveries and/or waste collection on weekends or public holidays.

- (d) No public use / commercial hire of premises -
 - (i) The church, church hall, residence and all school buildings not to be let out for any commercial purpose [Condition 47 of DA-1993/55, as modified]:
 - (ii) The facilities contained on Number 19 Dowling Street must not hired out to the general public [Condition 43 of DA-1993/55];
- (e) Incidental Uses to Church Operations -
 - (i) No use which is not ordinarily incidental or subsidiary to the church use being permitted without prior consent of the Council, and within the approved hours of operation detailed in (a)(ii) above, other than [Condition 46 of DA-1993/55]:

 - * social activities; * office/study/counselling area;
 - * Church band practice; * Church concert;
 - * toilets.
 - (ii) Before and after school care is not ordinarily incidental or subsidiary to the church use and must not be provided by the church operation. Separate development approval is required for school related uses after 3:30pm on Mondays to Fridays and/or on weekends with the exception of parent teacher nights.
- 13.

 * Car Parking Provision and Ongoing Management
 - (i) Car parking must be provided and carried out in accordance with:
 - (a) the approved plans listed in Condition 2,
 - (b) the approved Transport and Parking Impact Assessment Review (including attached plans), and
 - (c) the approved Plan of Management.
 - (ii) Car parking and basement access shall be provided and carried out in accordance with the following key requirements:
 - (a) Church Operations A total of 44 car parking spaces (including one accessible space) and ten (10) overflow parking spaces must be made available for use by church patrons in accordance with the approved plans.
 - (b) School Operations Parking for the school will be provided as follows:
 - (i) eight (8) spaces for school staff;
 - (ii) seventeen (17) spaces for drop-off / pick-up purposes, including one (1) accessible space; and
 - (iii) one (1) shuttle drop-off / pick-up space
 - (c) Basement security door / shutter
 - The basement carpark security door / shutter must be open for use by visitors / patrons to the site during peak times to ensure unrestricted access to car parking during key site operations. The basement carpark must be secured by way of a

locked gate or door at all times outside of the approved operating times, and may be closed outside of peak times for the church and school for security purposes.

- (ii) The basement security door / shutter must, at minimum, be open during the following times:
 - (A) between 8:00am and 9:30am and 2:30 4:00pm on school days;
 - (B) from 8:00am until end of services on Sundays;
 - (C) at least 30 minutes prior to, and at least 30 minutes after the start and finish times of major events.
- (d) An intercom system must be provided at the entry to the basement car park to permit access to the car park outside of peak times. The intercom system must be installed prior to issue of any Occupation Certificate, and maintained in working order at all times.
- (e) Parking spaces shall not be enclosed without further approval of Council. The enclosure of car spaces is not permitted unless the enclosure complies with the design requirements of AS2890.1.

14. PNoise Management & Minimisation



- (a) Adopt and implement all recommendations contained in the acoustic report prepared by AECOM Australia Pty Ltd for KCCS – Development Application - 19 Dowling Street Arncliffe Doc No. 60318564-ARPT02.04 dated the 18 August 2016.
- (b) Compliance with the submitted Noise Management Plan prepared by AECOM Australia Pty Ltd (dated 25 January 2018, except as amended and approved by Council) at all times, particularly with regards to the following:
 - (i) No amplified music / assembly speeches permitted in outdoor areas;
 - (ii) Outdoor play areas to be used for a maximum of 2 hours per day;
 - (iii) Roof terrace to be used for passive recreation only;
 - (iv) Outdoor play areas to be monitored at all times with a minimum of 1 staff member to 30 children.
- (c) Compliance with the Plan of Management, prepared by CPS, dated August 2018 (as amended and approved by Council);
- (d) The roof terrace being used for school purposes only, unless separate approval is obtained.
- (e) All activity being conducted on the site to ensure that noise levels emitted from the site are no greater than 5dB(A) above background noise level measured at the boundary of the nearest residential property [Condition 4 of DA-1993/55, approved by the Land and Environment Court].
- (f) No amplified/ stereo/music/ speakers/ assembly speeches are permitted in all outdoor play areas.
- (g) The use of the premises, building services, equipment, machinery and, ancillary fittings shall not give rise to an "offensive noise" as defined under the provisions of the Protection of the Environment Operations Act, 1997.
- (h) The use of mechanical plant including air conditioners, fans, compressors, condensers, freezers, swimming pool or spa pumps (whether commercial or domestic) shall not cause sound pressure levels in excess of the criteria given

in the NSW Industrial Noise Policy - 2000.

- (i) Noise Monitoring & Modifications to NMP
 - (A) Noise Monitoring to be carried out in accordance with the Noise Management Plan listed in (b) above. Monitoring also to be carried out at 20 Kembla Street, and to include consideration of (a) to (h) above, at the following occasions:
 - (i) after four (4) months of the commencement of operations and within the first six (6) months of operation
 - (ii) within three (3) months of the school reaching 85% capacity.
 - (B) Within two (2) months of completion of the noise monitoring required by (i)(A) above, the Noise Management Plan (NMP) listed in (b) above must be updated and submitted to Council's Director of City Futures. The amended plan must be approved by Council and implemented. The amended plan is to:
 - A. include any required amendments to ensure compliance with the NMP and Acoustic Report listed in (a) above;
 - B. updated to include reference to relevant conditions of this consent;
 - address complaints received from neighbouring property owners;

15. Praffic Refuge Island

Prior to issue of any Construction Certificate, a detailed design must be submitted to, and approved by, the Local Traffic Committee for the traffic refuge island required by the Local Traffic Development Advisory Committee. The Committee identified the need for a traffic refuge island and associated works in Kembla Street east of Hirst Street.

The approved traffic refuge island and associated works shall be constructed prior to issue of any Occupation Certificate at no cost to council.

A permit is required to be approved by council prior to the works being undertaken.

16. Trees

- (a) The Canary Island Date Palm identified as Tree 1 in the Existing Tree Plan prepared by Fiona Robbe Landscape Architecture dated July 2015 may be transplanted on site as indicated in the Existing Tree Plan. Transplanting of the palm shall be undertaken by a specialist Tree Transplanting Contractor.
- (b) Trees numbered 4, 7, 8, and 25 in the Existing Tree Plan and the Fig (Tree 23) growing in the fork of Tree No.22 may be removed.
- (c) No other trees located within the site, adjoining properties or Council's nature strip shall be removed or pruned without the prior written consent of Council in the form of a Permit issued under Council's Development Control Plan 2011.
- (d) Where drainage or paving works are proposed to be constructed in the area below the dripline of trees, the proposed works and construction methods must not damage the tree. Where either the trees or works were not shown in detail on the approved plans, then Council approval must be obtained by contacting Council's Tree Management Officer.
- (e) Underground Services such as pipelines or cables to be located close to trees, must be installed by boring or by such other method that will not damage the tree rather than open trench excavation. The construction method

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- must be approved by Council's Tree Management Officer.
- (f) Existing soil levels within the drip line of trees to be retained shall not be altered without reference to Council's Tree Management Officer.
- (g) Building materials, site residue, machinery and building equipment shall not be placed or stored under the dripline of trees required to be retained.
- (h) Prior to the commencement of work, Tree Protection Zones shall be established in accordance with AS4970-2009 (Protection of trees on Development Sites) with protective fences at least 1.8 metres high erected outside the drip lines where possible around each tree or group of trees which are required to be retained. The protective fences shall consist of chain wire mesh temporary fence panels securely mounted and braced to prevent movement, shall be in place prior to the commencement of any work on site and shall remain until the completion of all building and hard landscape construction. Excavations for services, waste bins, storage of materials and equipment, site residue, site sheds, vehicle access or cleaning of tools and equipment are not permitted with the Tree Protection Zones at any time.
- (i) Prior to the commencement of any work on site, a sign shall be placed in a prominent position on each protective fence identifying the area as a Tree Protection Zone and prohibiting vehicle access, waste bins, storage of materials and equipment, site residue and excavations within the fenced off area.
- 17. Plan of Management Implementation and Review
 - (a) The site must be operated in accordance with the approved Plan of Management at all times.
 - (b) The Plan of Management, as amended in accordance with Condition 64, must be reviewed after six (6) months of commencement of operations and before nine (9) months from commencement of operations.
 - (c) Within one (1) month of completion of the review required by (a) above, the Plan of Management must be updated and submitted to, and approved by, Council's Director of City Futures. The amended plan is to consider, at minimum:
 - include any required amendments to ensure compliance with the NMP and Acoustic Report listed in (a) above;
 - (ii) updated to include reference to relevant conditions of this consent;
 - (iii) address complaints received from neighbouring property owners;

To maximise security in and around the development the following shall be incorporated into the development. Details for the following are to be approved by the Principal Certifying Authority prior to the issue of the Construction Certificate, implemented prior to issue of the Occupation Certificate, and maintained for the lifetime of the development:

- Monitored CCTV facilities shall be implemented throughout the development.
 Areas of focus include the basement car park (including entry and exits),
 main entry areas to the development and garbage/storage areas.
- b) A lighting maintenance policy shall be established for the development. Lighting shall be designed to the Australian and New Zealand Lighting Standards. Australia and New Zealand Lighting Standard 1158.1 -Pedestrian, requires lighting engineers and designers to consider crime risk and fear when selecting lamps and lighting levels.

- Security mirrors shall be installed within corridors and on blind corners to enable users to see around blind corners.
- d) Graffiti resistant materials shall be used to ground level external surfaces.
- Intercom facilities shall be installed at all vehicular and pedestrian entry/exit points to enable residents to communicate and identify with people prior to admitting them to the development.
- 19. The existing and future owners (Registered Proprietor) of the property will be responsible for the operation and maintenance of the detention system. The registered proprietor will:
 - (i) permit stormwater to be temporarily detained by the system;
 - (ii) keep the system clean and free of silt, rubbish and debris;
 - (iii) maintain, renew and repair the whole or parts of the system so that it functions in a safe and efficient manner, and in doing so complete the same within the time and in the manner specified in written notice issued by the Council;
 - (iv) carry out the matters referred to in paragraphs (ii) and (iii) at the proprietor's expense;
 - not make any alterations to the system or elements thereof without prior consent in writing of the Council;
 - (vi) permit the Council or its authorised agents from time to time upon giving reasonable notice (but at any time and without notice in the case of emergency) to enter and inspect the land for compliance with the requirements of this clause;
 - (vii) comply with the terms of any written notice issued by the Council in respect to the requirements of this clause within the time stated in the notice.
- 20. <u>Properties of the Properties of the Propert</u>

Temporary dewatering of the site to construct the subsurface structure is not permitted.

21. <u>Premises</u>

All existing and proposed lights shall comply with the Australian Standard AS4282 - 1997 "Control of the Obtrusive Effects of Outdoor Lighting". In this regard, the lighting of the premises shall be directed so as not to cause nuisance to the owners or occupiers of adjacent/adjoining premises or to motorists on adjoining or nearby roads.

- 22. <u>Properties of the English Properties of</u>
 - (a) The approved completed landscape works shall be maintained for a period not less than 12 months.
 - (b) On completion of the maintenance period, a Landscape Architect shall provide a report to the certifying authority (with a copy provided to Council if Council is not the principal certifying authority) stating the landscape maintenance has been carried out in accordance with approved landscape plans and designated specifications before release of the nominated landscape bond.

The approved landscape plans must be updated prior to issue of the Construction Certificate to address the following matters:

(1) Planter pots shall be replaced with built in planter boxes.

- (2) Screen hedge along south-eastern boundary adjacent of 20 Dowling Street shall be planted with advanced shade tolerant specimens. Minimum pot size supplied shall be 45 Litres to ensure growth of shrubs between fence and development, where sun access is limited.
- (3) Stormwater and drainage systems are not to be located in, or under those areas shown as landscaped beds, or where existing or proposed trees are located.
- (4) Planter boxes constructed over a concrete slab shall be built in accordance with the following requirements:
 - (a) Ensure soil depths and dimensions in accordance with Council's DCP allowing a minimum soil depth of 800mm and 1000mm wide to allow screen planting. The base of the planter must be screeded to ensure drainage to a piped internal drainage outlet of minimum diameter 90mm, with no low points elsewhere in the planter. There are to be no external weep holes.
 - (b) A concrete hob or haunch shall be constructed at the internal join between the sides and base of the planter to contain drainage to within the planter.
 - (c) Planters are to be fully waterproofed and sealed internally with a proprietary sealing agent and applied by a qualified and experienced tradesman to eliminate water seepage and staining of the external face of the planter. All internal sealed finishes are to be sound and installed to manufacturer's directions prior to backfilling with soil. An inspection of the waterproofing and sealing of edges is required by the Certifier prior to backfilling with soil.
 - (d) Drainage cell must be supplied to the base and sides of the planter to minimize damage to the waterproof seal during backfilling and facilitate drainage. Apply a proprietary brand filter fabric and backfill with an imported lightweight soil suitable for planter boxes compliant with AS 4419 and AS 3743. Install drip irrigation including to lawns.
 - (e) Finish externally with a suitable paint, render or tile to co-ordinate with the colour schemes and finishes of the building.
 - (f) Planter boxes shall be fully automatic irrigated. Irrigation system shall be connected to rainwater tank as a water sensitive urban design principle.
- (5) Plant species selection shall provide acoustic and visual privacy. Leaves shall be small and dense, to reach a minimum of 1.8 meters from terrace RL. Some recommended screen plants for this location are: Callistemon viminalis Better John, Red Alert, Captain Cook, Metrosideros excelsa Lemon Twist, Westringia Ozbreed, Rhaphiolepis indica.

Prior to issue of the construction certificate

The following conditions must be completed prior to the issue of the Construction Certificate.

- 24. The following fees shall be paid to Council prior to the issue of a Construction Certificate. If payment is made after the end of the financial year, the amount shall be adjusted in accordance with Council's adopted fees and charges.
 - i. A Footpath Reserve Restoration Deposit of \$70,996.00. This is to cover

repair of any damages, or other works to be done by Council. This includes construction, removal, or repair as required to: kerb and guttering, existing or new driveways; paved areas and concrete footpaths. The deposit may be lodged with Council in the form of a Bank Guarantee (Any proposed Bank Guarantee must not have an expiry date). The deposit will not be returned by Council until works are completed and all damage is restored and all specified works are completed by Council.

- ii. An environmental enforcement fee of 0.25% of the cost of the works.
- iii. A Soil and Water Management Sign of \$19.00.
- 25. For work costing \$25,000 or more, a Long Service Leave Levy shall be paid. For further information please contact the Long Service Payments Corporation on their Helpline 13 1441.
- 26. An application for Driveway Works (Public Domain Construction Vehicle Entrance/Driveway Application) / Frontage Works (Public Domain Frontage Works Construction Application) shall be made to Council's Customer Service Centre prior to issue of the Construction Certificate. All boundary frontage works, egress paths, driveways and fences shall comply with the approval. A fee is payable to Council. If payment is made after the end of the financial year, the amount shall be adjusted in accordance with Council's adopted fees and charges.
- - Where the proposed cost of carrying out the development is less than \$1,000,000, a cost summary report prepared and certified by a building industry professional, or
 - ii. Where the proposed cost of carrying out the development is \$1,000,000 or more, a detailed cost report prepared and certified by a quantity surveyor registered with the Australian Institute of Quantity Surveyors or a person who can demonstrate equivalent qualifications. This report is to be prepared in the form specified in Rockdale Section 94A Development Contributions Plan 2008 and the costs must be determined in accordance with clause 25J of the Environmental Planning and Assessment Regulation 2000.

Note:

- 1. Council may review the costs contained in the report and may seek the services of an independent person to verify them. In such a case, all costs associated with obtaining this advice will be at the expense of the applicant and no Part 4A certificate is to be issued until such time as these costs have been paid.
- 2. The proposed cost of carrying out the development excludes any part of the proposed development that is exempt from the section 94A levy by reason of a Ministerial direction or an exemption specified in Rockdale Section 94A Development Contributions Plan 2008. Where the applicant considers that the proposed development, or any part of it, is or should be exempt from the levy they may submit to Council, prior to approval of the required certificate, an application for exemption giving reasons and providing any necessary evidence for the exemption.

b. Where the proposed cost of carrying out the development, as specified in the cost summary report, the registered surveyor's detailed cost report or the independent review of costs obtained by Council (as the case may be), is more than \$100,000 a section 94A levy is to be paid to Council for the following amount:

- i. Where the proposed cost of carrying out the development is greater than \$100,000 but not more than \$200,000 0.5% of that cost, or
- Where the proposed cost of carrying out the development is greater than \$200,000 – 1% of that cost.

This levy is to be paid prior to the issue of the first Part 4A certificate required for the development.

If the levy is not paid within the same financial year as the date on which Council accepted the cost summary report, the registered surveyor's detailed cost report or the independent review of costs (as the case may be), the amount of the levy is to be adjusted at the time of actual payment to reflect changes in construction costs, in accordance with the provisions of Rockdale Section 94A Development Contributions Plan 2008.

Note: This requirement to pay the section 94A levy does not apply if the proposed cost of carrying out the development is \$100,000 or less or Council has confirmed in writing that the proposed development is exempt from the levy.

28. Parking & Basement Design

The plans submitted with the Construction Certificate must comply with the following requirements:

- (a) The off-street parking areas associated with the subject development shall be designed strictly in accordance with AS2890.1 and AS2890.6.
- (b) All pick up and drop off parking spaces must be 2.6m wide in accordance with AS2890.1:2004.
- (c) Removable and adjustable bollards shall be provided to protect the proposed pedestrian paths within the basement in accordance with the approved plans and the *Transport and Parking Impact Assessment Review* dated 14 August 2018
- (d) The overflow parking spaces shall be allocated in a way that they can feasibly manoeuvre safely in and out of the basement.
- (e) Bollard(s) must be installed by the Developer in the shared space located adjacent to each of the accessible car parking spaces to prevent use of these areas for car parking. Bollards are to be constructed from steel pipe minimum 100mm diameter, domed at the top and filled with concrete. They are to protrude 1100mm out of the ground, painted white, with reflectors attached. Future maintenance will be the responsibility of the owner and/or occupier.
- (f) Appropriate lighting shall be provided in the basement in accordance with RMS guidelines.
- 29. A certificate from a practising Structural Engineer shall be submitted prior to the issue of the construction certificate confirming that the existing building elements are structurally adequate to support all proposed additional loads.
- 30. <u>Sydney Water Approval</u>

 The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre to determine whether the development will affect Sydney Water's

sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. Plans will be appropriately stamped. For Quick Check agent details please contact Sydney Water.

The consent authority or a private accredited certifier must ensure that a Quick Check agent/Sydney Water has appropriately stamped the plans before issue of any Construction Certificate.

31. Prior to issue of the Construction Certificate, a longitudinal driveway profile shall be submitted to Principal Certifying Authority for assessment and approval. The profile shall start in the centre of the road and be along the critical edge (worst case) of the driveway. Gradients and transitions shall be in accordance with Council's Code. The profile shall be drawn to a scale of 1 to 20 and shall include all relevant levels, grades (%) and lengths.

32. Food Act Requirements

The proposed development shall be operated in compliance with the requirements of the Food Act 2003, Food Regulations 2004 and the Australian Standard AS 4674 – 2004 "Design, Construction and Fit out of Food Premises".

All hand basins shall be provided with soap and a towel dispenser for dispensing single use towels or other means of drying hands and arms which prevents the transfer of pathogenic micro-organisms to the hands or arms (air dryers as the only means of drying hands shall not be permitted). A receptacle for used towels shall be provided at the hand wash basin.

34. Stormwater Drainage

Prior to the issue of the Construction Certificate a detailed stormwater drainage management plan for the disposal of all roof-water, surface water and subsoil water from the site shall be submitted and approved by the Principal Certifier. The drainage management plan for the Construction Certificate shall comply with the requirements as detailed in the Rockdale Stormwater Technical guidelines.

The following amendments must be included in the design:

- (i) The design shall be generally in accordance with the approved plans;
- (ii) All stormwater surface pits must have a surface level higher than the top of kerb level. Basement pits must not connect directly to the kerb pit to eliminate potential basement inundation.
- (iii) The OSD system is to be designed as a two stage storage in accordance with section 6 of Rockdale Technical Specification Stormwater management.

35. <u>Priood Management Plan</u>

Prior to the issue of the Construction Certificate, a Flood Risk Management Plan, prepared by a qualified practicing Civil Engineer must be provided to the Principal Certifying Authority. The flood impacts on the site shall be assessed for the 100 year ARI and Probable Maximum Flood (PMF) storm events. The Plan must make provision for the following:

- (a) Recommendations on all precautions to minimise risk to personal safety of occupants and the risk of property damage for the total development.
- (b) Types of materials to be used to ensure the structural integrity of the building to immersion and impact of velocity and debris.
- (c) Flood warning signs/depth indicators for areas that may be inundated.

- (d) A flood evacuation strategy.
- (e) On site response plan to minimise flood damage, demonstrating that adequate storage areas are available for hazardous materials and valuable goods above the flood level.
- (f) Specify the architectural and structural plans upon which the above recommendations have been incorporated.
- 36.

 All surface runoff shall be directed through a propriety oil and sediment filtration system prior to discharge. Details of the pit type, location, performance and manufacturer's maintenance and cleaning requirements shall be submitted and approved prior to the issue of the construction certificate.

The owners/occupiers are to undertake all future maintenance and cleaning to the manufacturer's requirements.

- 37. Surrender of development consent
 - (a) The surrender of Development Consent No. 1992/55 approved by the Land and Environment Court (Noel Bell, Ridley Smith & Partners v Rockdale Municipal Council [1993] NSWLEC 103) and Development Consent No. 2014/295 must be undertaken prior to the issue of a Construction Certificate pursuant to Section 4.63 of the Environmental Planning and Assessment Act 1979 and Clause 97 of the Environmental Planning and Assessment Regulation 2000.
 - (b) Details demonstrating compliance with the requirements of this condition must be submitted to the satisfaction of the Principal Certifier prior to the issue of any Construction Certificate.

Prior to commencement of works

The following conditions must be completed prior to the commencement of works.

- - (a) Prior to any development being carried out, the approved plans must be submitted to Ausgrid's local customer service office for approval to determine whether the development will affect Ausgrid's network or easements and to determine whether an electricity substation is required, including written confirmation of Ausgrid's requirements for installation. (Note: if a substation is required and cannot be provided in the location shown in the approved plans, a Section 96 Application will be required for the amended location).
 - (b) The development must comply with both the Reference Levels and the precautionary requirements of the Draft Radiation Protection Standard for Exposure Limits to Electric and Magnetic Fields 0 Hz – 3 kHz (ARPANSA, 2006), for development in proximity to overhead power lines.
 - (c) The applicant must check the location of underground cables by using Dial Before You Dig and comply with the requirements of NS156: Working Near or Around Underground Cables (Ausgrid, 2010).
- 39. 🏲 Telstra

Written confirmation from Telstra that they have agreed to the proposed works must be submitted to the Principal Certifying Authority prior to the issue of a Construction Certificate or any works commencing, whichever occurs first; and the arrangements and costs associated with any adjustment to telecommunications infrastructure shall be borne in full by the applicant / developer.

40. <u>Poliapidation Survey</u>

A dilapidation survey shall be undertaken of all properties and/or Council infrastructure, including but not limited to all footpaths, kerb and gutter, stormwater inlet pits, and road carriageway pavements, in the vicinity which could be potentially affected by the construction of this development. Any damage caused to other properties during construction shall be rectified. A copy of the dilapidation survey and an insurance policy that covers the cost of any rectification works shall be submitted to the Accredited Certifier (AC) or Council prior to Commencement of Works. The insurance cover shall be a minimum of \$10 million.

41. Soil and Water Management Plan

A Soil and Water Management Plan shall be prepared. The Plan must include details of the proposed erosion and sediment controls to be installed on the building site. A copy of the Soil and Water Management Plan must be kept on-site at all times and made available on request.

Soil and sedimentation controls are to be put in place prior to commencement of any work on site. The controls are to be maintained in effective working order during construction.

Council's warning sign for soil and water management must be displayed on the most prominent point on the building site, visible to both the street and site workers. The sign shall be erected prior to commencement of works and shall be displayed throughout construction.

42. ** A Construction Management Plan (CMP) shall be prepared in accordance with the requirements of all relevant regulatory approval bodies. Access to the site for construction purposes via Hirst Street and Dowling Street is not permitted.

Prior to the commencement of works the Certifying Authority shall be satisfied that the Construction Management Plan has obtained all relevant regulatory approvals. The Construction Management Plan shall be implemented during demolition, excavation and construction.

Prior to the issue of the relevant Construction Certificate, a Construction Traffic Management Plan (TMP) prepared by a suitably qualified person shall be submitted to and approved by the Certifying Authority. The Plan shall address, but not be limited to, the following matters:

- (a) ingress and egress of vehicles to the site;
- (b) loading and unloading, including construction zones;
- (c) predicted traffic volumes, types and routes; and
- (d) pedestrian and traffic management methods.

Copies of the CMP and TMP shall be submitted to Council.

43. Vibration monitoring equipment must be installed and maintained, under the supervision of a professional engineer with expertise and experience in geotechnical engineering, between any potential source of vibration and any building identified by the professional engineer as being potentially at risk of movement or damage from settlement and/or vibration during the excavation and during the removal of any excavated material from the land being developed.

If vibration monitoring equipment detects any vibration at the level of the footings of any adjacent building exceeding the peak particle velocity adopted by the professional engineer as the maximum acceptable peak particle velocity an audible

alarm must activate such that the principal contractor and any sub-contractor are easily alerted to the event.

Where any such alarm triggers all excavation works must cease immediately. Prior to the vibration monitoring equipment being reset by the professional engineer and any further work recommencing the event must be recorded and the cause of the event identified and documented by the professional engineer.

Where the event requires, in the opinion of the professional engineer, any change in work practices to ensure that vibration at the level of the footings of any adjacent building does not exceed the peak particle velocity adopted by the professional engineer as the maximum acceptable peak particle velocity these changes in work practices must be documented and a written direction given by the professional engineer to the principal contractor and any sub-contractor clearly setting out required work practice.

The principal contractor and any sub-contractor must comply with all work directions, verbal or written, given by the professional engineer.

A copy of any written direction required by this condition must be provided to the Principal Certifying Authority within 24 hours of any event.

Where there is any movement in foundations such that damaged is occasioned to any adjoining building or such that there is any removal of support to supported land the professional engineer, principal contractor and any sub-contractor responsible for such work must immediately cease all work, inform the owner of that supported land and take immediate action under the direction of the professional engineer to prevent any further damage and restore support to the supported land.

Note: Professional engineer has the same mean as in Clause A1.1 of the BCA. **Note**: Building has the same meaning as in section 4 of the Act i.e. "building includes part of a building and any structure or part of a structure".

Note: Supported land has the same meaning as in section 88K of the Conveyancing Act 1919.

- 44.

 A sign must be erected at the front boundary of the property clearly indicating the Development Approval Number, description of work, builder's name, licence number and house number before commencement of work. If owner/builder, the Owner/Builder Permit Number must be displayed.
- 45. Same A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:
 - i. stating that unauthorised entry to the work site is prohibited, and
 - ii. showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours.

 Any such sign is to be removed when the work has been completed.

 This condition does not apply to:
 - iii. building work carried out inside an existing building or
 - iv. building work carried out on premises that are to be occupied continuously (both during and outside working hours) while the work is being carried out.
- 46. Where it is necessary to import landfill material onto the site to fill the land to levels shown on the plans forming part of the consent, a certificate, prepared by a suitably qualified and experienced Contaminated Land Consultant, shall be submitted to Council being the Regulatory Authority prior to the commencement of

works, certifying that the imported fill is suitable for the land use.

47.

A hoarding or fence shall be erected between the work site and the public place when the work involved in the erection or demolition of a building:



- (i) is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or
- (ii) building involves the enclosure of a public place,

Where the development site adjoins a public thoroughfare, the common boundary between them must be fenced for its full length with a hoarding, unless, the least horizontal distance between the common boundary and the nearest part of the structure is greater than twice the height of the structure. The hoarding must be constructed of solid materials (chain wire or the like is not acceptable) to a height of not less than 1.8m adjacent to the thoroughfare.

Where a development site adjoins a public thoroughfare with a footpath alongside the common boundary then, in addition to the hoarding required above, the footpath must be covered by an overhead protective structure, type B Hoarding, and the facing facade protected by heavy duty scaffolding unless either:

- (i) the vertical height above footpath level of the structure being demolished is less than 4m; or
- (ii) the least horizontal distance between footpath and the nearest part of the structure is greater than half the height of the structure.

The overhead structure must consist of a horizontal platform of solid construction and vertical supports, and the platform must -

- (i) extend from the common boundary to 200mm from the edge of the carriageway for the full length of the boundary;
- (ii) have a clear height above the footpath of not less than 2.1m;
- (iii) terminate not less than 200mm from the edge of the carriageway (clearance to be left to prevent impact from passing vehicles) with a continuous solid upstand projecting not less than 0.5m above the platform surface; and
- (iv) together with its supports, be designed for a uniformly distributed live load of not less than 7 kPa

The 'B' Class hoarding is to be lit by fluorescent lamps with anti-vandalism protection grids.

Any such hoarding, fence or awning is to be removed when the work has been completed.

The principal contractor or owner builder must pay all fees and rent associated with the application and occupation and use of the road (footway) for required hoarding or overhead protection.

48. Toilet facilities must be available or provided at the work site before works begin and must be maintained until the works are completed at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site.

During demolition / excavation / construction

The following conditions must be complied with during demolition, excavation and or construction.

49.

A copy of the Construction Certificate and the approved plans and specifications must be kept on the site at all times and be available to Council

officers upon request.

- 50. Phours of construction shall be confined to between 7 am and 6.30 pm Mondays to Fridays, inclusive, and between 8 am and 3.30 pm Saturdays with no work being carried out on Sundays and all public holidays.
- 51.

 All waste generated on site shall be disposed of in accordance with the submitted Waste Management Plan.
- 52. PA Registered Surveyor's check survey certificate or compliance certificate shall be forwarded to the certifying authority detailing compliance with Council's approval at the following stage/s of construction:
 - After excavation work for the footings, but prior to pouring of concrete, showing the area of the land, building and boundary setbacks.
 - ii. Prior to construction of each floor level showing the area of the land, building and boundary setbacks and verifying that the building is being constructed at the approved level.
 - iii. Prior to fixing of roof cladding verifying the eave, gutter setback is not less than that approved and that the building has been constructed at the approved levels.
 - On completion of the building showing the area of the land, the position of the building and boundary setbacks and verifying that the building has been constructed at the approved levels.
 - v. On completion of the drainage works (comprising the drainage pipeline, pits, overland flow paths, on-site detention or retention system, and other relevant works) verifying that the drainage has been constructed to the approved levels, accompanied by a plan showing sizes and reduced levels of the elements that comprise the works.
- 53. All excavation and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards and guarded and protected to prevent them from being dangerous to life or property.

When excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building or an adjoining allotment of land, you shall:

- i. preserve and protect the building from damage and
- ii. underpin and support the building in an approved manner, if necessary and
- iii. give notice of intention to excavate below the level of the base of the footings of a building on an adjoining allotment of land to the owner at least 7 days prior to excavation and furnish particulars of the excavation to the owner of the building being erected or demolished.

Note: The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this conditions allotment of land includes a public road and any other public place.

Works shall not encroach onto or over adjoining properties, including retaining walls, fill material or other similar works. Soil shall not be lost from adjoining sites due to construction techniques employed on the subject site.

54. When soil conditions require it:

- retaining walls associated with the erection or demolition of a building or other approved methods of preventing movement of the soil shall be provided, and
- ii. adequate provision shall be made for drainage.
- 55. The sandstone kerb and gutter shall be retained and protected during construction. The following works are required:



- A footpath protection pad shall be constructed over Council's footpath at the point of entry onto the building site and extend over the kerb and gutter.
- ii. Any damaged sandstone kerb and gutter shall be replaced with sandstone of equal dimensions. Note: A stockpile of sandstone is kept at Council's Works Depot, 10 Rye Avenue, Bexley. Please phone Council's Work Depot on 9562 1670 to enquire whether any sandstone is currently available and to make arrangements for collection. If no sandstone kerbing is available from Council's Works Depot, sandstone shall be purchased from an accredited supplier.
- iii. Sandstone removed for the construction of the driveway is Council property and shall be taken to Council's Works Depot at 10 Rye Avenue, Bexley for stockpiling. Note: Only damaged or broken pieces may be discarded.
- iv. To protect the remaining section of sandstone kerb and gutter, a barricade of star pickets and parawebbing fencing or similar material shall be erected on a 600mm setback from the sandstone kerb. Note: Star pickets shall be painted either white or fluorescent in colour so they are visible to pedestrians at night.
- 56. ** All contractors shall comply with the following during all stages of demolition and construction:
 - A Waste Container on Public Road Reserve Permit must be obtained prior to the placement of any waste container or skip bin in the road reserve (i.e. road or footpath or nature strip). Where a waste container or skip bin is placed in the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
 - A Road Opening Permit must be obtained prior to any excavation in the road reserve (i.e. road or footpath or nature strip). Where excavation is carried out on the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
 - A Hoarding Permit must be obtained prior to the erection of any hoarding (Class A or Class B) in the road reserve (i.e. road or footpath or nature strip).
 Where a hoarding is erected in the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
 - A Crane Permit must be obtained from Council prior to the operation of any
 activity involving the swinging or hoisting of goods across or over any part of a
 public road by means of a lift, hoist or tackle projecting over the footway.
 Permits can be obtained from Council's Customer Service Centre.
 - A Permit to Dewater or Pump Out a site must be obtained prior to the

discharge of pumped water into the road reserve, which includes Council stormwater pits and the kerb and gutter. Permits can be obtained from Council's Customer Service Centre.

- 57. All demolition work shall be carried out in accordance with AS2601 2001:

 The Demolition of Structures and with the requirements of the WorkCover Authority of NSW
- 58. The following conditions are necessary to ensure minimal impacts during construction:
 - Building, demolition and construction works not to cause stormwater pollution and being carried out in accordance with Section 2.8 of Council's Stormwater Pollution Control Code 1993. Pollutants such as concrete slurry, clay and soil shall not be washed from vehicles onto roadways, footways or into the stormwater system. Drains, gutters, roadways and access ways shall be maintained free of sediment. Where required, gutters and roadways shall be swept regularly to maintain them free from sediment.
 - Stormwater from roof areas shall be linked via a temporary downpipe to an approved stormwater disposal system immediately after completion of the roof area.
 - All disturbed areas shall be stabilised against erosion within 14 days of completion, and prior to removal of sediment controls.
 - iv. Building and demolition operations such as brickcutting, washing tools or paint brushes, and mixing mortar shall not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.
 - v. Stockpiles are not permitted to be stored on Council property (including nature strip) unless prior approval has been granted. In addition stockpiles of topsoil, sand, aggregate, soil or other material shall be stored clear of any drainage line or easement, natural watercourse, kerb or road surface.
 - vi. Wind blown dust from stockpile and construction activities shall be minimised by one or more of the following methods:
 - a) spraying water in dry windy weather
 - b) cover stockpiles
 - c) fabric fences
 - vii. Access to the site shall be restricted to no more than two 3m driveways. Council's footpath shall be protected at all times. Within the site, provision of a minimum of 100mm coarse crushed rock is to be provided for a minimum length of 2 metres to remove mud from the tyres of construction vehicles.

An all weather drive system or a vehicle wheel wash, cattle grid, wheel shaker or other appropriate device, shall be installed prior to commencement of any site works or activities, to prevent mud and dirt leaving the site and being deposited on the street. Vehicular access is to be controlled so as to prevent tracking of sediment onto adjoining roadways, particularly during wet weather or when the site is muddy. Where any sediment is deposited on roadways it is to be removed by means other than washing and disposed of appropriately.

In addition builders / demolishers are required to erect a 1.5m high fence along the whole of the street alignment other than at the two openings. Such

- protection work, including fences, is to be constructed, positioned and maintained in a safe condition to the satisfaction of the Principal Certifying Authority, prior to the demolition of the existing structures and commencement of building operations.
- viii. Any noise generated during construction of the development shall not exceed limits specified in any relevant noise management policy prepared pursuant to the Protection of the Environment Operations Act, 1997 or exceed approved noise limits for the site.
- 59. Council's warning sign for soil and water management must be displayed on the most prominent point on the building site, visible to both the street and site workers. The sign must be displayed throughout construction. A copy of the sign is available from Council.

Prior to issue of occupation certificate or commencement of use

The following conditions must be complied with prior to issue of the Occupation Certificate or Commencement of Use.

- 60. PAN Occupation Certificate shall be obtained in relation to the approved works prior to any use or occupation of the building.
- 61. Pappropriate signage and tactile information indicating accessible facilities shall be provided at the main entrance directory, or wherever directional signage such as lifts or building directories or information is provided to those buildings where access and facilities for people with disabilities has been provided. Such signage shall have regard to the provisions of AS1428.1 and AS1428.2.
- 62. Tactile differentiation on floor surfaces indicating change of gradient shall be provided to those buildings where access and facilities for people with disabilities has been provided. This includes the external parts of the building, eg. access walkways and ramps. Such differentiation shall have regard to the provisions of AS1428.4.
- 63. Where Council's park/reserve is damaged as a result of building work or vehicular building traffic, this area shall be restored by Council at the applicant's expense. Repairs shall be completed prior to the issue of the Occupation Certificate.
- 64. Plan of Management Amended

 The submitted Plan of Management (PoM), dated August 2018, must be amended.

 The amended PoM must be submitted to, and approved by, Council's Director of City Futures prior to issue of any Occupation Certificate, including the following:
 - Reference to all relevant conditions of consent from the original church approval relating to number of services permitted on Sundays, restriction on noise generating activities, etc.;
 - (ii) Reference to relevant conditions of this consent (e.g. compliance with mechanical noise, etc.);
 - (iii) Commitment to a maximum of 100 of persons attending the site after school hours each school day (i.e. between 3:30pm and 10:00pm on school days);
 - (iv) Include a section for 'Waste Management';
 - (v) Include a section for litter / rubbish collection in the street immediately in front of the site;
 - (vi) Update the 'car parking management' section to include that the parking of vehicles must be supervised by suitably qualified staff / church / school

- members to ensure that the basement parking is utilised. This is to ensure that impacts to surrounding residents are minimised [Condition 49 of DA-1993/55, as amended by this consent].
- (vii) Provide a method for ensuring that people for each part of the Plan of Management know of its contents;
- (viii) Include a procedure for updating and changing the Plan of Management, including approval by Council and advertising any changes.
- 65. Solution Ground level surfaces are to be treated with anti-graffiti coating to minimise the potential of defacement. In addition, any graffiti evident on the exterior facades and visible from a public place shall be removed forthwith.
- 66. **The approved recommendations from the Flood Management Report shall be implemented prior to occupation.
- 67. <u>Properties of the English of th</u>
 - (a) All landscape works are to be carried out in accordance with the approved landscape plans. The landscaping is to be maintained to the approved standard at all times.
 - (b) A Landscape Architect shall provide a report to the certifying authority (with a copy provided to Council, if Council is not the principal certifying authority) stating that the landscape works have been carried out in accordance with the approved plans and documentation.
- 68. PAll works within the road reserve, which are subject to approval pursuant to Section 138 of the Roads Act 1993, shall be completed and accepted by council prior to issue of any Occupation Certificate.
- 69. <u>Prior to issue of any Occupation Certificate:</u>
 - (a) The width of the double driveway at the boundary shall be a maximum of 6 metres.
 - (b) The basement driveway ramp shall have a 2.2m height clearance in accordance with AS2890.1:2004.
 - (c) The driveway profile and crest level at the boundary shall be maintained in accordance with the approved plans, to reduce the risk of flood inundation.
 - (d) Line marking and signage of basement must be clear and maintained for the lifetime of the development, and shall include (at minimum):
 - Basement line marking, signage, speed humps and kerb to be carried out in accordance with the approved Signage and Linemarking Plan (refer to Condition 2);
 - (ii) Each parking bay to be clearly marked & signposted for 'church' and/or 'school' use.
 - (e) Bollards to be provided in accordance with the Plan of Management to ensure safe pedestrian movement in the basement.
 - (f) The forty four (44) off-street car spaces (including one accessible space and one shared shuttle bus / parking space) shall be provided in accordance with the submitted plan and shall be sealed and linemarked in accordance with the relevant Australian Standard.

The pavement of all car parking spaces, manoeuvring areas and internal driveways shall comply with Australian Standard AS3727 – Guide to

Residential Pavements.

The parking spaces shall be colour coded and clearly sign-posted / marked for the church and school uses as shown in the approved plans submitted by GTA Consultants and listed in Condition 2, including:

- (i) School
 - A. School pick-up / Drop-off (17 spaces)
 - B. School staff parking (8 spaces)
 - C. Shuttle bus drop-off and parking (1 space)
 - D. Accessible space (1 space)
- (ii) Church
 - A. Church parking space (42 spaces)
 - B. Accessible church parking space (1 space)
 - C. Suttle-bus parking (1 space)
- 70. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

 Application must be made through an authorised Water Servicing Coordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance. Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design. The Section 73 Certificate must be submitted to the Principal Certifying Authority prior to occupation of the development.
- 71. 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.
- 72. Noise Impacts Compliance with Acoustic Report

 The noise reduction measures specified in the noise report prepared by AECOM
 Australia Pty Ltd for KCCS Development Application 19 Dowling Street Arncliffe
 Doc No. 60318564-ARPT02.04 dated the 18 August 2016 shall be validated by a
 Certificate of Compliance prepared by the acoustic consultant and submitted to the
 Principal Certifying Authority (PCA) prior to the issue of an Occupation Certificate. If
 Council is not the PCA, a copy shall be submitted to Council concurrently.
- 73. PA certificate of playground safety installation compliance shall be submitted to Council prior to release of the Occupation Certificate.
- 74. Prior to occupation or use of the premises, a qualified mechanical engineer shall certify that the mechanical ventilation/air conditioning system complies in all respects with the requirements of Australian Standard 1668, Part 1 & 2.
- 75. Prior to occupation, a chartered professional engineer shall certify that the tanking and waterproofing has been constructed in accordance with the approved design and specification. A copy shall be provided to Council if council is not the Principal Certifying Authority.
- 76. Prior to occupation a Chartered Professional Engineer shall certify that the stormwater system has been constructed in accordance with the approved plans and

as required by Rockdale Technical Specification Stormwater Management. The certificate shall be in the form specified in Rockdale Technical Specification Stormwater Management and include an evaluation of the completed drainage works. A works-as-executed drainage plan shall be prepared by a registered surveyor based on a survey of the completed works. A copy of the certificate and works-as-executed plan(s) shall be supplied to the Principal Certifying Authority. A copy shall be provided to Council if Council is not the Principal Certifying Authority.

- 77. The premises shall be registered with Councils Environmental Health Unit by the proprietor of the food business by completing the registration form available from Council.
- 78. Positive covenant pursuant to the Conveyancing Act 1919 shall be created on the title of the lots that contain the stormwater detention facility to provide for the maintenance of the detention facility.
- 79. Prior to issue of the Occupation Certificate, compliance is required with all relevant conditions of this consent including (but not limited to):
 - (a) Removable and adjustable bollards must be provided within the basement to protect the proposed pedestrian paths shown in the approved plans:
 - (b) Bollard(s) must be installed by the Developer in the shared space located adjacent to each of the accessible car parking spaces to prevent use of these areas for car parking.
 - (c) Bicycle parking must be provided in accordance with the approved plans listed in Condition 2.

Roads Act

- 80. Where applicable, the following works will be required to be undertaken in the road reserve at the applicant's expense:
 - (a) construction of required portion of the concrete footpath along the frontage of of Kembla street fronting the site.
 - (b) construction of a new fully constructed concrete vehicular entrance;
 - removal of the existing concrete vehicular entrance/s, and/or kerb laybacks which will no longer be required;
 - (d) construction of the traffic refuge island in Kembla Street east of Hirst Street.
- 81. All footpath, or road and drainage modification and/or improvement works to be undertaken in the road reserve shall be undertaken by Council, or by a Private Licensed Contractor subject to the submission and approval of a Private Contractor Permit, together with payment of all inspection fees. An estimate of the cost to have these works constructed by Council may be obtained by contacting Council. The cost of conducting these works will be deducted from the Footpath Reserve Restoration Deposit, or if this is insufficient the balance of the cost will be due for payment to Council upon completion of the work.
- 82. This Roads Act approval does not eradicate the need for the Contractor to obtain a Road Opening Permit prior to undertaking excavation in the road or footpath.
- 83. Any driveway works to be undertaken in the footpath reserve by a private contractor requires an "Application for Consideration by a Private Contractor" to be submitted to Council together with payment of the application fee. Works within the footpath reserve must not start until the application has been approved by Council.

84. Following completion of concrete works in the footpath reserve area, the balance of the area between the fence and the kerb over the full frontage of the proposed development shall be turfed with either buffalo or couch (not kikuyu) or landscaped. If landscaping is proposed rather than turfing, details shall be submitted to the Property and Community Services Department for approval.

Development consent advice

- a. Some forms of signage require separate development consent. Please refer to relevant planning policies for more information.
- c. ** Telstra Advice Dial Before You Dig

Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets, please contact Dial before You Dig at www.1100.com.au or telephone on 1100 before excavating or erecting structures (This is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contacting the Dial before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial before You Dig service in advance of any construction or planning activities.

d. ** Telstra Advice - Telecommunications Act 1997 (Commonwealth)

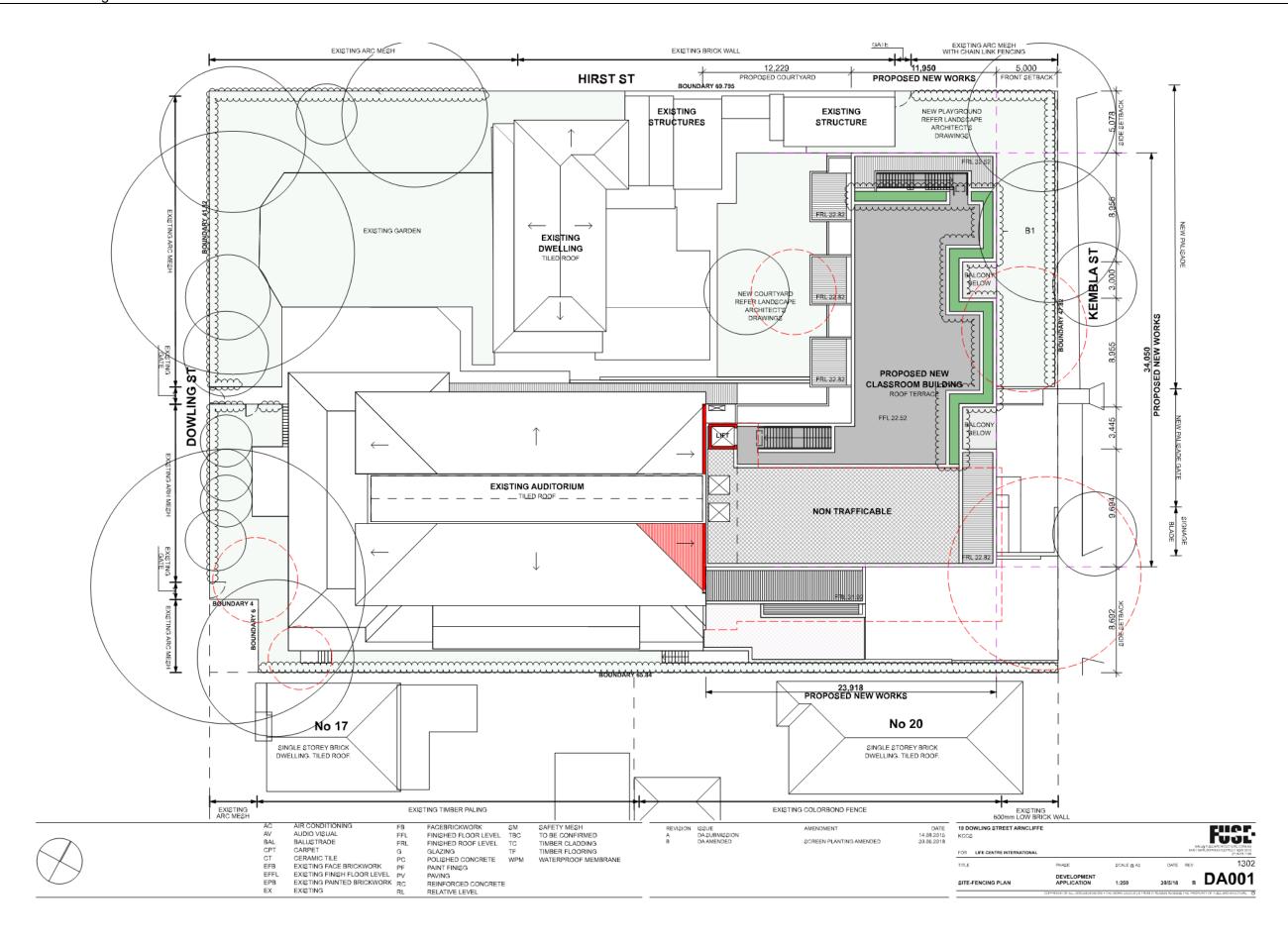
Telstra (and its authorised contractors) are the only companies that are permitted to conduct works on Telstra's network and assets. Any person interfering with a facility or installation owned by Telstra is committing an offence under the Criminal Code Act 1995 (Commonwealth) and is liable for prosecution. Furthermore, damage to Telstra's infrastructure may result in interruption to the provision of essential services and significant costs. If you are aware of any works or proposed works which may affect or impact on Telstra's assets in any way, you are required to contact: Telstra's Network Integrity Team on phone number 1800810443.

- e. Where Council is not engaged as the Principal Certifying Authority for the issue of the Subdivision Certificate (Strata), and the Section 88B Instrument contains easements and/or covenants to which Council is a Prescribed Authority, the Council must be provided with all relevant supporting information (such as works-as-executed drainage plans and certification) prior to Council endorsing the Instrument.
- f. Phazardous and/or intractable wastes arising from the demolition process shall be removed and disposed of in accordance with the requirements of the relevant statutory authorities (NSW WorkCover Authority and the NSW Environment Protection Authority), together with the relevant regulations, including:
 - Work Health and Safety Act 2011
 - Work Health and Safety Regulation 2011
 - Protection of the Environment Operations (Waste) Regulation 2005.
- g. Pemolition and construction shall minimise the emission of excessive noise

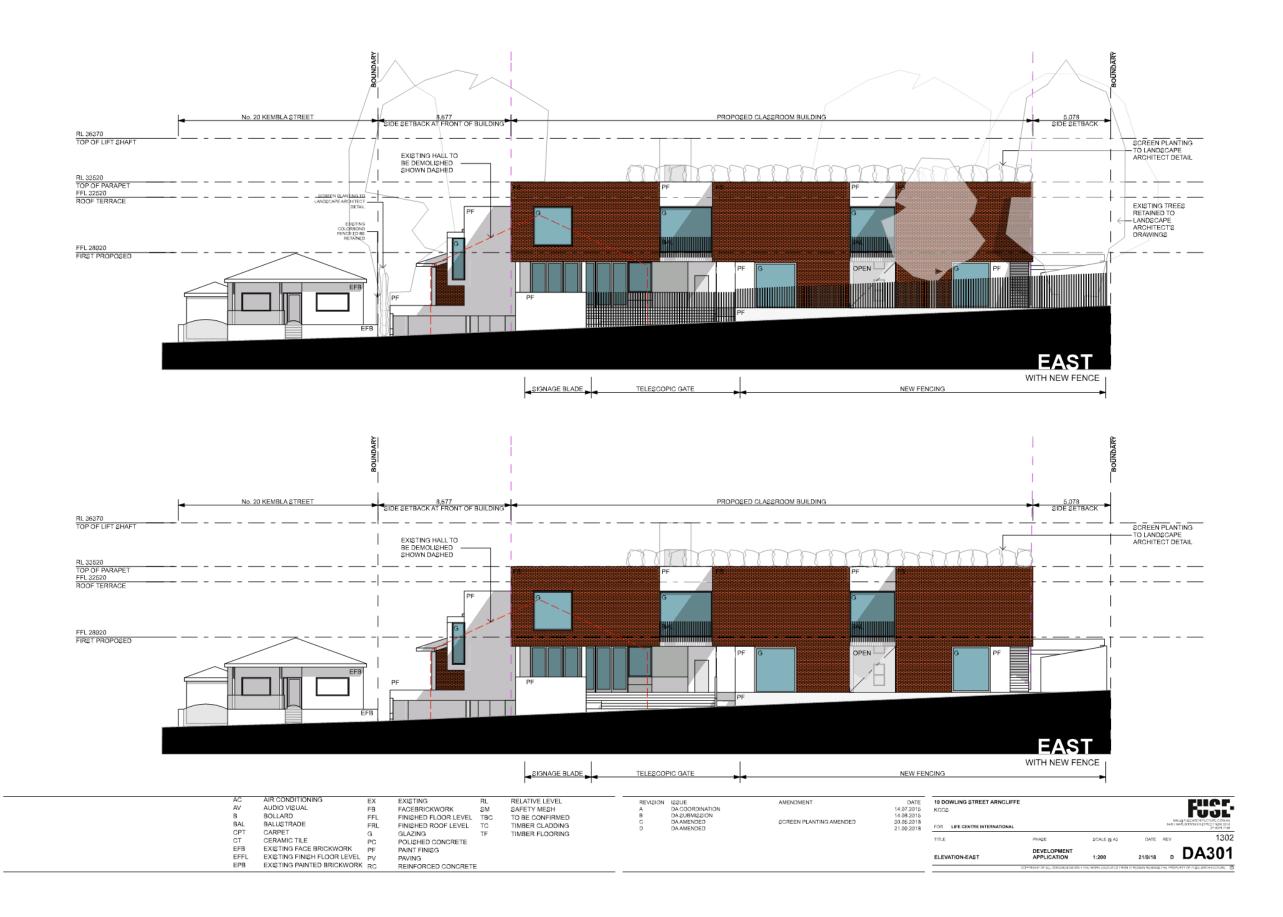
and prevent "offensive noise" as defined in the Protection of the Environment Operations Act 1997. Noise reduction measures shall include, but are not limited to the following strategies:

- choosing quiet equipment
- · choosing alternatives to noisy activities
- relocating noise sources away from affected neighbours
- educating staff and contractors about quiet work practices
- informing neighbours of potentially noise activities in advance
- equipment, such as de-watering pumps, that are needed to operate on any
 evening or night between the hours of 8 p.m. and 7 a.m. or on any Sunday or
 Public Holiday, shall not cause a noise nuisance to neighbours of adjoining or
 nearby residences. Where the emitted noise exceeds 5 dB(A) [LAeq(15m)]
 above the background sound level [LA90] at the most affected point on the
 nearest residential boundary at any time previously stated, the equipment shall
 be acoustically insulated, isolated or otherwise enclosed so as to achieve the
 sound level objective.
- h. *The removal, cleaning and disposal of lead-based paint shall conform with the requirements of the NSW Environment Protection Authority's guideline "Lead Alert Painting Your Home".
- i. In the event of any inconsistency between conditions of this approval and the drawings/documents referred to in condition 2, the conditions of this approval prevail.

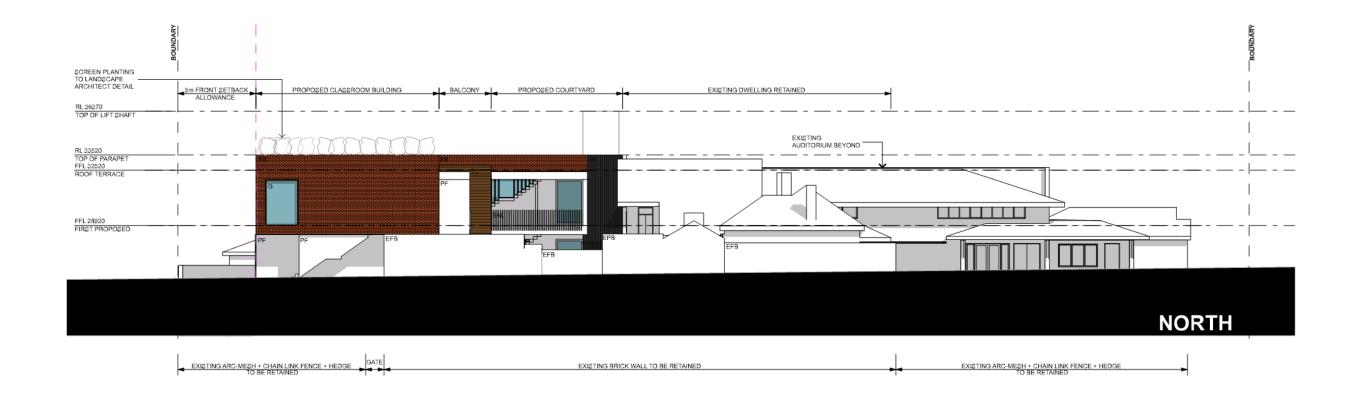
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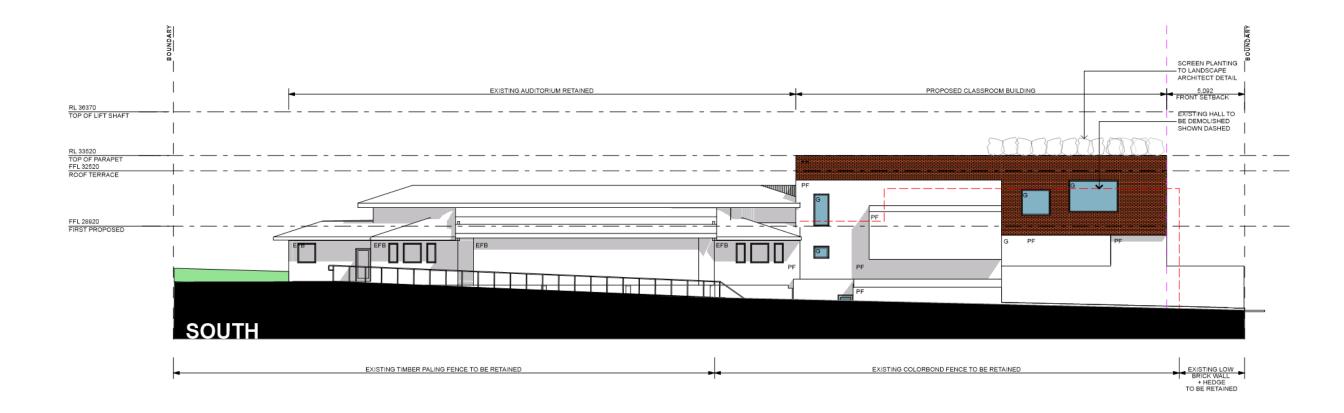


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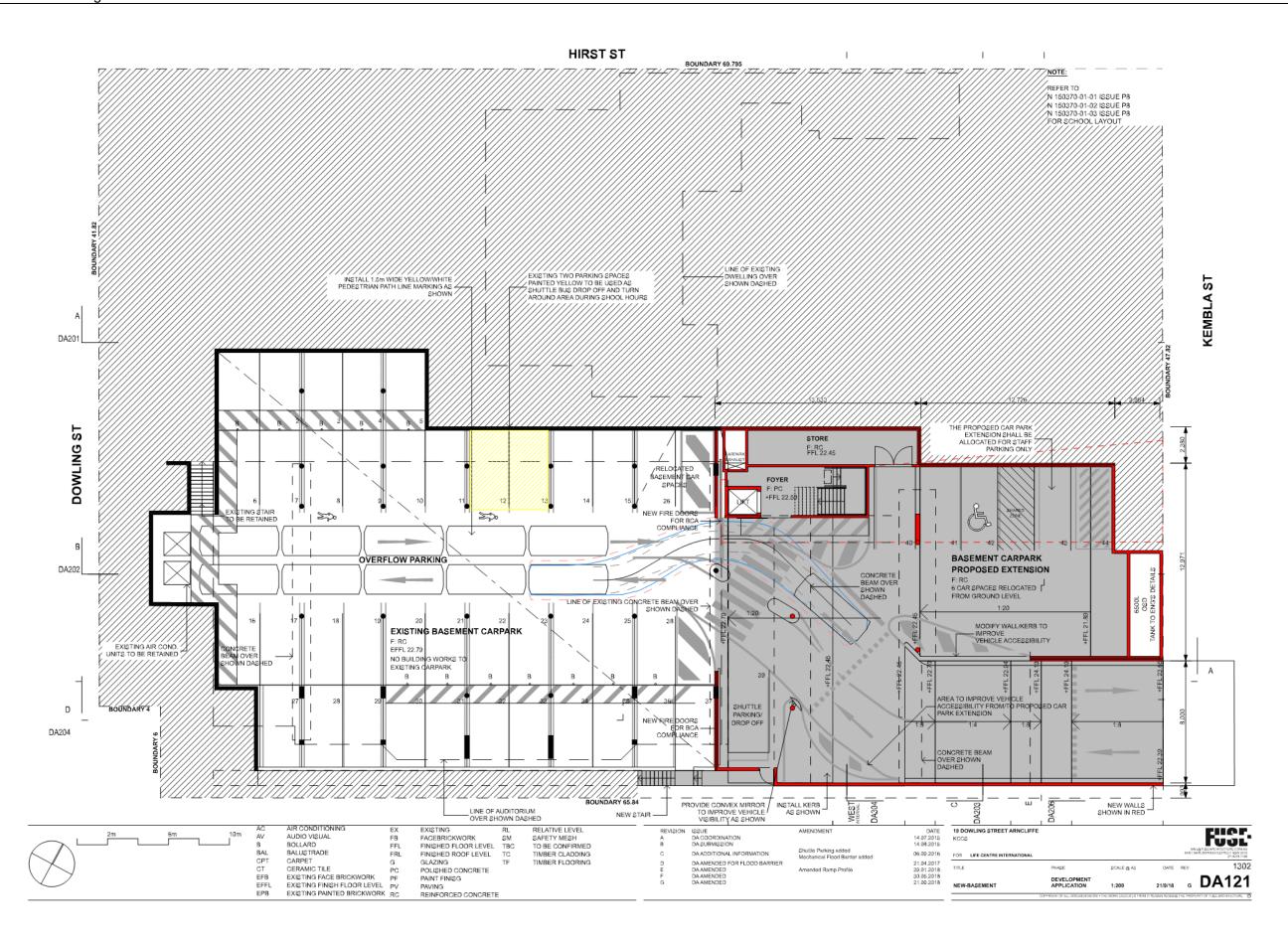
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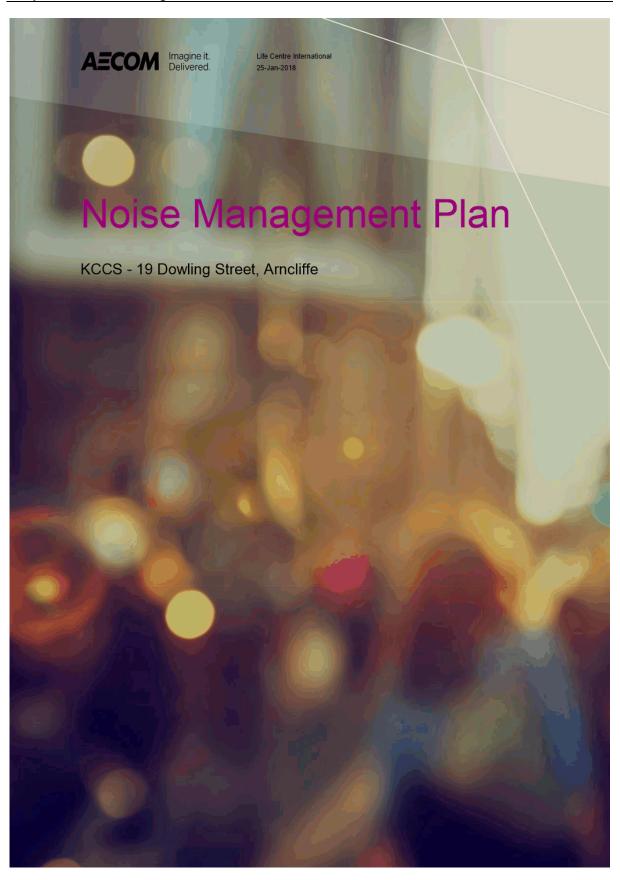
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Bayside Local Planning Panel 23/10/2018





KCCS - 19 Dowling Street, Arncliffe Noise Management Plan

Noise Management Plan

KCCS - 19 Dowling Street, Arncliffe

Client: Life Centre International

ABN: 49 003 688 720

Prepared by

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Quality Information

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Reviewed by Gayle Greer

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Α	22-Jan-2018	Draft	Gayle Greer Technical Director - Acoustics	Gegle Gree		
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1.0 Introduction

AECOM Australia Pty Ltd (AECOM) has been engaged by Life Centre International to prepare a Noise Management Plan (NMP) for the operation of the educational facilities at 19 Dowling Street, Arncliffe.

1.1 Purpose

This NMP provides a framework by which noise emissions from operations of the educational facility will be managed to reduce the environmental impact as much as possible on nearby sensitive receivers

The purpose of this NMP is to:

- Outline the management strategies that will be implemented to mitigate noise emission to the surrounding environment; and
- Propose management practices/administrative measures to assist in reducing operational noise impacts upon surrounding properties.

1.2 Site Description

The site is bounded by Dowling Street to the west, Hirst Street to the north, Kembla Street to the east and residential properties to the south. Residential properties are also located on Dowling, Hirst and Kembla Streets adjacent to and opposite the assessment site.

An existing childcare centre is located at 2 Dowling Street and Athelstane Public School is located at 2-12 Athelstane Avenue, Arncliffe.

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2.0 Description of Activities

2.1 Spaces

Throughout the school day education activities will occur within the existing Church Auditorium and within the proposed new education facility buildings. These will be typical of primary and secondary school classroom activities. Students will spend recess and lunch breaks within the outdoor play areas and west facing balconies where they will eat their food and play. Sporting activities will occur off-site at other facilities.

2.2 Activities

2.2.1 Internal activities

Indoor classes will be conducted within the studio and foyer spaces of the new education facility and the existing church auditorium.

2.2.2 Outdoor play areas

Three external play areas are proposed. These will be located at the north-east and north-west corners of the development site and within a central courtyard. The corner play areas will be approximately 25 metres from the nearest sensitive receivers across Dowling, Hirst and Kembla Streets

In addition the roof-top terrace may be used as an outdoor play area. When students use this area to play overall noise levels from outdoor play areas will be reduced. This is a result of lower student numbers in the ground floor play areas and noise mitigation provided by the balustrade of the terrace and the geometry of the building.

2.2.3 Car parking

Current allowances for car-parking on the development site are a basement car-park and a small number of on-grade spaces. Six (6) of the existing on grade spaces will be relocated to the basement car park

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3.0 Noise Criteria

3.1 Noise sources

Noise sources associated with the operation of the education facility are likely to include the following:

- Mechanical plant;Car parking activities;
- □ Internal activities;
- □ Outdoor play areas; and
- ☐ Increased road traffic noise.

3.2 Operational noise criteria

3.2.1 Mechanical plant, internal educational activities and car-parking activities

A summary of the environmental noise criteria applicable to mechanical plant operation, car-parking activities and internal educational activities is presented in Table 1 below.

Table 1 Summary of environmental noise emission criteria

Location	Time of Day	Plant and carpark criteria L _{Aeq} , dB(A)			
		Intrusive	Amenity		
Residences North	Day	45	55		
Residences South	Day	42	55		
School (Internal)	Noisiest 1-hour period	-	35		

3.2.2 Outdoor play areas

Specific noise criteria applicable to school outdoor play areas have not been recommended by either Rockdale City Council or the NSW Environment Protection Authority (EPA), therefore consideration will be given to whether the noise from the outdoor play areas is offensive.

The Noise Guide for Local Government (NGLG) published by NSW EPA provides guidance on the assessment of offensive noise.

"Depending on the type of noise under consideration, noise can be considered as offensive in three ways according to its:

- Audibility
- Duration
- Inherently offensive characteristics"

3.2.3 Road traffic noise

Traffic generated by the additions and alterations to the school should not increase existing road traffic noise levels by more than 2 dB(A) in accordance with the Road Noise Policy.

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4.0 Management Practices and Commitments

In order to minimise and manage the impact of noise from the operation of the educational facilities on nearby sensitive receivers, the following noise control recommendations will be implemented:

Mechanical plant

- Any replacement items of external mechanical plant will be selected with a sound power level equal or less than the existing item of plant to be replaced;
- In the case of new mechanical plant, selection of equipment will prioritise the lowest possible noise output of the plant; and
- All mechanical plant will be well maintained.

4.2 Internal educational activities

Windows may be open for natural ventilation purposes during quiet activities, however, all windows will be closed on the eastern and southern facades during noise generating activities such as music lessons and group activities.

4.3 Car parking

- Hours of operation of the carpark gate/shutter will be minimised to secured hours only; and
- Any metal drainage grates will be mounted on resilient pads to reduce impact noise as vehicles pass over them.

4.4 Outdoor play areas

- Students will be supervised at all times;
- Recess and lunch will take place during the following times only:
 - Recess: 10:30 am to 11:00 am
 - Lunch: 12:30 pm to 1:00 pm;
- The behaviour of the students will be monitored and modified as required by adequately trained staff. This will include quieting excessively noisy students. A minimum ratio of 1 staff member to 30 students will be maintained:
- The maximum number of students in the outdoor play areas at any one time will not exceed those detailed in Table 2.

Maximum number of students in outdoor play areas

Play area	Maximum number of students
North-east	50
Central courtyard	50
North-west	100

- Louder activities will be directed to play in the central play area where feasible and reasonable;
- The use of outdoor play areas will be limited to between the hours of 8:30am and 3:30pm;
- Staff will ensure the total time students spend playing outside is less than 2 hours per day;
- Parents and guardians will be informed of the importance of noise minimisation when entering the site, dropping off or picking up students;
- No loudspeakers will be located in outdoor areas and amplified music or speech will not be used in outdoor areas; and

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When possible the roof-top terrace will be used as an outdoor play area to reduce student numbers in the ground floor play areas. This area will be used for passive play only and will be supervised at the minimum ratio of 1 staff member to 30 students.

4.5 Noise monitoring

- Within the first six months of operations noise monitoring will be undertaken to assess compliance with the established noise emission criteria;
- Noise monitoring will be completed at the following residential receivers, as a minimum:
 - 12 Dowling Street, Arncliffe
 - 23 Kembla Street, Arncliffe;
- Measurements and reporting will be conducted by a suitably qualified and experienced acoustic consultant. Lists of suitable acoustic consultants can be obtained from the Association of Australian Acoustical Consultants (AAAC) and the Australian Acoustical Society (AAS);
- Attended noise monitoring will be conducted using equipment classed as Class 1 in accordance with AS IEC 61672.1 2004 Electroacoustics Sound Level Meters. Unattended noise monitoring will be conducted using equipment classed as Class 1 or 2 in accordance with AS IEC 61672.1 2004 Electroacoustics Sound Level Meters;
- ☐ The following parameters will be measured as a minimum:
 - LAeq,T, LA01,T, LA10,T, LA90,T, LAmax,slow, LCmax,slow.
 - Unweighted SPL (LP,T) in 1/1 Octave Bands, centres: 31.5 Hz 16 kHz;
- Sound level metres will have current calibration certificate from a NATA accredited laboratory in accordance with NATA guidelines; and
- The measurements will be conducted in accordance with the procedures outlines in Australian Standard AS 1055 Acoustics Description and measurement of environmental noise and in accordance with methods outlined in the NSW Industrial Noise Policy (INP). The following points will be followed when conducting noise monitoring:
 - A field calibration will be conducted before and after measurements
 - Measurements will be conducted a minimum of 1.5 metres from the nearest façade and/or solid fence/wall. If it is not possible to do this, corrections for façade reflection will be applied to the measurement results
 - Detailed observations will be made as to meteorological conditions, and the primary sources (and locations) of noise affecting the measurements. When noise levels are dominated by noise other than the operation of the school, this will be noted so that it can be excluded from the analysis.

4.6 Complaints and community

- A noise complaint handling procedure will be implemented which includes the following mechanisms:
 - Provide a readily-accessible contact point for noise complaints handling
 - Give noise complaints a fair hearing
 - Have a documented complaints process, including in the process an escalation procedure so that if a complainant is not satisfied there is a clear path to follow
 - Call back as soon as possible to keep people informed of action to be taken to address noise problems
 - Keep a register of any complaints, including the following Information to be recorded:
 - Date and time of contact / inquiry

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- Name of inquirer (if agreed by the inquirer)
- Inquirer's contact details (if agreed by the inquirer)
- Nature of inquiry (for example, information request)
- The nature of the complaint
- Description of noise source that is the subject of complaint, duration of event
- Location of complainant during time of incident, and general area in which the noise source was located
- The means by which the comment, inquiry or complaint was made (telephone, fax, mail, email or in person)
- Proposed follow up action/s (for example immediate verbal response, letter, other). This
 may require one or more actions
- If no action is taken by school staff in relation to the inquiry, the reason(s) for this are to be documented
- Content of response
- Status of the inquiry (open / closed); and
- Nearby residential receivers shall be encouraged to express their opinion on the impact of noise emanating from the education facilities and provide suggestions on minimising the impact through letter box drops or community feedback session. The general public should similarly be encouraged through a website.

4.7 General

- ☐ A regular review and update the NMP Plan shall be conducted taking into account:
 - Complaints regarding noise;
 - Results of the community consultation; and
 - Any significant changes to operations.

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5.0 Roles and Responsibilities

A summary of the persons responsible for the administration, implementation and maintenance of the NMP is presented in Table 3.

Table 3 Roles and responsibilities for noise management

NMP section	Task	Person responsible
4.1	Mechanical plant	Facilities Manager
4.2	Internal educational activities	Principal
4.3	Car parking	Facilities Manager
4.4	Outdoor play areas	Principal
4.5	Noise monitoring	Facilities Manager
4.6	Complaints and community	Principal
4.7	General	Principal

Plan of Management

Kingdom Culture Christian School

- and -

Life Centre International

August 2018

Version 4.0

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1.0 Executive Summary

Further to correspondence with Bayside Council, this Plan of Management has been prepared to accompany documentation previously submitted to Council as part of Development Application No. DA-2016/68, which proposes the demolition of an existing small hall, retention of the existing Auditorium and heritage dwelling, extension of existing basement carpark and addition of a new two storey building to accommodate six (6) new classrooms for a maximum of two hundred (200) students to the existing Kingdom Culture Christian School (KCCS). The Plan of Management will also cover the existing Life Centre International (LCI) church use on the site.

The preparation of this document has been undertaken in accordance with the recommendations of specialist reports that have been submitted to Council that support the proposed operation of the site. Further, the plan of management demonstrates that the site can be effectively and safely managed in perpetuity, and would not adversely affect the amenity, safety and wellbeing of visitors to the site, surrounding residents and the wider community.

Background, Purpose and General Objectives

This Plan of Management provides guidelines and management practices for the day to day operation of the Life Centre International (LCI) and the Kingdom Culture Christian School (KCCS) at 19 Dowling Street, Arncliffe.

This Plan of Management aims to communicate the purpose of the school and church, and to ensure that the site:

- Is well managed; a)
- Operates with regard to the surrounding area; and b)
- c) Takes a proactive role in being a responsible neighbour within the local area.

Kingdom Culture Christian School commenced operations in 2015. The school is a 21st Century educative establishment that contributes to the community by providing student-centred and self-paced education within an active learning environment.

As of August 2018, the school provides education to 38 students from Kindergarten to Year 6. In 2019, this will increase to 60 students from Kindergarten to Year 8 before expanding again to provide education for 200 students from Kindergarten to Year 12.

Life Centre International (LCI) is a non-denominational church organisation. The Arncliffe site benefits the community through the hosting of activities including church and children's church services and a range of other related uses that includes Bible training, Christian training, prayer meetings, kids club, social activities, counselling, and special events.

3.0 Hours of Operation

The operating hours of the site would be in accordance with those already consented to by Rockdale (now Bayside) Council. For reference, the approved hours of operation for the overall site are 8:00am to 10:00pm, seven days. The approved hours of operation for the school are 8:30am to 3:30pm, Monday to Friday.

Church services would not be run during school hours (i.e. between 8.30am and 3.30pm on school days, that being those days that are not a weekend, a public holiday or school holidays).

A schedule containing approximate timings of particular events are as follows:

Monday to Friday:

- School activities (i.e. classes, etc.)
 - 8:30am to 3:30pm
 - Breaks:
 - Recess: 10:30am to 10:50am
 - Lunch: 12:30pm to 1:10pm
- Church activities (i.e. small group meetings, kids club, etc.)
 - 3:30pm to 10:00pm

In addition to the above, the following special school-related activities would occur during weekdays:

- Parent teacher nights are held two (2) times a year.
- Presentation nights are held four (4) times a year (one at the end of each school term).

Church activities would not be organised on evenings that coincide with these school events.

Saturday:

Small group meetings: 8:00am to 12:00pm Music practice: 3:00pm to 5:00pm Youth group: 5:30pm to 10:00pm

Sunday:

- Church service:
 - 9:00am to 12:00pm
- Lunch and various meetings:
 - 12:00pm to 3:00pm

NOTE: LCI currently has consent to run activities at the site from 8:00am to 10:00pm, seven days. As reflected above, LCI will not run church activities during school times and events (i.e. parentteacher and presentation nights) that are specified above. Further, the information provided above outlines typical church activities and the approximate times for each, but does not include

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occasional special events (e.g. weddings), as it is not possible to provide a fixed schedule for such events. Any special events run by LCI that are not specified above are however undertaken in accordance with conditions of consent imposed by Council.

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4.0 Visitor Numbers

School

During school times, the maximum number of visitors to the site would be as follows:

- A maximum of two hundred (200) students would attend the site between 8:30am and 3:30pm, Monday to Friday.
 - One hundred and fifty (150) of these students would be of primary-school age (Kindergarten to Year 6)
 - Fifty (50) of these students would be high-school age (Year 7 to Year 12). 0

Church

Outside of school times (i.e. between 8:00am and 10:00pm as previously consented), the maximum number of visitors to the site – excluding special events – would typically be as follows:

- A maximum of forty (40) visitors would attend the site on Mondays, Tuesdays and Thursdays.
- A maximum of eighty (80) visitors would attend the site on Wednesdays and Fridays.
- A maximum of two hundred (200) visitors would attend the site on Saturdays.
- While the site currently has consent for a maximum of four hundred (400) people to be on the site, a maximum of three hundred and eighty (380) visitors would attend the site on Sundays, as recommended by the transport and parking assessment prepared by GTA Consultants.

NOTE: The visitor numbers specified within this section of the Plan of Management relate to scheduled activities that are specified within Part 3 of this Plan of Management, and does not include visitor number associated with special events (i.e. parent-teacher nights, school presentation nights and special events associated with LCI). The maximum number of visitors onsite would however comply with the requirements of relevant development consents.

5.0 Staffing

The school would be operated by a maximum of ten (10) staff consisting of eight (8) teaching staff and two (2) support staff.

The church employs one (1) staff member, who organises events with church members.

Support staff (i.e. cleaners, gardeners, maintenance, etc.) would be subcontracted, and would attend the site on a needs-basis only.

Daily Activities

School

Typical daily activities would include primary and secondary education activities that would occur within the existing Church Auditorium, studios and the foyer. A detailed list of daily scheduled activities is contained within Part 3 of this Plan of Management, however recess and lunch breaks would be scheduled as follows:

Recess: 10:30am to 10:50am Lunch: 12:30pm to 1:10pm

When weather permits, break periods as identified above would be conducted within outdoor balconies and play areas, including the rooftop terrace.

Church

A range of activities are typically conducted throughout the week, with larger gatherings held on weekends. Typical activities during the week outside of school times are likely to consist of uses such as Bible training, Christian training, prayer meetings, kids club and counselling. Weekend activities typically include larger gatherings such as music rehearsals, small group meetings, youth group on Saturdays and church services on Sundays, in addition to Sunday School and special events.

Consent for the use of the site as a church also includes uses such as a crèche (nursery), a kids' club; fellowship activities, a library, general storage, car parking, sporting activities, social activities and office/study/counselling areas.

The largest gatherings at the church would typically occur between 5:30pm and 10:00pm on Saturdays, and between 9:00am to 3:00pm and 6:30pm to 10:00pm on Sundays. All church activities would occur within times that have previously been consented to and in accordance with this plan of management and other expert reports, however typical church activities would not be subject to a fixed schedule as with school activities.

7.0 Traffic and Parking Management

KCCS and LCI are committed to ensuring the design and development of the educational establishment and place of public worship will be undertaken to meet all necessary regulatory requirements and complies with relevant Australian Standards to ensure the wellbeing and safety of all students, visitors, staff, local residents and passing pedestrians and traffic.

Reference is made to Attachment 1 of this Plan of Management for the detailed Traffic and Parking Management Plan. As the configuration and operation of the basement carpark would vary when used for school and church purposes, this section of the Plan of Management has been categorised into school and church uses as follows:

<u>Scho</u>ol

The proposed school configuration of the carpark would operate between 8:30am and 3:30pm Monday to Friday.

It is not proposed to utilise on-street parking for the drop-off and/or pick-up of school children during school hours; all such activities will occur onsite.

The number of spaces available for the school would be as follows:

- Eight (8) spaces for school staff;
- Seventeen (17) spaces for drop-off/pick-up purposes, including one (1) accessible space; and
- One (1) shuttle drop-off/pick-up space.

During school times, two (2) parking spaces shall be dedicated as a "turn-around" bay. Aside from line-marking, a sign shall be erected that prohibits parking within the shuttle-bus parking bay during school hours. The pavement of these two spaces and the shuttle drop-off/pick-up space shall be painted/line-marked to clearly identify their purposes and to prevent parents parking in these spaces. An appropriately trained traffic controller shall be situated by the pedestrian crossing during drop-off/pick-up times before and after school; a roster shall be maintained to ensure that at least one responsible individual is able to perform this task during those times.

A complaint management system will also be put in place for parking related matters that will be the responsibility of the School Principal; such a management system will operate as follows:

- A readily-accessible contact point for complaints handling is to be provided on the school website;
- A register of complaints shall be maintained that includes the following details where b) possible:
 - The name and contact details of the complainant(s), and the means by which the complaint was made (i.e. phone, email, in person, etc.).

PLAN OF MANAGEMENT – KCCS AND LCI 10

- The details of any complaint (i.e. when the issue occurred, whether the vehicle(s) was involved with dropping off and/or picking up students from the school).
- A documented complaints process is to be provided. The responsible person is to call c) back the complainant(s) as soon as practical and keep them informed of action(s) that are to be taken to address the parking issue. Once the issue is resolved/finalised, the complainant is to be notified, with the details and content of any response to the complainant to be recorded.
- d) The responsible person is to document the status of the enquiry (i.e. open/closed) and what action(s) has been taken to resolve and finalise the issue.

Any review of the Plan of Management should consider changes to the parking arrangements should issues be identified as a result of complaints and/or observations by staff.

Parents of students shall also be provided with an email and/or information sheet at the start of each school term that will contain details regarding drop-off/pick-up arrangements. The information contained within such correspondence will be prepared in a suitable format that can easily communicate parking arrangements, and shall include the following information:

- Parents will be advised to only use the basement car park for all drop-off and pick-up parking;
- A posted speed limit of 10 kilometre per hour will be in place;
- Parents will be instructed to follow the directions of the traffic controller;
- Parents will be instructed to park only in the dedicated drop-off and pick-up bays provided within the basement car park. Such instructions shall include a copy of the approved car park plan (or any modified plan that is approved by Council);
- Parents will be instructed to use the marked turnaround bay;
- Parents will be advised that they would be limited to ten minutes for drop-off and pick-up activities, and that they should make suitable arrangements with their child prior to attending the site;
- Families with accessible parking requirements will be provided with specific information on the location of the accessible spaces; and
- Parents are to be advised that Council can be notified should it be observed that vehicles are stopping and/or parking illegally to drop off/pick up students instead of driving into the school grounds.

A shuttle service will be provided to transport students between the school site and local train stations. Parents would need to book the shuttle service in advance; details regarding the booking of the shuttle bus shall be provided to parents as part of the enrolment information package.

Staff shall be made aware of the location of allocated car parking spaces, and provided with instructions to park within those spaces. Individual arrangements should be made where certain staff vehicles are "parked in" by the stacked parking configuration. Staff should also be

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discouraged from arriving and leaving during peak times to minimise the number of vehicular movements while children are being dropped off and picked up.

Forty-four (44) spaces would be available for the church. A shuttle service would not be provided for church activities, therefore the space for the shuttle service can be utilised outside of school times.

Unlike the school configuration, no spaces would be utilised for a turning bay. On very rare occasions where additional onsite parking may need to be provided, a further ten (10) car overflow parking spaces can also be provided as a stacked configuration along the access aisle; the operation of the overflow parking would be managed under the supervision of a trained car parking management volunteer. In accordance with the recommendations of the traffic consultant, it is proposed that a number of church members would be trained to manage overflow parking once all car parking spaces within the basement carpark are filled. A system shall be utilised to ensure that at least one appropriately trained staff member and/or church member is available to oversee the management of the overflow parking during particularly large church events. The person(s) on duty shall ensure that the accessible space is only utilised by those needing the use of such a facility.

Noise, Site Management and Complaint Handling

KCCS and LCI recognises that school and church-based operations on the site have the potential to impact on the amenity of adjoining properties; they are subsequently committed to ensuring that appropriate management strategies are implemented to mitigate noise emissions to surrounding properties. As such, management and administrative measures to assist in reducing the operational noise impact on surrounding properties have been prepared.

A Noise Management Plan, dated 25 January 2018, has been prepared for the proposed educational establishment (KCCS) at 19 Dowling Street, Arncliffe. The Noise Management Plan for KCCS is contained in Attachment 2a. The purpose of this document are as follows:

- Outline the management strategies that will be implemented to mitigate noise emission to the surrounding environment; and
- Propose management practices/administrative measures to assist in reducing operational noise impacts upon surrounding properties.

With regard to the above, management and administrative measures to assist in reducing the operational noise impact on surrounding properties have been prepared with consideration to the two Noise Management Plans referenced above. Potential noise emission sources are categorised within this section of the report; the operations to which they specifically apply and the relevant management strategies, roles and responsibilities of relevant staff are detailed as follows:

1. Mechanical and plant equipment:

- Part of the site to which the strategies apply: All
- Responsible position: Facilities Manager or equivalent.
- Management practices:
 - New mechanical plant equipment shall utilise equipment with the lowest possible noise output.
 - The replacement of any external machinery and/or plant equipment (as a result of building works or ongoing maintenance) shall utilise equipment with noise emissions that are equal to or less than the item(s) being replaced.
 - All mechanical plant equipment will be well maintained. Any equipment fault that results in the creation of additional mechanical noise shall be rectified as soon as possible.

2. Onsite parking facilities:

- Part of the site to which the strategies apply: All
- Responsible position: Facilities Manager or equivalent
- Management practices:

- Access to the carpark shall be secured by security measures (i.e. a door and/or bollards) to prevent access to the basement carpark outside of consented operating hours.
- Written correspondence detailing car parking arrangements that is sent to parents at the start of each year shall include a note requesting that parents be considerate of surrounding residences when dropping off and picking up children from the school.

3. Internal school activities:

- Part of the site to which the strategies apply: KCCS
- Responsible position: School Principal
- Management practices:
 - During class times, windows may be opened for natural ventilation during quiet activities.
 - All windows on the eastern and southern facades must be closed during noise generating activities (e.g. group activities, music lessons, etc.).

4. Outdoor school activities:

- Part of the site to which the strategies apply: KCCS
- Responsible position: School Principal
- Management practices:
 - Breaks may take place during the following times only:

i. Recess: 10:30am to 10:50am 12:30pm to 1:10pm Lunch:

The maximum number of students in each of the outdoor play area at any one time will not exceed the following requirements:

Northeast: Sixty (60) students Central Courtyard: Sixty (60) students iii. Northwest: Eighty (80) students

- The rooftop terrace shall be used as an outdoor play area to alleviate student numbers within the outdoor areas that are identified within Section B above. Any outdoor activities within the rooftop area shall be used for quiet activities and/or passive play only.
- During breaks, students using outdoor areas (including the rooftop terrace) will be supervised by staff with a minimum staff/student ratio of one staff member per 30 students. The staff/student ratio shall be subject to monitoring and may be need to be modified subject to the outcomes of ongoing acoustic testing and/or any complaints. Staff may need to quieten students who make excessive amounts of noise, particularly within the rooftop terrace area.
- Loudspeakers and amplified music/speech will not be used in outdoor areas, except when required in an emergency situation.

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5. Indoor church activities:

- Part of the site to which the strategies apply: Church
- Responsible position: Facilities Manager or equivalent
- Management practices:
 - All internal church activities are to be undertaken within the existing main auditorium building. For quiet church-based activities (e.g. select church services, and subsidiary uses such as Bible training; Christian training; prayer meetings; fellowship activities; library; counselling, etc.), windows and doors may be open for ventilation purposes.
 - For louder noise generating church activities (e.g. large Sunday services, amplified voice church services, congregational singing/music, or Crèche (nursery), kids' club, sporting activities, social activities, Church band practice, and special events, etc.), doors and windows on the eastern and southern facades will be closed (i.e. on facades that are adjacent to sensitive residential receivers).

6. Outdoor church activities:

- Part of the site to which the strategies apply: Church
- Responsible position: Facilities Manager or equivalent
- Management practices:
 - Organised church activities would be arranged within areas on the northern side of the auditorium and foyer. While attendees at the site would be free to congregate within/around the eastern entry point to the site, no organised events would be arranged within the outdoor entry area on the eastern side of the site.
 - No live or amplified music will be performed in the outdoor entry area (i.e. the area between the foyer and Kembla Street). No amplified speech will be conducted within this area, except in the event of an emergency.

7. Noise Monitoring:

- Part of the site to which the strategies apply: All
- Responsible position: Facilities Manager or equivalent
- Management practices:
 - Within six months of commencing of operations, noise monitoring will be undertaken to assess compliance with established noise emission criteria. Such monitoring will be completed at the following residential receivers as a minimum:
 - 12 Dowling Street, Arncliffe
 - o 23 Kembla Street, Arncliffe

Written consent shall be obtained from the owners of nominated residential sites to obtain access to their sites to gain access to undertaken acoustic modelling. If consent is unable to be obtained from the land owners, then a

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- record of attempts to obtain consent must be kept. Where consent is unable to be obtained from identified land owners, noise monitoring will be undertaken at the common boundary of the nominated sites and the subject
- The specifics of the acoustic noise modelling shall be undertaken in accordance with Section 4.5 of the KCCS Noise Management Plan prepared by AECOM, dated 25 January 2018, unless such requirements are superseded by conditions imposed by the Consent Authority (i.e. Council) at the time of approval.

8. Complaint monitoring and management:

- Part of the site to which the strategies apply: All
- Responsible position: School Principal (School), Facilities Manager or equivalent
- Management practices:
 - Noise complaint handling procedures are to be implemented as follows:
 - A readily-accessible contact point for noise complaints handling is to be provided on the school website.
 - A documented complaints process is to be provided, which includes an escalation procedure so that complaints can be resolved.
 - A register of complaints shall be maintained that includes the following details where possible:
 - The name and contact details of the complainant(s), and the means by which the complaint was made (i.e. phone, email, in person,
 - The nature of the inquiry and/or complaint; and
 - Details and descriptions of the noise (i.e. the duration and event of the noise, the location of the complainant at that time, the general area where the noise source was located, etc.).
 - The responsible person is to call back the complainant(s) as soon as practical and keep them informed of action(s) that are to be taken to address noise issues. Once the issue is resolved/finalised, the complainant is to be notified, with the details and content of any response to the complainant to be recorded.
 - The responsible person is to document the status of the enquiry (i.e. open/closed) and what action(s) has been taken to resolve and finalise the issue.
 - b) Where changes are proposed to be made to the Plan of Management, the owners of surrounding sites should be notified via a letter drop and encouraged to provide feedback as to how the site operations might be able to further improve noise mitigation strategies.

9.0 Security, Safety and Emergencies

Relevant sections under this heading are addressed within each of the subheadings as follows:

1. Security

It is proposed that access to/from the site be controlled, to prevent multiple points of entry and exit, particularly during school operating hours. Existing access points to the site are to be maintained, however the main entrance to point to the site would remain on the eastern (i.e. Kembla Street) frontage. Where possible, visitors and parents to the site will be advised to enter the site from Kembla Street.

Signs will be erected at access points on the Hirst and Dowling Street frontages that would direct unauthorised persons (i.e. people other than staff, waste collection personnel, etc.) to access the site via the Kembla Street Entrance. Signs are to be erected inside these access points advising that exit from these points is restricted to authorised persons only, except in the case of an emergency. All access points to the site will be secured outside of the consented operating hours, and would include a security door at the entrance to the basement carpark and lockable doors/gates between the entry area and terrace areas on the eastern side of the site.

Security measures (i.e. lighting, surveillance/CCTV measures, etc.) will be provided where required and/or as directed by conditions associated with the approval of the development application. Students will not be permitted to leave the site during school hours except where under the direct supervision of a staff member, during excursions and during an emergency where evacuation of the site is required. During break periods and periods before and after scheduled classes, students using outdoor areas will be supervised by members of staff, as detailed within the section of this Plan of Management which relates to site and noise management.

2. Flooding

As the site is vulnerable to flash flooding, specific operational procedures will be put in place to ensure that the safety of staff, students and visitors is ensured. Operational flood management procedures contained within the Flood Management Plan prepared by FUSE have been referenced in the preparation of this Plan of Management as follows:

- During a flood event, staff, students and visitors are to be kept on the site to prevent persons entering the surrounding road network, which may be flooded.
- A Flood Management Plan is to be prepared prior to the operation of site activities. This document shall identify:
 - Responsibilities of members of staff;
 - Identify safe points of refuge that are sheltered and out of flood-affected areas;
 - Safe evacuation routes to the points of refuge for all persons onsite during a flood event: and
 - Procedures to ensure that checks are undertaken and that students are not left behind and/or in vulnerable areas during any evacuation procedure.

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A laminated copy of this flood plan shall be permanently attached (glued) on the school office door and to the inside of the electrical meter box. The Flood Management Plan shall be reviewed every five years with regard to the potential effects of climate change, sea level rise and increased rainfall intensities.

- During any such event however, access to the basement carpark is to be prevented, and a check system shall adopted, so that young children or vulnerable persons are not inadvertently left in this area.
- Should flood levels approach habitable floor levels, then staff are to:
 - Gather all students and ensure they are safe;
 - Isolate/ turn off and disconnect any electrical items if possible; and
 - Move students to the upper levels.

Evacuation of the school or church is not to occur unless instructed to do so by emergency services, given the risk of floodwaters within the road reserve.

In the case of a medical emergency, responsible staff are to ring 000 as normal, however they would need to explain any flooding situation to emergency services.

3. Evacuation Events

LCI and KCCS must provide certified fire equipment commensurate with applicable standards; all such equipment is to be certified as required by law.

LCI and KCCS must document Emergency Evacuation Plans and have evacuation diagrams on display throughout the entire site. LCI and KCCS must also conduct emergency drills and provide staff with information about emergency procedures at regular intervals

The following procedures are to be followed in the event of a fire, gas leak, or any other event that requires all staff and children to immediately vacate the premises.

The R.A.C.E. (Rescue, Alarm, Contain, Extinguish) procedure. This would involve:

- Removing children from immediate danger;
- Raising the alarm;
- Ringing the Fire Brigade on 000 from safe area;
- Containing fire by closing doors and windows, if safe to do so; and
- Evacuating all persons to a nominated assembly area(s) and ensuring all persons (including staff) are accounted for.

For evacuations of the school, a trained staff member in each play area will assemble all children, ready to move out to the evacuation assembly point.

Duties:

School Principal or equivalent for church activities outside of school operating hours:

- If safe, collect:
 - Staff attendance book (or equivalent) from staff room to verify that all staff are present and accounted for; and
 - Daily student attendance roster and a copy of parent contact details.
- If safe, check the toilets to ensure that all staff have evacuated.
- Move to assembly area as quickly as possible.

Teaching staff:

- Perform R.A.C.E. procedures where required.
- Collect daily attendance sheets
- Move students under care to the assembly area as quickly as possible. If possible, walk them to the assembly point in a straight line to assist with counting/roll call
- Check the attendance roster to ensure that all children are present.

Other staff members and/or staff without children:

- Staff members have a nominated role(s) in assisting teaching staff in assembling children and moving them to emergency assembly points.
- Walk the children to the assembly area and sit them in a straight line if possible (to assist with counting/roll call).
- Quickly check the areas you are in for other staff or children.
- Close doors behind you to contain fire.
- Move to assembly area as quickly as possible.

Exit Procedures

The following points must be considered by all staff:

- Exit procedures are to be followed, unless they lead to the source of the fire/problem;
- Staff should only consider using a fire extinguisher if it is safe to do so and you are trained in the use of such equipment;
- You may not be able to re-enter the building after evacuation for some time if at all;
- Points for the principal or equivalent to consider:
 - The assembly area may not be safe due to other circumstances (e.g. a flooding hazard).
 - A secondary assembly area must be identified and brought to the attention of
 - In the event of heavy rainfall, the secondary assembly point and/or the route to this point must not be located within the surrounding road reserve due to flooding hazards.

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 $Remember\ that\ evacuation\ procedures\ may\ apply\ for\ a\ variety\ of\ situations\ and\ not\ just\ fire.\ Such$ situations may include chemical spillage, bomb threat, storm, aircraft crash, flooding, earthquake, riot, building collapse, gas leak, hostage and/or or siege situations.

Fire Drills should incorporate different scenarios, with evacuations being acted out accordingly, highlighting problems that may not have been envisaged.

10.0 Centre Cleanliness, Maintenance and Waste Collection

The site will be kept clean by external professional cleaners. Such staff would be contracted, and would attend the site on a needs-basis only.

Routine gardening and site maintenance activities would be undertaken within the hours of consent previously granted by Council. Persons responsible for such activities will be advised to minimise the use of power tools (e.g. leaf blowers) during sensitive times (e.g. after 5:00pm on weekends) unless absolutely necessary.

The cleaners would attend the site within the consented hours to ensure that site activities are undertaken in accordance with current approvals. Cleaning staff will be instructed that doors and windows are to be closed when noise-generating equipment (e.g. vacuum cleaners or similar) is used to prevent disturbance of surrounding residences.

Where not already done, the site must designate a Work Health and Safety officer to maintain a schedule of required maintenance which is routinely undertaken by relevant tradesmen as required.

Anticipated waste management volumes are detailed within the Waste Management Plan approved by Council. Large bins are to be stored within the existing waste storage area (adjacent to the Dowling Street frontage) and shall be collected from that part of the site. The waste contractors shall be instructed that any waste collection activities are to occur:

- Between the hours of 7:00am to 6:00pm, Monday to Friday and 8:00am to 5:00pm on Saturdays and Sundays; and
- Outside of peak-use periods (i.e. during pick-up and drop-off activities, church services and major events) to prevent conflict between waste collection activities and likely periods of notable traffic generation that would be associated with site activities.

11.0 Deliveries

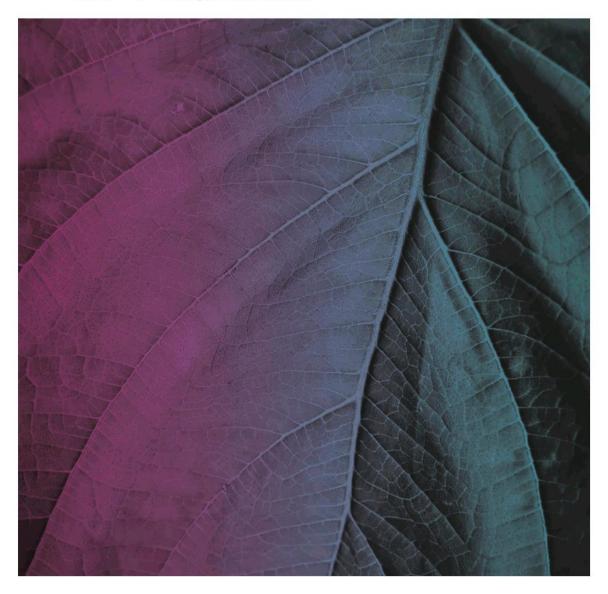
Any site deliveries would generally occur between 9:30am and 2:30pm Monday to Friday, so that they do not coincide with peak drop-off/pick-up times. Where possible, the delivery drivers would be instructed to park in the basement carpark.



KCCS - 19 Dowling Street, Arncliffe Life Centre International 18-Aug-2016 Doc No. 60318564-ARPT02.04

Development Application

KCCS - 19 Dowling Street, Arncliffe



KCCS - 19 Dowling Street, Arncliffe

Development Application

KCCS - 19 Dowling Street, Arncliffe

Client: Life Centre International ABN: 49 003 688 720

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1.0 Introduction

AECOM Australia Pty Ltd (AECOM) has been engaged by Life Centre International to provide acoustic consultancy services for alterations and additions to the educational facilities at 19 Dowling Street, Arncliffe, to accommodate 200 Kindergarten to Year 12 students.

This report establishes appropriate environmental criteria based upon the measured background noise level and the Environment Protection Authority's (EPA) NSW Industrial Noise Policy (INP).

The outcomes of the acoustic assessment and proposed noise control measures are outlined in this report.

Acoustic terminologies used in this report are explained in Appendix A.

1.1 Overview of project

The Kingdom Culture Christian School (KCCS) commenced operations in 2015 at this site. The school is a Christian school associated with Life Centre International. The school currently operates 8:30 am - 3:30 pm, Monday to Friday.

The proposed development consists of the partial demolition of some existing buildings and structures on the subject site and the construction of a new two storey school building with basement car parking and storage. The driveway will be relocated adjacent to the southern boundary of the site and will provide a new access to the basement car park.

The proposed alterations and additions have been designed to accommodate an increase in student numbers from 60 to 200. It is likely that 150 of the students will be primary school students and 50 will be high school students. There are no proposed changes to the hours of operation.

1.2 Site location

The site is bounded by Dowling Street to the west, Hirst Street to the north, Kembla Street to the east and residential properties to the south. Residential properties are also located on Dowling, Hirst and Kembla Streets adjacent to and opposite the assessment site.

An existing childcare centre is located at 2 Dowling Street and Athelstane Public School is located at 2-12 Athelstane Avenue, Arncliffe.

1.3 Representative receivers

The locations of the site and nearby noise sensitive receivers are shown in Figure 1.

Table 1 Assessment receiver locations

Representative Receiver Designation	' Addrose		
R1	12 Dowling Street, Arncliffe		
R2	91 Hirst Street, Arncliffe		
R3	83 Hirst Street, Arncliffe	Desidence Cubumban	
R4	23 Kembla Street, Arncliffe	Residence - Suburban	
R5	20 Kembla Street, Arncliffe		
R6	17 Dowling Street, Arncliffe		

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1.4 Reference documents

This report considers the following legislation, guidelines, policies and standards:

- NSW Protection of the Environment Operations Act 1997 (POEO Act 1997)
- NSW Industrial Noise Policy (INP) (EPA, 2000)
- NSW Industrial Noise Policy Application Notes (EPA, 2013)
- NSW Noise Guide for Local Government (NGLG) (EPA, 2013)
- NSW Road Noise Policy (RNP) (DECCW, 2011)
- Australian Standard 1055: Part 1 1997 Acoustics Description and measurement of environmental noise, Part 1: General procedures

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2.0 Existing noise environment

Attended and unattended noise measurements were made of the existing background noise levels in the area. Attended noise measurements were also made of students playing in the existing play areas during lunch-time.

2.1 Instrumentation

The noise measurements were completed using the equipment presented in Table 2.

Table 2 Measurement instrumentation

Date of measurements	Equipment	Serial Number			
Unattended noise measurements					
	Rion NL-52	00553966			
1 August - 10 August 2016	Rion NL-52	00164395			
Attended noise measurements					
1 & 10 August 2016	Brüel and Kjaer Type 2270	3000860			

The equipment was calibrated before and after the measurements with a drift in calibration not exceeding ±0.5 dB. All the acoustic instrumentation employed during the noise measurements complies with the requirements of "AS IEC 61672.1-2004 Electroacoustics - Sound level meters - Specifications" and have valid calibration certificates.

2.2 Meteorological data

Weather data for the area was sourced from the Bureau of Meteorology (Canterbury), which is located approximately 4 km north-west of the assessment site, to identify periods of adverse weather occurring during the noise monitoring periods. Extraneous noise events and noise data adversely affected by weather, e.g. wind and rain, were excluded as required by the Industrial Noise Policy (INP) guidelines.

The strength of the wind and direction were recorded during the attended measurements based upon observations.

2.3 Environmental noise monitoring results

2.3.1 Unattended background noise monitoring

Background noise logging was undertaken at two locations deemed representative of the noise environment at nearby residential receiver locations and without influence from noise from the existing site operations. These locations are indicated in Figure 1. The measurements were undertaken from Monday 1 August to Wednesday 10 August, 2016 and were made in accordance with the NSW Industrial Noise Policy (INP)

A noise logger measures the noise level over the sample period and then determines L_{Amax} , L_{A1} , L_{A10} , L_{A90} and L_{Aeq} levels of the noise environment. The L_{A1} , L_{A10} and L_{A90} levels are the noise levels exceeded for 1%, 10% and 90% of the sample period respectively.

The L_{Amax} is indicative of the maximum noise levels due to individual noise events such as the pass-by of a heavy vehicle. The L_{Aeq} level is the equivalent continuous sound level and has the same sound energy over the sample period as the actual noise environment with fluctuating sound levels.

The background noise level is defined by the NSW Environment Protection Authority (EPA) as 'the underlying level of noise present in ambient noise when all unusual extraneous noise is removed'. It can include sounds that are normal features of a location and may include birds, traffic, insects etc. The background noise level is considered to be represented by the L_{ABO} descriptor.

The assessment background level (ABL) is established by determining the lowest tenth-percentile level of the L_{ABO} noise data acquired over each of the day, evening and night periods. The background noise level or rating

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background level (RBL) representing the day, evening and night-time assessment periods is based on the median of individual ABLs determined over each period for the entire monitoring duration

Full details of the noise logging results are presented in Appendix B. A summary of the results are presented in Table 3.

Table 3 Ambient noise logging summary for residential receiver locations, dB(A)

Logger location		Rating background level (RBL), L _{A90}			Ambient noise levels, L _{Aeq}		
55		Day ¹	EvenIng ²	Nlght ³	Day ¹	EvenIng ²	Nlght ³
L1	North, east and west sides of development site	40	40	33	57	56	51
L2	South side of development site	37	38	29 ⁴	50	48	44

Notes:

- Day is defined as 7:00 am to 6:00 pm Monday to Saturday and 8:00 am to 6:00 pm Sunday and Public Holidays
- Evening is defined as 6:00 pm to 10:00 pm Monday to Sunday and Public Holidays
- Night is defined as 10:00 pm to 7:00 am Monday to Saturday and 10:00 pm to 8:00 am Sundays and Public Holidays
- Where the rating background level is found to be less than 30 dB(A), then it is set to 30 dB(A) in accordance with the INP.

2.3.2 Attended ambient noise measurements

Attended noise measurements were undertaken adjacent to the long term noise logger locations in order to determine the sources of existing ambient noise levels at the logger locations during the daytime period. The results of these attended measurements are shown in Table 4.

Table 4 Attended noise measurements - 1 August 2016, dB(A)

Location	Time of measurement	L _{A1}	L _{A10}	L _{Aeq}	L _{A90}	Comments
M1	2:24 pm	66	57	54	40	Aircraft contribution: Distant and nearby aircraft operations, varied with distance ~49 - 54 dB(A). Road traffic contribution: Traffic movements on Hirst and Kembla Streets, pass-bys ranged from ~ 55 – 68 dB(A) (Controls ambient noise). Distant traffic/urban hum to south-east when there was no nearby traffic movements ~39 dB(A) (Controls background noise). Other: Nearby occasional birds ~up to 53/54 dB(A). Slight wind in trees up high. Overcast sky, Average Wind – Calm to slight
M2	2:13 pm	50	45	41	36	Aircraft contribution: Distant helicopter operations, varied with distance ~37 – 48 dB(A). Traffic contribution: Traffic movements on Dowling and Kembla Streets, pass-bys ranged from ~ 40 – 49 dB(A) (controls ambient noise). Distant traffic/urban hum to south-east when there was no nearby traffic movements ~36 dB(A (Controls background noise). Other: Distant birds, and nearby birds up to ~52 dB(A). Occasional slight wind in distant trees ~36/37 dB(A). Faint residential activities (ie. washing machine) ~37 dB(A). Overcast sky, Average Wind — Calm to slight

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The existing noise environment around the site generally comprises road traffic noise, both from local roads and the Princes Highway, in addition to air traffic noise and nearby residential activity noise. Industrial noise is not a feature at this location.

2.3.3 Existing outdoor play area measurements

Attended noise measurements were undertaken at the nearest residential receivers in order to quantify the existing noise levels from the use of the outdoor play area. Measurements were undertaken on 1 August 2016 between 12:30 pm and 1:10 pm. Contributions from noise sources other than the outdoor play area (ie. car passbys) were excluded from the measurements.

Measurement results are shown in Table 5. During the measurements 26 students were using the outdoor play area spaces, with 10-14 students playing football/running in outdoor play grass area with typically up to 2-3 students talking/shouting. The remaining students were playing on the adjacent paved areas in groups of around 4-5, with typically 1-2 students talking. During the measurements the sky was overcast and the wind was calm to slight at times.

Table 5 Outdoor play area noise measurements

Location	Date	Time	L _{Aeq} noise level, dB(A)	Comments
M3	1/08/16	1:08 pm	55	Typically play area activity noise level with no shouts around 53 dB(A), with frequent shouts of around 59 dB(A)
M4	1/08/16	12:55 pm	58	Typically play area activity noise level with no shouts around 54 dB(A) with frequent shouts of around 63 dB(A)

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3.0 Environment noise criteria

3.1 Mechanical plant, car-parking activities and internal educational activities

Under the NSW Protection of the Environment (Operations) Act 1997, the Environment Protection Authority (EPA) document NSW Industrial Noise Policy (INP) provides guidance in relation to acceptable noise limits for industrial noise emission, which includes, but is not limited to, noise emission from mechanical plant.

The assessment procedure in the NSW INP has two components:

- Controlling intrusive noise impacts in the short term for residences
- Maintaining noise level amonity for residences and other land uses

Both components are assessed at the boundary of the noise sensitive receiver site, or if the site boundary is more than 30 metres from the noise sensitive building, a distance of 30 metres from the noise sensitive building.

Adjustments to the level of noise predicted (or measured) at the assessment location may be applied in accordance with Section 4 of the INP to account for the subjective effects of specific noise characteristics including tonality, low frequency content, intermittency, impulsiveness and duration.

In absence of specific relevant noise criteria by Rockdale City Council or the NSW EPA, noise impacts from indoor educational activities have been assessed against INP intrusive criterion.

3.1.1 Intrusive noise impacts

The INP states that the noise from any single noise source should not be greatly above the prevailing background noise level. Industrial noise sources are generally considered acceptable if the A-weighted equivalent continuous sound pressure level of noise from the source, measured over a 15 minute period ($L_{Aeq.15 \text{ min}}$) does not exceed the Rating Background Level (RBL) by more than 5 dB(A) for the period under consideration. This is termed the Intrusiveness Criterion.

The 'Rating Background Level' (RBL) is the background noise level to be used for assessment purposes and is determined by the methods given in the INP.

The RBLs and the respective intrusive criteria for the daytime period are provided in Table 6.

Table 6 Intrusive criteria

Location	RBL (L _{A90}), dB(A)	Intrusive Criteria (RBL+5), dB(A)
Residential receivers north of the development site	40	45
Residential receivers south of the development site	37	42

3.1.2 Protecting amenity

To limit continuing increase in noise levels, the maximum ambient noise level within an area from all industrial noise sources should not normally exceed the acceptable noise levels specified in Table 2.1 of the INP. That is the noise level should not exceed the level appropriate for the particular locality and land use. This is often termed the "background creep" or "amenity criterion". Where there are existing high road traffic or industrial noise levels then the amenity are corrected in accordance with the INP. This was not the case for receivers in proximity to 19 Dowling Street, Arncliffe.

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The amenity criteria applicable to this development are provided in Table 7.

Table 7 Amenity criteria

Type of Receiver	Indicative Noise	Time of Day	Recommended L _{Aeq} Noise Level, dB(A)		Amenity	
.,,,	Amenity Area		Acceptable	Maximum	Criteria	
Residences North	Suburban	Day	55	60	55	
Residences South	Suburban	Day	55	60	55	
School (Internal)	All	Noisiest 1-hour period	35	40	35	

3.1.3 Environmental noise emission criteria summary

A summary of the environmental noise criteria is presented in Table 8 below. The criteria apply to environmental noise emission from plant installed as part of the development and on-site car parking movements

Summary of environmental noise emission criteria

Location	Time of Day	Plant and carpark critoria L _{Aeq} , dB(A)	
		Intrusivo	Amonity
Residences North	Day	45	55
Residences South	Day	42	55
School (Internal)	Noisiest 1-hour period	-	35

3.2 Outdoor play areas

The outdoor play areas will be used during recess and lunchtime and will be in use for approximately one hour per day. Specific noise criteria applicable to school outdoor play areas have not been recommended by either Rockdale City Council or the NSW Environment Protection Authority (EPA), therefore consideration should be given to whether the noise from the outdoor play areas is offensive.

The Noise Guide for Local Government (NGLG) published by NSW EPA provides guidance on the assessment of

"Depending on the type of noise under consideration, noise can be considered as offensive in three ways according to its:

- Audibility
- Duration
- Inherently offensive characteristics

3.2.1 Definition of offensive noise

- The Protection of the Environment Operations (Noise Control) Regulation 2008 defines offensive noise as noise. That, by reason of its level, nature, character or quality, or the time at which it is made, or any other circumstances:
 - Is harmful to (or is likely to be harmful to) a person who is outside the premises from which it is i) emitted, or
 - Interferes unreasonably with (or is likely to interfere unreasonably with) the comfort or repose of a person who is outside the premises from which it is emitted, or
- that is of a level, nature, character or quality prescribed by the regulations or that is made at a time, or in other circumstances, prescribed by the regulations.

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3.2.2 Offensive noise test

Noise Guide for Local Government published by NSW EPA provides the following checklist of considerations to determine whether the noise is offensive.

- 1) Is the noise loud in an absolute sense? Is it loud relative to other noise in the area?
- 2) Does the noise include characteristics that make it particularly irritating?
- 3) Does the noise occur at times when people expect to enjoy peace and quiet?
- 4) Is the noise atypical for the area?
- 5) Does the noise occur often?
- 6) Are a number of people affected by the noise?

Noise from the use of the play areas will be assessed with consideration of this test.

3.3 Road traffic noise

To assess noise impacts from traffic generated by the additions and alterations to the school an initial screening test should be undertaken by evaluating whether existing road traffic noise levels will increase by more than 2 dB(A). Where the predicted noise increase is 2 dB(A) or less, then no further assessment is required. However, where the predicted noise level increase is equal to or greater than 2 dB(A), and the predicted road traffic noise level exceeds the road category specific criterion then noise mitigation should be considered for those receivers affected in accordance with the Road Noise Policy.

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4.0 Environmental noise assessment

4.1 School operations

Throughout the school day education activities will occur within the existing Church Auditorium and within the proposed new education facility buildings. These will be typical of primary and secondary school classroom activities. Students will spend recess and lunch breaks within the outdoor play areas and west facing balconies where they will eat their food and play. Sporting activities will occur off-site at other facilities.

All aspects of environmental noise emissions are discussed below

4.2 Modelling methodology

Noise levels due to the operational activities have been predicted to nearby noise sensitive receivers using a combination of AECOM in-house acoustic building calculation software and SoundPLAN 7.3 (industry standard) noise modelling software.

The noise emission modelling includes:

- Ground topography;
- Buildings and structures;
- All representative operational noise sources included as point or moving point sources;
- Ground Absorption; and
- Representative operational noise sources as required

Mechanical plant

Existing environmental plant is located in the south-west corner of the development site. Adjacent sensitive receivers are shielded from plant noise emission by acoustic barriers.

Additional plant will exist of external air conditioning plant located in a rooftop plant area. The operation of this plant will be limited to school operating hours of 8:30 am to 3:30 pm. In order to comply with the environmental noise emission, the total sound power level of this plant must be limited to 93 dB(A).

4.4 Car-parking

Current allowances for car-parking on the development site are a basement car-park and a small number of ongrade spaces. Six (6) of the existing on grade spaces will be relocated to the basement car park. Any noise emission from the use of these spaces will be sufficiently attenuated by the building structure once inside the basement carpark area. To minimise noise from use of the carpark access ramp it is recommended that the following noise mitigation measures are implemented:

- Hours of operation of the carpark gate/shutter should be minimised to secured hours only.
- Any metal drainage grates should be mounted on resilient pads to reduce impact noise as vehicles pass over them

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4.5 Internal activities

Indoor classes will be conducted within the studio and foyer spaces of the new education facility and the existing church auditorium

The building envelope design of the auditorium is considered to be sufficient to attenuate a noise emission to adjacent sensitive receivers. All noise emanating from internal activities within the auditorium will meet the relevant criteria.

The building envelope design of the new education facility is considered to sufficient to attenuate noise emission to adjacent sensitive receivers with windows closed. Windows may be open for natural ventilation purposes during quiet activities, however, all windows must be closed on the eastern and southern facades during noise generating activities such as music lessons and group activities.

4.6 Outdoor play areas

4.6.1 Predicted noise levels

Three external play areas are proposed. These will be located at the north-east and north-west corners of the development site and within a central courtyard. The corner play areas will be approximately 25 metres from the nearest sensitive receivers across Dowling, Hirst and Kembla Streets.

Recess and lunch will take place during the following indicative times -

- Recess: 10:30 am to 11:00 am
- Lunch: 12:30 pm to 1:00 pm

A 'reasonable' worst case scenario outlined below has been considered based upon the site observations and the attended noise measurements undertaken of existing usage of the outdoor play area, presented in Section 2.3.3.

- North-east play area
 - 50 students playing outdoors;
- Central courtyard play area
 - 50 students playing outdoors;
- North-west play area
 - 100 students playing outdoors;

Based upon site observations, it is noted that typically -

- Students typically play in groups of four to five, with one student in the group talking/shouting at any one time.
- 50% of students typically play active games, while the other 50% typically play passive games.

The attended measurements, presented in Table 5, have been used to calculate the likely sound power levels of each play area based on likely number of students in each area as presented above. The modelled sound power levels are presented in Table 9, and the modelled locations presented in Figure 1.

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Table 9 Outdoor play area sound power level, dB(A)

Area	Outdoor play area sound power level (SWL), L _{Aeq 15 minute} dB(A)
Existing	
North-west play area	94
Future modelled	
North-east play area	100
Central courtyard play area	97
North-west play area	97

The predicted noise impacts from worst case outdoor play area scenario have been assessed to the nearest noise sensitive receivers. Additionally, noise impacts to the private outdoor spaces at the rear of the residential houses are presented. Predicted noise levels for each of the receiver locations are presented in Table 10.

Table 10 Predicted noise levels from the use of outdoor play areas, dB(A)

Receiver	Nearest residential boundary Predicted L _{Aeq} noise level, dB(A)	Private outdoor space Predicted L _{Aeq} noise level, dB(A)
R1	61	40
R2	63	43
R3	61	39
R4	62	38
R5	57	42
R6	57	41

Occasionally the roof-top terrace may be used as an outdoor play area. The balustrade of the roof-top terrace and the geometry of the building will provide some shielding to nearby residential receivers. When students are allowed to use this area as a play area, this will reduce number of students in the ground floor play areas. As a result the overall noise impacts from the outdoor play areas will be lower. As such, the roof-top terrace should not be precluded from being used as an occasional play area.

Only the west facing balconies may be used as areas where the students may play during recess and lunch periods. The east facing balconies are expected to be used for low noise activities only, such as hanging of artwork to dry and quiet reading.

4.6.2 Offensive noise assessment

The following assessment is in accordance with the NGLG to determine whether the noise impacts would be considered offensive.

1) Is the noise loud in an absolute sense? Is it loud relative to other noise in the area? No

The predictions presented in Table 10 above indicate that use of the play area will result in worst case scenario noise levels of around 38-43 dB(A) in private outdoor spaces at the rear of the nearest residential properties. These levels are of the existing ambient noise levels measured by the unattended noise loggers which are presented in Table 3, and are less than the INP intrusive criteria presented in Table 8. Currently aircraft and local traffic pass-bys can result in similar noise levels to those from the outdoor play areas at the nearest residential boundaries. It is acknowledged that noise levels from the play areas will be higher at the nearest residential boundaries however it is likely that residents would not spend significant periods of time at these boundaries. It should also be noted these noise levels are based on a worst-case scenario with all students playing actively outside for the entire playtimes, and therefore the noise levels are likely to be lower if less students are outside or quieter activities are undertaken.

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2) Does the noise include characteristics that make it particularly irritating? $\,No$

The noise generated by the use of the play areas is predominantly students playing and talking. The noise would not be considered to have any 'annoying characteristics' as defined in the INP.

3) Does the noise occur at times when people expect to enjoy peace and quiet? No

The use of the play areas is limited to a maximum of two hours within school hours only. No noise will be generated during the evening or at night-time from school activities.

4) Is the noise atypical for the area? No

The noise from the use of the play areas is considered typical for suburban residential areas surrounding schools. It is noted that the school has been in operation since 2015 and has not received any complaints regarding noise from nearby residents. In addition there is another school nearby in the same suburb.

5) Does the noise occur often? No

The noise from the use of outdoor play areas will occur twice per day, for approximately 0.5 hours in the morning (recess) and afternoon (lunch), and can be considered regular but infrequent and is strictly limited to certain periods of the school day.

6) Are a number of people affected by the noise? Limited number

Potentially affected receivers are limited to those in close proximity to the school along Hirst, Kembla and Dowling Streets.

4.6.3 Assessment outcome

Based on the above checklist of considerations, noise associated with the use of the outdoor play areas is not considered to be offensive, however management controls should be put in place to minimise noise emissions. It is recommended that a noise management plan be implemented in order to minimise and manage the impact of outdoor play noise on nearby sensitive receivers.

4.7 Road traffic noise

The change of use will accommodate 200 K-12 students and teachers. A worst-case scenario of one car movement per student and teacher has been considered. Considering the existing level of traffic noise levels at nearby residential receivers it is unlikely that this number of car movements will have a significant impact on road traffic noise emission in the area.

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5.0 Noise management plan

In order to minimise and manage the impact of outdoor play noise on nearby sensitive receivers, it is recommended that the following noise control recommendations be incorporated into management procedures. It is noted that all of the controls detailed below (with the exception of the student numbers) already form part of the School's procedures.

- Students will be supervised at all times;
- The behaviour of the students will be monitored and modified as required by adequately trained staff. This
 will include quieting excessively noisy students. A minimum ratio of 1 staff member to 30 students will be
 maintained;
- Louder activities will be directed to play in the central play area where feasible and reasonable.
- The number of students in the external play areas will be limited as follows:
 - · North-western play area: 100 students
 - North-eastern play area: 50 students
 - Central courtyard play area: 50 students
- Parents and guardians will be informed of the importance of noise minimisation when entering the site, dropping off or picking up students;
- Staff will ensure the total time students spend playing outside is less than 2 hours per day;
- The use of outdoor play areas will be limited to between the hours of 8:30am and 3:30pm;
- No loudspeakers will be located in outdoor areas and amplified music or speech will not be used in outdoor areas:
- Contact details for the school will be displayed prominently, so the public are easily able to contact the school to register any comments or complaints;
- A review of this plan should be completed regularly to ensure that the most appropriate noise controls are being implemented.

5.1 Complaint procedure

If complaints are received, the School Principal will complete an Environmental Incident Report Form to record details of the occurrence and actions taken. Where applicable, completed forms should detail the following:

- The date and time of the complaint;
- The method by which the complaint was made;
- Any personal details of the complainant which were provided by the complainant or, if no such details were provided, a note to that effect;
- The nature of the complaint;
- Description of the noise source that is the subject of complaint and the duration of event;
- Location of complainant during time of incident, and general area in which the noise source was located;
- Identification of noise activities and locations that could have or are known to have contributed to the incident:
- Description of appropriate actions taken to address the complaint; and
- If appropriate, details of any actions taken to be communicated to the complainant.

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6.0 Conclusion

This report presents the results of an acoustic assessment of the proposed development of 19 Dowling Street to accommodate a 200 child K-12 education program. Noise emission from the proposed development has been assessed. The environmental noise emission from the development has been assessed against Environmental Protection Authority (EPA) Industrial Noise Policy (INP) criterion and the requirements of the Noise Guide for Local Government (NGLG).

Noise levels from mechanical plant, car parking activities, and educational activities taking place within school buildings have been assessed, and will be sufficiently controlled through the implementation of the recommended noise mitigation and management strategies.

Predicted noise levels from a worst case usage of outdoor play areas were higher than the INP noise criteria at the nearest residential boundaries, but complied at the outdoor private areas at the rear of the properties, however the INP criteria is not considered appropriate for the assessment of such noise. The noise impacts were reviewed in accordance with the NGLG to determine if they would be considered offensive and it was determined that the noise impacts were unlikely to be considered offensive. However management controls should be put in place to minimise noise impacts. It is recommended that a noise management plan be implemented in order to minimise and manage the impact of outdoor play noise on nearby sensitive receivers.

A noise management plan for the outdoor play areas, including a complaints procedure, has been presented in this report. If this is implemented along with all other noise mitigation recommendations then it is unlikely that nearby residents will be adversely affected by noise from the proposed alterations and additions at the education facility of 19 Dowling Street, Arncliffe.

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Appendix A

Glossary of Acoustic Terminology

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Appendix A Glossary of Acoustic Terminology

The total sound emitted by a source Sound power level The amount of sound at a specified point Sound pressure level

The measurement unit of sound Decibel [dB]

A Weighted decibels [dB(A]) The A weighting is a frequency filter applied to measured noise levels to

represent how humans hear sounds. The A-weighting filter emphasises frequencies in the speech range (between 1kHz and 4 kHz) which the human ear is most sensitive to, and places less emphasis on low frequencies at which the human ear is not so sensitive. When an overall

sound level is A-weighted it is expressed in units of dB(A)

The decibel scale is logarithmic in order to produce a better representation Decibel scale

of the response of the human ear. A 3 dB increase in the sound pressure level corresponds to a doubling in the sound energy. A 10 dB increase in the sound pressure level corresponds to a perceived doubling in volume.

Examples of decibel levels of common sounds are as follows

0dB(A) Threshold of human hearing

30dB(A) A quiet country park 40dB(A) Whisper in a library 50dB(A) Open office space

70dB(A) Inside a car on a freeway

80dB(A) Outboard motor 90dB(A) Heavy truck pass-by 100dB(A) Jackhammer/Subway train

110 dB(A)

115dB(A) Limit of sound permitted in industry

120dB(A) 747 take off at 250 metres

The repetition rate of the cycle measured in Hertz (Hz). The frequency Frequency [f]

corresponds to the pitch of the sound. A high frequency corresponds to a

high pitched sound and a low frequency to a low pitched sound

Equivalent continuous sound

level [Lea]

The constant sound level which, when occurring over the same period of time, would result in the receiver experiencing the same amount of sound

energy

The maximum sound pressure level measured over the measurement L_{max}

period

The minimum sound pressure level measured over the measurement

The sound pressure level exceeded for 10% of the measurement period.

For 10% of the measurement period it was louder than the L₁₀.

The sound pressure level exceeded for 90% of the measurement period.

For 90% of the measurement period it was louder than the Leo.

The all-encompassing noise at a point composed of sound from all sources Ambient noise

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Traffic noise

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Background noise The underlying level of noise present in the ambient noise when

extraneous noise (such as transient traffic and dogs barking) is removed. The L_{90} sound pressure level is used to quantify background noise.

The total noise resulting from road traffic. The L_{eq} sound pressure level is

used to quantify traffic noise.

Day The period from 0700 to 1800 h Monday to Saturday and 0800 to 1800 h

Sundays and Public Holidays.

Evening The period from 1800 to 2200 h Monday to Sunday and Public Holidays.

Night The period from 2200 to 0700 h Monday to Saturday and 2200 to 0800 h

Sundays and Public Holidays.

Assessment background level [ABL]

The overall background level for each day, evening and night period for

each day of the noise monitoring.

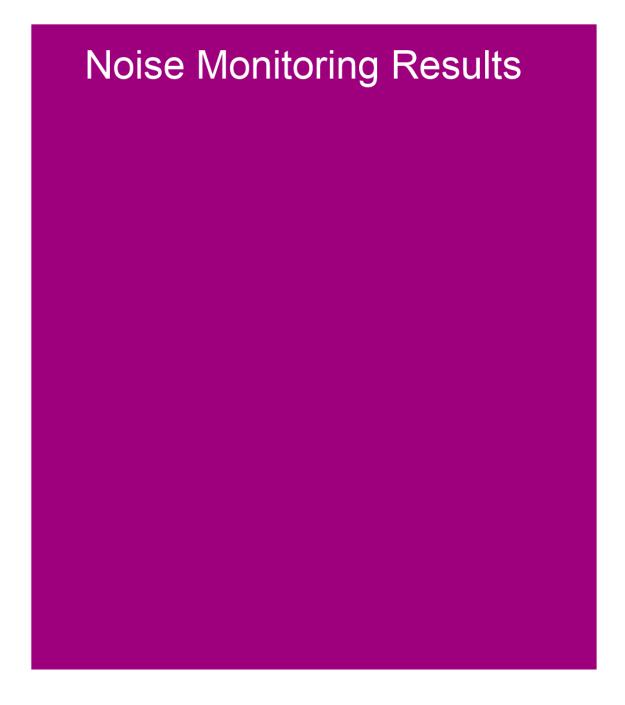
Rating background level [RBL] The overall background level for each day, evening and night period for the

entire length of noise monitoring.

^{*}Definitions of a number of terms have been adapted from Australian Standard AS1633:1985 "Acoustics – Glossary of terms and related symbols", the EPA's NSW Industrial Noise Policy and the EPA's Road Noise Policy.

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Appendix B



AECOM

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Appendix B Noise Monitoring Results

Existing Background (L_{A90}) and ambient (L_{Aeq}) noise levels

Measurement Date	L _{A90} Background Noise Level, dB(A)			L _{Aeq} Ambient Noise Level, dB(A)		
	Day ²	Evening ³	Night ⁴	Day	Evening	Night
Location 1						
Monday 1 August 2016	40	35	28	58	53	49
Tuesday 2 August 2016	_1	_1	_1	_1	_1	_1
Wednesday 3 August 2016	_1	_1	_1	_1	_1	_1
Thursday 4 August 2016	_1	_1	36	_1	_1	48
Friday 5 August 2016	_1	_1	_1	_1	_1	50
Saturday 6 August 2016	_1	_1	_1	_1	_1	50
Sunday 7 August 2016	41	36	30	56	54	51
Monday 8 August 2016	40	44	33	57	54	51
Tuesday 9 August 2016	39	40	32	57	60	55
Wednesday 10 August 2016	41	_1	_1	56	_1	_1
Rating Background Level (RBL)	40	40	33			
Log Average				57	56	51
Location 2						
Monday 1 August 2016	36	32	25	49	48	44
Tuesday 2 August 2016	_1	_1	_1	_1	_1	_1
Wednesday 3 August 2016	_1	_1	_1	_1	_1	_1
Thursday 4 August 2016	_1	_1	34	_1	_1	42
Friday 5 August 2016	_1	38	33	_1	48	43
Saturday 6 August 2016	40	41	31	49	49	42
Sunday 7 August 2016	38	33	28	54	45	44
Monday 8 August 2016	36	40	29	49	50	45
Tuesday 9 August 2016	35	38	28	50	49	44
Wednesday 10 August 2016	37	-	-	49	-	-
Rating Background Level (RBL)	37	38	29			
Log Average				50	48	44

Notes:

- 1. This period was affected by rain and/or wind noise and has been excluded from the measurements.
- Day is defined as 7:00 am to 6:00 pm Monday to Saturday and 8:00 am to 6:00 pm Sunday and Public
- Evening is defined as 6:00 pm to 10:00 pm Monday to Sunday and Public Holidays
- Night is defined as 10:00 pm to 7:00 am Monday to Saturday and 10:00 pm to 8:00 am Sundays and Public Holidays.

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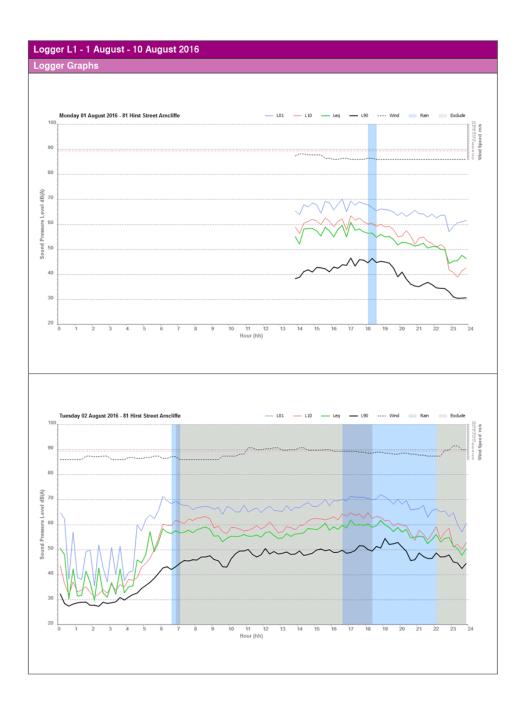
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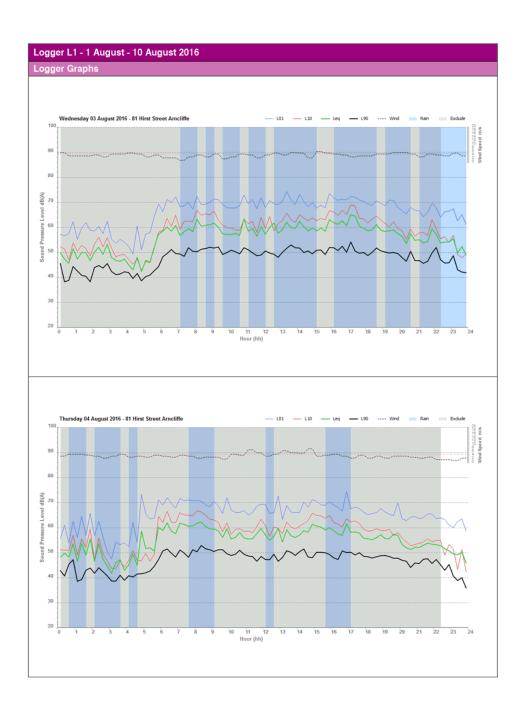


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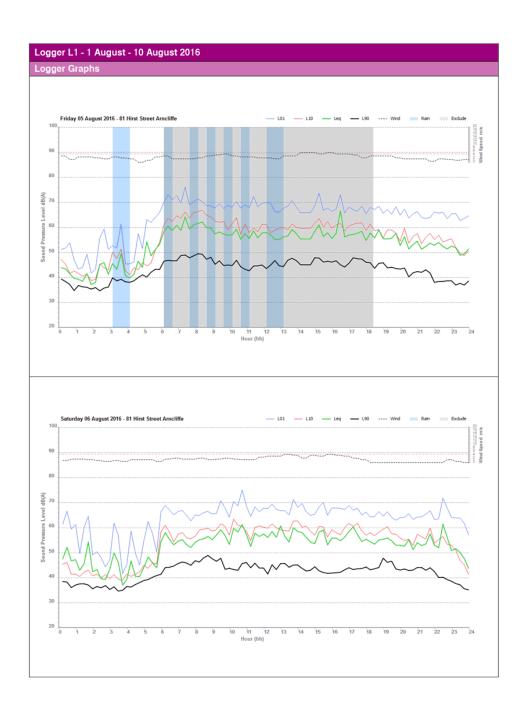


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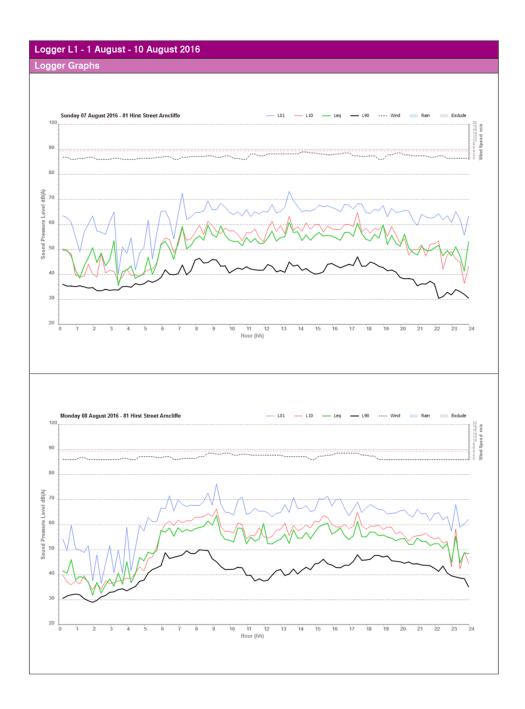


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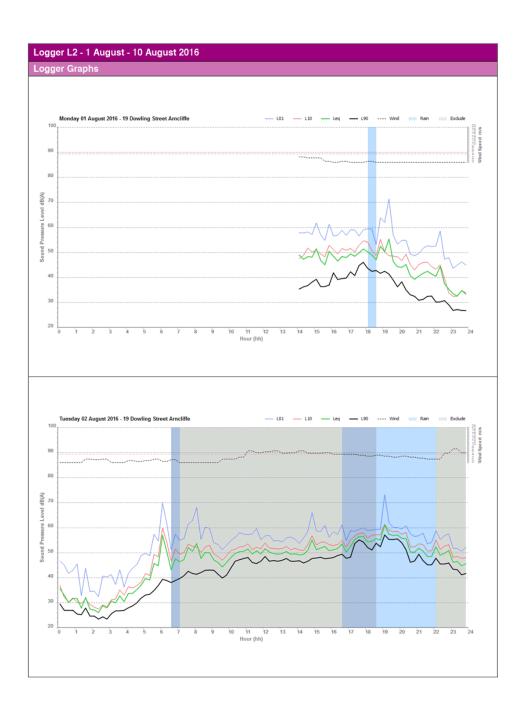
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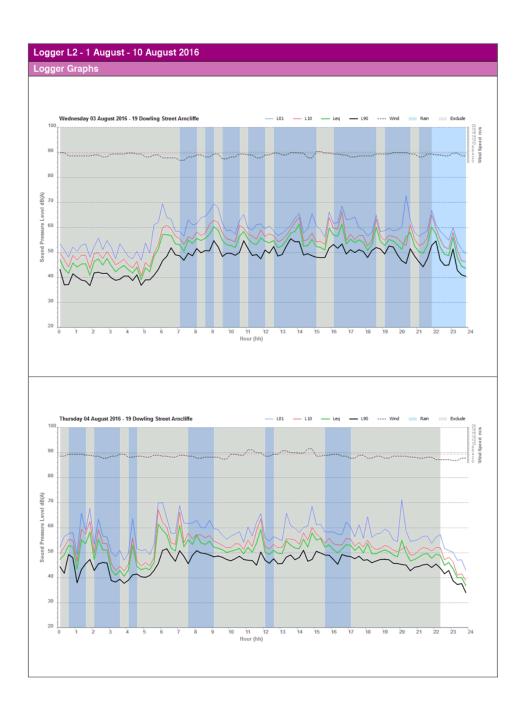


AECOM KCCS - 19 Dowling Street, Amcliffe b-8 Development Application



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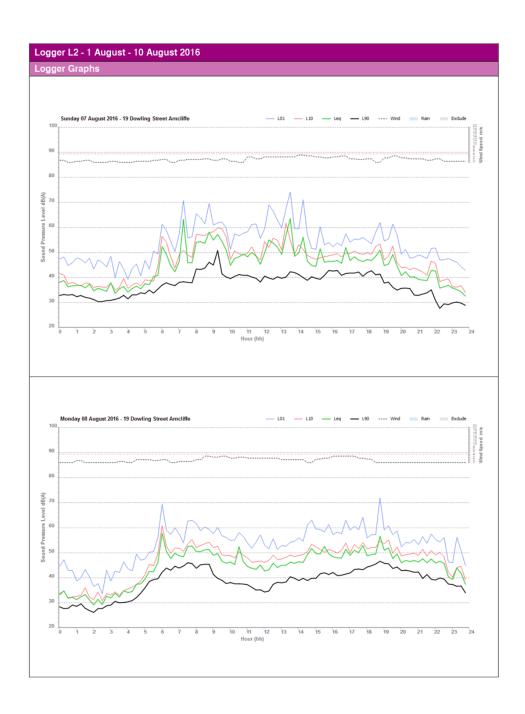
AECOM KCCS - 19 Dowling Street, Arncliffe Development Application



AECOM KCCS - 19 Dowling Street, Amcliffe b-10 Development Application



AECOM KCCS - 19 Dowling Street, Amcliffe b-11
Development Application



AECOM KCCS - 19 Dowling Street, Amcliffe b-12 Development Application



Creative Planning Solutions Pty Limited Response to additional information – 19 Dowling Street, Arncliffe

ANNEXURE B

Clause 4.6 Written Request - Floor Space Ratio

Clause 4.6 Exception to Development Standards (Compulsory)

Rockdale Local Environmental Plan 2011

Applicant's name: Kingdom Culture Christian School Pty Limited

Site address: 19 Dowling Street Arncliffe

Proposal: The proposed development consists of the partial demolition of some existing buildings and structures associated the subject site and the construction of a new two storey addition with basement car parking and storage.

Introduction

At the time of writing, the case law relevant to the preparation of this Clause 4.6 variation request are as follows:

- Wehbe v Pittwater Council [2007] NSWLEC 827
- Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 ('Four2five No 3')
- Winten Property Group Ltd v North Sydney Council [2001] NSWLEC 46
- Zhang and Anor v Council of the City of Ryde [2016] NSWLEC 1179
- Micaul Holdings Pty Ltd v Randwick City Council [2016] NSWLEC 7
- Moskovich v Waverley Council [2016] NSWLEC 1015

The findings and principles set out in these cases have been considered in the preparation of this Clause 4.6 variation request.

In accordance with clause 4.6, and as guided by the above case law, this clause 4.6 variation request:

- a. identifies the development standard to be varied (Section 1);
- b. identifies the extent of the variation sought (Section 2);
- establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances because the objective of the FSR development standard is achieved notwithstanding non-compliance with the standard (Section 3 and Section 4);
- d. demonstrates that there are sufficient environmental planning grounds to justify the variation (Section 4 below);
- e. demonstrates that the consent authority can be satisfied that the proposal is in the public interest because it is consistent with the objectives of the standard and the objectives for development within the B4 Mixed Use zone (Section 4 below);

- f. demonstrates that the variation of the maximum FSR development standard does not raise any matter of significance for State or regional planning (Section 4 below); and
- g. demonstrates that there is no public benefit in maintaining the numerical FSR development standard in this instance (Section 4 below).

1. Name of the applicable planning instrument which specifies the development standard:

Rockdale Local Environmental Plan 2011

The number of the relevant clause therein:

Clause 4.4 – Floor space ratio

The relevant subclause states:

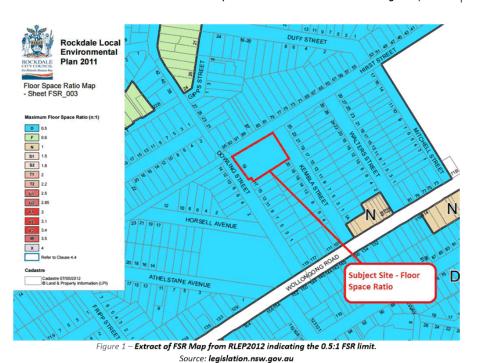
(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

2. The nature of Development Standard sought to be varied and details of variation:

As outlined above, Clause 4.4 of the Rockdale Local Environmental Plan 2011 (RLEP2011) prescribes that a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map. As indicated in the RLEP2011 Floor Space Ratio Map extract below (*Figure 1*), the maximum floor space ratio shown for the subject site on the Floor Space Ratio Map is partially 0.5:1

With a gross floor area (GFA) of 1,690.09m² and a site area of 3,315m², the proposed development has an overall floor space ratio of 0.5098:1. This fails to comply with the maximum FSR of 0.5:1 and therefore results in a 1.95% variation to the development standard for this portion of the site.

A 1.95% variation is considerably less than the 10% departure that would otherwise trigger the determination of the DA being made by the Bayside Planning Panel.



3. Assessment of Clause 4.6 Variation

3.1 Consistency with Objectives of Floor Space Ratio Development Standard:

Clause 4.4(1) of the RLEP2011 includes the following specific objectives for controlling the height of buildings:

- (1) The objectives of this clause are as follows:
 - (a) to establish the maximum development density and intensity of land use, accounting for the availability of infrastructure and generation of vehicular and pedestrian traffic, in order to achieve the desired future character of Rockdale,
 - (b) to minimise adverse environmental effects on the use or enjoyment of adjoining properties,
 - (c) to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing or likely to undergo a substantial transformation.

The following is an explanation as to how the proposal, notwithstanding the non-compliance with the development standard, will achieve the objective of the development standard.

 Objective 1(a) of the development standard outlined in Section 3 of this report is achieved due to the following reasons:

To establish the maximum development density and intensity of land use, accounting for the availability of infrastructure and generation of vehicular and pedestrian traffic, in order to achieve the desired future character of Rockdale,

The proposal seeks a 1.95% variation to the FSR development standard.

Having regard to the objective, the question is then whether this 1.95% variation in FSR is sustainable when considering the availability of infrastructure and any additional generation of vehicular and pedestrian traffic that may result from the development.

Regarding infrastructure specifically, it is noted that all available services required for operating the new school buildings are available, owing to the existing use of the site as a school and church. Additional infrastructure such as access to public transport services is also available within close vicinity of the subject site. On this point reference is made to the reports prepared by ML Traffic Engineers and also GTA Consultants.

Submitted within the response to Council's additional information request is a traffic and parking assessment which serves as an updated traffic and parking assessment of the proposed modifications to the development. The concluding comments of the assessment are:

- It is expected that car parking demand for the proposed expansion can be effectively managed on-site and accommodated in the road network immediately surrounding the site if required, without any adverse impacts.
- It is proposed that the number of church patrons be reduced to 380 patrons.
- The level of on-site parking provision proposed is sufficient to support the proposed expansion of the school to 200 students, with sufficient on-site parking.
- The car park layout has been amended to improve the safety and operation of the basement car park.
- The car parking provisions for the site have been reduced to 44 spaces
 designed for use by the church. During school operations, use of the car
 park is reduced to 42 spaces, where two spaces will be used as a
 turnaround area, further improving the safety operation of the car park.

- The overflow parking for church use can be provided via stack parking arrangements.
- By implementing traffic management arrangements and via parking allocation arrangements, the safety of the basement car parking can be improved.

Having regard to the conclusions of the GTA assessment, it evident the proposal is capable of satisfying the objective of the development standard which seeks to ensure generation of vehicular and pedestrian traffic achieves the desired future character of Rockdale.

Reference is also made to Annexure A of this response to Council's additional information request which includes acceptance of a consent condition that will ensure church services will not be held during school hours. The acceptance of this condition helps support the notion that the density and intensity of land uses on the site remain acceptable with regard to the desired future character of the local area.

It is also important to also note that a considerable amount of floor space across the site is attributable to the underutilised area of the heritage listed villa (341.7m² or 20.6% of the allowable GFA), In this regard, when offsetting the 32.59m² or 1.95% variation to the control against the 341.7m² or 20.6% of the underutilised area of the site, it is evident the proposed variation does not contribute to the intensity of the school or church land use on the site.

 Objective 1(b) of the development standard outlined in Section 3 of this report is achieved due to the following reasons:

To minimise adverse environmental effects on the use or enjoyment of adjoining properties,

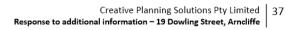
It is considered that adverse environmental impact on adjoining properties has been minimised. The subject site has three (3) frontages to the surrounding road network. Only the south eastern boundary adjoins residential properties. The majority of built form along this south eastern boundary is existing as such it is considered that the perceived additional impacts of the development will be minimal.

The proposed new building has been assessed to slightly reduce the solar access to the rear yard by 16.6% to approximately 41.66% or 2.5hrs, this is less than the 20% maximum reduction specified within the RDCP2011.

The existing shadow is being cast by the existing hall on the development site (to be demolished) which has a height RL31.27 and is approximately 10.5m from the

boundary. The proposed shadows are increased because the parapet height has been increased in general by approximately 2.25m to the top of the 1m safety balustrades and approximately 8.72m from the boundary. It is considered that the lift overrun which rises to 11.9m is a relatively minor portion of the non-compliance and is not considered to contribute to this increase in overshadowing. This reduction in solar access is considered justifiable for the following reasons.

- The proposed building does not significantly reduce the level of existing solar access to habitable areas within the dwelling – refer to Figure 3 below which includes an elevation shadow diagram of the adjoining property at 20 Kembla Street.
- The increase in overshadowing to the rear yard is less than the 20% maximum reduction specified within the RDCP2011.
- The roofline has been stepped from the boundary to provide greater setbacks to the upper levels from this side boundary,
- If it were not for the heritage item located on the site, the development could potentially be undertaken as complying development pursuant to State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017, a new school building could theoretically be built to a height of 22m within 10m of the boundary. The maximum height of this building has been assessed to be 11.9m at the lift overrun which is a relatively minor portion of the roof, and according to the complying development provisions, such a building could be constructed within 5m of the boundary. Furthermore, under the provisions of the aforementioned SEPP no floor space ratio limits apply for complying development. In such circumstances a considerably great shadow would be cast over adjoining development and deemed to be within acceptable limits by the complying development standards of the SEPP.
- At 8.72m the building setbacks provided to the upper levels of the proposed new school building to the southern boundary are greater than 5m which is permitted under the aforementioned SEPP.



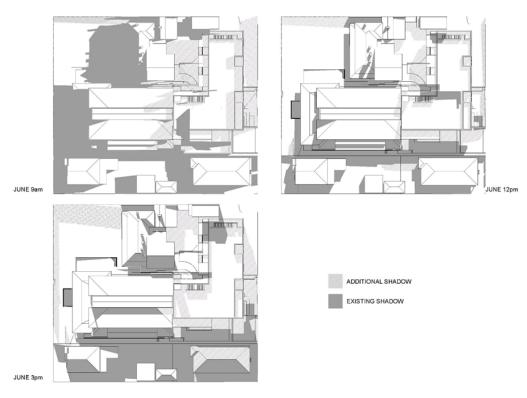


Figure 2 – **Submitted shadow diagrams showing extent of existing and proposed shadows.**Source: **FUSE Architecture**

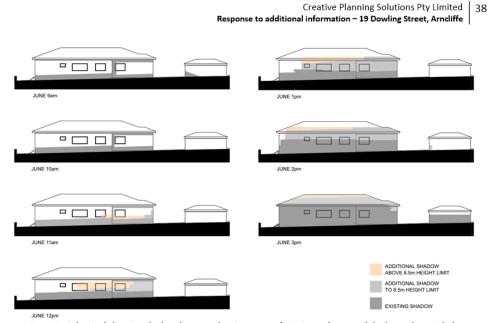


Figure 3 – Submitted elevation shadow diagrams showing extent of existing and proposed shadows, along with the difference of a building with a compliant building height and that proposed under the latest amendment to the plans.

Source: FUSE Architecture

In terms of visual privacy, the design provides for an increased setback for the first storey and proposed rooftop terrace which along with the proposed orientation will minimise opportunities for overlooking into the neighbours private open space.

The latest amendment to the plans introduces a non-trafficable area to the rooftop terrace to ensure users of the rooftop are placed further away from the southern boundary with the adjoining dwelling house at 20 Kembla Street. In addition, the planter boxes on the rooftop have been doubled in size so as to sustain better landscape planting and reduce overlooking potential.

It is also noted that the times for recess and lunch will be two 30 min periods per day, as such the level of time that this elevated terrace will be in use for active playground play will be one (1) hour in the mid-morning and early afternoon respectively.

Given the availability of outdoor play areas on the ground floor not all students will utilise the elevated terrace area for recess and lunch activities. The submitted acoustic report states the following in terms of the use of the outdoor areas within the school.

Children will spend recess and lunch breaks within the outdoor play areas and west facing balconies where they will eat their food and play. Sporting activities

will occur off-site at other facilities. The east facing balconies are expected to be used for low noise activities only, such as hanging of artwork to dry and quiet reading.

Recess and lunch will occur at the following indicative times:

- Recess: 10:30 am to 10:00 am - Lunch: 12:30 pm to 1:00 pm

It is considered that the above operations will form part of the updated noise management plan for the school and as such become part of normal day to day operations. Given that 'play' activities will occur on the west facing balconies and the adjacent residences are to the east and south east to which quiet activities will be orientated it is considered that opportunities for overlooking will be minimised.

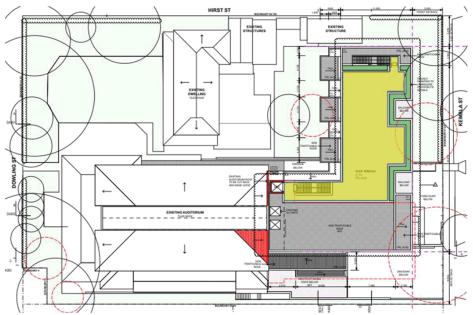


Figure 3 – Extract of the amended Roof Plan showing the area of the rationalised rooftop terrace highlighted in yellow. Noted in this image is how the reduction in the size of the roof terrace has come about by increasing the size of the non-trafficable area on the southern edge of the roof, thus meaning the usable area of the roof terrace is not positioned a further 8.2m from the nearest adjoining property.

Source: FUSE Architecture edited for use by CPS

 Objective 1(c) of the development standard outlined in Section 3 of this report is achieved due to the following reasons: To maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing or likely to undergo a substantial transformation.

Despite the non-compliance with the RLEP2011 FSR development standard, the proposed development is considered to be of an appropriate scale and visual appearance so as to be compatible with the surrounding streetscape. Appropriate built form massing has ensured the development appears as a relatively modest building when viewed from the streetscape and the surrounding allotments.

Where possible, increased setbacks and physical separation from the upper levels has been provided to reduce the visual impact and appearance of the built form as well as increase privacy and amenity. High levels of landscaping have been retained and new landscaping incorporated within the setback areas to further reduce the visual bulk and dominance of the building and maintain the front garden setting similar to the existing dwellings along Kembla Street. Landscaping has also been utilised to increase the level of inter-allotment privacy.

To determine compatibility with the local area guidance is taken from *Project Venture Development v Pittwater Council* [2005] NSWLEC 191 whereby compatibility was summarised as meaning 'capable of existing together in harmony'. Within this meaning, two key components were explored being the 'physical impacts' (noise, overlooking, overshadowing) and the 'visual impacts' (building height, bulk, scale, setbacks and landscaping).

In this regard it is considered that the proposed new buildings will present a modest change to the Kembla Street frontage, however on balance it is considered this change is capable of existing together in harmony with surrounding development.

To help support this notion, reference is made to the submitted acoustic assessments undertaken by AECOM which essentially find the acoustic performance of the proposal as being compliant with the relevant assessment criteria.

Reference is also made to the earlier discussions within this assessment regarding overlooking/privacy and overshadowing.

When considering the appropriateness of the 1.95% variation to the development standard on the grounds of bulk, scale and setbacks, and importantly its ability to exist in harmony with surrounding development, reference is once again made to the argument that the variation helps support retention of the heritage buildings on the site by avoiding alterations or additions to these buildings in lieu of new school buildings. In this regard it is contended that the proposal exists more harmoniously with surrounding development than the alternative which may

necessitate the augmentation of a heritage item in order to achieve the same gross floor area required by the applicant.

Given the above, it is considered the proposed development is compatible and improves the visual appearance of the surrounding area by providing a building which exists in harmony with the existing surrounding development and replaces an ageing church hall with new school building of high amenity, architectural integrity and modern presentation.

3.2 Consistency with the Objectives of the R2 Low Density Residential Zone

The objectives of the R2 Low Density Residential Zone under the RLEP2011 are as shown below in italics, followed by a comment on how the objectives of the zone are achieved despite the variation to the floor space ratio development standard:

To provide for the housing needs of the community within a low density residential environment.

Comment: The proposal is for a non-residential land use that is nonetheless a permissible form of development within the zone. As such, this objective is considered to have limited applicability to the proposal. Despite this it is considered that the proposed development does not limit the ability of adjoining land to continue to provide for the housing needs of the community within a low density residential environment. This is because it has been demonstrated within the clause 4.6 written request that the impact of the proposal on adjoining land are such that they do not unduly impact on the redevelopment potential of this land.

To enable other land uses that provide facilities or services to meet the day to day needs of residents.

Comment: The demand for additional placements at the school is evidence that there a need for the proposed school expansion in order to meet the day to day requirements of residents.

To ensure that land uses are carried out in a context and setting that minimises any impact on the character and amenity of the area.

Comment: As demonstrated by the submitted consultant reports including Acoustic, Traffic and Parking and Heritage the proposed school demonstrates that it is able to minimise additional impacts on the character and amenity of the low density residential area. As well as this, this proposal has undergone a number of amendments to improve visual privacy from the roof terrace to minimise overlooking potential by reducing trafficable areas.

Changes to the playground configuration have also brought about an improved relationship between the proposed building and the existing heritage items on the site. Reference is made to the supporting comments by the project team's heritage consultant, Weir Phillips Heritage in their letter dated 25 May 2018.

Having regard to the above, it is contended that the proposal will now be carried out in a context and setting that minimises impacts on the character and amenity of the area.

3.3 Unreasonable or Unnecessary

For the following reasons it is considered unreasonable and unnecessary to enforce strict compliance with the numerical floor space requirements of Clause 4.4 of the RLEP2011:

- It has been demonstrated that the 1.95% variation to the development standard does not result in any additional impacts on the amenity afforded to neighbouring properties, and does not contribute negatively to the cohesiveness of the streetscape. While it is acknowledged that even a development complying with this development standard may otherwise result in the same impacts, it important nonetheless to establish the level of impact resulting from the variation is no greater. This clause 4.6 written request has demonstrated this with regard to traffic and parking, solar access/overshadowing, visual and acoustic privacy, noise impacts and outlook.
- By allowing the construction of new building on the subject site, the school
 is able to meet the demand for new placements without having to
 augment the existing heritage buildings. This means that the heritage
 buildings are able to be preserved without be subjected to more intense
 school uses.
- If it were not for a heritage item being located on the site, the complying development provisions of State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 would prescribe that a new school building could theoretically be built to a height of 22m within 10m of the boundary. The maximum height of this building has been assessed to be 11.9m at the lift overrun which is a relatively minor portion of the roof, and according to the complying development provisions, such a building could be constructed within 5m of the boundary. Furthermore, under the provisions of the aforementioned SEPP no floor space ratio limits apply for complying development. In such circumstances a considerably greater shadow would be cast over adjoining development and deemed to be within acceptable limits by the complying development standards of the SEPP.

3.4 Consideration of Wehbe v Pittwater Council [2007] NSWLEC 827

The Chief Judge of the NSW Land and Environment Court (NSWLEC) delivered this influential judgment in relation to variations under SEPP 1, which held that variations to development standards may be well founded in a variety of ways

At [42], it was noted that the most common way to establish that compliance with a development standard is unreasonable or unnecessary is because the objectives of the development standard are achieved despite non-compliance with the control.

The Court elaborated on the rationale of this approach, noting at [43]:

Development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).

The question that this raises is as follows:

1. Would the proposal, despite a numerical non-compliance, be consistent with the relevant environmental or planning objectives?

Section 4.1 and 4.2 above demonstrate that, despite the numerical non-compliance, the proposal is consistent with the objectives of the Floor Space Ratio standard and R2 Low Density Residential zone.

The Court outlined four other methods for establishing that compliance with a development standard is unreasonable or unnecessary:

Establish that the underlying objective or purpose [of the development standard]
is not relevant to the development, with the consequence that compliance is
unnecessary.

Comment: The underlying objectives of the FSR standard and R2 zone are relevant to this proposal and as such this consideration is not relevant in this case.

3. Establish that the underlying objective or purpose would be defeated or thwarted if compliance was required, with the consequence that compliance with the development standard is unreasonable.

Comment: The underlying objective or purpose of the development standard would not be defeated or thwarted if strict compliance with the development standard was required. However this written request has demonstrated that the underlying objective or purpose of the development standard can still be achieved with the proposed 1.95% variation to the development standard.

4. Establish that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the development standard, and hence compliance with the standard is unnecessary and unreasonable.

Comment: Bayside Council has not abandoned the development standard. This consideration is not relevant.

5. Establish that the zoning of particular land was unreasonable or inappropriate so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary.

Comment: The use of the subject site as a church was in existence when the site was zoned "special uses" and not subject to a maximum numerical FSR control.

The zoning change to R2 Low Density Residential brought about by the gazettal of RLEP2011 resulted in a maximum FSR development standard being applied to the subject site. The uses on the site however are more consistent with its previous zoning which offered greater flexibility in the controls for developing buildings for a specific purpose (e.g. church, school etc.) without the inherent burden of prescriptive numerical development standards.

Although this written request does not rely upon it, there is an argument that the current R2 Low Density Residential zoning is unreasonable and inappropriate when having regard to *Wehbe v Pittwater Council [2007] NSW LEC 827* which establishes 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy.

This is because the current approved uses on the site are more akin to the previous zoning (special use). It is thus considered that the 0.5:1 FSR development standard is more appropriate to control the bulk and scale of low density residential accommodation within the R2 Residential Zone. It is therefore considered that the application of the standard to this development could be argued as unreasonable and unnecessary and that this particular parcel of land should not have been included in the R2 zone.

To further support the above argument, it is again reiterated that under the provisions of *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017*, that complying developments for schools are not subjected to a floor space ratio limit which places further questions over the appropriateness of a 0.5:1 floor space ratio limit for the site.

3.5 Sufficient Environmental Planning Grounds

It is considered that there are sufficient environmental planning grounds to support the variation as follows:

- The 1.95% variation to the development standard does not manifest in any
 undue impacts on the amenity of adjoining development by way of
 overshadowing, loss of visual or acoustic privacy, noise impacts, traffic or
 parking impacts, nor visual outlook.
- The applicant has accepted conditions by Council that would see no church services being undertaken during school hours. Furthermore, the applicant acknowledges the outcomes of the GTA traffic and parking report which require a reduction in the number of church patrons. These reductions in the use of the site will reduce the level of density and intensity associated with the development and offset the 1.95% variation to the development standard in terms of the additional gross floor area over that prescribed by the development standard.
- Through the construction of new buildings on the subject site, the school is
 able to meet the demand for new placements without having to augment the
 existing heritage buildings. This means that the heritage buildings are able to
 be preserved without be subjected to more intense school uses.

3.6 Any Matter of Significance

The non-compliance does not raise any matter of significance for state or regional environmental planning.

3.7 Public Benefit

The proposal will result in significant public benefit through the ability to meet demand for school placements currently experienced by Kingdom Culture Christian School. Furthermore it is considered to be in the public interest that the objectives of the development standard and zone are upheld, irrespective of whether numerical compliance with the development standard is met.

On balance it is therefore considered that strict maintenance of the standard in this instance is not in the public interest.

Creative Planning Solutions Pty Limited Response to additional information – 19 Dowling Street, Arncliffe

ANNEXURE C

Clause 4.6 Written Request – Building Height

Clause 4.6 Exception to Development Standards (Compulsory)

Rockdale Local Environmental Plan 2011

Applicant's name: Kingdom Culture Christian School Pty Limited

Site address: 19 Dowling Street Arncliffe

Proposal: The proposed development consists of the partial demolition of some existing buildings and structures associated the subject site and the construction of a new two storey addition with basement car parking and storage.

Introduction

At the time of writing, the case law relevant to the preparation of this Clause 4.6 variation request are as follows:

- Wehbe v Pittwater Council [2007] NSWLEC 827
- Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 ('Four2five No 3')
- Winten Property Group Ltd v North Sydney Council [2001] NSWLEC 46
- Zhang and Anor v Council of the City of Ryde [2016] NSWLEC 1179
- Micaul Holdings Pty Ltd v Randwick City Council [2016] NSWLEC 7
- Moskovich v Waverley Council [2016] NSWLEC 1015

The findings and principles set out in these cases have been considered in the preparation of this Clause 4.6 variation request.

In accordance with clause 4.6, and as guided by the above case law, this clause 4.6 variation request:

- h. identifies the development standard to be varied;
- i. identifies the extent of the variation sought;
- j. establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances because the objective of the FSR development standard is achieved notwithstanding non-compliance with the standard;
- k. demonstrates that there are sufficient environmental planning grounds to justify the variation;
- demonstrates that the consent authority can be satisfied that the proposal is in the public interest because it is consistent with the objectives of the standard and the objectives for development within the R2 Low Density Residential zone;

- m. demonstrates that the variation of the maximum FSR development standard does not raise any matter of significance for State or regional planning; and
- n. demonstrates that there is no public benefit in maintaining the numerical FSR development standard in this instance.

4. Name of the applicable planning instrument which specifies the development standard:

Rockdale Local Environmental Plan 2011

The number of the relevant clause therein:

Clause 4.3 – Height of buildings

The relevant subclause states:

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map

5. The nature of Development Standard sought to be varied and details of variation:

Clause 4.3 of the *Rockdale Local Environmental Plan 2011* (RLEP2011) prescribes that a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. As indicated in the RLEP2011 Height of Buildings Map extract below (*Figure 1*), the maximum building height shown for the subject site on the Height of Buildings Map is 8.5m

The proposed development has a maximum building height of 11.9m (RL36.67), it is noted that the maximum building height exceedance generally pertains to the top of the proposed lift overrun. Other non-compliant elements include the proposed safety balustrading/planter boxes demonstrated within *Figures 2*. It is acknowledged that the amended plans have reduced the trafficable area of the rooftop by recessing the planter boxes on the southern side of the roof terrace. Therefore the extent of the building height non-compliance has been reduced with the amended plans.

The above represents a variation of 40%, or 3.4m, and would therefore trigger the determination of the DA being made by the Bayside Planning Panel.



Figure 1 – Height of Buildings Map extract from RLEP2011. Maximum building height for the subject site is 8.5m.

Source: www.legislation.nsw.gov.au

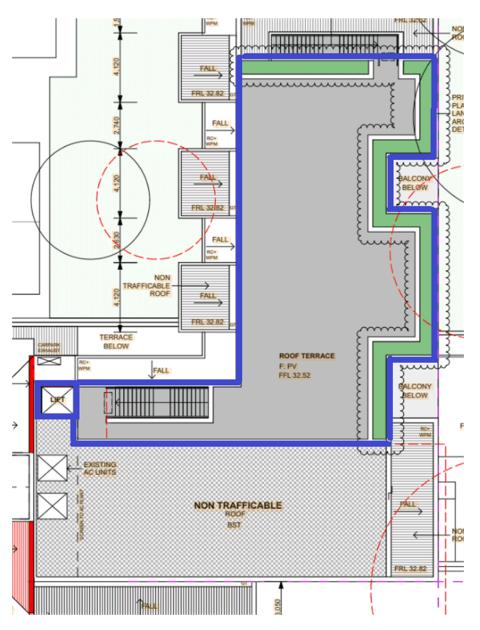


Figure 2 – Roof Plan diagram of the proposed development indicating non-compliant elements highlighted in blue. Notably this pertains to the lift overrun and planter boxes on the perimeter of the building.

Source: Fuse + CPS

6. Assessment of Clause 4.6 Variation

3.8 Consistency with Objectives of Floor Space Ratio Development Standard:

Clause 4.3(1) of the RLEP2011 includes the following specific objectives for controlling the height of buildings:

- (1) The objectives of this clause are as follows:
 - (a) to establish the maximum limit within which buildings can be designed and floor space can be achieved,
 - (b) to permit building heights that encourage high quality urban form,
 - (c) to provide building heights that maintain satisfactory sky exposure and daylight to buildings, key areas and the public domain,
 - (d) to nominate heights that will provide an appropriate transition in built form and land use intensity.

The following is an explanation as to how the proposal, notwithstanding the non-compliance with the development standard, will achieve the objective of the development standard. Each of the objectives are provided in *italics* and <u>underlined</u> the planner's comment following.

to establish the maximum limit within which buildings can be designed and floor space can be achieved,

The components of the building which breach the building height limit do not contribute to the floor space ratio of the development. This is because the offending elements of the building which breach the buildings height limit are confined to the lift overrun and the planter boxes/balustrades for the roof terrace area.

Neither of these components contribute to the building's gross floor area when having regard to the relevant definitions in the Dictionary of the RLEP2011. The lift is considered to be common vertical circulation, and therefore excluded under part (d) of the gross floor area definition. The roof terrace is located outside of the external walls of the building, and by definition also does not constitute gross floor area.

Given the non-compliance elements do not impact on the ability of the building to be designed and floor space ratio achieved, it is considered the proposal satisfied this objective.

to permit building heights that encourage high quality urban form

The proposal will result in a built form outcome that is sympathetic to the local area. As evidenced in the written submission provided by FUSE dated 1 June 2018, non-residential development in the surrounding area is characterised by flat roof designs. Attention is drawn to the photographs submitted by FUSE architecture in their submission which shows neighbourhood shops and child care centres within the vicinity of the site all including flat roofs rather than pitched roofs which are more commonly found on dwelling houses. In these circumstances it is contended that the proposed flat roof design for the new school building is appropriate in its context and therefore contributes positively to the urban form of the locality.

It is reiterated that those elements which breach the height limit are generally limited to the lift overrun and the planter boxes on the roof of the building. Given the lift overrun is centrally located within the building/site, its discernibility from the street is diminished. Furthermore, it can be argued that the roof top planter boxes will enable vegetation planting on the roof that will contribute positively to the building's aesthetic and therefore its ability to present a higher quality urban form than a traditional roof which does not include vegetation planting.

to provide building heights that maintain satisfactory sky exposure and daylight to buildings, key areas and the public domain,

Good solar access is achieved by the proposed new building due to its location and orientation on the site. The new building exhibits an ideal northerly orientation as demonstrated in the accompanying shadow diagrams and enables the capture of both winter sun and summer breezes. In addition to the above the proposed new buildings will provide 3m+ ceiling heights that will allow for a high level of solar access and natural ventilation. This will reduce the reliance on mechanical heating and cooling within the proposed school buildings.

The subject development will slightly reduce solar access to the neighbouring dwelling to the south at No. 20 Kembla Street. However, as demonstrated within the set of submitted shadow diagrams any existing living areas to the rear of the dwelling would currently be in shadow for 100% of the time between 9am and 3pm. An analysis of the rear yard has revealed that it currently receives 50% (3hrs) solar access to 50% of the private open space area.

The shadow diagrams illustrate that there will be a minor reduction in solar access to the internal living areas of the dwelling at 20 Kembla Street on 21 June.

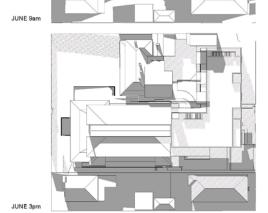
In terms of solar access to the rear private open space of 20 Kembla Street an analysis of the existing and proposed shadows has revealed that the existing private open space receives approximately 3 hours sunlight on 21 June to 50% of the rear yard. The proposed new building has been assessed to slightly reduce the solar access to the rear yard by 16.6% to approximately 41.66% or 2.5hrs, this is less than the 20% maximum reduction specified within the RDCP2011.

The existing shadows are being cast by the existing hall on the subject site (to be demolished) which has a height RL31.27 and is approximately 10.5m from the boundary. The proposed shadows are increased because the overall parapet height has been increased by approximately 2.25m to the top of the 1m safety balustrades and approximately 8.72m from the boundary. It is considered that lift overrun which rises to an overall height of 11.9m, is a relatively minor component of the non-compliance and its location (18m from the southern boundary) is not considered to contribute to this increase in overshadowing.

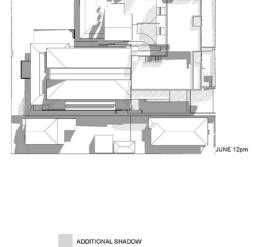
This reduction in solar access is considered justifiable for the following reasons.

- The proposed building does not significantly reduce the level of existing solar access to habitable areas within the dwelling refer to *Figure 3* below which includes an elevation shadow diagram of the adjoining property at 20 Kembla Street.
- The increase in overshadowing to the rear yard is less than the 20% maximum reduction specified within the RDCP2011.
- The roofline has been stepped from the boundary to provide greater setbacks to the upper levels from this side boundary,
- If it were not for the heritage item located on the site, the development could potentially be undertaken as complying development pursuant to State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017, a new school building could theoretically be built to a height of 22m within 10m of the boundary. The maximum height of this building has been assessed to be 11.9m at the lift overrun which is a relatively minor portion of the roof, and according to the complying development provisions, such a building could be constructed within 5m of the boundary. Furthermore, under the provisions of the aforementioned SEPP no floor space ratio limits apply for complying development. In such circumstances a considerably great shadow would be cast over adjoining development and deemed to be within acceptable limits by the complying development standards of the SEPP.
- At 8.72m the building setbacks provided to the upper levels of the proposed new school building to the southern boundary are greater than 5m which is permitted under the aforementioned SEPP.





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EXISTING SHADOW

 $\label{eq:Figure 2-Submitted} \emph{Shadow diagrams showing extent of existing and proposed shadows.} \\ \emph{Source: FUSE Architecture}$

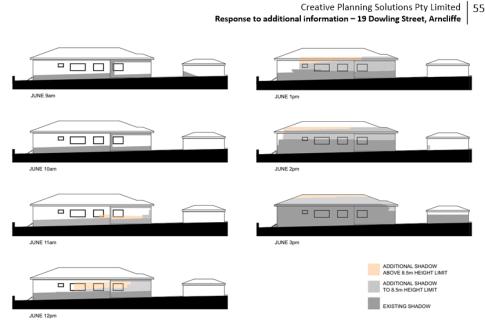


Figure 3 – Submitted elevation shadow diagrams showing extent of existing and proposed shadows, along with the difference of a building with a compliant building height and that proposed under the latest amendment to the plans.

Source: FUSE Architecture

to nominate heights that will provide an appropriate transition in built form and land use intensity.

As discussed the proposed building height maintains a two storey built form across the site. The exceedances in the building height relate mainly to safety balustrading and the lift overrun. The proposed height responds to the existing buildings on the subject site which were approved prior to RLEP2011 when the site was zoned "Special Uses" and not subject to a maximum numerical height control.

The zoning change to R2 Low Density Residential brought about by the gazettal of the RLEP2011 resulted in a maximum height development standard being applied to the subject site. The use however remains consistent with its previous zoning which offered more flexibility in the controls for developing buildings for a specific purpose (e.g. church etc.) without the inherent burden of the prescriptive numerical development standards required to control residential development within a low density residential zone.

Such burdens on building heights for schools are not reflected within State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 which permits buildings up to 22m high being undertaken as complying development. The trigger for such works not being able to be undertaken on the site as complying development is because of the existing heritage item located on the land. Therefore it can be accepted that the additional

building height does not negatively impact upon the heritage item, there is nothing therefore in the way of arguing the proposed building height is otherwise appropriate.

The proposed building is positioned over 8m from the adjoining residential boundary, and as such is considered to represent sufficient separation to allow or an orderly transition of the build form from the north to the south.

The content of the building height non-compliance must be considered in the context of other forms of development permissible within the R2 zone which could see a dwelling house constructed within 900mm of the side boundary and up to a height of 8.5m.

In this regard it is considered the intensity of the land use associated with the proposed development at 8m from the boundary is less than that of a building 8.5m high and only 900mm from the side boundary.

3.9 Consistency with the Objectives of the R2 Low Density Residential Zone

The objectives of the R2 Low Density Residential Zone under the RLEP2011 are as shown below in italics, followed by a comment on how the objectives of the zone are achieved despite the variation to the floor space ratio development standard:

To provide for the housing needs of the community within a low density residential environment.

Comment: The proposal is for a non-residential land use that is nonetheless a permissible form of development within the zone. As such, this objective is considered to have limited applicability to the proposal. Despite this it is considered that the proposed development does not limit the ability of adjoining land to continue to provide for the housing needs of the community within a low density residential environment. This is because it has been demonstrated within the clause 4.6 written request that the impact of the proposal on adjoining land is such that they do not unduly impact on the redevelopment potential of this land.

To enable other land uses that provide facilities or services to meet the day to day needs of residents.

Comment: The demand for additional placements at the school is evidence that there is a need for the proposed school expansion in order to meet the day to day educational requirements of residents.

To ensure that land uses are carried out in a context and setting that minimises any impact on the character and amenity of the area.

Comment: As demonstrated by the submitted consultant reports including Acoustic, Traffic and Parking and Heritage the proposed school demonstrates that it is able to minimise additional impacts on the character and amenity of the low density residential area. As well as this, this proposal has undergone a number of amendments to improve visual privacy from the roof terrace to minimise overlooking potential by reducing trafficable areas.

Changes to the playground configuration have also brought about an improved relationship between the proposed building and the existing heritage items on the site. Reference is made to the supporting comments by the project team's heritage consultant, Weir Phillips Heritage in their letter dated 25 May 2018.

Having regard to the above, it is contended that the proposal will now be carried out in a context and setting that minimises impacts on the character and amenity of the area.

3.10 Unreasonable or Unnecessary

For the following reasons it is considered unreasonable and unnecessary to enforce strict compliance with the numerical floor space requirements of Clause 4.4 of the RLEP2011:

- It has been demonstrated that the variation to the building height development standard does not result in any additional impacts on the amenity afforded to neighbouring properties, and does not contribute negatively to the cohesiveness of the streetscape. While it is acknowledged that even a development complying with this development standard may otherwise result in the same impacts, it important nonetheless to establish the level of impact resulting from the variation is not significantly greater, and no more than what a potentially complying building height would achieve if it were positioned closer to the southern boundary. This clause 4.6 written request has demonstrated this with regard to traffic and parking, solar access/overshadowing, visual and acoustic privacy, noise impacts and outlook.
- By allowing the construction of a new building on the subject site, the school is able to meet the demand for new placements without having to augment the existing heritage buildings. This means that the heritage buildings are able to be preserved without being subjected to more intense school uses that may otherwise impede on the fabric of these heritage buildings.
- If it were not for a heritage item being located on the site, the complying
 development provisions of State Environmental Planning Policy
 (Educational Establishments and Child Care Facilities) 2017 would prescribe
 that a new school building could theoretically be built to a height of 22m
 within 10m of the boundary. The maximum height of this building has been

assessed to be 11.9m at the lift overrun which is a relatively minor portion of the roof, and according to the complying development provisions, such a building could be constructed within 5m of the boundary. Furthermore, under the provisions of the aforementioned SEPP no floor space ratio limits apply for complying development. In such circumstances a considerably greater shadow would be cast over adjoining development and deemed to be within acceptable limits by the complying development standards of the SEPP.

3.11 Consideration of Wehbe v Pittwater Council [2007] NSWLEC 827

The Chief Judge of the NSW Land and Environment Court (NSWLEC) delivered this influential judgment in relation to variations under SEPP 1, which held that variations to development standards may be well founded in a variety of ways

At [42], it was noted that the most common way to establish that compliance with a development standard is unreasonable or unnecessary is because the objectives of the development standard are achieved despite non-compliance with the control.

The Court elaborated on the rationale of this approach, noting at [43]:

Development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).

The question that this raises is as follows:

6. Would the proposal, despite a numerical non-compliance, be consistent with the relevant environmental or planning objectives?

Section 4.1 and 4.2 above demonstrate that, despite the numerical non-compliance, the proposal is consistent with the objectives of the Building Height standard and R2 Low Density Residential zone.

The Court outlined four other methods for establishing that compliance with a development standard is unreasonable or unnecessary:

Establish that the underlying objective or purpose [of the development standard]
is not relevant to the development, with the consequence that compliance is
unnecessary.

Comment: The underlying objectives of the Building Height standard and R2 zone are relevant to this proposal and as such this consideration is not relevant in this case.

8. Establish that the underlying objective or purpose would be defeated or thwarted if compliance was required, with the consequence that compliance with the development standard is unreasonable.

Comment: The underlying objective or purpose of the development standard would not be defeated or thwarted if strict compliance with the development standard was required. However this written request has demonstrated that the underlying objective or purpose of the development standard can still be achieved with the proposed variation to the building height development standard.

9. Establish that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the development standard, and hence compliance with the standard is unnecessary and unreasonable.

Comment: Bayside Council has not abandoned the development standard. This consideration is not relevant.

10. Establish that the zoning of particular land was unreasonable or inappropriate so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary.

Comment: The use of the subject site as a church was in existence when the site was zoned "special uses" and not subject to a maximum numerical FSR control.

The zoning change to R2 Low Density Residential brought about by the gazettal of RLEP2011 resulted in a maximum FSR development standard being applied to the subject site. The uses on the site however are more consistent with its previous zoning which offered greater flexibility in the controls for developing buildings for a specific purpose (e.g. church, school etc.) without the inherent burden of prescriptive numerical development standards.

Although this written request does not rely upon it, there is an argument that the current R2 Low Density Residential zoning is unreasonable and inappropriate when having regard to *Wehbe v Pittwater Council [2007] NSW LEC 827* which establishes 5 different ways in which an objection may be well

founded and that approval of the objection may be consistent with the aims of the policy.

This is because the current approved uses on the site are more akin to the previous zoning (special use). It is thus considered that the 8.5m building height development standard is more appropriate to control the bulk and scale of low density residential accommodation within the R2 Residential Zone, rather than select specialised land uses on larger allotment of land that accommodate schools and churches. It is therefore considered that the application of the standard to this development could be argued as unreasonable and unnecessary and that this particular parcel of land should not have been included in the R2 zone.

To further support the above argument, it is again reiterated that under the provisions of *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017*, that complying developments for schools are permitted with building heights up to 22m.

3.12 Sufficient Environmental Planning Grounds

It is considered that there are sufficient environmental planning grounds to support the variation as follows:

- The variation to the development standard does not manifest in any undue impacts on the amenity of adjoining development by way of overshadowing, loss of visual or acoustic privacy, noise impacts, traffic or parking impacts, nor visual outlook.
- The applicant has accepted conditions by Council that would see no church services being undertaken during school hours. Furthermore, the applicant acknowledges the outcomes of the GTA traffic and parking report which require a reduction in the number of church patrons. These reductions in the use of the site will reduce the level of density and intensity associated with the development and offset the variation to the development standard in terms of the additional building height over that prescribed by the development standard.
- Through the construction of new buildings on the subject site, the school is
 able to meet the demand for new placements without having to augment the
 existing heritage buildings. This means that the heritage buildings are able to
 be preserved without be subjected to more intense school uses.

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3.13 Any Matter of Significance

The non-compliance does not raise any matter of significance for state or regional environmental planning.

3.14 Public Benefit

The proposal will result in significant public benefit through the ability to meet demand for school placements currently experienced by Kingdom Culture Christian School. Furthermore it is considered to be in the public interest that the objectives of the development standard and zone are upheld, irrespective of whether numerical compliance with the development standard is met.

On balance it is therefore considered that strict maintenance of the building height standard in this instance is not in the public interest.



Bayside Local Planning Panel

23/10/2018

Item No 6.2

Application Type Development Application

Application No SF18/1786 Lodgement Date 15/02/2017

Property DA-2016/117/02 - 671-683 Gardeners Road, Mascot

Ward Mascot

Owner Karimbla Properties (No. 46) PL
Applicant Karimbla Properties (No. 46) PL

Proposal Modification of Conditions 8, 53, 80, 89 and 104.

No. of Submissions Nil
Cost of Development N/A

Report by Michael McCabe, Director City Futures

Officer Recommendation

That the Section 4.55(1A) application for the Modification of Conditions **8, 53, 80, 89 and 104** be APPROVED subject to the following:

- Modification of Condition 8(a)(ii) relating to the addition of an alternative drinking water connection through to the adjoining site to the south at 1-5 Kent Road, as it is proposed to use the one connection for water from 1-5 Kent Road for both sites.
- Amend Condition 37 to correct the reference to Condition 38.
- Retention of Condition 38 relating to the deferring the timing of the registration of the lot consolidation to be prior to the release of the Strata Subdivision Certificate.
- Modification of Condition 53 relating to the amending the table to clarify 0.9 space / 2 bed unit and 1.4 space / 3 bed unit, as the bed numbers were originally omitted from the consent, modifying the condition to be consistent with Condition 27 under DA-2017/1155.
- Modification of Condition 80 relating to the deferring the requirement to provide certification for storage, and the provision of natural ventilation to the service rooms on the top level and the provision of a small meeting place in the entry to the lobby of Building E to be provided prior to the occupancy of the final building in the development and release of the damage deposit.
- Retention of Condition 89 relating to the deferring the timing of lot consolidation to be prior to the registration of the strata subdivision.
- Modification of Condition 104 relating to the deferring the timing of the provision of parking spaces to retail tenancies and security requirements for the child care centre to the relevant Occupation Certificate.

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Location Plan



Attachments

- 1
- Planning Assessment Report <u>J</u> Statement of Environmental Effects <u>J</u> 2

Item 6.2 190

BAYSIDE COUNCIL

Planning Assessment Report

Application Details

Application Number: DA-2016/117/02

Date of Receipt: 15 February 2017

Property: 671-683 Gardeners Road, Mascot (Lot 17 in DP 1238487)

Owner: Karimbla Properties (No. 46) PL

Applicant: Karimbla Properties (No. 46) PL

Proposal: Modification of Conditions 8, 36, 53, 80, 89 and 104

Recommendation: Approval subject to amended conditions

Value: Nil

Zoning: B4 Mixed Use under Botany Bay Local Environmental Plan 2013

Author: Andrew Ison, Senior Development Assessment Planner

Date of Report: 23 October 2018

Key Issues

The key issues relate to the following:

 The modification of a series of conditions relating to water and wastewater, lot consolidation, basement parking, certification and the timing of parking allocation and safety measures.

Recommendation

- That the Section 4.55(1A) application for the Modification of Conditions 8, 36, 53, 80, 89 and 104 is APPROVED subject to the following:
- Modification of Condition 8(a)(ii) relating to the addition of an alternative drinking water connection through to the adjoining site to the south at 1-5 Kent Road, as it is proposed to use the one connection for water from 1-5 Kent Road for both sites;
- Retention of the wording of Condition 36 as per the original development consent;

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- Amend Condition 37 to correct the reference in Condition 38.
- Modification of Condition 53 relating to the amending the table to clarify 0.9 space / 2 bed unit and 1.4 space / 3 bed unit, as the bed numbers were originally omitted from the consent, modifying the condition to be consistent with Condition 27 under DA-2017/1155;
- Modification of Condition 80 to defer the requirement to provide certification for storage, and the
 provision of natural ventilation to the service rooms on the top level and the provision of a small
 meeting place in the entry to the lobby of Building E to be provided prior to the occupancy of the
 final building in the development and release of the damage deposit;
- · Retention of the wording of Condition 89 as per the original development consent; and
- Modification of Condition 104 to defer the timing of the provision of parking spaces to retail tenancies and security requirements for the child care centre to the relevant Occupation Certificate.

Site Description

The subject site is commonly known as 671-675 Gardeners Road, Mascot (Lot 17 in DP 1238487). The site is irregular in shape and the approved mixed use development is currently under construction. The surrounding area is characterised primarily by various forms of commercial and industrial developments and uses. The subject site is located on the southern side of Gardeners Road, between Kent Road to the west and Bourke Road to the east.



Figure 1: Aerial showing subject site, marked in red (Source: Bayside IntraMaps)

Description of approved development and proposed modifications

Approved Development DA-2016/117

Development Application (DA) 2016/117 was approved by the Sydney Central Planning Panel on 19 January 2017 for the following:

- The construction of two residential flat buildings incorporating two x 4 storey podiums, 2 x 14 storey towers containing 239 residential units, a retail tenancy, a childcare centre, private recreation facilities, at-grade and above ground 'sleeved' podium parking for 255 cars and 24,648m² of gross floor area;
- Construction of a new north-south private / publically accessible open space link; and
- · Associated excavation, earthworks and landscaping.

Approved Modification DA-2016/117/03

On 12 December 2017, Council approved under delegated authority a modification under the former Section 96(1A) provisions (now Section 4.55(1A)) as follows:

- Amend Condition 77(c) pertaining to the hours of construction of the approved mixed use development; and
- Amend Condition 117 to refer to the current Section 96(1A) application.

Withdrawn Modification DA-2016/117/04

A Section 96(1A) application lodged on 21 July 2017 to amend a series of conditions relating to trees and landscaping. This was withdrawn by the applicant on 2 July 2018.

Approved Modification DA-2016/117/05

On 11 September 2018, the Bayside Planning Panel approved a modification under the Section 4.55(1A) provisions as follows:

- Amend Condition 38 relating to the reduction in the duration of the Street Tree Maintenance Bond from 24 months to 12 months.
- Amend Condition 83 relating to the deferment of the completion of damages from site works to occur prior to the release of the damage deposit.
- Amend Condition 85 relating to the changing the timing of the stormwater drainage system certification to be prior to the release of the relevant Occupation Certificate.
- Amend Condition 86 relating to the deferment of the completion of kerb and gutter work to the issue of the final Occupation Certificate.
- Amend Condition 87 relating to the deferment of the submission of inspection reports for works in the road reserve to the Principal Certifying Authority to prior to the issue of the final Occupation Certificate
- Amend Condition 88 relating to the changing the registration of positive covenants relating to onsite detention and other stormwater devices to be prior to the release of the relevant Occupation Certificate.
- Amend Condition 90 relating to the deferring the timing of the creation of an easement for public access over the proposed north-south link to be prior to the issue of the final Occupation Certificate.
- Amend Condition 93 relating to the deferring the completion of the public domain landscaping works to be prior to the release of the final Occupation Certificate.
- · Delete Condition 95 as it was a repeat of Condition 93.

- Amend Condition 96 relating to the deferring the completion the public footpaths and new community park to prior to the issue of the final Occupation Certificate.
- Amend Condition 97 relating to the changing the timing of landscaping certification to the relevant Occupation Certificate.
- Amend Condition 101 relating to the deferring the timing of the lodgement of the Certificate of Survey to prior to issue of the relevant Occupation Certificate.

Approved Modification DA-2016/117/06

On 25 September 2018, the Bayside Planning Panel approved a modification under the Section 4.55(1A) provisions as follows:

- Delete Conditions 104(c) and 107 as the child care centre was removed as part of DA-2017/1155.
- Retain the wording of Conditions 102 as per the original development consent issued under Development Application consent, based on advice from the Roads and Maritime Services.

Modification DA-2016/117/02

A Section 96(1A) application was lodged on 15 February 2017 to amend a series of conditions, as follows:

- <u>Condition 8</u>: Modification of (a)(ii) relating to the addition of an alternative drinking water connection through to the adjoining site to the south at 1-5 Kent Road, as it is proposed to use the one connection for water from 1-5 Kent Road for both sites.
- <u>Condition 36</u>: Deferring the timing of the registration of the lot consolidation to be prior to the release of the Strata Subdivision Certificate.
- <u>Condition 53</u>: Amending the table to clarify 0.9 space / 2 bed unit and 1.4 space / 3 bed unit, as the bed numbers were originally omitted from the consent, and is intended only for clarification of the condition.
- Condition 80: Deferring the requirement to provide certification for storage, and the provision of
 natural ventilation to the service rooms on the top level and the provision of a small meeting place
 in the entry to the lobby of Building E to be provided prior to the occupancy of the final building in
 the development and release of the damage deposit.
- <u>Condition 89</u>: Deferring the timing of lot consolidation to be prior to the registration of the strata subdivision.
- <u>Condition 104</u>: Deferring the timing of the provision of parking spaces to retail tenancies and security requirements for the child care centre to the relevant Occupation Certificate.

The applicant had also requested amendments to Conditions 33a, 39, 38, 47, 48, 77, 83, 85, 86, 87, 88, 90, 93, 95, 96, 97 and 101 as part of this application.

Conditions 33a, 39, 47 and 48 are deemed no longer relevant for modification as the requisite Construction Certificates have been lodged since the date of lodgement.

Condition 77 was amended as part of a subsequent modification (DA-2017/117/03) with the construction hours on Saturday approved to 3pm on Saturday. This was approved under delegated authority on 12 December 2017.

These other proposed modified conditions were part of a subsequent modification (DA-2016/117/05) which was determined by the Bayside Planning Panel on 11 September 2018.

The modification 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.

Statutory Considerations

Environmental Planning and Assessment Act, 1979

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

S.4.55(1A) – Modifications involving minimal environmental impact

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

(a) it is satisfied that the proposed modification is of minimal environmental impact,

The proposed modification does not involve any physical amendments to the approved development and relates to a series of development consent conditions in terms of modifying the timing of completion of various works and other commitments.

(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and

As discussed above, the proposed modification does not involve any physical amendments to the approved development.

- (c) it has notified the application in accordance with:
 - i. the regulations, if the regulations so require, or
 - a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and

Notification was not considered to be necessary as per Part 2 of the Botany Bay Development Control Plan (DCP) 2013.

(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.

No submissions have been received.

S.4.15(1) - Matters for Consideration – General

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

The following Environmental Planning Instruments are relevant to this application:

Botany Bay Local Environmental Plan 2013 (LEP)

Botany Bay Local Environmental Plan 2013 has been considered in the assessment of the Development Application. Given that the subject application makes proposes no physical amendments to the approved development, there are no relevant provisions to the assessment of this application.

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

There are no current Draft EPIs applicable to this development.

S4.15(1)(a)(iii) - Provisions of any Development Control Plan

The following Development Control Plan is relevant to this application:

Botany Bay Development Control Plan 2013

Given that the subject application makes proposes no physical amendments to the approved development, there are no relevant provisions to the assessment of this application.

S.4.15(1)(a)(iv) - Provisions of regulations

Clause 92 of the Regulation has been considered and there are no applicable provisions to the development.

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

Condition 8: Modification of (a)(ii) relating to the addition of an alternative drinking water connection through to the adjoining site to the south at 1-5 Kent Road, as it is proposed to use the one connection for water from 1-5 Kent Road for both sites.

This was referred to Sydney Water for comment. Sydney Water have reviewed the application and have determined that this development does not require assessment at this stage.

Condition 36: Deferring the timing of the registration of the lot consolidation to be prior to the release of the Strata Subdivision Certificate.

Council is not supportive of this amendment as there is no certainty as the timing of any registration of a strata subdivision in the future, which cannot occur after the final of the Occupation Certificates are issued. Based on this, it is recommended that the condition as originally worded in the development consent is retained.

Condition 37: Amend condition reference for street tree maintenance bond from condition 36 to condition 38

This is a housekeeping change to accurately reflect the intention of the condition.

Condition 53: Amending the table to clarify 0.9 space / 2 bed unit and 1.4 space / 3 bed unit, as the bed numbers were originally omitted from the consent, and is intended only for clarification of the condition.

This is considered acceptable. However, the table will be amended to reflect what was approved under Condition 27 of DA-2017/1155, which involved changes to the approved development including the deletion of the approved child care centre.

Condition 80: Deferring the requirement to provide certification for storage, and the provision of natural ventilation to the service rooms on the top level and the provision of a small meeting place in the entry to the lobby of Building E to be provided prior to the occupancy of the final building in the development and release of the damage deposit.

It is considered acceptable as it will still ensure that these requirements are still met, but at the appropriate stage as there will be multiple Occupation Certificates issued for this development.

Condition 89: Deferring the timing of lot consolidation to be prior to the registration of the strata subdivision.

Council is not supportive of this amendment as there is no certainty as the timing of any registration of a strata subdivision in the future, which cannot occur after the final of the Occupation Certificates are issued. Based on this, it is recommended that the condition as originally worded in the development consent is retained.

Condition 104: Deferring the timing of the provision of parking spaces to retail tenancies and security requirements for the child care centre to the relevant Occupation Certificate.

The deferment of the timing of the retail spaces to be allocated to the closest spaces to the retail tenancy section as prescribed under part (a) is considered acceptable as the retail component will be considered as part of one of the multiple Occupation Certificates to be issued.

The child care section under part (c) was deleted as part of DA-2016/117/06 as the child care centre was deleted as part of DA-2017/1155 and therefore considered a redundant condition.

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

Site suitability was assessed as part of the original Development Application, and the modifications to the conditions do not change the deemed acceptable suitability of the approved development on the subject site.

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

In accordance with Part 2 of the Botany Bay Development Control Plan 2013 – Notification and Advertising the development it was determined that notification was not required. No submissions were received.

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

Granting approval to the proposed development will have no adverse impact on the public interest. The proposal will still facilitate the orderly development of the land.

Section 7.11 Contributions

The proposed modification does not change any Section 7.11 Contributions that are payable, and as prescribed in the original development consent (as amended).

Conclusion

Development Application No. 2016/117/02 for the That the Section 4.55(1A) application for the Modification of Conditions 8, 36, 53, 80, 89 and 104 is APPROVED at 671-683 Gardeners Road, Mascot has been assessed in accordance with the relevant requirements of the Environmental Planning and Assessment Act 1979 and is recommended for partial approval subject to modified conditions of consent.

Schedule 1 - Conditions of Consent

Premises: 671-683 Gardeners Road, Mascot DA No: 2016/117/02

SCHEDULE OF CONSENT CONDITIONS

GENERAL CONDITIONS

The development is to be carried in accordance with the following plans and endorsed with Council's stamp, except where amended by other conditions of this consent. Reference documentation is also listed.

Drawing No.	Author	Dated Received
Ground Plan (Drawing No. DA-110-001, Revision S6)	Turner Architects	Dated 20/12/2016 Received 04/01/2017
Level 1 (Drawing No. DA-110-002, Revision S5)	Turner Architects	Dated 26/10/2016 Received 04/01/2017
Level 2 to 3 Plan (Drawing No. DA-110-003, Revision S5)	Turner Architects	Dated 26/10/2016 Received 04/01/2017
Level 4 Podium Plan (Drawing No. 110-004, Revision S5)	Turner Architects	Dated 03/11/2016 Received 04/01/2017
Level 5 to 13 Tower Plan (Drawing No. DA-110-005, Revision S7)	Turner Architects	Dated 20/12/2016 Received 04/01/2017
Plant Rooms (Drawing No. DA- 110-006, Revision S3)	Turner Architects	Dated 03/11/2016 Received 04/01/2017
Roof Plan (Drawing No. DA-110-007, Revision S3)	Turner Architects	Dated 03/11/2016 Received 04/01/2017
North Elevation (Drawing No. DA-250-001, Revision S4)	Turner Architects	Dated 01/11/2016

Drawing No.	Author	Dated Received
		Received 04/01/2017
East Elevation (Drawing No. DA-	Turner Architects	Dated 01/11/2016
250-002, Revision S3)		Received 04/01/2017
South Elevation (Drawing No. DA-	Turner Architects	Dated 01/11/2016
250-003, Revision S3)		Received 04/01/2017
West Elevation (Drawing No. DA-	Turner Architects	Dated 01/11/2016
250-004, Revision S3)		Received 04/01/2017
East Elevation - North South	Turner Architects	Dated 01/11/2016
Street (Drawing No. DA-250-005, Revision S3)		Received 04/01/2017
West Elevation - Street (Drawing	Turner Architects	Dated 01/11/2016
No. DA-250-006, Revision S3)		Received 04/01/2017
Cross Section (Drawing No. DA-	Turner Architects	Dated 01/11/2016
350-001, Revision S2)		Received 04/01/2017

Referenced documents

Drawing No.	Author	Dated Received
Cover Sheet	Turner Architects	Dated 09/11/2016 Received 22/11/2016
Site Plan (Drawing No. DA-100- 001, Revision S3)	Turner Architects	Dated 03/11/2016 Received 22/11/2016
Site Analysis (Drawing No. DA-100-002, Revision S2)	Turner Architects	Dated 12/09/2016 Received 22/11/2016
GFA Diagrams (Drawing No. DA-710-001, Revision S7)	Turner Architects	Dated 20/12/2016 Received 04/01/2017
Shadow Diagrams (Drawing No. DA-720-001, Revision S3)	Turner Architects	Dated 02/11/2016 Received 22/11/2016
View from Sun Analysis Sheet 1 (Drawing No. DA-720-002, Revision S2)	Turner Architects	Dated 12/09/2016 Received 22/11/2016
View from Sun Analysis Sheet 2 (Drawing No. DA-720-003, Revision S2)	Turner Architects	Dated 12/09/2016 Received 22/11/2016
View from Sun Analysis Sheet 3 (Drawing No. DA-720-004, Revision S1)	Turner Architects	Dated 12/09/2016 Received 22/11/2016

Drawing No.	Author	Dated Received
View from Sun Analysis Sheet 4 (Drawing No. DA-720-005, Revision S1)	Turner Architects	Dated 12/09/2016 Received 22/11/2016
Podium Shadow Diagrams (Drawing No. 720-006, Revision S1)	Turner Architects	Dated 03/09/2016 Received 22/11/2016
ADG Diagrams (Drawing No. DA-721-001, Revision S2)	Turner Architects	Dated 31/10/2016 Received 22/11/2016
Site Survey (Drawing No. 21386, Sheet 1 – 3)	B & P Surveys	Dated 24/05/2016 Received 27/07/2016
Adaptable Apartments (Drawing No. DA-810-001, Revision S1)	Turner Architects	Dated 08/07/2016 Received 27/07/2016
Materials and Finishes (Drawing No. Da-910-001, Revision S2)	Turner Architects	Dated 22/07/2016 Received 27/07/2016
CGI View from north west Gardeners Road (Drawing No. DA-920-001, Revision S2)	Turner Architects	Dated 26/07/2016 Received 27/07/2016
CGI View from north east Gardeners Road (Drawing No. DA-920-002, Revision S2)	Turner Architects	Dated 26/07/2016 Received 27/07/2016
Perspective 1 (Drawing No. DA- 920-003, Revision S2)	Turner Architects	Dated 22/07/2016 Received 27/07/2016
Perspective 2 (Drawing No. DA- 920-004, Revision S2)	Turner Architects	Dated 22/07/2016 Received 27/07/2016
Perspective 3 (Drawing No. DA- 920-005, Revision S2)	Turner Architects	Dated 22/07/2016 Received 27/07/2016
Perspective 4 (Drawing No. DA- 920-006, Revision S2)	Turner Architects	Dated 22/07/2016 Received 27/07/2016
Perspective 5 (Drawing No. DA- 920-007, Revision S1)	Turner Architects	Dated 08/07/2016 Received 27/07/2016
SEPP 65 Report (Revision A)	Turner	Dated 08/07/2016 Received 27/07/2016
Design Verification Statement (Revision A)	Turner	Dated 08/07/2016 Received 27/07/2016
Statement of Environmental Effects and DCP Assessment Table	Meriton Property Services Pty Ltd	Dated 25/07/2016 Received 27/07/2015
Clause 4.6 Variation	Urbis	Received 01/12/2016

Drawing No.	Author	Dated Received
Thermal Comfort & BASIX Assessment (Issue B)	Efficient Living	Dated 03/11/2016 Received 03/11/2015
Acoustic Report (Revision 1)	Acoustic Logic	Dated 17/06/2016 Received 27/07/2016
Waste Management Plan (Revision C)	Elephants Foot	Dated 11/07/2016 Received 27/07/2016
Transport Impact Assessment	Arup	Dated 11/07/2016 Received 27/07/2016
Access Report (Revision 2)	Wall to Wall Design & Consulting	Dated 04/07/2016 Received 27/07/2016
BCA Compliance Assessment Report (1423-96, Rev 00)	AED Group	Dated 27/06/2016 Received 27/07/2016
Arboricultural Assessment Report	Tree and Landscape Consultants (TALC)	Dated 20/06/2016 Received 27/07/2016
Amended Arborist Report	TALC	Dated 06/09/2016 Received 21/09/2016
Amended Arborist Report	TALC	Dated 28/10/2016 Received 28/10/2016
Landscape Cover (Revision C)	Context	Dated October 2016 Received 28/10/2016
Landscape Masterplan (Page 1, Issue C)	Context Landscape Design Pty Ltd	Dated October 2016 Received 28/10/2016
Streetscape / Public Domain Plan (Page 2, Issue C)	Context Landscape Design Pty Ltd	Dated October 2016 Received 28/10/2016
Landscape Masterplan (Page 3, Issue C)	Context Landscape Design Pty Ltd	Dated October 2016 Received 28/10/2016
Landscape Masterplan Podium Level (Page 4, Issue C)	Context Landscape Design Pty Ltd	Dated October 2016 Received 28/10/2016
Landscape Section Ground Level (Page 5, Issue C)	Context Landscape Design Pty Ltd	Dated October 2016 Received 28/10/2016
Landscape Section Ground Level (Page 6, Issue C)	Context Landscape Design Pty Ltd	Dated October 2016 Received 28/10/2016

Drawing No.	Author	Dated Received
Landscape Section Podium Level (Page 7, Issue C)	Context Landscape Design Pty Ltd	Dated October 2016 Received 28/10/2016
Planting / Indicative Palette & Schedule (Page 8, Issue C)	Context Landscape Design Pty Ltd	Dated October 2016 Received 28/10/2016
Plan of Management	Meriton Property Services Pty Ltd	Dated 11/07/2016 Received 27/07/2016
Construction Management Plan	Meriton Property Services Pty Ltd	Dated June 2016 Received 27/07/2016
Crime Risk and Security Report	Meriton Property Services Pty Ltd	Dated 31/05/2016 Received 27/07/2016
Civil Infrastructure Development Application Report (Revision 1)	at&I	Dated 11/07/2016 Received 27/07/2016
Detailed Site Assessment	Coffey	Dated 31/10/2012 Received 27/07/2016
Site Auditor Interim Advice (Ref: 16112_IA1)	Zoic Environmental Pty Ltd	Dated 23/11/2016 Received 23/11/2016
Geotechnical Site Investigation	Coffey	Dated 18/05/2016 Received 27/07/2016
Flood Report (Ref: X14220.0)	Calibre Consulting	Dated 12/10/2015 Received 27/07/2016
Qualitative Wind Impact Assessment (Revision 0)	SLR	Dated 11/07/2016 Received 27/07/2016
QS Report	Steven Wehbe	Dated 11/07/2016 Received 27/07/2016
8.00 Apartment Schedule (Revision S2)	Turner	Dated 29/11/2016 Received 29/11/2016

- No construction works (including excavation) shall be undertaken prior to the issue of a Construction Certificate.
- This Consent relates to land in Lot 1 in DP 777315 Lot 500 in DP 1030729 and, as such, building works must not encroach on to adjoining lands or the adjoining public place.
- 4 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.
- 5 All building work must be carried out in accordance with the provisions of the Building Code of Australia.
- 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 each relevant BASIX Certificate for the each building in the development are fulfilled.
 - (a) Note

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.
- (iii) BASIX Certificate has the meaning given to that term in the Environmental Planning and Assessment Regulation 2000.

CONDITIONS IMPOSED BY AN EXTERNAL AUTHORITY

- 7 The following condition is imposed by Ausgrid and is to be complied with.
 - (a) Ausgrid has identified the following assets to be affected by the development works:
 - (i) Existing substation(/s) within site boundary and associated underground cables. Including the easement, lease or right of ways over these electrical assets.
 - (ii) Close proximity of overhead and/or underground cable/s on public land

Ausgrid require that due consideration be given to the compatibility of proposed development with existing Ausgrid infrastructure, particularly in relation to risks of electrocution, fire risks, electric and magnetic fields (EMF), noise, visual amenity and other matters that may impact on Ausgrid or the development. In general, conditions to be adhered to by the developer include, but are not limited to, the following:

- (b) Ausgrid requires kiosk substation housings to be separated from building ventilation system air intake and exhaust duct openings, by not less than 6 metres. This applies irrespective of whether the building ducted ventilation system is mechanical or natural and irrespective of whether or not fire dampers are installed in the ducts.
- (c) Any portion of a building other than a BCA class 10a structure constructed from non-combustible materials, which is not sheltered by a non-ignitable blast-resisting barrier and is within 3 metres in any direction from the housing of a kiosk substation, is required to have a Fire Resistance Level (FRL) of not less than 120/120/120. Openable or fixed windows or glass blockwork or similar, irrespective of their fire rating, are not permitted within 3 metres in any direction from the housing of a kiosk substation, unless they are sheltered by a non-ignitable blast resisting barrier. For further details on fire segregation requirements refer to Ausgrid's Network Standard 141.
- (d) Any work undertaken near Overhead Power lines needs to be done in accordance with:
 - (i) WorkCover Document ISSC 23 "Working Near Overhead Power Lines"
 - (ii) Ausgrid Network Standards
 - (iii) Ausgrid Electrical Safety Rules
- (e) The location of underground cables by using Dial Before You Dig and comply with the requirements of Ausgrid's Network Standard 156: Working Near or Around Underground Cables before any excavation works are undertaken.
- (f) Existing Ausgrid easements, leases and/or right of ways must be maintained at all times to ensure 24 hour access. No temporary or permanent alterations to this property tenure can occur without written approval from Ausgrid. For further details refer to Ausgrid's Network Standard 143.
- (g) The developer is required to make a formal submission to Ausgrid by means of a duly completed Preliminary Enquiry and/ or Connection Application form, to allow Ausgrid to assess any impacts on its infrastructure and determine the electrical supply requirements for the development (e.g. whether a substation is required on site).
- (h) The developer is to ensure that the proposed works do not contravene Ausgrid's technical standards and statutory requirements, in regards to the safe and reliable operation of Ausgrid's network.
- 8 The following conditions are imposed by the **Sydney Water:**
 - (a) <u>Water and Wastewater</u>
 - Strategic investigation shows that the trunk water and wastewater systems have adequate capacity to service the proposed development.
 - (ii) The drinking water main available for connection is the 150mm main on the southern side of Gardeners Road or, alternatively, through the adjoining site to the south at 1-5 Kent Road. Depending on the final location of the connection to the water network and number of dwellings within the approved development, local system amplifications may be required.

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- (iii) The wastewater main available for connection is the existing 300mm main in Gardeners Road. A minor extension to provide a connection point within the boundary of the development will be required.
- (iv) Detailed requirements will be provided at Section 73 application phase.

(b) Sydney Water E-Planning

(i) Sydney Water has an email address for planning authorities to submit statutory or strategic planning documents for review. This email address is <u>urbangrowth@sydneywater.com.au</u>. Further advice and requirements for this proposal are at attachments 1. If you require any further information, please contact Manwella Hawell of Urban Growth Strategy on of Urban Growth 02 8849 4354 or e-mail manwella.hawell@sydneywater.com.au

(c) Sydney Water Servicing

(i) A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water. The proponent is advised to make an early application for the certificate, as there may be water and wastewater pipes to be built that can take some time. This can also impact on other services and buildings, driveways or landscape designs.

Applications must be made through an authorised Water Servicing Coordinator. For help either visit www.sydneywater.com.au Plumbing, building and developing Developing Land development or telephone 13 20 92.

(d) Building Plan Approval

(i) The developer must have the building plans stamped and approved before any construction is commenced. Approval is needed because construction/building works may affect Sydney Water's assets (e.g. Water, sewer and stormwater mains).

For further assistance please telephone 13 20 92 or refer to the Building over or next to assets page on the Sydney Water website (see Plumbing, building and developing then Building over or next to assets).

(e) Requirements for Business Customers for Commercial and Industrial Property Developments

(i) If this property is to be developed for Industrial or Commercial operations, it may need to meet the following requirements:

Trade Wastewater Requirements

If this development is going to generate trade wastewater, the property owner must submit an application requesting permission to discharge trade wastewater to Sydney Water's sewerage system. You must wait for approval of this permit before any business activities can commence.

The permit application should be emailed to Sydney Water's Business Customer Services at businesscustomers@sydneywater.com.au. It is illegal to discharge Trade Wastewater into the Sydney Water sewerage system without permission.

A Boundary Trap is required for all developments that discharge trade wastewater where arrestors and special units are installed for trade wastewater pre-treatment.

If the property development is for Industrial operations, the wastewater may discharge into a sewerage area that is subject to wastewater reuse. Find out from Business Customer Services if this is applicable to your development.

(f) <u>Backflow Prevention Requirements</u>

 Backflow is when there is unintentional flow of water in the wrong direction from a potentially polluted source into the drinking water supply.

All properties connected to Sydney Water's supply must install a testable Backflow Prevention Containment Device appropriate to the property's hazard rating. Property with a high or medium hazard rating must have the backflow prevention containment device tested annually. Properties identified as having a low hazard rating must install a non-testable device, as a minimum.

Separate hydrant and sprinkler fire services on non-residential properties, require the installation of a testable double check detector assembly. The device is to be located at the boundary of the property.

Before you install a backflow prevention device:

- Get your hydraulic consultant or plumber to check the available water pressure versus the property's required pressure and flow requirements.
- Conduct a site assessment to confirm the hazard rating of the property and its services. Contact PIAS at NSW Fair Trading on 1300 889 099.

For installation you will need to engage a licensed plumber with backflow accreditation who can be found on the Sydney Water website: http://www.sydneywater.com.au/Plumbing/BackflowPrevention/

(g) Water Efficiency Recommendations

(i) Water is our most precious resource and every customer can play a role in its conservation. By working together with Sydney Water, business customers are able to reduce their water consumption. This will help your business save money, improve productivity and protect the environment.

Some water efficiency measures that can be easily implemented in your business are:

- Install water efficiency fixtures to help increase your water efficiency, refer to WELS (Water Efficiency Labelling and Standards (WELS) Scheme, http://www.waterrating.gov.au/
- Consider installing rainwater tanks to capture rainwater runoff, and reusing it, where cost effective. Refer to http://www.sydneywater.com.aulWater4Life/InYourBusiness/RWT
 Calculator.cfm
- Install water-monitoring devices on your meter to identify water usage patterns and leaks.
- Develop a water efficiency plan for your business.

It is cheaper to install water efficiency appliances while you are developing than retrofitting them later.

(h) Contingency Plan Recommendations

- (i) Under Sydney Water's customer contract Sydney Water aims to provide Business Customers with a continuous supply of clean water at a minimum pressure of 15 meters head at the main tap. This is equivalent to 146.8kpa or 21.29psi to meet reasonable business usage needs.
 - Sometimes Sydney Water may need to interrupt, postpone or limit the supply of water services to your property for maintenance or other reasons. These interruptions can be planned or unplanned.
- (ii) Water supply is critical to some businesses and Sydney Water will treat vulnerable customers, such as hospitals, as a high priority.

9 The following conditions are imposed by the NSW Roads and Maritime Service

- (a) All redundant driveways are to be removed and replaced won Gardeners Road with kerb and gutter to Roads and Maritime requirements. The design and construction of the kerb and gutter crossing on Gardeners Road shall be in accordance with Roads and Maritime requirements. Details of these requirements should be obtained from Roads and Maritime Services, Manager Developer Works, Statewide Delivery, Parramatta (telephone 88492138).
 - Detailed design plans of the proposed kerb and gutter crossing are to be submitted to Roads and Maritime for approval prior to the issue of the relevant a Construction Certificate and commencement of any road works.
 - A plan checking fee (amount to be advised) and lodgement of a performance bond may be required from the applicant prior to the release of the approved road design plans by Roads and Maritime.
- (b) A Construction Traffic Management Plan detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control should be submitted to Council prior to the issue of a Construction Certificate.
- (c) All demolition and construction vehicles are to be contained wholly within the site and vehicles must enter the site before stopping.
- (d) A construction zone will not be permitted on Gardeners Road.
- (e) A Road Occupancy Licence should be obtained from Transport Management Centre for any works that may impact on traffic flows on Gardeners Road during construction activities.
- (f) The swept path of the longest vehicle (to service the site) entering and existing the subject site, as well as manoeuvrability through the site, shall be in accordance with AUSTROADS. In this regard, a plan shall be submitted to Council for approval, which shows that the proposed development complies with this requirement.
- (g) Should the post development storm water discharge from the subject site into the Roads and Maritime system exceed the pre-development discharge, detailed design plans and hydraulic calculations of any charges are to be submitted to Roads and Maritime for approval, prior to the commencement of works on site. Details should be forwarded to:
 - 1. The Sydney Asset Management
 - 2. Roads and Maritime Services

- PO Box 973 Parramatta CBD 2124.
- A plan checking fee will be payable and a performance bond may be required before Roads and Maritime approval is issued. With regard to the Civil Works requirement please contact the Roads and Maritime Project Engineer, External Works Ph: 8849 2114 or Fax: 8849 2124.
- (h) The developer is to submit design drawings and documents relating to the excavation of the site and support structures to Roads and Maritime for assessment, in accordance with Technical Direction GTD2012/001.
- The developer is to submit all documentation at least six (6) weeks prior to commencement of construction and is to meet the full cost of the assessment by Roads and Maritime.

The report and any enquiries should be forwarded to:

Project Engineer, External Works Sydney Asset Management Roads and Maritime Services PO Box 973 Parramatta CBD 2124.

Telephone 8849 2114 Fax 8849 2766

- If it is necessary to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owner/s of the roadway is/are given at least seven (7) days' notice of the intention to excavate below the base of the footings. The notice is to include complete details of the work.
- (i) All vehicles are to enter and leave the site in a forward direction.
- (j) The layout of the proposed car parking areas associated with the subject development (including, driveways, grades, turn paths, sight distance requirements, aisle widths, aisle lengths, and parking bay dimensions) should be in accordance with AS 2890.1-2004, AS2890.6-2009 and AS 2890.2-2002 for heavy vehicle usage.
- (k) Any proposed landscaping and/or fencing must not restrict sight distance to pedestrians and cyclist travelling along the footpath.
- The following conditions are imposed by the Sydney Airport Corporation Limited (SACL) and must be complied with:
 - (a) This location lies within an area defined in schedules of the Civil Aviation (Buildings Control) Regulations which limit the height of structures to 15.24 metres above existing ground height (AEGH) without prior approval of the Civil Aviation Safety Authority.
 - (b) The application sought approval for the property development to a height of 51.0 metres Australian Height Datum (AHD).
 - (c) In the capacity as Airfield Design Manager and an authorised person of the Civil Aviation Safety Authority (CASA) under Instrument Number: CASA 229/11, in this instance, the Airfield Design Manager has no objection to the erection of this development to a maximum height of 51.0 metres AHD. Should you wish to exceed this height a new application must be submitted.

- (d) Should the height of any temporary structure and/or equipment be greater than 15.24 metres AEGH, a new approval must be sought in accordance with the Civil Aviation (Buildings Control) Regulations Statutory Rules 1988 No. 161.
- (e) Construction cranes may be required to operate at a height significantly higher than that of the proposed controlled activity and consequently, may not be approved under the Airports (Protection of Airspace) Regulations. Sydney Airport advises that approval to operate construction equipment (i.e. cranes) should be obtained prior to any commitment to construct.
- (f) Information required by Sydney Airport <u>prior to any approval</u> is set out below:
 - (i) "Prescribed airspace" includes "the airspace above any part of either an Obstacle Limitation Surface (OLS) or Procedures for Air Navigation Services – Aircraft Operations (PANS-OPS) surface for the airport (Regulation 6(1)). The height of the prescribed airspace at this location is 51 metres above AHD.
 - (ii) Planning for Aircraft Noise and Public Safety Zones: Current planning provisions (s.117 Direction 3.5 NSW Environmental Planning and Assessment Act 1979) for the assessment of aircraft noise for certain land uses are based on the Australian Noise Exposure Forecast (ANEF). The current ANEF for which Council may use as the land use planning tool for Sydney Airport was endorsed by Airservices in December 2012 (Sydney Airport 2033 ANEF). Whilst there are currently no national aviation standards relating to defining public safety areas beyond the airport boundary, it is recommended that proposed land uses which have high population densities should be avoided.
- (g) Application for Approval of Crane Operation
 - (i) Pursuant to s. 183 of the Airports Act 1996 and Regulation 7 of the Airports (Protection of Airspace) Regulations 1996, the Proponent must apply through the Airport to the Secretary of the Department of Infrastructure and Regional Development for approval of the operation ("controlled activity") set out in the Schedule.
 - (ii) An Application for approval must be given to the Airport at least 28 days before commencement of the operation.
 - (iii) The operation must not commence without approval, and must only proceed in compliance with any conditions imposed on such approval.
 - (iv) Sydney Airport has delegated authority from the Secretary to determine "short term" operations (less than 3 months).
 - (v) The Airport is required to invite submissions from CASA and Airservices regarding the proposed operation.
 - (vi) The Secretary and the Airport, as applicable, may request further information before determining an application.
 - (vii) The "Important Notes" must be read and accepted.
 - (viii) The Proponent must complete this Application and provide it to Sydney Airport, with a copy to the Council as part of the relevant Development Application.

CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE COMMENCEMENT OF ANY DEMOLITOIN, EXCAVATION OR BUILDING WORKS

- 11 The applicant must, prior to the commencement of any works, pay the following fees:
 - (a) Development Control \$12,900.00
 - (b) Builders Damage Deposit & Performance Bond \$531,300.00 (# No. 12)
- Prior to the issue of any Construction Certificate, the applicant shall lodge a Builder's Damage Deposit and Performance Bond of \$531,300.00 (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.
- 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 (e.g. AusGrid, Sydney Water, Telecommunications Carriers and Council in connection with:
 - (i) The additional load on the system, and
 - (ii) The relocation and/or adjustment of the services affected by the construction.
 - (c) As part of this development, the Ausgrid lighting poles along Kent and Gardeners Roads fronting the site, will need to be decommissioned and new lighting poles shall be constructed satisfying V3 lighting requirements for Kent and Gardeners Roads and any other requirements as specified by Council, RMS and any other service provider,
 - (d) All above ground utilities shall be relocated underground in accordance with Ausgrid and any other affected and relevant service provider (where required), 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, new lighting poles, any new pits and trenches for utilities shall be confirmed with Council prior to the issue of the relevant staged Construction Certificate.
 - (f) 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.
- Prior to commencement of any works, the Applicant must indemnify Council against all loss of or damage to the property of others and injury or death to any persons which may arise out of or in consequence of the carrying out of the work and against all claims, demands, proceedings, costs, charges and expenses whatsoever in respect thereof or in relation

thereto. In this regard, the Applicant shall take out a public liability policy during the currency of the works in the sum of not less than \$20,000,000 and to be endorsed with City of Botany Bay Council as principal, and keep such policy in force at the Applicant's own expense. A certificate from the Applicant's insurers to this effect is to be LODGED WITH COUNCIL BEFORE ANY WORK IS COMMENCED. The amount of Common Law liability shall be unlimited.

- Prior to the commencement of excavation or any building works, 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.
- Prior to the commencement of excavation or any building works, at the proposed point of construction site entry, photographic survey showing the existing conditions of Council's and RMS infrastructure shall be submitted to Council and Principal Certifying Authority.

The survey shall detail the physical conditions and identify any existing damages to the roads, kerbs, gutters, footpaths, driveways, street trees, street signs and any other Council assets fronting the property and extending to a distance of 50m from the development. Failure to do so may result in the applicant/developer 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.

- 17 A Construction Management Program shall be submitted to, and approved in writing by the PCA prior to the commencement of excavation or any building works. 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 on site 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.
- Prior to the commencement of excavation or any building works, 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) and approved by the relevant road authority. 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
 - (c) during construction, if access from Kent Road is required, the applicant is to submit documentary evidence to the Principal Certifying Authority that the required Section 138 Consent under the Roads Act, 1993 has been issued by the New South Wales Roads and Maritime Services, and
 - (d) 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.

- Prior to the commencement of any excavation or building work, the applicant shall contact "Dial Before You Dig" to obtain a utility service diagram for, and adjacent to the property. The sequence number obtained from "Dial Before You Dig" shall be forwarded to Principal Certifying Authority. All utilities within the work zone shall be protected during construction.
 - Any adjustments or damage to public utilities/services as a consequence of the development and associated construction works shall be restored or repaired at the applicant's expense.
- To ensure the necessary assessment and remediation is completed, a NSW Environment Authority (EPA) Accredited Site Auditor shall be appointed to the site <u>prior to the</u> commencement of any remediation works, excavation or commencement of works at the

<u>site</u>. The Site Auditor shall review and endorse any additional investigation and remediation proposed prior to the commencement of any works.

- 21 In accordance with the Contaminated Land Management Act 1997, notification of all category 2 remediation work to Council is required <u>at least 30 days prior to commencement of works.</u>
- Prior to the demolition of any building or structure, a Hazardous Building Material Assessment (HBMA) shall be carried out and a report provided to council to ensure that any hazardous materials that may have been used within the structural components of buildings and infrastructure are adequately addressed to protect site personnel and the public from the risk of exposure. This shall be undertaken by an appropriately qualified consultant and shall be submitted to the Principal Certifying Authority (and the Council if the Council is not the Principal Certifying Authority) prior to the demolition of any building or structure.

Should any hazardous materials be identified a Work Management Plan completed in accordance with AS2601 – Demolition of Buildings shall be submitted to the Principal Certifying Authority prior to the demolition of any building or structure. The report shall contain details regarding the type of hazardous material and the proposed methods of containment and disposal.

- A Soil and Water Management Plan (SWMP) 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 Soil and Water Management Plan (SWMP) 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 SWMP shall be kept on-site at all times and made available to Council Officers on request.
- Erosion and sediment control devices shall be installed and functioning <u>prior to the commencement</u> 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.

The vehicular entry/exits to the site must be protected from erosion and laid with a surface material which will not wash into the street drainage system or watercourse.

- Shaker pads and a wheel washer are to be installed at the entry/exit points to the site to prevent soil material leaving the site on the wheels of vehicles and other plant and equipment.
- 27 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 afterhours contact telephone number.
 - (b) Any such sign is to be removed when the work has been completed.
- 28 Toilet facilities are to be provided at or in the vicinity of the work site on which work involves:
 - (a) demolition and construction of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site;
 - (b) Each toilet provided:
 - (i) must be standard flushing toilet; and,
 - (ii) must be connected:
 - (iii) to a public sewer; or
 - (iv) if connection to a public sewer is not practicable to an accredited sewerage management facility approved by the Council; or,
 - if connection to a public sewer or an accredited sewerage management facility is not practicable to some other sewerage management facility approved by the Council.
 - (c) The provisions of toilet facilities in accordance with this condition must be in place before work commences.
- 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.
- Prior to the commencement of any demolition, excavation or remediation 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.

i)

Prior to commencement of any works, application(s) shall be made to Council's Customer Services Counter and obtained the following approvals and permits on Council's property/road reserve under Road Act 1993 and Local Government Act 1993: -

(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 to install temporary ground anchors in public land,
- (d) Permit to discharge ground water to Council's stormwater drainage system,
- (e) Permit for roads and footways occupancy (long term/ short term),
- (f) Permit to construct vehicular crossings, footpaths, kerbs and gutters over road reserve.
- (g) Permit to open road reserve area, including roads, footpaths, nature strip, vehicular crossing or for any purpose whatsoever, such as relocation / re-adjustments of utility services,
- (h) Permit to place skip/waste bin on footpath and/or nature strip, and
- (i) Permit to use any part of Council's road reserve or other Council lands.
- Where any shoring is to be located on or is supporting Council's property, or any adjoining private property, engineering drawings certified as being adequate for their intended purpose by an appropriately qualified and practising engineer, showing all details, including the extent of encroachment and the method of removal (or any other method) and destressing of shoring elements, shall be submitted with the Construction Certificate to the Principle Certifying Authority along with Council's (or other) consent if the works intrude on Council's (or other) property.
- In order to ensure that a total of nine (9) trees including: three (3) London Plane trees (Tree #32, Tree #31 and Tree #30) to the west of the site along Kent Road, together with two (2) Paperbark trees (Tree #24 and Tree #25) and four (4) Tallowood (Trees #20, Tree #20a, Tree #20b and Tree #20c), within the setback to Gardeners Road are retained and protected during construction, and their health and structural stability ensured, the following is required:
 - (a) A revised storm water/drainage layout is required to be submitted to Council for review and approval prior to the issue of construction certificate. The storm water/drainage layout is required to be revised – with consultation with the Consultant Arborist - to ensure that the trees identified for retention will not be

- adversely impacted, in accordance with AS4970-2009 Protection of Trees on Development Sites.
- (b) A Consultant Arborist AQF Level 5 shall be engaged from site establishment to the post-construction period to erect tree protection zones and signage, inspect and advise on all works during the entire construction period, monitor tree health and to authorize and undertake tree canopy and root pruning where necessary only and to the minimum only so that the health or structural stability of the trees is not impacted.
- (c) All tree works and tree management shall be undertaken in accordance with the Arborist report by Tree and Landscape Consultants (TALC) (dated 20th June 2016 and Statement of Aboricultural Issues dated 28 October 2016). For all tree root and canopy work to trees, comply with the recommendations and requirements and management plan contained within this report.
- (d) Trees to be retained are to be tagged with clearly visible marking tape at a height of approx. 2 metres from ground and numbered with the corresponding number in the Tree Report.
- (e) Prior to commencing demolition/any works the tree/s is/are to be physically protected by fencing underneath the canopy dripline using 1.8 metre high chainwire fence to form the Tree Protection Zone (TPZ). The area within the fencing is to be mulched with leaf mulch to a depth of 100mm and a weekly deep watering program undertaken during construction. The fence shall remain in place until construction is complete.
- (f) If there is insufficient space to erect fencing in a particular area, wrap the trunk with hessian or carpet underlay to a height of 2.5 metres or to the tree's first lateral branch, whichever is greater, and affix timber palings around the tree with strapping or wire (not nails).
- (g) Before any works commence on site, the Applicant is required to contact Council for an inspection and/or provide photographic evidence of the fenced TPZ's. Council approval is required prior commencement of any work.
- (h) All detailed Construction Certificate plans shall show trees to be protected and the TPZ.
- (i) The TPZ's are "No-Go" zones. There shall be no access to the property excluding the existing crossover, no stockpiling, storage or sorting of waste or building materials, no construction work, no concrete mixing, strictly no washing down of concrete mixers or tools, no chemicals mixed/disposed of, no excavation or filling, no service trenching. Any unavoidable work within the fenced zone shall be under the direction of Council's Tree Officer or Consultant Arborist.
- (j) Where unavoidable foot access is required in the TPZ, provide temporary access with timber sheets to minimise soil compaction, spillage or root damage.
- (k) Excavation within the TPZ and within a nominated radial dimension from the tree trunk as determined by the consultant Arborist in accordance with AS 4970: 2009

 Protection of Trees on Development Sites shall be carried out manually using hand tools or light machinery to minimise root damage or disturbance.
- (I) No tree roots greater than 30mm in diameter shall be pruned without further assessment by Council's Tree Officer and the consulting Arborist and only following the submission of further Arborists reports to Council so as not to unduly impact or stress the tree.

- (m) Ensure no damage to the canopy, trunk or root system (including the surrounding soil) of any tree to be retained. There shall be no canopy pruning unless approval has been granted by Council's Tree Officer under application from the consultant Arborist. Approved pruning shall be undertaken by a qualified Arborist in accordance with AS 4373.
- (n) For retained trees on the private property adjoining, the developer is required to consult with Council and advise prior to any tree works taking place.
- (o) Care shall be taken with construction work in the primary root zone of all existing neighbouring trees to be retained. These trees must be retained and construction works are to accommodate tree roots, branches and canopy without damage or impact. Trees are not to be pruned back to the boundary fence line under any circumstances. The canopy may otherwise overhang the property.
- (p) The Applicant will be required to undertake any tree maintenance or remedial pruning works required by Council or the Consultant Arborist at the completion of construction.
- (q) If there is any contravention of these tree preservation conditions, or a tree was found to be damaged (including roots), in decline, dead or pruned without permission, then Council may claim all or part of the lodged security bond prior to its release as well as require remedial pruning work. Epicormic growth is evidence of root damage.
- Fire booster assemblies and electrical kiosks and the like are to be housed within the building structure or screened by a built screen enclosure and/or landscaping so as not to reduce the visual amenity of the development or the streetscape and public domain. The location of, and screening treatment surrounding these utilities is to be approved by Council's Landscape Architect prior to their installation.
- Prior to the commencement of any 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.

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

The following conditions shall be satisfied prior to the issue of the relevant construction certificate unless otherwise stated

Prior to the issue of any Occupation Certificate, 671-683 Gardeners Road (Lot 1 in DP 777315 and Lot 500 in DP 1030729) and 1-5 Kent Road (Lot 30 in DP 789177) must be consolidated and the consolidated title registered.

37 The applicant must prior to the issue of any Construction Certificate, pay the following fees:

(a) Waste Levy \$7,408.60;

(b) Street Tree Maintenance Bond \$10,000.00 (# No. 38)

(DA-2016/117/02)

- Prior to the issue of any Construction Certificate, the applicant is to submit payment of a Street Tree Maintenance Bond of \$10,000.00. The duration of the Bond shall be limited to a period of 24 12 months after final inspection of new street trees by Council. At the completion of the 24 12 month period the Bond shall be refunded pending a satisfactory inspection of the trees by Council. If any tree is found to be dead or dying then Council will forfeit all or part of the bond to replace or maintain the tree, unless the Applicant undertakes this work. (DA-2016/117/05)
- 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.

(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 but not be limited to the following:

- (a) Provisions made in the Civil Infrastructure Development Application Report, project no. 16-381-01 by AT&L, dated July 2016 and but not limited to Part 6 of the SMTG,
- (b) The On-Site Detention System (OSD) shall be designed according to Part 6 of the SMTG. It should be noted that OSD systems shall be designed to detain the stormwater runoff 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 1 in 5 year ARI peak flow generated from the site under the "State of Nature" condition (i.e. the site is totally grassed/turfed), rather than pre-development condition,
- (c) Stormwater discharge to Council/RMS Kerb & Gutter shall be limited to a single outlet with maximum capacity of 10L/s. If greater discharge rate is proposed (upto the maximum discharge rate stated in the point above), the a direct connection to Council/RMS pit and pipe system isrequired,
- (d) No pump-out shall be used to drain seepage from the basement due to the elevated water table level. That is the basement shall be designed as a "fully tanked" structure,
- (e) The pump-out can only be utilized to dispose runoff that may enter the basement carpark from driveway access to the basement,
- (f) The pump out system from the basement carpark proposed shall discharge to the on-site stormwater detention (OSD) system,
- Incorporate a Stormwater Quality Improvement system to ensure compliance with Section 16 of Botany Bay's SMTG,

- (h) The water quality improvement system and WSUD strategy proposal shall be designed to capture and treat at least 85% flows generated from the site.
- (i) A WSUD Strategy and MUSIC model must be prepared and submitted to Council for the development. The MUSIC model must be prepared in line with the Draft NSW MUSIC Modelling Guidelines (Sydney Metro CMA). Sydney's Water's requirements are that the water quality improvement should meet or exceed the target as described in the "Botany Bay & Catchment Water Quality Improvement Plan" which was prepared by the Sydney Metropolitan Catchment Management Authority in April 2011, and
- The submission of detailed calculations including computer modelling where required to support the proposal.
- 40 Evidence that a NSW Environment Authority (EPA) Accredited Site Auditor appointment has been appointed to the site is required to be provided to Council <u>prior to the issue of any Construction Certificate</u>.
- The City of Botany Bay being satisfied that the proposed development will increase the demand for public amenities within the area, and in accordance with Council's Section 94 Contributions Plans, a contribution of \$3,420,043.94 is payable as calculated below:

City of Botany Bay Section 94 Contributions Plan 2016

The s94 contributions (as indexed as at 2015/16) for residential and commercial/retail are as follows (including application of credit):

a) Community Facilities: \$ 525.810.26
 b) Administration: \$ 39.187.02
 c) Open Space & Recreation (Mascot): \$ 53,346.79
 d) Open Space & Recreation (Citywide): \$ 2,284,013.26
 e) Transport (Mascot): \$ 302,483.16
 f) Transport (Citywide): \$ 215,203.46
 TOTAL: \$ 3,420,043.94

Note: The Section 94 Contributions 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.

- 42 Prior to the issue of the Construction Certificate for the relevant stage, the applicant shall submit amended plans to Council for approval, showing the following:
 - (a) As per the Qualitative Wind Impact Assessment prepared by SLR, the following recommendations are to be shown on a set of amended plans:
 - A 1.8m vertical shield or screen along the western perimeter of the retail outdoor dining area to help shield potential westerly winds impacting the area;

- (ii) Local shade cloths to the Level 4 communal open space of Buildings D and E to further protection from adverse winds;
- (iii) A 1.8m balustrade surrounding the perimeters of both proposed Level 4 communal open space and childcare open spaces for further shielding.
- (iv) Scattered landscaping within the proposed level 4 childcare open space is recommended to help break up adverse winds.
- Plans and specifications for the storage room for waste and recyclable materials shall be submitted to the Certifying Authority with the application for the above ground Construction Certificate. The garbage and recycling storage area shall be adequately ventilated, roofed and screened from public view. The floor shall be made of an impervious surface, drained to sewer and include a dry arrestor pit with a removable basket. Washing facilities shall be provided within close proximity to the garbage and recycling storage area.
- Prior to the issue of a Construction Certificate, the construction certificate drawings are to show the sub-surface OSD tanks and infiltration trenches are to be located at least 3 metres away from the canopy dripline of any existing tree to be retained and not located where it will limit the planting of trees on the site. Excavation proximate to trees shall be carried out manually using hand tools, or with small machinery to minimise tree root damage, disturbance or soil compaction. If tree roots are encountered Council's Tree Officer must be called for a site inspection. If tree roots cannot be cut without compromising the tree then the OSD will be required to be re-configured or relocated.
- The Applicant has permission to remove trees Tree #1, Tree #2, Tree #3, Tree #4, Tree #5, Tree #6, Tree #7, Tree #8, Tree #9, Tree #10, Tree #11, Tree #12, Tree #13, Tree #14, Tree #15, Tree #16, Tree #17, Tree #18, Tree #19, Tree #21, Tree #22, Tree #23, Tree #26, Tree #27, Tree #28, Tree #29, Tree #33, as identified by the Consultant Arborist in the report by Tree and Landscape Consultants (TALC) (dated 20th June 2016). Note: Trees are not permitted to be removed until the Construction Certificate has been issued.
- Tree removal shall be undertaken by the Applicant at their own expense and adhere to the following:
 - (a) A gualified Arborist with their own public liability insurance must be engaged.
 - (b) All work is to take place on the Council road reserve with the appropriate safety and directional signage implemented to ensure public safety and access otherwise road and footpath closures require a Council Road Occupancy Permit.
 - (c) A Dial-Before-You-Dig enquiry is required prior to stump grinding the trunk and shall occur without damage to Council infrastructure or underground services/utilities.

Council will take no responsibility for any damage incurred to persons, property or services during the tree removal works.

The private domain landscape areas shown on the plan by Context, Plans 01 to 08 (Issue C, dated October 2016) shall comprise detailed landscape construction documentation (plans and specifications) to be <u>submitted to and approved by Council's Landscape</u>

Architect prior to the issue of any Construction Certificate. The landscape documentation is to be prepared by Context Landscape Architects and shall include, but not be limited to:

- (a) A planting plan at 1:100 showing all plant locations/groupings and plant centres/species. There is to be a dense layered planting scheme consisting of trees, shrubs and groundcovers in all of these areas.
- (b) Canopy trees are required to be incorporated within the landscape setback along Kent Road frontage and Gardeners Road frontage.
- (c) Canopy trees are to be used extensively within the ground level community park. Planters are required to be of adequate depth and soil volume to accommodate both large and medium size canopy trees in accordance with DCP Part 10 Part 4.6.
- (d) Elevated planter box sectional details and drainage details. All planter box depths and dimensions shall be in accordance with Council's DCP and capable of supporting medium and large canopy trees.
- (e) All deep soil areas to include canopy trees where feasible to mitigate the loss of existing mature trees on site and to provide a level of amelioration to the development that is appropriate to the scale of the building heights.
- (f) Indicate the location of all basement structures relative to the landscape areas.
- (g) The nine (9) existing trees identified for retention shall be shown on all plans.
- (h) Barbeque facilities to be incorporated within the Level 4 Podium Courtyard.
- (i) Within the new ground level community park (between Buildings E and F), areas of paving, schedule of materials, edge treatments, tactiles and sectional construction details. Paving to Council Draft Public Domain schedule/ specification. Drainage details in specific locations such as the public parks, use of WSUD initiatives or materials is required to be indicated.
- (j) Privacy to the balconies facing the communal open space at podium level are to be adequately treated through fencing and mounding to provide a sufficient landscape screen.
- (k) Adequate screen planting is to be provided in front of the perforated metal screen to the car park along Gardeners Road.
- (I) Full details including plans, sections and material palettes indicating the proposed treatments of the interface between the privately owned through site link (between buildings E and F) and the public domain (along the northern boundary) are to be submitted to Council's Landscape Architect for review and approval prior to issue of the Construction Certificate for above ground works. The proposed treatments (including, but not limited to fencing, landscaping and paving) shall not impede public access and is not to be inconsistent with Condition 88 of the Development Consent. The proposed treatment should take the following into consideration:
 - (i) Landscaping based solutions are encouraged over any type of fencing;
 - (ii) The treatment will need to read as being publically accessible;
 - (iii) It should be fully permeable, with large-scale, wide gates that will allow full access to the space during the day for the public;
 - (iv) Materiality will need to be in keeping with the Public Domain Manual for Mascot Station Precinct and the opportunity exists to be innovative and

creative with use of such materials such as corten steel blades or similar treatments (for fencing).

- The public domain landscape areas shown on the plan by Context, Plans 01 to 08 (Issue C, dated October 2016) shall comprise detailed landscape construction documentation (plans and specifications) to be <u>submitted to and approved by Council's Landscape Architect prior to the issue of any Construction Certificate</u>. The landscape documentation is to be prepared by Context Landscape Architects and shall include, but not be limited to:
 - (a) The clear delineation of all public domain areas as follows:
 - (i) Kent Road and Gardeners Road footpath areas.
 - (b) A planting plan at 1:100 showing all plant locations/groupings and plant centres/species. There is to be a dense layered planting scheme consisting of trees, shrubs and groundcovers in all of these areas.
 - (c) Street trees are required along Kent Road, Gardeners Road, and within the community park between Building E and Building F.
 - (d) All street trees are to be in accordance with Council's Street Tree Master Plan.
 - (e) All deep soil areas are to include evergreen canopy trees where feasible to mitigate the loss of existing mature trees on site and to provide a level of amelioration comparable to the scale of the buildings.
 - (f) Canopy trees are to be used extensively within the community park at the north of the new North South Street. Planters are required to be of adequate depth and soil volume to accommodate both large and medium size canopy trees in accordance with Councils DCP (Part 10 Part 4.6).
 - (g) A plant schedule listing all plants by botanical name, total plant numbers, plant spacings, pot sizes and staking. Canopy trees are to be a minimum litreage of 200 litres and street trees 400 litre.
 - (h) Specifications detailing soil and mulch finishes, root barriers, irrigation, edging and other landscape hardworks such as retaining walls, steps, planter walls, feature walls, skateboard restrictors, tree pits, tree grates, tree guards, tree pit treatments and so on in accordance with Council's Draft Public Domain specifications.
 - (i) Areas of paving, schedule of materials, edge treatments, tactiles and sectional construction details. Paving to Council Draft Public Domain schedule/specification. Drainage details in specific locations such as the public parks, use of WSUD initiatives or materials.
 - (j) Details of all fencing, privacy screening, arbors and the like elevations and materials, impacting or visible to public domain areas.
 - (k) Details of all other hardscape landscape elements such as street furniture, pedestrian amenity lighting, playground and recreational equipment, water features and water stations, bins, bollards, public toilets, signage suite. Locations to be clearly identified on plan. Provide sectional construction details and elevations.
 - Rigid polyethylene sheet type tree root barriers are to be specified as required to protect structural elements.
 - (m) A detailed public art proposal.

- (n) A way finding signage proposal.
- (o) Elevated planter box sectional details and drainage details. All planter box depths and dimensions shall be in accordance with Council's DCP (Part 10 Part 4.6) and capable of supporting medium and large canopy trees.
- (p) Trees are to be used extensively throughout the site and shall be of an appropriate scale to complement and ameliorate buildings and for appropriate scaling within pedestrian areas – footpaths and open spaces. Deep soil zones must include larger trees. Trees are to be predominantly native, evergreen species using open canopy evergreens or selected deciduous for solar penetration.
- (q) Indicate the location of all basement structures relative to the landscape areas.
- (r) The nine (9) existing retained trees shall be shown on all plans.
- 49 <u>Prior to the release of the Construction Certificate</u>, the following required section(s) are to be submitted to and approved by Council:
 - (a) All driveways/access ramps/vehicular crossings shall conform with Australian Standards AS 2890.1 and Council requirements including but not limited to Section 8(v) of the DCP Stormwater Management Technical Guidelines, and
 - (b) For residential flat developments, the applicant shall provide longitudinal sections along the extremities and the centre line of each internal driveway/access ramp at a scale of 1:25. These long sections shall extend from the horizontal parking area within the property to the centre line of the roadway. The sections shall also show the clear height from the ramp to any overhead structure.
- Prior to the release of the Construction Certificate, the following required section(s) are to be submitted to and approved by Council:
 - (a) All driveways/access ramps/vehicular crossings shall conform with Australian Standards AS 2890.1 and Council requirements including but not limited to Section 8(v) of the DCP Stormwater Management Technical Guidelines,
 - (b) All service vehicles shall enter the property front in front out,
 - (c) Demonstrate safe headroom clearance of 4.5m is achieved in the driveway entrance and along the along the travel path, parking and manoeuvring areas of a Medium Rigid Vehicle (MRV), including Council's Garbage Truck,
 - (d) Swept path analysis shall be provided for manoeuvring of commercial vehicles, and
 - (e) A longitudinal section plotting headroom clearance above driveway access is to be provided for assessment.
- Prior to the release of the Construction Certificate, the following required section(s) are to be submitted to and approved by Council:
 - (a) Disabled car parking spaces shall be provided and clearly marked as per the Transport Impact Assessment, by ARUP, dated 11 July 2016, Australian Standards AS 2890.6, SEPP 65 Design Code and Council requirements, and

- (b) All off street disabled parking shall have access to the adjacent road(s) and to the communal open space as per Australian Standards AS 2890.6 and Council requirements.
- Prior to the release of the Construction Certificate, a plan (written and/or diagrammatic) shall be submitted and approved by the Engineering and Regulatory Services Department, 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.
- The drawings for the construction certificate for the car park shall show the following parking requirements:

Car Parking Rates	Required
0.6 space / 1 bed unit	36 spaces
0.9 space / 2 bed unit	121 spaces
1.4 space / 3 bed unit	70
1 visitor space / 7 dwellings	35 spaces
Retail Spaces	24 of which 12 shall be allocated to the gym located in RG07
Child Care Centre	34
TOTAL REQUIRED	286
TOTAL PROVIDED	276

Excess car parking spaces within the development at 1-5 Kent Road are to be reallocated to 671-683 Gardeners Road so as to make up the shortfall identified in the table above.

Any parking in excess of 286 car parking spaces is to be allocated to a residential apartment or the retail tenancy. (DA-2016/117/02)

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 the certifying authority prior to the release of the Construction Certificate and the building plans endorsed with the required acoustical measures.

The measures required in the acoustical assessment report prepared by Acoustic Logic, dated 17 June 2016, Report reference number 20160869.1/1706A/R1/TA 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.

<u>Note</u>: In many cases the applicant chooses to install air conditioning to meet mechanical ventilation requirements above. If they do it will require consideration of the noise from the air conditioner.

- A suitable intercom system linked to all units within the development shall be provided at the vehicle entrance to the development to ensure any visitors to the site can gain access to the visitor parking in the car parking area. The details of the intercom system shall be submitted to Certifying Authority prior to the issue of the Construction Certificate and its location and specifications endorsed on the construction drawings.
- In order to maximise visibility in the basement car parks, the ceilings shall be painted white. This requirement shall be reflected on the Construction Certificate plans.

DURING WORKS

- An experienced Landscape Contractor shall be engaged to undertake all landscaping (site and public domain) work and shall be provided with a copy of both the approved landscape drawing and the conditions of approval to satisfactorily construct the landscape to Council requirements. The contractor shall be engaged weekly for a minimum period of 52 weeks from final completion of landscaping for maintenance and defects liability, replacing plants in the event of death, damage, theft or poor performance. After that time regular and ongoing maintenance is required.
- New street trees at the pot size specified shall be installed in the accordance with the approved landscape plan. The trees shall be sourced from a reputable supplier that grows stock to the NATSPEC specifications. A Dial-Before-You-Dig enquiry is required prior to all planting Council is not liable for any damage to subsurface infrastructure during public domain works. Two hold point inspections are required: prior planting trees to ensure plant stock is suitable and post-planting.
- 59 Planter boxes constructed over a concrete slab shall be built in accordance with the following requirements:
 - (a) Ensure soil depths and dimensions in accordance with Council's DCP allowing a minimum soil depth of 1 metre to support trees. The base of the planter must be screeded to ensure drainage to a piped internal drainage outlet of minimum diameter 90mm, with no low points elsewhere in the planter. There are to be no external weep holes.
 - (b) A concrete hob or haunch shall be constructed at the internal join between the sides and base of the planter to contain drainage to within the planter.

- (c) Planters are to be fully waterproofed and sealed internally with a proprietary sealing agent and applied by a qualified and experienced tradesman to eliminate water seepage and staining of the external face of the planter. All internal sealed finishes are to be sound and installed to manufacturer's directions prior to backfilling with soil. An inspection of the waterproofing and sealing of edges is required by the Certifier prior to backfilling with soil.
- (d) Drainage cell must be supplied to the base and sides of the planter to minimize damage to the waterproof seal during backfilling and facilitate drainage. Apply a proprietary brand filter fabric and backfill with an imported lightweight soil suitable for planter boxes compliant with AS 4419 and AS 3743. Install drip irrigation including to lawns.
- (e) Finish externally with a suitable paint, render or tile to co-ordinate with the colour schemes and finishes of the building.
- 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 demolition, excavation and construction. The area fronting the site and in the vicinity of the development shall also be make 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.

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- (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. 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. 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) During construction and celiveries, 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.

- 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.
- 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. All work on site shall cease until the council is notified and appropriate measures to assess and manage the contamination in accordance with any relevant NSW EPA adopted guidelines is completed by an appropriately qualified and experienced environmental consultant.
- All remediation work must be carried out in accordance with:
 - (a) NSW Office of Environment and Heritage (OEH) 'Contaminated Sites Guidelines for Consultants Reporting on Contaminated Sites';
 - (b) NSW Environment Protection Authority (NSW EPA) guidelines under the Contaminated Land Management Act 1997;
 - (c) State Environmental Planning Policy 55 (SEPP55) Remediation of Land; and
 - (d) Any Remedial Action Plan (RAP) required to be submitted as part of the Deferred Commencement Condition 1).
- To ensure that the risk to the environment, workers and occupants of the residential premises is acceptable, any remediation or management measures for excavation and construction outlined in the contaminated land report provided as part of Deferred Commencement condition DC1 shall be complied with during excavation and construction.
- Any material containing asbestos found on site during the demolition process shall be removed and disposed of in accordance with:
 - (a) SafeWork 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 Operations (Waste) Regulation 2014.
 - (d) NSW Environment Protection Authority Waste Classification Guidelines 2014.
- 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.
- To prevent contaminated soil being used onsite and to ensure that it is suitable for the proposed land use, all imported fill (should this be required) 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.
- (d) 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.
- The principal contractor or owner builder must install and maintain water pollution, erosion and sedimentation controls in accordance with:
 - (a) The Erosion and Sediment Control Plan;
 - (b) "Managing Urban Stormwater Soils and Construction" (2004) Landcom ('The Blue Book'); and
 - (c) Protection of the Environment Operations Act 1997.
- During demolition, excavation, construction and any associated delivery activities, access to the site shall be available in all weather conditions. The area shall be stabilised and protected from erosion to prevent any construction-related 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 lands.
- 71 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 construction works.
- 72 If required pursuant to deferred commencement condition DC1, a Stage 4 Site Validation Report (SVR) shall be prepared by a suitably qualified contaminated land consultant and shall be in accordance with:
 - (a) NSW Office of Environment and Heritage (OEH) 'Contaminated Sites Guidelines for Consultants Reporting on Contaminated Sites';
 - (b) NSW Environment Protection Authority (NSW EPA) approved guidelines under the Contaminated Land Management Act 1997; and
 - (c) State Environmental Planning Policy 55 (SEPP55) Remediation of Land.
- The site validation report shall provide a notice of completion of remediation works, whether there are any ongoing site management requirements and a clear statement on the suitability of the likely proposed site use. The report shall be submitted to the Principal Certifying Authority (and the Council if the Council is not the Principal Certifying Authority). The report is to be submitted after completion of remediation works and prior to the issue of any Occupation Certificate.
- 74 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.

- 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.
- 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.
- 77 The following shall be complied with during construction and demolition:
 - (a) Construction Noise
 - (i) 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:
 - (1) 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:
 - (1) 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 06:00pm

(ii) Saturday 08:00am to 03:00pm 04:00pm

(iii) No demolition or construction to take place on Sundays or Public Holidays.

- (d) Silencing
 - (i) All possible steps should be taken to silence construction site equipment.

(Condition modified - DA-16/117/03)

- During excavation and 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.
- During excavation and construction works, the applicant / builder is required to ensure the protection and preservation of all boundary fencing or boundary walls between the subject site and adjoining properties. Any damage caused as a result of such works will be at the full cost of the applicant/builder.

$\frac{\text{CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE ISSUE OF AN OCCUPATION}{\text{CERTIFICATE}}$

80 Prior to the issue of any Occupation Certificate, the applicant is to provide the following:

- (a) Certification is to be provided to the Certifying Authority that all apartments, including U423 (which provides 9.8m³ of storage and should provide at least 10m³) comply with the minimum requirements for storage under the ADG with at least 50% of this storage requirement contained within the apartment.
- (b) The service rooms on the top level are to be provided with natural light and ventilation.
- (c) The entry to the lobby of Building E is to provide a small meeting place facilitated by the provision of seating.
- To ensure that the site is suitable for the proposed use, a Site Audit Statement (SAS) completed by an accredited site auditor under the Contaminated Land Management Act 1997 shall be submitted to Council for clearly demonstrating that the site is suitable for the proposed development. A separate SAS shall be provided for any land dedication to council, such as parks or roadways and the site audit statement shall not be subject to any ongoing management measures.
- Any conditions imposed on the SAS shall form part of this consent. The accredited site auditor shall provide Council with a copy any Site Audit Report (SAR) and Site Audit Statement (SAS) prior to the release of any applicable Occupation Certificate. In circumstances where the SAS conditions (if applicable) are not consistent with the consent, a Section 96 application pursuant to the Environmental Planning & Assessment Act 1979 shall be submitted to ensure that they form part of the consent conditions.
- 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. (DA-2016/117/05)
- A qualified practitioner, with a certificate of attainment in NWP331A Perform Conduit Evaluation, shall undertake a closed circuit television (CCTV) inspection and then report on the existing condition of the existing stormwater drainage infrastructure on Kent Road, and all the new stormwater drainage lines associated with the development.

The camera and its operation shall comply with the following:

- (a) The internal surface of the drainage pipe/culvert shall be viewed and recorded in a clear and concise manner,
- (b) The CCTV camera used shall be capable to pan, tilt and turning at right angles to the pipe axis over an entire vertical circle to view the conduit joints,
- (c) Distance from the manholes shall be accurately measured, and
- (d) The inspection survey shall be conducted from manhole to manhole.
- (e) The written report, together with a copy of the digital video footage of the pipeline shall be submitted to Council for review. Any damage to the culvert/pipeline since the commencement of construction on the site shall be repaired in full to the satisfaction of Council. A written acknowledgement shall be obtained from Council (attesting this condition being appropriately satisfied) and submitted to the Principal Certifying Authority.

- Prior to the issue of any the relevant 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 all relevant standards. (DA-2016/117/05)
- 86 <u>Prior to the issue of any the relevant Occupation Certificate,</u> the applicant shall carry out the following works:
 - (a) On Kent Road, adjacent to development, reconstruct existing Kerb and Gutter for the full length of the property in accordance with Council and RMS Infrastructure Specifications. Location of kerb & gutter to be confirmed with RMS and Council prior to construction,
 - (b) On Gardeners Road, adjacent to development, reconstruct existing Kerb and Gutter for the full length of the property in accordance with Council and RMS Infrastructure Specifications. Location of kerb & gutter to be confirmed with RMS and Council prior to construction,
 - (c) On Kent Road, adjacent to development, demolish existing concrete footpath and construct new paved footpath as per Council's Infrastructure and Landscape Architect specifications,
 - (d) On Gardeners Road, adjacent to development, demolish existing concrete footpath and construct new paved footpath as per Council's Infrastructure and Landscape Architect specifications. (DA-2016/117/05)
- 87 Prior to the issue of any the final 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. (DA-2016/117/05)
- 88 Prior to the issue of any the relevant Occupation Certificate, a restriction on Use of Land and Positive Covenant(s) shall be imposed on the development. The following covenants shall be imposed under Section 88(E) of the Conveyancing Act 1919 and lodged with the NSW Land and Property Information:
 - (a) Restriction on Use of Land for On-Site Detention System. Refer to Appendix B of the SMTG for suggested wording, and
 - (b) Restriction on Use of Land for Stormwater Quality Improvement Device. Refer to Appendix E of the SMTG for suggested wording.

The terms of the 88 E instruments are to be submitted to Council for review and approval and Proof of registration at the Lands and Property Information Office shall be submitted to the Principal Certifying Authority and Council prior to occupation. (DA-2016/117/05)

89 Prior to the issue of any Occupation Certificate, Lot 1 in DP 777315 and Lot 500 in DP 1030729 are to be consolidated.

- Prior to the issue of any the final Occupation Certificate, a new 16.6 wide "Easement for Public Access" shall be created over the proposed North-South Link. The draft plan of easement shall be lodged with Council for approval. The proposed new easement shall be unlimited in stratum. Once approval from Council is granted, the plan shall be registered with Land & Property Information prior to the issue of any Occupation Certificate. A copy of the registered document shall be submitted to Council for record purposes. (DA-2016/117/05)
- 91 Any Stratum subdivision of the development shall be the subject of a further Development Application to Council.
- 92 That before entering a lease/occupancy agreement, all tenants and occupiers of the development are to be advised by the owner of the building that residents are not eligible to participate in on-street resident parking schemes.
 - <u>Prior to the issue of the occupation certificate</u>, a sign to this effect shall be located in a prominent place, to Council's satisfaction, such as on a the notice board in the communal room, where it can easily be observed and read by persons entering the building.
- The public domain landscaping shall be installed in accordance with the <u>approved</u> landscape plan as stamped by Council's Landscape Architect prior to the issue of <u>any</u> the <u>final Occupation Certificate</u>. This amended plan supersedes the original landscape plan. The landscaped areas on the property shall be maintained in accordance with the approved landscape documentation and to Council's satisfaction all times.
- To ensure satisfactory growth and maintenance of the landscaping, a fully automatic drip irrigation system is required in all landscaped areas. The system shall be installed by a qualified landscape contractor and provide full coverage of planted areas with no more than 300mm between drippers, automatic controllers and backflow prevention devices, and should be connected to a recycled water source. Irrigation shall comply with both Sydney Water and Council requirements as well as Australian Standards, and be maintained in effective working order at all times.
- 95 Landscaping on the property and in the public domain shall be installed in accordance with the approved landscape plan as stamped by Council's Landscape Architect prior to the issue of any Occupation Certificate. This amended plan supersedes the original landscape plan prior to the issue of an Occupation Certificate. The landscaped areas on the property shall be maintained in accordance with the Council stamped and approved landscape documentation, the conditions of development consent all times. (DA-2016/117/05)
- Prior to the issue of any the final Occupation Certificate, the public footpaths in Kent Road, Gardeners Road and in the new ground level community park shall be constructed in accordance with the approved Public and Private Domain Plans and Council specifications. The footpath dimensions, location, paver type and construction methods shall be in accordance with these specifications. Hold points and Council inspections are required after formwork setback and prior to pouring the concrete blinding slab, at the commencement of paving works and at final completion as a minimum. Pavers shall be ordered allowing for adequate lead time for manufacture (10-12 weeks). (DA-2016/117/05)

- 97 At the completion of landscaping on the site, the Applicant is required to obtain a Certificate of Compliance from the Landscape Consultant to certify that the landscaping has been installed in accordance with the Council approved landscape plan. The Certificate is to be submitted to the City of Botany Bay Council prior to the issue of an the relevant Occupation Certificate. (DA-2016/117/05)
- Prior to release of the Occupation Certificate the developer must submit to the Certifying Authority an acoustic report to verify that the measures stated in the acoustic report have been carried out and certify that the construction meets the above requirements. The report must be prepared by a qualified practicing acoustic engineer (who is a member of either the Australian Acoustical Society or the Association of Australian Acoustical Consultants).
- 99 All services (Utility, Council, etc.) within the road reserve (including the footpath) shall be relocated/adjusted to match the proposed/existing levels as required by the development.
- 100 Prior to the issue of the Occupation Certificate, street numbers shall be clearly displayed with such numbers being of contrasting colour and adequate size and location for viewing from the footway and roadway.
- Prior to the issue of any the final Occupation Certificate, a Certificate of Survey from a Registered Surveyor shall be submitted to the Principal Certifying Authority and the Council to the effect that:
 - (a) All reduced levels shown upon the approved plans, with relation to the required solar panels, drainage, boundary and road reserve levels, have been strictly adhered to: and
 - (b) A Floor Space Ratio (FSR) of 3.43:1 and a maximum height of 46.34m and up to a maximum of RL 51m AHD, as approved under this Development Consent No. 16/117, have been strictly adhered to and any departures are to be rectified in order to issue the Occupation Certificate.
 - (c) The development as built, stands within a consolidated lot otherwise described as Lot 1 in DP 777315 and Lot 500 in DP 1030729. (DA-2016/117/05)
- The applicant is responsible for the installation and protection of all regulatory/ parking / street signs fronting the property. Any damaged or missing street signs as a consequence of the development and associated construction works shall be replaced at full cost to the applicant.
- Any air conditioning units are to be located so that they are not visible from the street or public place and are not obscure windows/window frames or architectural features of the development and installed in a manner not be inconsistent with the relevant provisions of the Building Code of Australia (BCA).

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- (a) Prior to the issue of the relevant Occupation Certificate, the retail spaces are to be allocated to the closest spaces to the retail tenancy. (DA-2016/117/02)
- (b) Prior to the issue of any Occupation Certificate, entry/egress doors to the development should have an electronically operated lock which require security swipe pass for entry. The lifts operating in the building should have the same security swipe pass technology. When an occupant buzzes in a visitor the lift should recognise the floor the occupant resides and only allow the visitor access to that floor in the lift.
- (c) Prior to the issue of any Occupation Certificate, customers and staff of the childcare centre are to be provided with swipe cards that access Level 4 only so as to protect the privacy of the two residences on Level 4, and also to restrict non-customers from accessing Level 4. (DA-2016/117/06)
- Prior to use and occupation of the building an Occupation Certificate must be obtained under Section 109C(1)(c) and 109M of the Environmental Planning and Assessment Act 1979.

CONDITIONS WHICH MUST BE SATISFIED DURING THE ONGOING USE OF THE DEVELOPMENT

- 106 The use of the retail tenancy is subject to a separate approval (DA or complying development certificate).
- 107 The use of the child care centre is subject to a separate Development Application to be lodged with Council for approval. It should be noted in any future application that the primary outdoor area is to be located where the majority of solar access is provided. (DA-2016/117/05)
- 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.
- 109 New street trees shall be maintained by the Applicant/Owner/Strata Corporation for a period of 12 months after final inspection by Council. Maintenance includes twice weekly watering within the first 6 months then weekly thereafter to sustain adequate growth and health, bi-annual feeding, weed removal round the base, mulch replenishment at 3 monthly intervals (to 75mm depth) and adjusting of stakes and ties. Maintenance but does not include trimming or pruning of the trees under any circumstances.
- 110 Ongoing maintenance of the road verges and footpaths and nature strips in Kent Road Gardeners Road shall be undertaken by the owner/body corporate/Strata Corporation. Maintenance includes mowing, watering and maintaining the landscaping in these areas at

all times. Maintenance does not include pruning, trimming, shaping or any work to street trees at any time.

- The use of the premises shall not give rise to any of the following when measured or assessed at "sensitive" positions within any other property. These "sensitive" positions should be selected to reflect the typical use of a property (ie any outdoor areas for day and evening but closer to the façade at night time), unless other positions can be shown to be more relevant.
 - (a) The operation of all plant and equipment shall not give rise to an equivalent continuous (LAeq) sound pressure level at any point on any residential property greater than 5dB(A) above the existing background LA90 level (in the absence of the noise under consideration).
 - (b) The operation of all plant and equipment when assessed on any residential property shall not give rise to a sound pressure level that exceeds LAeq 50dB(A) day time and LAeq 40 dB(A) night time.
 - (c) The operation of all plant and equipment when assessed on any neighbouring commercial/industrial premises shall not give rise to a sound pressure level that exceeds LAeq 65dB(A) day time/night time.
 - (d) For assessment purposes, the above L_{Aeq} sound levels shall be assessed over a period of 10-15 minutes and adjusted in accordance with EPA guidelines for tonality, frequency weighting, impulsive characteristics, fluctuations and temporal content where necessary.
- Any air conditioning units shall comply with the following requirements:
 - (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) A person must not cause or permit an air conditioner to be used on residential premises in such a manner that it emits noise that can be heard within a habitable room in any other residential premises (regardless of whether any door or window to that room is open):
 - (i) Before 8 am or after 10 pm on any Saturday, Sunday or public holiday, or
 - (ii) Before 7 am or after 10 pm on any other day.
- 113 Visible light reflectivity from building materials use on new building facades must not exceed 20%.
- 114 The following shall be complied with at all times:
 - (a) All loading and unloading associated with the retail tenancy is to be undertaken within the loading dock (basement) of Building C (1-5 Kent Road, Mascot).
 - (b) No garbage collection associated with the retail premises is permitted between 10pm and 6am.
 - (c) The collection of garbage associated with the residential premises shall be restricted to 6am to 6pm Monday to Sunday.
- 115 The following shall be complied with at all times:

- (a) Each residential dwelling (apartment) is approved as a single dwelling for use and occupation by a single family. They 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, other than permitted by Exempt and Complying provisions;
- (b) The adaptable apartments approved under this development consent are to remain unaltered at all times; and
- (c) The storage areas located within the basement shall be allocated to the relevant residential dwelling in any future subdivision of the site. In addition, any isolated storage areas and other spaces as identified by the NSW Police, shall be monitored by CCTV cameras at all times.
- All parking bays shown on the approved architectural plans shall be set aside for parking purpose only and shall not be used for other purposes, e.g. storage of goods. Vehicle turning areas shall be kept clear at all times and no vehicles are permitted to park in these areas. This is to be complied with at all times.
- 117 The applicant being informed that this approval shall be regarded as being otherwise in accordance with the information and particulars set out and described in the Development Application registered in Council's records as Development Application No. 16/117 dated as 27 July 2016 and DA- 16/117/03 lodged with Council on 11 May 2017 and that any alteration, variation, or extension to the use, for which approval has been given, would require further Approval from Council.

(Condition modified - DA-16/117/03)

ADVISORY CONDITIONS

No response was received from the **NSW Police Service**. Standard conditions have been included below:

Surveillance

- (a) Digital technology should be used to receive, store and process data. Recording equipment should be secured away from public access areas to restrict tampering with the equipment and data. All access areas to the building be covered by such equipment including mail delivery ports. This equipment needs to be checked and maintained on a regular basis.
- (b) It is crucial even in the development stage that these cameras are installed as soon as power is available to the site.
- (c) By angling fire egress inlet walls 45 degrees or more, opportunities for entrapment, loitering and vandalism can be reduced.
- (d) Care should be taken when using glazing in entry foyers. At night the vision of departing occupants can be affected by reflections on the interior of the glass (can't see outside). Mirroring can be reduced by using appropriate external lighting.
- (e) Main entrance of all parking, lift entries and lobbies to be covered with CCTV footage.

- (f) Uneven building alignments, insert doorways and hidden entrances should be avoided. They can facilitate predatory crimes, thefts, malicious damage and other offences.
- (g) Bicycle parking areas should be located within view of capable guardians. The provision of covered lockable racks to secure bicycles increases the effort required to commit crime.

Lighting

- (a) Lighting (lux) levels for this development must be commensurate with a medium crime risk identified in this evaluation. The emphasis should be on installing low glare/high uniformity lighting levels in line with Australian Standard AS:1158.
- (b) Lighting sources should be compatible with requirements of any surveillance system installed within the development. (Poor positioning choices in relation to light can cause glare on the surveillance screens).
- (c) The luminaries (light covers) should be designed to reduce opportunities for malicious damage. Lighting within the development needs to be checked and maintained on a regular basis.
- (d) A limited amount of internal lighting should be left on at night to enable patrolling police, security guards and passing people to monitor activities within the business.
- (e) Improved lighting needs to extend from the development towards adjacent streets. Consideration must be given to pedestrians walking from the development to surrounding streets for the purpose of catching public transport etc. Areas adjoining pathways should be illuminated to avoid opportunities for concealment and entrapment.

Territorial Reinforcement

- (a) Clear street number signs should be displayed and appropriately positioned at the front of the business to comply with Local Government Act, 1993 Section 124 (8). Failure to comply with any such order is an offence under Section 628 of the Act. Offences committed under Section 628 of the Act attract a maximum penalty of 50 penalty units (currently \$5500) for an individual and 100 penalty units (currently \$11000) for the corporation. The numbers should be in contrasting colours to the building materials and be larger than 120mm.
- (b) Warning signs should be strategically posted around the buildings to warn intruders of what security treatments have been implemented to reduce opportunities for crime.
 - (i) Warning, trespassers will be prosecuted
 - (ii) Warning, these premises are under electronic surveillance
- (c) Directional signage should be posted at decision making points (eg. Entry/egress points) to provide guidance to the uses of the development. This can also assist in access control and reduce excuse making opportunities by intruders.
- (d) A Fire Safety Statement must be prominently displayed within the development to comply with the Environmental Planning & Assessment Regulations (1994) Clause 80GB. The annual fire safety statement is a statement issued by the owner of a building.
- (e) Signage needs to be provided at fire exits to assist occupants to identify exits in emergency situations.

- (f) Signage needs to be provided to assist occupants to identify fire suppression equipment, e.g. extinguishers, fire hoses etc.
- (g) Graffiti resistant materials and anti-graffiti coating should be utilised throughout the development or at least ground levels situated on the outsides of the buildings.

Space/Activity Management

- (a) An Emergency control and evacuation plan which complies with the Australian Standard, Emergency Control Organisation and Procedures for Buildings, Structures and Workplace, AS:3745:2002 should be prepared and maintained by your development to assist management and staff in the event of an emergency. This standard sets out the requirements for the development of procedures for the controlled evacuation of the building, structures and workplaces during emergencies. Further information in relation to planning for emergencies can be obtained from Emergency NSW http://www.emergency.nsw.gov.au or Emergency Management Australia http://www.ema.gov.au.
- (b) It is NOT advised to install storage cages or similar for the residents in the underground car park. If it is required, consider that they should NOT be constructed in an isolated area. The cages are easy targets when they have little supervision. CCTV cameras must cover this area if they are constructed. Solid steel housing and quality key locks should be used to prevent access.

Access Control

- (a) The door and door frames to these premises should be of solid construction.
- (b) Doors should be fitted with locks that comply with the Australian Standard Mechanical Locksets for doors in buildings, AS:4145:1993, to restrict unauthorised access and the Building Code of Australia (fire regulations). This standard specifies the general design criteria, performance requirements and procedures for testing mechanical lock sets and latch sets for their resistance to forced entry and efficiency under conditions of light to heavy usage. The standard covers lock sets for typical doorways, such as wooden, glass or metal hinged swinging doors or sliding doors in residential premises. Requirements for both the lock and associated furniture are included. Certain areas may require higher level of locking devices not referred to in this standard (eg. Locking bars, electronic locking devices and detection devices) Dead locks are required for residential units.
- (c) There are some doors within the premises which are designated as fire exits and must comply with the Building Code of Australia. This means that they provide egress to a road or open space, an internal or external stairway, a ramp, a fire isolated passageway, a doorway opening to a road or open space.
- (d) The doors in the required exits must be readily open-able without a key from the side that face the person seeking egress, by a single hand downward action or pushing action on a single device which is located between 900mm and 1.2m from the floor.
- (e) Any sliding doors MUST be fitted with lockable bolts in the bottom and top of the door frame.
- (f) The windows and window-frames to these premises should be of solid construction. These windows should be fitted with locks with comply with the Australian Standard Mechanical Locksets for windows in buildings, AS:4145 http://www.standards.org.au to restrict unauthorised access. This standard specifies the general design criteria, performance requirements, and procedures for testing mechanical lock sets and latch sets for their resistance to forced entry

and efficiency under conditions of light to heavy usage. The standard covers lock sets for typical windows, such a wooden, glass or metal hinged swinging windows or sliding windows in residential and business premises, including public buildings, warehouses and factories. Requirements for both the lock and associated furniture are included. Certain areas may require higher level of locking devices not referred to in this standard. (e.g. locking bars, electronic locking devices, detection devices, alarms).

(g) The main access to the underground car park should have restricted access with a security pass. The opening/closing mechanism should be protected from vandalism and tampering. All exit doors from the car park should have striker plates installed to minimise chance of tampering.



671-683 Gardeners Road, Mascot

Amend various conditions

15 February 2017



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Annexure 1: Amended Conditions

1 Introduction

This Statement of Environmental Effects relates to a Section 96 Application seeking Council's consent to amend development consent No.16/117.

The subject Section 96 Application seeks to amend various conditions in relation to the timing of works.

This Statement:

- · describes the site and its surrounding area,
- details the nature of the proposed development, and
- undertakes an assessment of the proposal under the heads of consideration in Section 79C
 (1) of the Environmental Planning and Assessment Act, 1979.

The conclusion is reached that the proposal is acceptable with regard to all relevant planning issues.

2 Site and Surroundings

2.1 The Site

The site is known as 1-5 (No.3) Kent Road, Mascot, and occupies a parcel of land on the eastern side of Kent Road, between Gardeners Road and Church Avenue. **Figure 1** shows the general location of the site and **Figure 2** shows an aerial view of the site and its boundaries.

The site comprises Lot 30 in Deposited Plan 789177. It has an 53.44 metre frontage to Kent Road; a 54.48 metre broken rear boundary; a 143.03 metre northern side boundary; and a 148.48 metre southern side boundary. The total site area is 7,820 sqm.

The site is currently under construction in accordance with DA 16/117 – refer section 3.1 of this Statement.

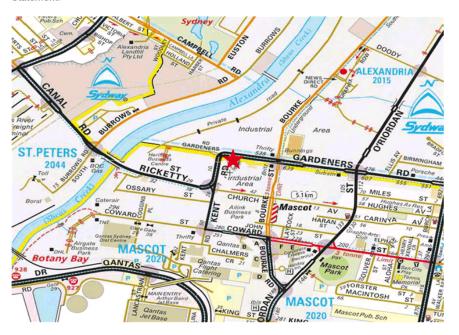


Figure 1: Location of subject site marked with red star



Figure 2: Aerial view of subject site - red border (as at 24 February 2016)

2.2 Surroundings

The existing surrounding area is in transition from industrial to residential and some commercial landuses. The transition reflects changes occurring over the Mascot area more broadly.

The site is located within 400 metres (7 minute walk) to Mascot Railway Station and the town centre that surrounds the station.

The adjoining site to the east has been demolished and sits vacant for future redevelopment.

To the north of the site, on the other side of Gardeners Road, is a mix of commercial and light industrial development.

The adjoining site to the south (1-5 Kent Road) has recently been approved for redevelopment. The approved development, once completed, is to be combined with the proposed development on the subject site.

To the west of the site, on the other side of Kent Road, are existing light industrial buildings.

3 Proposed Modifications

3.1 Existing Consent

On 19 January 2017, the Council issued its consent for approval of DA 16/117 for the following development:

Integrated Development Application for the construction of two residential flat buildings incorporating two x 4 storey podiums, 2 x 14 storey towers containing a total of 239 residential units, a retail tenancy, a childcare centre, private recreation facilities, at-grade and above ground 'sleeved' podium parking for 255 cars and 24,648sqm of gross floor area; construction of a new north-south private publically accessible open space link; associated excavation, earthworks and landscaping.

3.2 Proposed Amendments

It is proposed to make changes to Conditions 8a(ii), 33a, 36, 38, 39, 47, 48, 53, 77, 80, 83, 85, 86, 87, 88, 89, 90, 93, 95, 96, 97, 101, 104 and 115.

Annexure 1 contains a copy of the proposed amended conditions, and the following paragraphs provide explanation for the proposed changes.

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4 Threshold Test – Substantially the Same

It is considered that the development is substantially the same as the original approval.

The proposed amendments involve altering conditions only. The proposal results in no physical changes to the approved development. Overall, the development remains substantially the same in form as the approved development.

On this basis, the proposed amendments are considered to constitute substantially the same development and are, therefore, accessible under Section 96 of the Environmental Planning and Assessment Act, 1979.

5 Environmental Planning Assessment

5.1 Section 79C(1)(a)(i): Environmental Planning Instruments

5.1.1 Botany Local Environmental Plan 2013

Part 2 of the Botany Local Environmental Plan 2013 (LEP) identifies that the subject site is zoned B4 Mixed Use. The proposal is permitted in the zone subject to consent from the Council.

There are no other clauses of the LEP that are particularly relevant in the assessment of the proposal.

5.2 Section 79C(1)(a)(ii): Draft Environmental Planning Instruments

There are no draft environmental planning instruments that apply to the subject site.

5.3 Section 79C(1)(a)(iii): Development Control Plans

5.3.1 Botany Development Control Plan 2013

Botany Development Control Plan 2013 (DCP) applies to the subject site. However, none of its provisions are relevant in the assessment of the proposed amended conditions.

5.4 Section 79C(1)(a)(iiia): Planning Agreements

Not applicable.

5.5 Section 79C(1)(a)(iv): Regulations

The Section 96 Application has been made in accordance with the requirements contained in Clause 50(1A) of the Environmental Planning and Assessment Regulation 2000.

5.6 Section 79C(1)(b): Likely Impacts

The proposed changes will have no adverse impact. No material change will result from the proposed modifications. The amendment of the conditions will improve the development by better scheduling of work and providing a better outcome for the development.

5.7 Section 79C(1)(c): Suitability of the Site

There are no environmental constraints on the site that would impede the proposal or render it unsuitable for the site.

5.8 Section 79C(1)(d): Submissions

Should notification be required for the proposal, Council will consider submissions at the close of the notification period.

5.9 Section 79C(1)(e): The Public Interest

For the reasons set out in this Statement, it is considered that the public interest would be best served by approval of the Section 96 under consideration, particularly, given the absence of any demonstrable adverse impacts resulting from the proposal.

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6 Conclusion

The subject Section 96 Application seeks to amend various conditions.

The proposal satisfies the relevant heads of consideration under Section 79(C) of the Environmental Planning & Assessment Act, 1979.

It is considered that the proposal provides an appropriate response to the planned development of the site and will assist in the orderly and economic development of the land.

The development is substantially the same as when originally approved for the purposes of Section 96 of the Environmental Planning and Assessment Act and will have no implications upon the public domain.

It is therefore submitted that Council grant consent to the Section 96 application and amend the development consent in the manner requested.

Annexure 1: Amended Conditions

671-683 GARDENERS ROAD, MASCOT (DA 15/216)

- 8. The following conditions are imposed by the Sydney Water:
- (a) Water and Wastewater
 - (ii) The drinking water main available for connection is the 150mm main on the southern side of Gardeners Road or, alternatively, through the adjoining site to the south at 1-5 Kent Road. Depending on the final location of the connection to the water network and number of dwellings within the approved development, local system amplifications may be required.

Reason for change:

It is proposed to use the one connection for Water, from 1-5 Kent Rd, for both sites.

33a. A revised storm water/drainage layout is required to be submitted to Council for review and approval prior to the issue of the-relevant construction certificate. The storm water/drainage layout is required to be revised - with consultation with the Consultant Arborist - to ensure that the trees identified for retention will not be adversely impacted, in accordance with AS4970-2009 Protection of Trees on Development Sites.

Reason for change:

There is a concern about timing of before any construction certificate.

| 36. Prior to the issue of any Occupation Certificate Strata Subdivision, 671-683 Gardeners Road (Lot 1 in DP 777315 and Lot 500 in DP 1030729) and 1-5 Kent Road (Lot 30 in DP 789177) must be consolidated and the consolidated title registered.

Reason for change:

Prior to strata subdivision is considered to be a more appropriate timing.

38. Prior to the issue of any Construction Certificate, the applicant is to submit payment of a Street Tree Maintenance Bond of \$10,000.00. The duration of the Bond shall be limited to a period of 24-12 months after final inspection of new street trees by Council. At the completion of the 24-12 month period the Bond shall be refunded pending a satisfactory inspection of the trees by Council. If any tree is found to be dead or dying then Council will forfeit all or part of the bond to replace or maintain the tree, unless the Applicant undertakes this work.

Reason for change:

24 months is considered to be unnecessary, and 12 months will be adequate to ensure ongoing health of trees.

39. Prior to the issue of any the relevant 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.

Reason for change:

There is a concern about timing of before any construction certificate.

671-683 GARDENERS ROAD, MASCOT (DA 15/216)

47. The private domain landscape areas shown on the plan by Context, Plans 01 to 08 (Issue C, dated October 2016) shall comprise detailed landscape construction documentation (plans and specifications) to be <u>submitted to and approved by Council's Landscape Architect prior to the issue of any the relevant Construction Certificate.</u> The landscape documentation is to be prepared by Context Landscape Architects and shall include, but not be limited to:

Reason for change:

There is a concern about timing of before any construction certificate.

48. The public domain landscape areas shown on the plan by Context, Plans 01 to 08 (Issue C, dated October 2016) shall comprise detailed landscape construction documentation (plans and specifications) to be <u>submitted to and approved by Council's Landscape Architect prior to the issue of any-the relevant Construction Certificate.</u> The landscape documentation is to be prepared by Context Landscape Architects and shall include, but not be limited to:

Reason for change:

There is a concern about timing of before any construction certificate.

53. The drawings for the construction certificate for the basement car park shall show the minimum following parking requirements:

Car Parking Rates	Required
0.6 space / 1 bed unit	35 spaces
0.9 space / <u>2</u> bed unit	118 spaces
1.4 space / <u>3</u> bed unit	70 spaces
1 visitor space / 7 dwellings	34 spaces
Retail Spaces	12
Child Care Centre	34
TOTAL REQUIRED	303
TOTAL PROVIDED	255

Excess car parking spaces within the development at 1-5 Kent Road are to be reallocated to 671-683 Gardeners Road so as to make up the shortfall identified in the table above.

Any parking in excess of 303 car parking spaces is to be allocated to a residential apartment or the retail tenancy.

Reason for change:

Intended only for clarification of the condition.

671-683 GARDENERS ROAD, MASCOT (DA 15/216)

- 77. The following shall be complied with during construction and demolition:
 - (c) Time Restrictions (ii) Saturday 8.00am to 3.00pm 4.00pm

Reason for change:

This will match the time under Condition 75 of the adjoining site at 1-5 Kent Road.

80. <u>Prior to the issue of any-the relevant Occupation Certificate</u>, the applicant is to provide the following:

Reason for change:

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 final building in the development and release of damage deposit.

Reason for change:

The amended timing is considered to be more appropriate and ensures the intent of the condition is still met.

85. Prior to the issue of any—the Occupation Certificate for the final building in the development. 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.

Reason for change:

The amended timing is considered to be more appropriate and ensures the intent of the condition is still met.

86. Prior to the issue of any—the Occupation Certificate for the final building in the development, the applicant shall carry out the following works:

Reason for change:

The amended timing is considered to be more appropriate and ensures the intent of the condition is still met.

87. Prior to the issue of any-the Occupation Certificate for the final building in the development, 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.

Reason for change:

The amended timing is considered to be more appropriate and ensures the intent of the condition is still met.

88. Prior to the issue of any Occupation Certificate for the relevant building in the development, a restriction on Use of Land and Positive Covenant(s) shall be imposed on the development. The following covenants shall be imposed under Section 88(E) of the Conveyancing Act 1919 and lodged with the NSW Land and Property Information:

Reason for change:

The amended timing is considered to be more appropriate and ensures the intent of the condition is still met.

89. Prior to the issue of any Occupation Certificate Strata Subdivision, Lot 1 in DP 777315 and Lot 500 in DP 1030729 are to be consolidated.

Reason for change:

Prior to strata subdivision is considered to be a more appropriate timing.

90. Prior to the issue of any-the final Occupation Certificate, a new 16.6 wide "Easement for Public Access" shall be created over the proposed North-South Link. The draft plan of easement shall be lodged with Council for approval. The proposed new easement shall be unlimited in stratum. Once approval from Council is granted, the plan shall be registered with Land & Property Information prior to the issue of any Occupation Certificate. A copy of the registered document shall be submitted to Council for record purposes.

Reason for change:

Not safe to give public access to site while parts of the site are still under construction. The amended timing is considered to be more appropriate and ensures the intent of the condition is still met.

93. The public domain landscaping shall be installed in accordance with the approved
landscape plan as stamped by Council's Landscape Architect prior to the issue of any
the relevant Occupation Certificate. This amended plan supersedes the original landscape plan. The landscaped areas on the property shall be maintained in accordance with the approved landscape documentation and to Council's satisfaction all times.

Reason for change:

The amended timing is considered to be more appropriate and ensures the intent of the condition is still met.

95. Landscaping on the property and in the public domain shall be installed in accordance with the approved landscape plan as stamped by Council's Landscape Architect prior to the issue of any Occupation Certificate. This amended plan supersedes the original landscape plan prior to the issue of an Occupation Certificate. The landscaped areas on the property shall be maintained in accordance with the Council stamped and approved landscape documentation, the conditions of development consent all times.

Reason for change:

Repeat of condition 93.

96. Prior to the issue of any the Occupation Certificate for the final building in the development, the public footpaths in Kent Road, Gardeners Road and in the new ground level community park shall be constructed in accordance with the approved Public and Private Domain Plans and Council specifications. The footpath dimensions, location, paver type and construction methods shall be in accordance with these specifications. Hold points and Council inspections are required after formwork setback and prior to pouring the concrete blinding slab, at the commencement of paving works and at final completion as a minimum. Pavers shall be ordered allowing for adequate lead time for manufacture (10-12 weeks).

Reason for change:

The amended timing is considered to be more appropriate and ensures the intent of the condition is still met.

97. At the completion of landscaping on the site, the Applicant is required to obtain a Certificate of Compliance from the Landscape Consultant to certify that the <u>public domain</u> landscaping has been installed in accordance with the Council approved landscape plan. The Certificate is to be submitted to the City of Botany Bay Council prior to the Issue of an Occupation Certificate.

Reason for change:

There is uncertainty as to whether Council requires sign off from Landscape consultant on the private domain landscape.

- 101. Prior to the issue of any-the relevant Occupation Certificate, a Certificate of Survey from a Registered Surveyor shall be submitted to the Principal Certifying Authority and the Council to the effect that:
 - (a) All reduced levels shown upon the approved plans, with relation to the required solar panels, drainage, boundary and road reserve levels, have been strictly adhered to; and
 - (b) A Floor Space Ratio (FSR) of 3.43:1 and a maximum height of 46.34m and up to a maximum of RL 51m AHD, as approved under this Development Consent No. 16/117, have been strictly adhered to and any departures are to be rectified in order to issue the Occupation Certificate.
 - (c) The development as built, stands within a consolidated lot otherwise described as Lot 1 in DP 777315 and Lot 500 in DP 1030729.

Reason for change:

The amended timing is considered to be more appropriate and ensures the intent of the condition is still met.

For deleted part c, Refer to amended conditions 36 and 89.

104.

- (a) Prior to the issue of any-the relevant Occupation Certificate. the retail spaces are to be allocated to the closest spaces to the retail tenancy.
- (b) Prior to the issue of any Occupation Certificate, entry/egress doors to the development should have an electronically operated lock which require security swipe pass for entry. The lifts operating in the building should have the same security swipe pass technology. When an occupant buzzes in a visitor the lift should recognise the floor the occupant resides and only allow the visitor access to that floor in the lift.
- (c) Prior to the issue of any the relevant Occupation Certificate. customers and staff of the childcare centre are to be provided with swipe cards that access Level 4 only so as to protect the privacy of the two residences on Level 4, and also to restrict non-customers from accessing Level 4.

Reason for change:

The amended timing is considered to be more appropriate and ensures the intent of the condition is still met.

- 115. The following shall be complied with at all times:
 - (a) Each residential dwelling (apartment) is approved as a single dwelling for use and occupation by a single family. They 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, other than permitted by Exempt and Complying provisions;
 - (b) The adaptable apartments approved under this development consent are to remain unaltered at all times; and
 - (c) The storage areas located within the basement shall be allocated to the relevant residential dwelling in any future subdivision of the site. In addition, any <u>Any</u> isolated storage areas and other spaces as identified by the NSW Police, shall be monitored by CCTV cameras at all times.

Reason for change:

The part of the condition is considered unnecessary.



Bayside Local Planning Panel

23/10/2018

Item No 6.3

Application Type Development Application

Application No SF18/2138 Lodgement Date 03/03/2018

Property **DA-2017/1022/03 - 130-150 Bunnerong Road**,

Eastgardens

Ward Botany Bay

Owner Karimbla Properties (No. 39)

Applicant Karimbla Constructions Services (NSW) Pty Ltd

Proposal Section 4.55(1A) Application to modify Development Consent

No. 2017/1022 to delete Condition 69 which requires

applicant to enter into a landscaping agreement and payment

of bond.

No. of Submissions Nil
Cost of Development N/A

Report by Michael McCabe, Director City Futures

Officer Recommendation

That the Bayside Local Planning Panel approves the Section 4.55(1A) Modification Application to modify Development Consent No. 2017/1022 to amend Condition No. 69 to modify the duration of the landscape bond at UB4 of 130-150 Bunnerong Road, Eastgardens.

Location Plan



Item 6.3 257

Attachments

- 1
- Planning Assessment Report <u>J</u> Statement of Environmental Effects <u>J</u> 2

Item 6.3 258

BAYSIDE COUNCIL

Planning Assessment Report

Application Details

Application Number: 2017/1022/03

Date of Receipt: 3 March 2018

Property: 130-150 Bunnerong Road Eastgardens

Lot 2 in DP 1187426

Owners: Karimbla Properties (No. 39) Pty Ltd

Applicant: Karimbla Constructions Services (NSW) Pty Ltd

Proposal: Section 4.55(1A) Application to modify Development Consent No.

2017/1022 to delete Condition 69 which requires applicant to enter into a landscaping agreement and payment of bond

.... a manacaping agreement and payment

Recommendation: Approve, subject to modified conditions.

Value: Nil No. of submissions: N/A

Author: Sumeet Badhesha, Development Assessment Planner

Date of Report: 17 September 2018

Key Issues

Section 4.55(1A) Application to modify Development Consent No. 2017/1022 to delete Condition No. 69 which requires applicant to enter into a landscaping agreement and payment of bond.

The application did not require public notification under Part 2 – Notification and Advertising of the BBDCP 2013 as the proposed modification was considered minor.

The key issue with this application relates to the applicant seeking to delete Condition No. 69 which requires the applicant to enter into a landscape agreement and lodgement of a bond for a period of five years after practical completion of landscape works. Rather than deletion of the condition, the length of the bond will be modified to 12 months of the relevant occupation certificate.

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

Item Bayside Planning Panel Meeting

23/10/2018

Recommendation

It is RECOMMENDED that the Bayside Planning Panel:

- Approve the Section 4.55(1A) Modification Application to modify Development Consent No. 2017/1022 to amend Condition No. 69 at UB4 of 130-150 Bunnerong Road, Eastgardens; and
- Resolve to modify Development Consent No. 2017/1022 under Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 as follows:
 - a) Amend Condition No. 69 to modify the duration of the landscape bond

Background

History

Stage 1 - Master Plan (DA-14/96)

Integrated Development Application No. 14/96 was received by Council on 5 May 2014 for the redevelopment of the site for a staged mixed use development involving subdivision and concept approval for the location of public road network, private access ways through the site, on-site stormwater detention including water sensitive urban design (WSUD), Building Envelopes and Building Heights facilitating approximately 2,733 dwellings on site, parking spaces in above ground and basement facilities, and provision of 8,000sqm of public open space. The Capital Investment Value CIV for these works was \$128,431,190.00, therefore the former Joint Regional Planning Panel (JRPP) was the consent authority. On 28 August 2014, this application was referred to the JRPP in accordance with Schedule 4A of the Environmental Planning & Assessment Act 1979 (EP&A Act) as it has a CIV in excess of \$20 million (Reference No. 2014/SYE/105).

On 12 September 2014, Karimbla Constructions (NSW) Pty Ltd filed a Class 1 Appeal against Council's 'deemed refusal' of the application. The application was considered at a series of Section 34 conferences, whereby a series of amended plans were considered. Council and the applicant reached a Section 34 agreement and the appeal was upheld. On 7 August 2015 the development consent was issued.

The Stage 1 Masterplan consent is a concept approval and does not grant consent for any demolition, remediation, excavation or building works. It is noted however that remediation works have commenced on-site as Category 2 works under the State Environmental Planning Policy No. 55 – Remediation of Land. The approval is limited to the massing, modulation, overall siting and setbacks, maximum height of buildings, maximum GFA, uses, maximum FSR, public domain provisions, unit mix, minimum unit sizes, indicative unit numbers, and minimum car parking provisions.

The key details of the approved Masterplan are as follows:

- The applicant must enter into a Planning Agreement including the following:
 - o Central Park embellished and dedicated to Council,
 - o Roads within the site constructed, embellished and dedicated to Council,
 - o Traffic lights and any other necessary traffic control systems constructed,

- Monetary contribution of \$10.5 million towards the cost of providing transport infrastructure in the form of upgrade to the intersection of Page Street and Wentworth Avenue.
- · Concept subdivision of the site
- Central Park of 8.000sqm.
- Linear Park of 2,703sqm.
- Building envelopes, setbacks, maximum GFA and FSR for each urban block.
- Indicative maximum of 2,223 residential apartments, up to 5,000sqm of retail space and four child care centres.
- Residential unit mix max 20% 1 bedroom, 50% 2 bedroom, min 30% 3 bedroom.
- Residential unit sizes.
- Car parking rates including an indicative minimum number of 3,693 spaces.

The VPA has been entered into and currently the applicant seeks an amendment to it. It is noted that Part 9D of the BBDCP 2013 specifically relates to the redevelopment of the subject site, 130-150 Bunnerong Road, Eastgardens, and guided the Stage 1 consent. The Stage 1 consent includes conceptual details of the proposed buildings which have been altered from the provisions of Part 9D.

Subject Urban Block

The subject site forms one of seven urban blocks within the site. The overall Stage 1 Masterplan site is contained within the block bound by Bunnerong Road to the east, Banks Avenue to the west, Heffron Road to the north and Westfield Drive to the south. UB4 is Lot 4 on the approved subdivision plan and has an area of 7,733sqm as approved in DA-14/96/03. The lot is generally rectangular in shape with a frontage to Bunnerong Road of 88.325 metres and 91.465 metres to Civic Avenue to the south. The lot includes the private access way on the southern side which adjoins the approved North-South Street 2.



Figure 1. Approved subdivision plan (DA-15/104) with UB4 outlined in red



Figure 2. Approved location of UB4 on the subject site

Approved Development

- <u>DA-2017/1022</u>- The proposed development is carried out on UB4 which the Panel approved on 5 October 2017 for the construction of a residential flat building consisting of one level of basement car parking, a podium and two towers, 1 x 6 storeys and 1 x 8 storeys. The development was approved with 167 apartments and a child care centre and includes landscaping across the site.
- DA-2017/1022/02- S4.55 (2) Modification to modify Development Consent No. 2017/1022 to introduce rooftop terraces above the top floor apartments, internal reconfiguration to convert six (6) x 1-bedroom apartments to 2 bedroom apartments, removal of basement ramp to the south and changes to the childcare parking, access and open space at UB4 was approved by the Sydney Eastern City Planning Panel on 17 May 2018.
- DA-2017/1022/04- S4.55 (1A) Modification to modify Development Consent No. 2017/1022 to amend conditions relating to various bonds and roadworks associated with building UB4. This modification application is currently under assessment.
- <u>DA-2017/1022/05-</u> S4.55 (1A) Modification to modify Development Consent No. 2017/1022 to add a portal frame at the western pedestrian entrance of UB 4. The application was approved under delegation on 14 August 2018.

Description and Assessment of the Proposed S.4.55 (1A) Modifications

The proposed modification seeks to amend Condition 69 within the consent. Condition No. 69 requires the applicant to enter into a landscape agreement and make the payment of a bond which will be held for the duration of five (5) years after practical completion of landscape works. The condition currently reads as follows:

69 The Applicant is to enter into an agreement with Council, to be prepared by Council's solicitors, at the applicant's expense, providing for the lodgement of a bond in the sum of \$69,000.00, for a period of five (5) years after practical completion of landscape works, to ensure establishment and maintenance of the landscaping in accordance with the plan. The lodgement of the bond shall not preclude the Council from initiating legal proceedings,

should the landscaping not be established and maintained in accordance with this Consent, and is not intended to limit the period of compliance with the landscaping requirements to five (5) years.

The bond may be applied by Council to the establishment and maintenance of the landscaping in accordance with the plan and Council should be entitled to recover any monies expended in excess of the bond in establishing, re-establishing, or maintaining the landscape in accordance with the plan.

The applicant is to note that the bond specified under this condition must be remitted to Council, either in the form of monies held in trust, or as a certified banker's guarantee, together with a sum of \$69,000.00 (cash or cheque) for disbursements associated with the preparation of the agreement, prior to the issue of an Occupation Certificate by the Principal Certifying Authority.

The applicant seeks to delete this condition and replace with a landscape maintenance condition which requires a Certificate of Compliance to be obtained from Council's Landscape Architect to certify works are in accordance with the approve landscape plan. The applicant has provided the following justification for the removal of this condition:

"The condition imposes a requirement on the Applicant to enter into a legal agreement with Council that would facilitate the payment of a bond, monies from which may be drawn upon by Council to establish, re-establish or maintain landscaping. This is not a valid condition. All landscaping depicted on the approved landscaping plan relates to land that is within, and will be remain entirely within private ownership."

The intent of Condition No. 69 was to ensure landscaping is carried out and maintained in accordance with the approved landscape plan. Council does not support the removal of this condition as requested by the applicant, however, Council has will accept a reduction in the timeframe period of the landscape bond from five (5) years to twelve (12) months after practical completion of landscape works. Council is of the opinion twelve months after practical completion of landscape works is sufficient to assess whether landscaping is established and maintained as per the approved landscape plan. This does not limit compliance to twelve months and ongoing compliance with the landscape plan is required. No other changes are recommended to be made.

The condition is recommended to be modified as follows:

67 The Applicant is to submit payment to Council of a bond in the sum of \$69,000.00, for a period of twelve (12) months after practical completion of landscape works, to ensure establishment and maintenance of the landscaping in accordance with the plan. The lodgement of the bond shall not preclude the Council from initiating legal proceedings, should the landscaping not be established and maintained in accordance with this Consent, and is not intended to limit the period of compliance with the landscaping requirements to twelve (12) months.

The bond may be applied by Council to the establishment and maintenance of the landscaping in accordance with the plan and Council should be entitled to recover any monies expended in excess of the bond in establishing, re-establishing, or maintaining the landscape in accordance with the plan.

Statutory Considerations

SECTION 4.55(1A) CONSIDERATIONS (previously Section 96(1A))

Section 4.55(1A) of the *Environmental Planning & Assessment Act 1979* states that "a consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:"

 a) It is satisfied that the proposed modification is of minimal environmental impact, and

The Section 4.55(1A) modification application relates to modification to a condition, and as such, the modification will result in substantially the same development as approved under DA-2017/1022 and then subsequently modified. It is considered that the proposed amendment is suitable in the context of the site and the locality.

 b) It is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and

The Section 4.55(1A) modification application relates to modification to a condition, therefore the modification application is substantially the same development to which consent was originally granted.

c) It has notified the application in accordance with (i) the <u>regulations</u>, if the <u>regulations</u> so require, and (ii) a <u>development control plan</u>, if the <u>consent authority</u> is a <u>council</u> that has made a <u>development control plan</u> that requires the notification or advertising of applications for modification of a <u>development</u> consent, and

The application did not require public notification under Part 2 – Notification and Advertising of the BBDCP 2013 as the proposed modification was considered minor.

d) It has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.

No objections received as the application was never notified.

SECTION 4.42- STATUS OF CONCEPT APPLICATIONS AND CONSENT CONSIDERATIONS (previously Section 83D)

The Stage 1 Master plan consent DA-14/96 is the first of a Staged Development Application as per Section 4.42 of the Environmental Planning and Assessment Act. The subject application is a modification to a Stage 2 Development Application and as per the Section 4.42(2) it cannot be inconsistent with the Stage 1 consent. The proposed modification does not alter the conditions approved within the Stage 1 consent.

S.4.15(1) - MATTERS FOR CONSIDERATION - GENERAL (FORMERLY S.79C)

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

An assessment of the application has been carried out under the provisions of Section 4.15 of the Environmental Planning and Assessment Act, 1979. The matters of relevance to this application have been considered as follows:

<u>State Environmental Planning Policy 65- Design Quality of Residential Apartment</u> Development

The application relates to a condition that does not relate to the built form approved as part of DA-2017/1022 and in subsequent applications. The building will continue to be consistent with the approved design that was originally assessed against SEPP 65 and the Apartment Design Guide.

Botany Bay Local Environmental Plan 2013

The application refers to modification to a condition therefore there is no section within the Botany Bay Local Environmental Plan 2013 that is of relevance as part of this assessment. The previously conclusions that were approved in the parent DA and in subsequent modifications has not been altered as part of this application. The proposal will continue to be consistent with the objectives of the BBLEP 2013 with regard to the B4- Mixed Use zone.

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 application refers to modification to a condition therefore there is no section within the Botany Bay Development Control Plan 2013 that is of relevance as part of this assessment. The previously conclusions that were approved in the parent DA and in subsequent modifications has not been altered as part of this application. The proposal relates to landscaping agreement and payment of bond and is not contrary to the requirements of the BBDCP 2013.

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 modification relates to modification of a condition which related to a landscape agreement and bond and as such, it is considered that the proposed amendment will have no significant adverse environmental, social or economic impacts on the locality. The proposed modification will have no additional environmental impacts beyond those considered by Council during the assessment and determination of DA-2017/1022.

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

The suitability of the site was addressed in the original approval of DA-2017/1022.

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

No objections were received as the application was not required to be notified under Part 2 – Notification and Advertising of the BBDCP 2013.

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

The proposed amendment will have no significant adverse impact upon the public interest.

Conclusion

The Section 4.55(1A) Application seeks to modify Development Consent No. 2017/1022 which approved the construction of a residential flat building with childcare centre. The modification relates only to a reduction to the length of the landscape bond period. The development as modified, is substantially the same development that was originally approved or as modified. The proposed modification will not alter the built form or character of the development, and will continue to ensure the development is carried out in an orderly manner. Therefore it is recommended that the Panel approve the proposed modifications to the proposal.

Attachment

Schedule 1 - Conditions of Consent

Premises: 130-150 Bunnerong Road, Eastgardens DA No: 2017/1022/03

GENERAL CONDITIONS

The development is to be carried in accordance with the following plans and endorsed with Council's stamp, except where amended by other conditions of this consent. Reference documentation is also listed.

Plans	Author	Dated / Received by Council
DA-000 Rev E F- Cover page	Nettleton Tribe	Dated 3 August 2017; Received 3 August 2017 Dated 21 November 2017; Received 3 May 2018
DA-001 Rev B- Context Plan- Site Plan	Nettleton Tribe	Dated 25 July 2017; Received 3 August 2017
DA-002 Rev C- Building Articulation Plan	Nettleton Tribe	Dated 25 July 2017; Received 3 August 2017
DA-005- Rev E- UB4_Parking Level (Sheet 1)	Nettleton Tribe	Dated 3 August 2017; Received 3 August 2017
DA-006- Rev E- UB4_Parking Level (Sheet 2)	Nettleton Tribe	Dated 3 August 2017; Received 3 August 2017
DA-100 Rev F G-H- UB4 Ground Floor Plan	Nettleton Tribe	Dated 3 August 2017; Received 3 August 2017 Dated 21 November 2017; Dated 8 March 2018 Dated July 2018; Received 05 July 2018
Entry Portal Plan and Section. (Plan No. S4826_SK-20180625- 01)	Nettleton Tribe	Dated 25 June 2018; Received 05 July 2018
DA-101 Rev C- UB5E Ground Floor Plan	Nettleton Tribe	Dated 25 July 2017; Received 3 August 2017
DA-102 Rev	Nettleton Tribe	Dated 25 July 2017; Received 3 August 2017 Dated 21 November 2017; Received 17 January 2018
DA-103 Rev D-E- Level 5 Plan	Nettleton Tribe	Dated 25 July 2017; Received 3 August 2017 Dated 21 November 2017; Received 17 January 2018
DA-104 Rev E F- Level 6 Plan	Nettleton Tribe	Dated 3 August 2017; Received 3 August 2017

		D-4-104 N
		Dated 21 November 2017;
DA 105 Bay D. E. Layel 7	Nottleten Tuilee	Received 17 January 2018
DA-105 Rev D E- Level 7	Nettleton Tribe	Dated 25 July 2017; Received 3 August 2017
Plan		Dated 31 November 2017:
		Received 8 March 2018
DA-106 Rev D E F- Roof	Nettleton Tribe	Dated 25 July 2017;
Plan	Nettleton Tibe	Received 3 August 2017
Fiaii		Dated 6 February 2018;
		Received 3 May 2018
DA-201 Rev ₽ € F-	Nettleton Tribe	Dated 25 July 2017;
North and South	110111010111111100	Received 3 August 2017
Elevations		Dated 6 February 2018;
Lievations		Received 8 March 2018
DA-202 Rev D E F - East	Nettleton Tribe	Dated 25 July 2017;
and West Elevations		Received 3 August 2017
		Dated 6 February 2018;
		Received 8 March 2018
DA-203 Rev C-	Nettleton Tribe	Dated 25 July 2017;
Elevations Comparisons		Received 3 August 2017
DA-301 Rev D- Sections	Nettleton Tribe	Dated 25 July 2017;
01		Received 3 August 2017
DA-430 Rev C D - GFA	Nettleton Tribe	Dated 25 July 2017;
Area Plans		Received 3 August 2017
		Dated 21 November 2017;
		Received 17 January 2018
DA-501 Rev C-	Nettleton Tribe	Dated 25 July 2017;
Ventilation Analysis Plan		Received 3 August 2017
DA-601 Rev B- Shadow	Nettleton Tribe	Dated 25 July 2017;
Analysis- Winter		Received 3 August 2017
DA-602 Rev B- Solar	Nettleton Tribe	Dated 25 July 2017;
Point Perspective Plan		Received 3 August 2017
DA-603 Rev C- Solar	Nettleton Tribe	Dated 25 July 2017;
Analysis Plan		Received 3 August 2017
DA-604 Rev C- Solar	Nettleton Tribe	Dated 25 July 2017;
Analysis- Communal		Received 3 August 2017
Open Space		
DA-801 Rev B- Survey	Nettleton Tribe	Dated 25 July 2017;
Plan Sheet 1	Trettleton Tribe	Received 3 August 2017
DA-802 Rev B- Survey	Nettleton Tribe	Dated 25 July 2017;
Plan Sheet 2	Tatticton Tibe	Received 3 August 2017
DA-803 Rev B- Survey	Nettleton Tribe	Dated 25 July 2017;
Plan Sheet 3	I ACTUCION TINC	Received 3 August 2017
DA-1001- Rev A-	Nottleton Tribe	Dated 8 February 2017;
	Nettleton Tribe	Received 3 August 2017
Adaptable Unit (Sheet 1)	Nottleter Tribe	
DA-1002- Rev A-	Nettleton Tribe	Dated 8 February 2017;
Adaptable Unit (Sheet 2)	- · · ·	Received 3 August 2017
DA-1101- Rev B- Privacy	Nettleton Tribe	Dated 25 July 2017;
and Screening		Received 3 August 2017
DA-1201- Rev B- BASIX	Nettleton Tribe	Dated 25 July 2017;
Commitment Notes		Received 3 August 2017

DA-1401- Rev C- UB4 and UB5e Basemen Level Parking Allocation	Nettleton Tribe	Dated 3 August 2017; Received 3 August 2017
DA-1402- Rev C- UB4 and UB5E Ground Level Parking Allocation	Nettleton Tribe	Dated 3 August 2017; Received 3 August 2017
DA-1403- Rev C- UB4 and UB5E Parking Level 1 Allocation	Nettleton Tribe	Dated 3 August 2017; Received 3 August 2017
DA-1404- Rev C- UB4 and UB5E Level 2 Parking Allocation	Nettleton Tribe	Dated 3 August 2017; Received 3 August 2017
DA-1601- Deep Soil Calculation	Nettleton Tribe	Dated 25 July 2017; Received 3 August 2017
Landscape Report Ref: ND1710	Urbis	Dated 10 August 2017 Received 11 August 2017
L01 Rev C- Level 8 Rooftop Plan	Urbis	Dated 3 May 2018; Received 3 May 2018

(Modified via DA-2017/1022/02) (Modified via DA-2017/1022/05)

Reference Document(s)	Author	Dated / Received by Council
DA Access Report Ref: MTN-026 Rev 3	Wall to Wall	Dated 1 February 2017; Received 13 February 2017
Acid Sulfate Soils Management Plan Ref: CES130805-MG-AD	Consulting Earth Scientists	Dated 21 January 2016; Received 17 August 2016
Noise Impact Assessment Report Ref: 610.16881-R01	SLR	Dated 2 February 2017; Received 13 February 2017
Arboricultural Impact Assessment Report	Jacksons Nature Works	Dated 14 August 2017; Received 13 September 2017
Thermal Comfort and BASIX Assessment Ref: 16-0764 Rev A-Ref: 17-1513 Rev B	Efficient Living	Dated 23 January 2017; Received 13 February 2017 Dated 22 December 2017; Received 17 January 2018
Building Code of Australia Compliance Assessment Report Ref: 1423-78 Rev 01	AED Group	Dated January 2017; Received 13 February 2017
Construction Management Plan	Meriton Property Services Pty Ltd	Dated January 2017; Received 13 February 2017
Crime Risk and Security Report	Meriton Property	Dated 19 January 2017; Received 13 February 2017

	Services Pty	
	Ltd	
SEPP 65 Design Verification	Nettleton Tribe	Received 13 February 2017
OFFID FF D	0	Received 7 May 2018
SEPP 55 Requirements	Consulting Earth Scientists	Dated 10 April 2014; Received 13 February 2017
Geotechnical Investigation Report Ref: GEOTLCOV24928AE-AC	Coffey Geotechnics Pty Ltd	Dated 5 February 2016; Received 13 February 2017
Quantity Surveying Cost Report	Steven Wehbe	Dated 30 January 2017; Received 13 February 2017
Site Audit Statement Ref: JC_NSW11C	NSW EPA	Received 13 February 2017
Site Audit Report: S11394_SAR_JC-NSW11C	AECOM	Dated 31 March 2014; Received 13 February 2017
Site Surveys	JBW Surveyors Pty Ltd	Dated 16 September 2014; Received 13 February 2017
Reflectivity and Glare Assessment Ref: 610.13932-R01	SLR	Dated 27 January 2017; Received 13 February 2017
Stage 1 Masterplan Consent Compliance Table	Meriton Property Services Pty Ltd	Received 13 February 2017
Statement of Environmental Effects	Urbis	Dated February 2017; Received 13 February 2017
Stage 2 Traffic and Transport Report Ref: 237575-00	ARUP	Dated 7 February 2017; Received 13 February 2017
Waste Management Plan Rev B	Elephants Foot	Dated 13 January 2017; Received 13 February 2017
Qualitative Wind Assessment Ref: 610.13932.R08 610.13932- L03-v.01 UB4 S96	SLR	Dated 31 January 2017; Received 13 February 2017 Dated 12 February 2018; Received 3 May 2018
Clause 4.6 variation to vary height and FSR development standard	Urbis	Dated February 2017; Received 13 February 2017
Amended Cover letter	Karimbla Constructions	Dated 7 March 2018; Received 8 March 2018

	Services (NSW) Pty Ltd	
CC Stromwater Report-	At&I	Dated October 2017;
Urban Block 4		Received 8 March 2018

(Modified via DA-2017/1022/02) (Modified via DA-2017/1022/05)

- This Consent relates to land in Lot 2 in DP 1187426 and, as such, building works must not encroach on to adjoining lands or the adjoining public place.
- 3 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
 - 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.
- 4 All building work must be carried out in accordance with the provisions of the Building Code of Australia.
- This development is a Stage 2 consent. The development must comply with all conditions of the Stage 1 consent DA-14/96 unless modified and agreed upon by Council within this consent.
- 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 each relevant BASIX Certificate for each building in the development are fulfilled.
 - (a) Note:

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
- If a replacement BASIX Certificate accompanies any subsequent application for a construction certificate, the replacement BASIX Certificate.

 BASIX Certificate has the meaning given to that term in the Environmental Planning and Assessment Regulation 2000.

CONDITIONS IMPOSED BY AN EXTERNAL AUTHORITY

Where relevant, the following external authority conditions apply:

The following conditions are imposed by Ausgrid:

- Ausgrid requires kiosk substation housings to be separated from building ventilation system air intake and exhaust duct openings, by not less than 6 metres. This applies irrespective of whether the building ducted ventilation system is mechanical or natural and irrespective of whether or not fire dampers are installed in the ducts. Any portion of a building other than a BCA class 10a structure constructed from non-combustible materials, which is not sheltered by a non-ignitable blast-resisting barrier and is within 3 metres in any direction from the housing of a kiosk substation, is required to have a Fire Resistance Level (FRL) of not less than 120/120/120. Openable or fixed windows or glass blockwork or similar, irrespective of their fire rating, are not permitted within 3 metres in any direction from the housing of a kiosk substation, unless they are sheltered by a non-ignitable blast resisting barrier. For further details on fire segregation requirements refer to Ausgrid's Network Standard141.
- 8 Ausgrid requires the following conditions with respect to Chamber substations. For a chamber station within the property or within 6m of the development, the substation ventilation openings, including substation duct openings and louvered panels, must be separated from building air intake and exhaust openings, natural ventilation openings and boundaries of adjacent allotments, by separation distances which meet the requirements of all relevant authorities, building regulations, BCA and Australian Standards including AS 1668.2: The use of ventilation and air-conditioning in buildings - Mechanical ventilation in buildings. In addition to above, Ausgrid requires the substation ventilation openings, including duct openings and louvered panels, to be separated from building ventilation system air intake and exhaust openings, including those on buildings on adjacent allotments, by not less than 6 metres. Exterior parts of buildings within 3 metres in any direction from substation ventilation openings, including duct openings and louvered panels, must have a fire rating level (FRL) of not less than 180/180/180 where the substation contains oil-filled equipment. For further details on fire segregation requirements refer to Ausgrid's Network Standard 113.
- 9 Any work undertaken near Overhead Power lines needs to be carried out in accordance with:
 - (a) WorkCover Document ISSC 23 "Working Near Overhead Power Lines"
 - (b) Ausgrid Network Standards
 - (c) Ausgrid Electrical Safety Rules
- The location of underground cables by using Dial Before You Dig and comply with the requirements of Ausgrids Network Standard 156: Working Near or Around Underground Cables before any excavation works are undertaken.

- 11 Existing Ausgrid easements, leases and/or right of ways must be maintained at all times to ensure 24 hour access. No temporary or permanent alterations to this property tenure can occur without written approval from Ausgrid. For further details refer to Ausgrid's Network Standard 143.
- The developer is required to make a formal submission to Ausgrid by means of a duly completed Preliminary Enquiry and/ or Connection Application form, to allow Ausgrid to assess any impacts on its infrastructure and determine the electrical supply requirements for the development (eg. whether a substation is required on site). The developer is to ensure that the proposed works do not contravene Ausgrids technical standards and statutory requirements, in regards to the safe and reliable operation of Ausgrid's network.

The following conditions are imposed by Civil Aviation Safety Authority (CASA):

- The building must not exceed a maximum height of 91 metres AHD, inclusive of all lift over-runs, vents, chimneys, aerials, antennas, lightning rods, any roof top garden plantings, exhaust flues etc.
- The proponent must ensure obstacle lighting arrangements have a remote monitoring capability, in lieu of observation every 24 hours, to alert SACL reporting staff of any outage. For detailed requirements for obstacle monitoring within the OLS of an aerodrome, refer to subsection 9.4.10 of the MOS Part 139.
- Separate approval must be sought under the Regulations for any cranes required to construct the buildings. Construction cranes may be required to operate at a height significantly higher than that of the proposed controlled activity and consequently, may not be approved under the Regulations. Therefore it is advisable that approval to operate construction equipment (i.e. cranes) should be obtained prior to any commitment to construct.
- At the completion of the construction of the building, a certified surveyor is to notify (in writing) the airfield design manager of the finished height of the building.

The following conditions are imposed by Water NSW:

- 17 A Water Supply Work Approval from WaterNSW must be obtained prior to commencing dewatering activity on the proposed site. Please complete an Application for approval for water supply works, and/or water use.
- An application for a Water Supply Works Approval will only be accepted upon receipt of supporting documentation, and payment of the applicable fee (see Application fees for New or amended Works and/or Use Approvals). The information required for the processing of the water supply work application may include preparation of a dewatering management plan. Please refer to checklist attached.
- 19 If approved, the Approval will be issued for a period of up to 24 months to cover the dewatering requirements during the construction phase. It will include conditions to ensure that impacts are acceptable and that adequate monitoring and reporting procedures are carried out. The Approval will be issued subject to the proponent meeting requirements of other agencies and consent authorities. For example, an authorisation by either Sydney Water or the local Council, depending where the

- water will be discharged. If contaminants are likely, or are found to be present in groundwater, and are being discharged to stormwater, including high salinities, a discharge licence under the Protection of the Environment Operations Act 1997 (NSW) may also be required.
- 20 Water NSW prefers "tanking" (ie. total water proofing below the seasonal high water table) of basement excavations, and avoids the ongoing extraction of groundwater after the initial construction phase. It is also advised to adopt measures to facilitate movement of groundwater post construction (eg. a drainage blanket behind the water-proof membrane).
- 21 If the basement is not "tanked", the proponent will require a Water Access Licence (WAL) and need to acquire groundwater entitlements equivalent to the yearly ongoing take of groundwater. Please note: Acquiring groundwater entitlements could be difficult, and may cause delay in project completion. If a WAL is required, please complete an Application for a new water access licence with a zero share component.

The following conditions are imposed by the NSW Roads and Maritime Services (RMS):

- 22 Roads and Maritime raises no objection to the development proposal on property grounds provided all buildings and structure, together with any improvements integral to the future use of the site is wholly within the freehold property (unlimited in height or depth), along the Bunnerong Road boundary.
- A Construction Traffic Management Plan detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control should be submitted to Council prior to the issue of a Construction Certificate.
- 24 All demolition and construction vehicles are to be contained wholly within the site. All vehicles must enter the site before stopping as a construction zone will not be permitted on Bunnerong Road.
- 25 A Road Occupancy Licence should be obtained from Transport Management Centre for any works that may impact on traffic flows on Bunnerong Road during construction activities.
- Should the post development storm water discharge from the subject site into the Roads and Maritime system exceed the pre-development discharge, detailed design plans and hydraulic calculations of any charges are to be submitted to Roads and Maritime for approval, prior to the commencement of works on site. Details should be submitted to Suppiah Thillai: suppiah.thillai@rms.nsw.gov.au A plan checking fee will be payable and a performance bond may be required before Roads and Maritime approval is issued.
- The developer is to submit design drawings and documents relating to the excavation of the site and support structures to Roads and Maritime for assessment, in accordance with Technical Direction GTD2012/001. The developer is to submit all documentation at least six (6) weeks prior to commencement of construction and is to meet the full cost of the assessment of Roads and Maritime. Details should be submitted to Suppiah Thillai: suppiah.thillai@rms.nsw.gov.au If it necessary to excavate below the level of the base of the footings of the adjoining roadways, the

person acting on the consent shall ensure that the owner/s of the roadway is/are given at least seven (7) days notice of the intention to excavate below the base of the footings. The notice is to include complete details of the work.

The following conditions are imposed by Sydney Water:

Sydney Water does not object to the proposed development, subject to the following:

28 Sydney Water Servicing

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water. The proponent is advised to make an early application for the certificate, as there may be water and wastewater pipes to be built that can take some time. This can also impact on other services and buildings, driveways or landscape designs. Applications must be made through an authorised Water Servicing Coordinator. For help either visit www.sydneywater.com.au > Plumbing, building and developing > Developing > Land development or telephone 13 20 92.

29 Building Plan Approval

The developer must have building plans stamped and approved before any construction is commenced. Approval is needed because construction/building works may affect Sydney Water's assets (e.g. Water, sewer and stormwater mains).

CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE COMMENCEMENT OF ANY WORKS

- A dilapidation report, including a photographic survey prepared by a Practising Structural Engineer, shall be undertaken of all properties and/or Council infrastructure, including but not limited to all footpaths, kerb and gutter, stormwater inlet pits, and road carriageway pavements, in the vicinity which could be potentially affected by the construction of this development. Any damage caused to other properties during construction shall be rectified. A copy of the dilapidation survey and an insurance policy that covers the cost of any rectification works shall be submitted to the Accredited Certifier (AC) or Council prior to Commencement of Works. The insurance cover shall be a minimum of \$10 million.
- Prior to commencement of any works, application(s) shall be made to Council's Customer Services Counter and obtained the following approvals and permits on Council's property/road reserve under Road Act 1993 and Local Government Act 1993: (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 to install temporary ground anchors in public land,
 - (d) Permit to discharge ground water to Council's stormwater drainage system,

- (e) Permit for roads and footways occupancy (long term/ short term),
- (f) Permit to construct vehicular crossings, footpaths, kerbs and gutters over road reserve,
- (g) Permit to open road reserve area, including roads, footpaths, nature strip, vehicular crossing or for any purpose whatsoever, such as relocation / readjustments of utility services.
- (h) Permit to place skip/waste bin on footpath and/or nature strip, and
- (i) Permit to use any part of Council's road reserve or other Council lands.
- Erosion and sediment control devices shall be installed and in function 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, trees and neighbouring properties. In this regard, all stormwater discharge from the site shall meet the legislative requirements and guidelines. 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.
- A sufficient area shall be provided onsite to enable separate stockpiling of excavated materials for sampling and analysis prior to removal or re-use on site. Details of this area shall be provided in the Soil and Water Management Plan (SWMP). This plan shall incorporate and reference the construction environmental management plan and address site limitations.
- Toilet facilities are to be provided at or in the vicinity of the work site on which work involves:
 - (a) demolition and construction of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site;
 - (b) Each toilet provided:
 - (i) must be standard flushing toilet; and,
 - (ii) must be connected:

to a public sewer; or

if connection to a public sewer is not practicable to an accredited sewerage management facility approved by the Council; or,

if connection to a public sewer or an accredited sewerage management facility is not practicable to some other sewerage management facility approved by the Council.

(c) The provisions of toilet facilities in accordance with this condition must be in place before work commences.

- This Consent shall not preclude the demolisher from giving notice to other statutory authorities, such as Sydney Water Corporation, WorkCover, etc.
- 36 Prior to the commencement of any works, 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.
- A Soil and Water Management Plan (SWMP) 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 Soil and Water Management Plan (SWMP) 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 SWMP shall be kept on-site at all times and made available to Council Officers on request.
- 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 stormwater a permit to discharge to the stormwater shall be obtained from Council. Dewatering shall not commence until this is issued by Council
- 39 In accordance with the Contaminated Land Management Act 1997, notification of all category 2 remediation work to Council is required at least 30 days prior to commencement of works.

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

- 40 Prior to the issue of the relevant Construction Certificate, revised plans are to demonstrate that the pop up skylights on Tower A are to not to exceed the maximum building height as stipulated in Condition No. 15 of the Stage 1 Consent. The skylights are to be velux-style skylights.
- 41 Prior to the issue of the relevant Construction Certificate, revised plans are to be provided to the Principal Certifying Authority demonstrating that the eastern wall of media rooms- G07 and B-108 shall be deleted to achieve sunlight access to the habitable rooms.
- 42 Prior to the issue of the relevant Construction Certificate, construction plans are to show that all study rooms are to have a window in accordance with the requirements under SEPP 65 and the ADG.
- 43 Prior to the issue of the relevant Construction Certificate, construction plans to show that compliance with the Apartment Design Guide minimum storage rates has been achieved as follows:
 - (a) 1 Bedroom apartments 6m³

(b) 2 Bedroom apartments 8m³

(c) 3 Bedroom apartments 10m³

At least 50% of the required storage is to be located within the apartment.

Prior to the issue of any Construction Certificate, the following fees are to be paid:-

(a) Development Control \$13,225.00

(b) Damage Deposit \$314,700.00 (See below)

(c) Section 94 Contributions \$2,361,207.88 \$2,394,718.29

(d) Long Service Levy See below

(e) Tree Preservation Bond \$7,500.00 (See below)

(f) Tree Maintenance Bond \$7,500.00 (See below)

(g) Street Tree Planting Bond \$7,500.00 (See below)

(h) Public Works Defect Liability Bond \$25,000.00 (See below)

(Modified via DA-2017/1022/02)

45 Prior to the issue of any Construction Certificate, the payment of a monetary contribution of \$2,361,207.88 (indexed as of September 2017) in accordance with Council's Section 94 Contributions Plan 2016 which is broken down as follows:

 a)
 Community Facilities
 \$405,176.37

 b)
 Recreation Facilities
 \$1,760,003.85

 c)
 Transport Management
 \$165,831.97

 d)
 Administration
 \$30,195.68

An additional Section 94 Contribution of \$33,510.41 applies to the development. The breakdown of the Section 94 Contributions is as follows:

(a) Community Facilities: \$5,750.29

(b) Recreation Facilities - Citywide: \$24,978.09

(c) Transport Management - Citywide: \$2,353.5

(d) Administration: \$428.54

The Section 94 Contribution fees are subject to annual review and the current rates are applicable for the financial year in which the consent is granted. If the

contribution is paid in a later financial year the fee applicable at the time will be required to be paid.

(Modified via DA-2017/1022/02)

- 46 Prior to the issue of any Construction Certificate, the required Long Service Levy payable under Section 34 of the Building and Construction Industry Long Service payments Act 1986 must 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.
- Prior to the issue of any Construction Certificate, the applicant shall lodge a Damage Deposit of \$314,700.00 (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.
- Prior to the issue of any Construction Certificate, at the proposed point of construction site entry, photographic survey showing the existing conditions of Council's and RMS infrastructure shall be submitted to Council and Principal Certifying Authority. The survey shall detail the physical conditions and identify any existing damages to the roads, kerbs, gutters, footpaths, driveways, street trees, street signs and any other Council assets fronting the property and extending to a distance of 50m from the development. Failure to do so may result in the applicant/developer 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.
- 49 Prior to the issue of any Construction Certificate, a Construction Management Program shall be submitted to the Principal Certifying Authority 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 on site 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.
- (I) The methodology to control dust on site.
- 50 Prior to the issue of any 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). 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.

51 Prior to the issue of the relevant Construction Certificate, the following required section(s) are to be submitted to and approved by the Principal Certifying Authority:

- (a) All driveways/access ramps/vehicular crossings shall conform with Australian Standards AS 2890.1 and Council requirements including but not limited to Section 8(v) of the DCP Stormwater Management Technical Guidelines, and
- (b) For commercial developments, the applicant shall provide longitudinal sections along the extremities and the centre line of each internal driveway/access ramp at a scale of 1:25. These long sections shall extend from the horizontal parking area within the property to the centre line of the roadway. The sections shall also show the clear height from the ramp to any overhead structure.
- 52 <u>Prior to the issue of the relevant Construction Certificate</u>, the following required section(s) are to be submitted to and approved by the Principal Certifying Authority:
 - (a) All driveways/access ramps/vehicular crossings shall conform with Australian Standards AS 2890.1 and Council requirements including but not limited to Section 8(v) of the DCP Stormwater Management Technical Guidelines,
 - (b) All service vehicles to leave the access way into the public roads in a forward direction.
 - (c) Demonstrate safe headroom clearance of 4.5m is achieved in the driveway entrance and along the along the travel path, parking and manoeuvring areas of a Medium Rigid Vehicle (MRV), including Council's Garbage Truck,
 - (d) Swept path analysis shall be provided for manoeuvring of commercial vehicles, and
 - (e) A longitudinal section plotting headroom clearance above driveway access is to be provided for assessment.
- Prior to the issue of the relevant Construction Certificate, the following required section(s) are to be submitted to and approved by the Principal Certifying Authority:
 - (a) Disabled car parking spaces shall be provided and clearly marked as per the Stage 2 Traffic and Transport Report by ARUP Group, dated 7 February 2017, Australian Standards AS 2890.6, SEPP 65 Design Code and Council requirements, and
 - (b) All off street disabled parking shall have access to the adjacent road(s) and to the communal open space as per Australian Standards AS 2890.6 and Council requirements.
- Prior to the issue of any Construction Certificate, the applicant shall contact "Dial Before You Dig" to obtain a utility service diagram for, and adjacent to the property. The sequence number obtained from "Dial Before You Dig" shall be forwarded to Principal Certifying Authority. All utilities within the work zone shall be protected during construction. Any adjustments or damage to public utilities/services as a consequence of the development and associated construction works shall be restored or repaired at the applicant's expense.

- Prior to the issue of the relevant Construction Certificate, 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:
 - (i) The additional load on the system, and
 - (ii) The relocation and/or adjustment of the services affected by the construction.
 - (c) The Ausgrid lighting poles along Bunnerong Road, will need to be decommissioned and new lighting poles shall be constructed satisfying V2 lighting requirements any other requirements as specified by Council, RMS and any other service provider,
 - (d) All above ground utilities shall be relocated underground in accordance with Ausgrid and any other affected and relevant service provider and is to be completed prior to the issue of the final Occupation Certificate, 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, new lighting poles, any new pits and trenches for utilities shall be confirmed with Council prior to the commencement of these works.

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.

Prior to the issue of the relevant 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 or Council for approval. (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 but not be limited to the following:

(a) An On-Site Detention System (OSD) shall be designed according to Part 6 of the SMTG. It should be noted that OSD systems shall be designed to detain the stormwater runoff 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 1 in 5 year ARI peak flow generated from the site under the "State of

- Nature" condition (i.e. the site is totally grassed/turfed), rather than predevelopment condition,
- Incorporate a Stormwater Quality Improvement system to ensure compliance with Section 16 of Botany Bay's SMTG,
- (c) The water quality improvement system and WSUD strategy proposal shall be designed to capture and treat at least 85% flows generated from the site.
- (d) A WSUD Strategy and MUSIC model must be prepared and submitted to Council for the development. The MUSIC model must be prepared in line with the Draft NSW MUSIC Modelling Guidelines (Sydney Metro CMA). Sydney's Water's requirements are that the water quality improvement should meet or exceed the target as described in the "Botany Bay & Catchment Water Quality Improvement Plan" which was prepared by the Sydney Metropolitan Catchment Management Authority in April 2011, and
- (e) The submission of detailed calculations including computer modelling where required supporting the proposal.
- Prior to the issue of the relevant Construction Certificate, the recommendations of the Qualitative Wind Assessment Report from SLR referred to in this consent are to be incorporated into the design in order to ensure compliance with the Councils maximum wind criteria (as set out at Part 9A.4.5.4 Wind Mitigation, Control C1 of the DCP 2013) as follows:
 - a) 10 metres/second along commercial/retail streets;
 - b) 13 metres/second along main pedestrian streets, parks and public places; and
 - c) 16 metres/second in all other streets.
- The building shall be designed in accordance with the Office of Environment and Heritage (Department of Environment, Climate Change and Water) 'NSW Road Noise Policy', and shall also meet the criteria recommended in Table 1 of Australian Standard AS 2107-2000. Suitably endorsed construction plans and specifications addressing these criteria's shall be submitted to the Principal Certifying Authority for approval prior to the release of the Construction Certificate.
- 59 Prior to the issue of the relevant Construction Certificate, details on the mechanical plant and equipment to be submitted to the Principal Certifying Authority. The report must:
 - (a) identify each item of plant and equipment;
 - (b) the following additional criteria adopted by Bayside Council:
 - (i) The operation of all plant and equipment shall not give rise to an equivalent continuous (LAeq) sound pressure level at any point on any residential property greater than 5dB(A) above the existing background LA90 level (in the absence of the noise under consideration).

- (ii) The operation of all plant and equipment when assessed on any residential property shall not give rise to a sound pressure level that exceeds LAeq 50dB(A) day time and LAeq 40 dB(A) night time.
- (iii) The operation of all plant and equipment when assessed on any neighbouring commercial/industrial premises shall not give rise to a sound pressure level that exceeds LAeq 65dB(A) day time/night time.
- (iv) For assessment purposes, the above LAeq sound levels shall be assessed over a period of 10-15 minutes and adjusted in accordance with EPA guidelines for tonality, frequency weighting, impulsive characteristics, fluctuations and temporal content where necessary.

Note "sensitive" positions should be selected to reflect the typical use of a property (i.e. any outdoor areas for day and evening but closer to the façade at night time), unless other positions can be shown to be more relevant.

- Prior to the issue of the relevant Construction Certificate, plans and specifications for the storage room for waste and recyclable materials shall be submitted to the Principal Certification Authority. The garbage and recycling storage area shall be adequately ventilated, roofed and screened from public view. The floor shall be made of an impervious surface, drained to sewer and include a dry arrestor pit with a removable basket. Washing facilities shall be provided within close proximity to the garbage and recycling storage area.
- Prior to the issue of the relevant Construction Certificate, any electrical kiosk, fire booster assembly or similar utilities must be located in an unobtrusive location away from vehicle and pedestrian entrances to the property and not within the landscaped street setback. The utilities must be screened by a built screen enclosure and/or landscaping so as not to reduce the visual amenity of the development or the streetscape and public domain. The location of, and screening treatment surrounding these utilities is to be approved by Council's Landscape Architect prior to their installation. Fire booster assemblies should be housed within the external face of the building structure and screened from view from the public domain area.
- Design verification is required to be submitted from a qualified designer to confirm the development is in accordance with the approved plans and details and continues to satisfy the design quality principles in State Environmental Planning Policy No. 65 Design Quality of Residential Apartment Development.
- Design certification, prepared by a suitably qualified engineer shall be submitted to Principal Certifying Authority certifying the car parking area shown on the construction plans has been designed in accordance with AS 2890.1, AS2890.2, and AS2890.6.
- A suitable intercom system linked to all units within the development shall be provided at the vehicle entrance to the development to ensure any visitors to the site can gain access to the visitor parking in the car parking area. The details of the intercom system shall be submitted to Principal Certifying Authority and its location and specifications endorsed on the construction drawings.

- Prior to the Commencement of Demolition/Issue of Construction Certificate, the applicant is to submit payment for a Tree Preservation Bond of \$9,000 to ensure protection of the 9 new street trees along Bunnerong Road from damage to replace the 9 Cupaniopsis anacardioides that have failed prior to construction due to vandalism and the insufficient maintenance including watering. The duration of the Bond shall be limited to a period of 24 months after issue (or cease upon issue of) of the Occupation Certificate. At the completion of the maintenance period the Tree Preservation Bond shall be refunded pending a satisfactory inspection by Council or a qualified Arborist. If the trees were found to be in decline, damaged (including roots), dead, excessively pruned or removed without Council permission or, if tree protection measures were not satisfied at any time, then all or part thereof of the bond shall be forfeited. The Tree Preservation Bond was calculated using the Thyer Tree Evaluation method.
- The applicant is to submit payment of a Tree Maintenance Bond of \$9,000.00. The duration of the Bond shall be limited to a period of 6 months after planting of the new street trees and a satisfactory inspection from Council. At the completion of the Bond period the Bond shall be refunded pending an inspection of the trees by Council. If a tree is found to be dead, pruned or dying and will not recover Council will forfeit all or part of the bond to replace or maintain the tree/s, unless the Applicant undertakes this work under instruction from Council.
- Prior to the issue of Construction Certificate, the applicant is to submit payment for a Street Tree Planting Bond of \$9,000 to ensure the installation and establishment of nine (9) street trees (species to be advised) in accordance with Condition mentioned below and Councils Street Tree Master Plan. Establishment includes watering for a period of six months following installation. The duration of the Bond shall be limited to a period of 6 months after Council approval of the planted tree. At the completion of the 6 month period the Street Tree Planting Bond shall be refunded pending a satisfactory inspection by Council. If the tree was found be to be in decline, damaged, dead, excessively pruned or removed then all or part thereof of the bond shall be forfeited to allow Council to replace or maintain the tree.
- Prior to the issue of a Construction Certificate, the applicant is to submit payment for a Public Works Defects Liability Bond of \$25,000. The duration of the Bond shall be limited to a period of 12 months after Council approval of all public domain works. At the completion of the 12 month period the Bond shall be refunded pending a satisfactory inspection of the new public domain work by Council. If rectification or maintenance work is required in this period then Council will forfeit all or part of the bond to undertake the required work, unless the Applicant undertakes this work.
- The Applicant is to submit payment to Council enter into an agreement with Council, to be prepared by Council's solicitors, at the applicant's expense, providing for the lodgement of a bond in the sum of \$69,000 for a period of five (5) years twelve (12) months after practical completion of landscape works, to ensure establishment and maintenance of the landscaping in accordance with the plan. The lodgement of the bond shall not preclude the Council from initiating legal proceedings, should the landscaping not be established and maintained in accordance with this Consent, and is not intended to limit the period of compliance with the landscaping requirements to five (5) years twelve (12) months.

The bond may be applied by Council to the establishment and maintenance of the landscaping in accordance with the plan and Council should be entitled to recover any monies expended in excess of the bond in establishing, re-establishing, or maintaining the landscape in accordance with the plan.

The applicant is to note that the bond specified under this condition must be remitted to Council, either in the form of monies held in trust, or as a certified banker's guarantee, together with a sum of \$69,000 (card or cheque) for disbursements associated with the preparation of the agreement, prior to the issue of an Occupation Certificate by the Principal Certifying Authority.

(DA-2017/1022/03)

- A frontage works approval be submitted to council prior to any construction certificate being issued. Prior to the issue of the relevant Construction Certificate, a public domain improvements plan be completed by Urbis shall be submitted for approval by Council. The Plan will include but not be limited to new street tree planting, footpath paving (segmental/other), street tree pit treatments and tree guards, street furniture, in ground landscaping, irrigation, lighting, maintenance and finishing details. The Plan shall be in accordance with Council's City Identity Program, Landscape DCP and any other Council specification or requirement. Civil drawings shall be included detailing levels and detailed footpath construction sections in accordance with Council's Engineering Services requirements.
- 71 The landscape areas shown on the Urbis Landscape plans dated 10/08/2017 rev G shall be the subject of detailed landscape construction documentation (plans and specifications) that are to be submitted to and approved by Council. The landscape documentation is to be prepared by a suitably qualified Landscape Architect, in accordance with Council's Landscape DCP. The detailed (construction level) plan shall include, but not be limited to:
 - (a) A site plan showing building envelopes, paved areas and areas to be landscaped.
 - (b) A planting plan at 1:100 scale showing all plant locations, groupings and centres. There is to be a dense 3-tier planting of trees, shrubs and groundcovers in all landscaped areas.
 - (c) A plant schedule listing all plants by botanical name, total plant numbers, plant spacings, pot sizes and staking.
 - (d) Specifications detailing soil and mulch finishes, root barriers, irrigation, edging and other landscape hardworks such as retaining walls.
 - (e) An irrigation plan comprising of subsurface drip systems and automatic timers with rainwater / soil moisture sensor controls; where possible storm water runoff will be directed to the lawn and garden beds. Irrigation will be provided to all soft landscape areas and will be specified in an updated landscape plan.
 - (f) Areas of paving, schedule of materials, edge treatments and sectional construction details.

- (g) All fencing, privacy screening and pergolas/arbours/pavilions elevations and materials.
- (h) Details of other landscape elements such as furniture, pedestrian lighting, sculpture and water features. Provide sectional construction details and elevations.
- (i) Bench seats should also be provided with and without hand rests on
- Planter box on slab sectional details. Planter box depths to be in accordance with Council's Landscape DCP and compliant with AS 4419 and AS 3743.
- (k) In communal open spaces, soft landscaping is to be maximised and accessways/ dissecting pathways minimised and kept to the edges of landscaped spaces. Provide lawn as well as planted areas, trees for shade and seating.
- (I) Trees shall be used extensively throughout the site private courtyards, through the centre of the site and in setbacks. Trees must be of an appropriate scale to complement and scale with the building form (setbacks, communal open space) and to pedestrianise landscaped open spaces. Deep soil zones must include larger trees. Consider avenue plantings and specimen tree entry features. Trees to be predominantly native, evergreen species using open canopy evergreens or selected deciduous for solar penetration.
- (m) Show the location of underground stormwater and rainwater tanks, ensuring deep soil availability for landscaping and tree planting is maximised. NOTE: detention tanks not permitted in street setbacks.
- Show the location of electrical kiosks and fire booster valves. Comply with conditions relating to their location and treatment.

Landscaping shall be installed in accordance with the approved landscape plan set *H*, *by Urbis*, stamped by Council's Landscape Architect and dated *13/09/2017* prior to the issue of an Occupation Certificate. This amended plan supercedes the original landscape plan. The landscaped areas on the property shall be maintained in accordance with the approved landscape documentation, the conditions of consent and Council's Landscape DCP at all times.

CONDITIONS WHICH MUST BE SATISFIED DURING WORKS

- 72 Construction operations shall comply with the following:
 - (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.
- (e) Concrete trucks and trucks 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 be conducted in a suitable offstreet area where wash waters do not enter the stormwater system or enter Council's land.
- (f) The vehicular entry/exits to the site must be protected from erosion and laid with a surface material which will not wash into the street drainage system or watercourse.
- (g) All vehicles transporting soil, sand or similar materials to or from the site shall cover their loads at all times.
- 73 Vibration levels induced by the demolition activities shall not exceed levels listed in Standard DIN 4150-3 (1999-02), Structural vibration Part 3 Effects of vibration on structures Table 12-7. The operation of plant and equipment must not give rise to the transmission of vibration nuisance or damage to other premises. Prior to commencement a specific vibration monitor shall be set up to monitor and record the vibration levels affecting surrounding buildings.
- 74 Vibration caused by excavation and construction at any residence or structure outside the site must be limited to: a) for structural damage vibration, German Standard DIN 4150 Part 3 Structural Vibration in Buildings. Effects on Structures; and b) for human exposure to vibration, the evaluation criteria set out in the Environmental Noise Management Assessing Vibration: a Technical Guideline (Department of Environment and Conservation, 2006).
- During demolition, excavation and construction, care must be taken to protect Council's infrastructure and surrounding buildings, 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 demolition, excavation and construction. The area fronting the site and in the vicinity of the development shall also be make safe for pedestrian and vehicular traffic at all times. Any damage to Council's infrastructure and surrounding buildings (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.

- 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.
- 77 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.
- Any material containing asbestos found on site during the demolition process shall be removed and disposed of in accordance with:
 - SafeWork 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 Operations (Waste) Regulation 2014.
 - d) NSW Environment Protection Authority Waste Classification Guidelines 2014
- 79 The development is to be constructed to meet the following construction noise requirements:
 - a) Construction Noise
 - Noise from construction activities associated with the development shall comply with the NSW Environment Protection Authority's Interim Construction Noise Guideline 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 less than 15 minutes when the construction site is in operating must not exceed the background level by more than 10dB(A).
 - ii) Construction period greater than 4 weeks and not exceeding 26 weeks:
 - 1 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 06:00pm;

ii) Saturday 07:00am to 03:00pm

- iii) No Construction to take place on Sundays or Public Holidays.
- d) Silencing
 - i) All possible steps should be taken to silence construction site equipment.
- 80 The principal contractor or owner builder must install and maintain water pollution, erosion and sedimentation controls in accordance with:
 - (a) The Soil and Water Management Plan if required under this consent;
 - (b) "Managing Urban Stormwater Soils and Construction" (2004) ('The Blue Book'); and
 - (c) Protection of the Environment Operations Act 1997.
- 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. All work on site shall cease until the council is notified and appropriate measures to assess and manage the contamination in accordance with any relevant NSW EPA adopted guidelines is completed by an appropriately qualified and experienced environmental consultant.
- 82 All remediation work must be carried out in accordance with:
 - a) NSW Office of Environment and Heritage (OEH) 'Contaminated Sites Guidelines for Consultants Reporting on Contaminated Sites';
 - NSW Environment Protection Authority (NSW EPA) guidelines under the Contaminated Land Management Act 1997;
 - c) State Environmental Planning Policy 55 (SEPP55) Remediation of Land;
 - d) The Remedial Action Plan 'Updated Remediation Action Plan Proposed Mixed Use / Medium Density Residential Zone, Part Lot 1 in D.P. 776089, Westfield Drive, Eastgardens, NSW' prepared by Douglas Partners, Project 71631.12, dated September 2013 and
 - e) The 'Proposed Remediation Action Plan Amendment Revision 1 Part 130 150 Bunnerong Road, Pagewood' prepared by Douglas Partners, Project 85009 Rev 1 dated 2 September 2015.
- The management of potential and actual acid sulfate soils shall be conducted in accordance with all recommendations within the 'Acid Sulfate Soils Management Plan 130-150 Bunnerong Road, Pagewood, NSW', Reference CES130805-MG-AD by Consulting Earth Scientists dated 21 January 2016.
- For any water from site dewatering to be permitted to go to stormwater, 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 the groundwater does not meet these guideline levels a Trade Waste permit from Sydney Water must be sought to put the groundwater to sewer.
- 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.
- 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.
 - (d) All imported fill shall be <u>accompanied by documentation from the supplier</u> which certifies that the material has been analysed and is suitable for the proposed land use.
- 87 <u>During demolition, excavation, construction</u> and any associated delivery activities, access to the site shall be available in all weather conditions. The area shall be stabilised and protected from erosion to prevent any construction-related 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 lands.
- 88 Landscape construction should be carried out by a qualified landscape contractor to ensure that adequate standards of workmanship are achieved. Landscape contractors who are members of the Landscape Contractors Association of NSW should be engaged.
- 89 Landscaping shall be installed in accordance with the approved Urbis landscape plans only stamped by Council's Landscape Architect and dated prior to the issue of a Construction Certificate. (This amended plan supercedes the original landscape plan).
- There are street trees identified on the Arborist plan within the nature strip that will require tree protection depending when the replacement of nine (9) trees is actioned. Protection (and tree bond) to existing trees in the Bunnerong Road nature strip based on the Arborist Report from Jacksons Nature Works (Arboricultural Impact Assessment Report, for Urban Block 4 -13/9/2017).
 - Trees 1-9 Cupaniopsis anacardioides is to be replaced with a similar size tree 100 Litre due to vandalism and poor maintenance (no irrigation).

Replacement trees will be advised to the developer and should not be planted until the irrigation to Bunnerong Road has been completed and Council notified.

A Tree Protection Zone requirement is necessary only if the Street trees are to be replaced prior to the completion of UB4.

The TPZ should not be impacted ensuring their retention.

The Tree Protection Zone is a radial distance measured from the centre of the trunk of the tree, radius of 2m.

Tree protection zones must also comply with the following requirements:

- a) Tree Protection Zone areas of 2m radius of tree.
- b) Tree Protection Zones shall be fenced to protect the TPZ as a preventative measure.
- A sign identifying the Tree Protection Zone shall be erected on each side of the protection fence indicating the existence of a TPZ. Signage must be visible from within the development site;
- d) All site personnel and contractors shall be aware of all tree protection requirements associated with the conditions of consent; and
- The Project Arborist shall provide written certification of compliance with the above, including photographs to the certifying authority.
- In accordance with councils DCP, the following activities are prohibited beneath the canopy drip line of any tree required to be retained and protected unless otherwise approved under the development consent/plans:
 - (a) Excavations and trenching (with exception of the approved foundations and underground services);
 - (b) Ripping or cultivation of soil;
 - (c) Mechanical removal of vegetation;
 - (d) Soil disturbance or movement of natural rock;
 - (e) Soil level changes including the placement of fill material (excluding and suspended floor slab);
 - (f) Movement and storage of plant, equipment & vehicles;
 - (g) Erection of site sheds;
 - (h) Affixing of signage or hoardings to trees;
 - (i) Storage of building materials, waste and waste receptacles;
 - (j) Disposal of waste materials and chemicals including paint, solvents,

In accordance with AS 4970 – 2009, inspections shall be conducted by the Project Arborist in accordance with the following key milestones:

Prior to any work commencing on-site (including demolition, earthworks or site clearing) and following installation of tree protection fences, tags and trunk protection;

During any excavations, building works and any other structure within the TPZ of the tree to be retained & protected, including any landscape works; A minimum of every month during the construction phase from Commencement to issue of the Occupation Certificate; and Following completion of the building works.

The Project Manager shall be responsible to notify the Project Arborist prior to any works within the Tree Protection Zones of protected tree within a minimum of 24 hours' notice

- 92 In order to ensure that the *Cupaniopsis anacardioides* is protected during construction, and its health and structural stability ensured, the following is required:
 - (a) Engage the Consultant Arborist for all tree root and canopy work to trees. Comply with recommendations and requirements and management plan contained within the Arborist's report dated 13/09/2017
 - (b) Trees to be retained are to be tagged with clearly visible marking tape at a height of approx. 2 metres from ground and numbered with the corresponding number in the Tree Report/Landscape Plan.
 - (c) Prior to commencing demolition/any works the tree/s is/are to be physically protected by fencing underneath the canopy dripline using 1.8 metre high chainwire fence or 1.5 metre steel pickets and nylon para-webbing/hessian to form the Tree Protection Zone (TPZ). The fence shall remain in place until construction is complete.
 - The area within the fencing is to be mulched with leaf mulch to a depth of 100mm and a weekly deep watering program undertaken during construction.
 - (ii) Fencing shall be erected to ensure the public footway is unobstructed.
 - (iii) If there is insufficient space to erect fencing in a particular area, wrap the trunk with hessian or carpet underlay to a height of 2.5 metres or to the tree's first lateral branch, whichever is greater, and affix timber palings around the tree with strapping or wire (not nails).
 - (d) Before any works commence on site, the Applicant is required to contact Council for an inspection and/or provide photographic evidence of the fenced TPZ's. Council approval is required prior commencement of any work.
 - (e) All detailed Construction Certificate plans shall show trees to be protected and the TPZ.
 - (f) All TPZ's as well as the entire Council nature strip are a "No-Go" zone. There shall be no access to the property excluding the existing crossover, no stockpiling, storage or sorting of waste or building materials, no construction work, no concrete mixing, strictly no washing down of concrete mixers or tools, no chemicals mixed/disposed of, no excavation or filling, no service trenching. Any unavoidable work within the fenced zone shall be under the direction of Council's Tree Officer (or Consultant Arborist).

- (g) Where unavoidable foot access is required in the TPZ, provide temporary access with timber sheets to minimise soil compaction, spillage or root damage.
- (h) Excavation within the canopy dripline or within an area extending 3 metres outward of the canopy dripline of any tree shall be carried out manually using hand tools to minimise root damage or disturbance.
- (i) Tree roots 40mm in diameter or greater that require pruning shall be done only under the direction of Council's Tree Officer (or the consulting Arborist) after a site inspection so as not to unduly impact or stress the tree.
- (j) It is the Applicant's responsibility to ensure that there is no damage to the canopy, trunk or root system (including the surrounding soil) of any tree. There shall be no canopy pruning unless approval has been granted by Council's Tree Officer under separate application. Approved pruning shall be undertaken by a qualified Arborist in accordance with AS 4373.
- (k) Any sub-surface OSD tank is to be located underneath the driveway, be a minimum of 3 metres beyond the canopy dripline of the existing tree and not located where it will limit the planting of trees on the property. Excavation shall be carried out manually using hand tools, or with small machinery to minimise tree root damage, disturbance or soil compaction. If tree roots are encountered Council's Tree Officer must be called for a site inspection. If tree roots cannot be cut without compromising the tree then the OSD will be required to be re-configured or relocated.
- (I) Masonry boundary fencing/walls or retaining walls shall be of piered or bridged construction to minimise damage to major or structural tree roots. Trench or strip footings are not permitted. If a tree root 40mm diameter or greater is in the location of a pier and the root cannot be cut without compromising the tree (must be obtained after Council inspection and advice), the pier will need to be relocated and the root bridged.
- (m) There shall be no walls retaining or otherwise, pavements, change in levels, trenching for new subsurface utilities or the location of new overhead services within the primary root zone or canopy of any tree. Any such structures in close proximity to trees must accommodate tree roots without damage or pruning.
- (n) All waste concrete and debris shall be removed from areas to be landscaped on the site, not buried, to minimise soil contamination.
- (o) The Applicant shall undertake any tree maintenance/remedial pruning as required by Council (or the Consultant Arborist) at the completion of construction.
- (p) If there is any contravention of these tree preservation conditions, or a tree was found to be damaged (including roots), in decline, dead or pruned without permission, then Council may claim all or part of the lodged security bond prior to its release as well as require remedial pruning work. Epicormic growth is evidence of root damage.

OR

- Council will invoice the Applicant for costs associated with remedial pruning work or tree replacement. For trees on private property, the Applicant will be required to undertake tree maintenance/replacement work, as specified by Council.
- Any sub-surface OSD tank or infiltration trench is required to be partially or wholly located underneath the driveway or paved areas to maximize the area available for deep soil, effective and site responsive tree planting and landscaping on the property. If this cannot be achieved the OSD shall cover no more than 50% of the landscape area, be appropriately located to allow effective tree planting and be constructed so that the top of the structure is 1.2m below final surface levels. Subsurface OSD tanks and infiltration trenches are to be located at least 3 metres away from the canopy dripline of any existing tree and not located where it will limit the planting of trees on the property. Excavation proximate to trees shall be carried out manually using hand tools, or with small machinery to minimise tree root damage, disturbance or soil compaction. If tree roots are encountered Council's Tree Officer must be called for a site inspection. If tree roots cannot be cut without compromising the tree then the OSD will be required to be re-configured or relocated.
- If kerb and gutter and footpath replacement is required <u>all work</u> must be undertaken under the supervision and direction of Council's Tree Management Officer. This includes the demolition of existing structures, to be undertaken with small machinery only, excavation for required subgrades/drainage and the construction of formwork. Tree roots 35mm in diameter or greater that require pruning shall be done <u>only</u> under the direction of Council's Tree Management Officer after site inspection so as not to impact or harm the existing street tree.
- If adjustment or connection to existing subsurface services or utilities within the road verge or the road carriageway is required, <u>all work</u> must be undertaken under the supervision and direction of Council's Tree Management Officer so as not to impact or harm the existing street tree. NOTE: Services may require re-routing at the Applicant's expense to ensure tree root protection. New overhead electrical property service wires shall located so that it is outside the tree canopy. No canopy pruning will be permitted for service wires.

96

- (a) The Applicant has permission to remove nine (9) trees, being the Cupionopsis anarcardiodes (trees 1-9 on arborist plan) located on Bunnerong Road Permission is also granted to replace as identified by the Consultant Arborist in the report dated 13/09/2017 Note: Trees are not permitted to be replaced until the Construction Certificate has been issued irrigation is made available to Bunnerong Road and replacement tree species provided.
- (b) The replacement trees species will be nominated by Council prior to during Construction, as the street trees should be replaced with 200 litre trees at 10m centres. Council staff will notify the project manager once a decision has been made

97

- (a) Prior to the issue of an Occupation Certificate, five (5) Angophora costata tree, at least 1.8 metres in height and 200 litre pot size, at 10 metre centres, shall be installed in the front of east-west Boulevard of the development and provide amenity to the streetscape by a qualified landscape contractor. The tree/s shall be sourced from a reputable supplier that grows to NATSPEC.
- (b) Five (5) Corymbia maculata trees min height 1.6metres and pot size 200 litre shall be planted at 10m centres along North South Street 2 of the property to provide screening and privacy for adjoining residents. Trees shall be sourced from a reputable supplier that grows to NATSPEC.
- (c) A Dial-Before-You-Dig enquiry is required prior to all tree planting.
- (d) The trees shall be planted in an area measuring 1 metre square, backfilled with imported soil/compost, water holding additive and fertiliser, and mulched with leaf mulch to a depth of 100mm. The trees are to be staked in accordance with Council's Landscape DCP and NATSPEC recommendations.
- (e) The Applicant is required to obtain a Council inspection of new trees prior to the maintenance period commencing.
- (f) Council is not liable for any damage to subsurface infrastructure during public domain works.
- (g) The trees shall be planted in an area measuring approx. 1 metre square ensuring adequate space for the root ball, backfilled with water holding additive and fertiliser and mulched to a depth of 75mm and at a diameter of 1 metre. Trees are to be staked as required.
- (h) Two hold point inspections are required : prior planting trees to ensure plant stock is suitable and post planting.
- (i) The street tree planting to all internal roads (East-West Boulevard, North-South Street 2 and Civic Avenue are to use the Citygreen Stratavault system of planting to be incorporated into the updated Landscape plans and documentation.
- (j) There must be irrigation to the site prior to installation of any trees.

<u>Note</u>: The street trees mentioned above may be modified prior to construction. Council will notify developer regarding tree alternatives (if any).

- 98 The Council nature strip shall be repaired and/or replaced in accordance with Council Specification at the completion of all construction work at the Applicant's expense.
- 99 The applicant is required to install 7 Eucalyptus microcorys trees; pot size 200 litre at minimum 1.6m height, at 8 metre centres to setback along Bunnerong Road. Irrigation must be provided to these trees as with all tree plantings to this site prior to installation.

Prior to the issue of an Occupation Certificate, no more than 50% of the street setback shall be hard paved (including stepping stones and large expanses of gravel). Paving shall be confined to the driveway and a pathway to the dwelling only. The driveway location and dimensions shall be in accordance with the approved Urbis plan, splaying within the property to meet the alignment of the Council crossover, no additional paving shall be provided. The remainder of the setback shall be deep soil and soft landscaped, including the residual area between driveway carpark and through link. As a minimum, shrubs shall be planted across the front boundary and down both side boundaries to the building alignment. Plants shall be predominantly native, have low water requirements and be suited to the local soils.

101

- (a) An experienced Landscape Contractor shall be engaged to undertake the landscaping work and shall be provided with a copy of both the approved landscape drawing and the conditions of approval to satisfactorily construct the landscape to Council requirements.
- (b) The contractor shall be engaged weekly for a minimum period of 13 weeks from final completion of landscaping for maintenance and defects liability, replacing plants in the event of death, damage, theft or poor performance. After that time regular and ongoing maintenance is required.
- To ensure satisfactory growth and maintenance of the landscaping, a fully automatic drip irrigation system is required in all landscape areas, installed by a qualified landscape contractor prior to landscaping works commencement. The system shall provide full coverage of all planted areas with no more than 300mm between drippers, automatic controller and backflow prevention device and shall be connected to a recycled water source, where provided. Irrigation shall comply with both Sydney Water and Council requirements as well as Australian Standards, and be maintained in effective working order at all times.

OR

To ensure satisfactory growth and maintenance of the landscaping, a fully automatic drip irrigation system is required in the following areas:

- a) all site boundary landscape setbacks and frontages, and
- b) the communal open space areas.

The system shall be installed by a qualified landscape contractor and provide full coverage of planted areas with no more than 300mm between drippers, automatic controllers and backflow prevention devices, and should be connected to a recycled water source. Irrigation shall comply with both Sydney Water and Council requirements as well as Australian Standards, and be maintained in effective working order at all times.

103 For the purposes of irrigating the landscaped areas, a water tank, minimum 25,000 litres in size but ideally equivalent to the building roof area to be drained, shall be installed on the property for stormwater collection and re-use.

- All new street trees shall be installed prior to completion of the staged development. All tree planting work is to be completed and protective fencing, being 1.8 metre chainlink fence, erected around the trees for protection prior to the commencement of construction.
- All internal access driveways, parking areas and pedestrian walkways shall be unit paved (interlocking pavers). Large areas of asphalt.
- A raised concrete edge shall be installed around the landscape areas to contain soil and mulch finishes from spilling out onto adjoining pavements. The edge shall be raised a minimum of 150mm above the adjoining pavement. Timber retaining edges are unsuitable.
- 107 Rigid polyethylene sheet type tree root barriers shall be installed alongside the kerb and footpath edge for all new street trees for a depth of 2000mm, for 3 metres each side of the tree centre and shall be located 150mm inward of the footpath and kerb edge, or any other built element. Root deflectors/directors surrounding the rootball are not permissable. Trees planted within paved areas shall have the barriers installed around the inside edge of the pavement cutout. The Applicant is required to contact Council's Landscape Architect for an inspection of root barrier system located within the public domain prior to backfilling and turfing.
- 108 Planter boxes constructed over a concrete slab shall be built in accordance with the following requirements:
 - (a) Ensure soil depths in accordance with Council's Landscape DCP. The base of the planter must be screeded to ensure drainage to a piped <u>internal</u> drainage outlet of minimum diameter 90mm, with no low points elsewhere in the planter. There are to be no external weep holes.
 - (b) A concrete hob or haunch shall be constructed at the internal join between the sides and base of the planter to contain drainage to within the planter.
 - (c) Planters are to be fully waterproofed and sealed internally with a proprietary sealing agent and applied by a qualified and experienced tradesman to eliminate water seepage and staining of the external face of the planter. All internal sealed finishes are to be sound and installed to manufacturer's directions prior to backfilling with soil. An inspection of the waterproofing and sealing of edges is required by the Certifier prior to backfilling with soil.
 - (d) Drainage cell must be supplied to the base and sides of the planter to minimize damage to the waterproof seal during backfilling and facilitate drainage. Apply a proprietary brand filter fabric and backfill with an imported lightweight soil suitable for planter boxes compliant with AS 4419 and AS 3743. Install drip irrigation including to lawns.
 - (e) Finish externally with a suitable paint, render or tile to co-ordinate with the colour schemes and finishes of the building.

CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE ISSUE OF AN 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.
- 110 Prior to the issue of the relevant Occupation Certificate, the floor surface of the entry, dining room and kitchen floor and internal storage areas are to be water-resist for all two and three bedroom apartments.
- 111 Prior to the issue of the relevant Occupation Certificate, car parking is to be allocated as follows:
 - (a) Minimum 254 257 residential spaces
 - (b) 17 residential visitor spaces
 - (c) 1 car share space within the car park
 - (d) Minimum 32 Childcare Centre spaces

(Modified via DA-2017/1022/02)

- 112 Prior to the issue of the relevant Occupation Certificate, at least 32 bicycle spaces are to be provided in the car park. Consideration on having bike racks close to the lobby entries is encouraged.
- 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.
- Prior to the issue of the relevant 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 all relevant standards.
- 115 Prior to the issue of the relevant Occupation Certificate, the applicant shall carry out the following works:
 - a) On Bunnerong Road, adjacent to development, reconstruct existing kerb and gutter for the full length of the property in accordance with Council's Infrastructure Specifications, and
 - On Bunnerong Road, adjacent to development, demolish existing concrete footpath and construct new footpath as per Council's Infrastructure and Landscape Architect specifications, and
 - On Bunnerong Road, adjacent to development, demolish existing road pavement and reconstruct road pavement full width as per Council's Infrastructure and Pavement Engineer's specifications.

116 The work to Civic Avenue, North-South Street 2, and Bunnerong Road public footpath shall be constructed in accordance with Council specifications *outlined in the 'Frontage Works Approval'* Council document. The footpath dimensions, location, paver type and construction methods shall be in accordance with this specification only. Pavers shall be ordered accounting for adequate lead time for manufacture.

Construction hold points and Council inspections are required at the following points:

- (a) after formwork installation and to prior pouring the concrete blinding slab,
- (b) at the commencement of paving works, and
- (c) at final completion.

Council approval of public domain works is required <u>prior issue of an Occupation</u> Certificate.

- 117 Prior to the issue of the relevant 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.
- 118 Prior to the issue of the Occupation Certificate, the following easements shall be created in conjunction with Council and the beneficiary:
 - (a) Register a new "Right of Way" Easement over the entire adjacent Lot 3
- 119 <u>Prior to the issue of the relevant Occupation Certificate</u>, a restriction on Use of Land and Positive Covenant(s) shall be imposed on the development. The following covenants shall be imposed under Section 88(E) of the Conveyancing Act 1919 and lodged with the NSW Land and Property Information:
 - (a) Restriction on Use of Land for On-Site Detention System. Refer to Appendix B of the SMTG for suggested wording, and
 - (b) Restriction on Use of Land for Stormwater Quality Improvement Device. Refer to Appendix E of the SMTG for suggested wording.

The terms of the 88E instruments are to be submitted to Council for review and approval and Proof of registration at the Lands and Property Information Office shall be submitted to the Principal Certifying Authority and Council prior to occupation.

- Prior to the issue of the Final Occupation Certificate, the Principal Certifying Authority is to ensure all units within the development are connected to an intercom system located at the vehicle entrance to the car parking area to ensure visitors to the site can access the visitor parking.
- 121 Street numbers shall be clearly displayed with such numbers being of contrasting colour and adequate size and location for viewing from the footway and roadway. Details of street numbering shall be submitted to Council for approval in accordance with the NSW Addressing Policy. Application fees apply.

- 122 The public area of the residential parts of each building must be designed by a practicing Interior Designer or other appropriately qualified person and include (but not limited to) colour schemes, artwork surface finishes, timber mid rails/skirting boards etc.
- A report prepared by a qualified air quality/mechanical engineer certifying that the mechanical ventilation/exhaust system as installed complies in all respects with the design and operation standards of AS 1668 Mechanical Ventilation and Air Conditioning Codes, and the relevant provisions of the Protection of the Environment Operations Act 1997 shall be submitted to Council within 21 days of the installation of the system and prior to the occupation of the premises.
- 124 Evidence of a Sydney Water permit or consent for discharge of wastewater to the sewer shall be submitted to the Principal Certifying Authority <u>prior to the issue of the interim Occupation Certificate</u>. Where a permit or consent may not be required from Sydney Water certification shall be provided verifying that any discharges to the sewer will meet specific standards imposed by Sydney Water.
- Prior to the issue of the Occupation Certificate, all noted screen or buffer planting is required along the property boundary to provide screening and privacy for UB4 residents. Screen planting shall comprise tall, dense foliaged shrubs that achieve a height of 2.5 metres and that retain foliage near ground level. Planter beds shall be a minimum width of 0.75 metres.
- Prior issue of an Occupation Certificate the Council footpath in front of the property is to be suitably repaired and made good after completion of construction works to Council specification and at the Applicant's expense. If existing pavers are damaged, subject to Council inspection and instruction, the Applicant is to source and purchase new pavers to match existing pavers in the street. If a significant number of new pavers are required Council may require that the entire frontage be replaced to allow for a uniform appearance. The footpath shall be maintained in a clean and tidy state at all times by the occupiers. Maintenance includes the removal of weeds and rubbish and periodic cleaning.
- 127 At the completion of landscaping on the site, the Applicant is required to obtain a Certificate of Compliance from the Landscape Consultant to certify that the landscaping has been installed in accordance with the Council approved landscape plan. The Certificate is to be submitted to Bayside Council prior to the Issue of an Occupation Certificate.
- 128 Concrete wheel stops shall be installed in all car spaces adjoining garden beds in accordance with Council specifications and Australian Standard AS/NZS 2890.1:2004 prior to the issue of an Occupation Certificate to prevent overhang and damage to garden beds.
- The public domain and Council footpath area shall be upgraded with new paving, street furniture and street tree planting, to be installed by the applicant at the applicant's expense. All improvements shall be in accordance with approved *Urbis Landscape plan rev H* and Council Landscaping and Engineering specifications and

requirements, and shall be constructed and complete <u>prior to the issue of an Occupation Certificate.</u>

- 130 <u>Prior to the issue of the Occupation Certificate</u>, a site works review is required demonstrating:
 - (a) Extent and minimum dimensions of the site dedicated to landscaping comply with the Detailed landscaping plans
 - (b) All detailed works comply with detailed schedules and specifications included in the detailed landscape plans
 - (c) Any modifications to the design were an equivalent or better solutions to the requirements of the detailed landscape plans and do not affect the ability of the landscape treatment to achieve the design intent.
 - (d) Site cultivation, quality and depth of soil and mulches as a minimum complies with Council specifications and standards.
 - (e) Drainage of all open space and soft landscaping complies with detailed landscape plans and to Council standards
- 131 Prior to the issue of the Occupation Certificate, the following applies:
 - (a) Any tree size modifications (ie from stated 400 litre to 200 litre or less) requires a Section 96 approval prior for compliance certification.
 - (b) Any variation in planting from the submitted CC Plant Schedule requires a Section 96 approval prior to certification.
- 132 <u>Prior to the issue of the Occupation Certificate</u>, the following applies for landscape works specification for construction documents:
 - (a) The Specification is to be read in conjunction with the Landscape Drawing Set, all other Consultant's documentation and revisions. Discrepancies are to be noted and clarified through a 'Request For Information' prior to construction. Allowance is to be made for all specified products. Equivalent alternatives to be documented when required and updated on As-Builts. All Australian Standards nominated in this Specification are to be the current issue.
- 133 The condition to be inserted under the heading of <u>prior to Issue of Occupation</u>

 <u>Certificate</u> is to read:
 - a) That before entering a purchase/lease/occupancy agreement, or individual units are on-sold, all tenants and occupiers of the development are to be advised by the owner of the building that residents are not eligible to participate in on-street resident parking schemes.
 - Prior to the issue of the occupation certificate, a sign to this effect shall be located in a prominent place, to Council's satisfaction, such as a directory

- board or notice board, where it can easily be observed and read by persons entering the building.
- c) Where a building is to be Strata Subdivided, a condition should be placed in the by-laws advising residents that they are not eligible to participate in onstreet resident parking schemes.
- 134 Prior to the issue of the Occupation Certificate for the Child Care Centre, the child care centre is to comply with the requirements of the NSW Children Services Regulations 2004 and any other requirements as specified by the NSW Department of Community Services.
- 135 Prior to use and occupation of the building an Occupation Certificate must be obtained under Section 109C(1)(c) and 109M of the Environmental Planning and Assessment Act 1979.

CONDITIONS WHICH MUST BE SATISFIED DURING THE ONGOING USE OF THE DEVELOPMENT

- 136 A separate application is to be submitted for the fit out of the child care centre.
- 137 The use of studies as bedrooms is prohibited.
- 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.
- 139 Council's footway (area between property boundary and street kerb) is to be kept clean, tidy, washed and maintained at the applicant's expense.
- 140 Any BBQ area shall be managed in a manner so as to not adversely impact the amenity of the surrounding residents.
- 141 The landscaped areas on the property shall be maintained in accordance with the approved landscape documentation, the conditions of development approval and Council's Landscape DCP at all times. The Landscape Contractor shall be engaged weekly for a minimum period of 26 weeks from completion of the landscape installation to maintain the landscaping. After that time regular maintenance is required.
- The automatic drip irrigation system shall be repaired and maintained in working order and in accordance with the approved landscape plan at all times.
- The landscaped areas on the property shall be maintained in a clean and tidy state and with a dense, even coverage of plants to Council's satisfaction, and in accordance with conditions of consent and Council's Landscape DCP, at all times.

- 144 New street trees shall be maintained by the Applicant for the duration of the landscape bond period after planting. Maintenance includes periodic watering at a frequency to sustain adequate growth, annual feeding and weed removal but does not include trimming or pruning of the trees under any circumstances.
- Ongoing maintenance of grass nature strips shall be undertaken by the occupier, strata or owner. Maintenance includes mowing, watering and maintaining an even coverage of grass. Maintenance <u>does not include</u> 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.
- 146 The operation of the premises shall be conducted in such a manner as not to interfere with or materially affect the amenity of the neighbourhood by reason of noise, vibration, odour, fumes, vapour, steam, soot, ash, dust, waste water, waste products, grit, oil, or otherwise.
- 147 The use of the premises shall not give rise to air impurities in contravention of the Protection of the Environment Operations Act 1997. Waste gases released from the premises shall not cause a public nuisance nor be hazardous or harmful to human health or the environment.
- 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.
- A person must not cause or permit an air conditioner to be used on residential premises in such a manner that it emits noise that can be heard within a habitable room in any other residential premises (regardless of whether any door or window to that room is open):
 - (a) Before 8 am or after 10 pm on any Saturday, Sunday or public holiday, or
 - (b) Before 7 am or after 10 pm on any other day.
- The use of the premises shall not give rise to any of the following when measured or assessed at "sensitive" positions within any other property. These "sensitive" positions should be selected to reflect the typical use of a property (ie any outdoor areas for day and evening but closer to the façade at night time), unless other positions can be shown to be more relevant.

The operation of all plant and equipment when assessed on any residential property shall not give rise to a sound pressure level that exceeds LAeq 50dB(A) day time and LAeq 40 dB(A) night time.

The operation of all plant and equipment when assessed on any neighbouring commercial/industrial premises shall not give rise to a sound pressure level that exceeds LAeq 65dB(A) day time/night time.

For assessment purposes, the above LAeq sound levels shall be assessed over a period of 10-15 minutes and adjusted in accordance with EPA guidelines for tonality, frequency weighting, impulsive characteristics, fluctuations and temporal content where necessary.

Statement of Environmental Effects

Section 96 Application

130-150 Bunnerong Road, Pagewood (UB4)

Condition 69 (Landscape agreement and bond)

28 February 2018

PREPARED BY

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5.3.1	3.1 Botany Development Control Plan 2013				
	5.4	Section 79C(1)(a)(iiia): Planning Agreements	5		
	5.5	Section 79C(1)(a)(iv): Regulations	5		
	5.6	Section 79C(1)(b): Likely Impacts	5		
	5.7	Section 79C(1)(c): Suitability of the Site	5		
	5.8	Section 79C(1)(d): Submissions	5		
	5.9	Section 79C(1)(e): The Public Interest.	5		
6	Conc	lusion	1		

1 Introduction

This Statement of Environmental Effects (SEE) has been prepared in support of a Section 96 application to delete and replace Condition 69 of DA2017/1022.

This Statement:

- Describes the site and its surrounding area;
- · Details the nature of the proposed development; and
- Undertakes an assessment of the proposal under the heads of consideration in Section 79C
 (1) of the Environmental Planning and Assessment Act, 1979.

The conclusion is reached that the proposal is acceptable with regard to all relevant planning issues.

2 Site and Surroundings

2.1 The Site

The site comprises an L-shaped parcel of land with an area of 103,547sqm at 130-150 Bunnerong Road, Pagewood within the former City of Botany Local Government Area (LGA). It is legally described as Lot 2 in DP 1187426. The land was formally known as Virginia Park and was previously occupied by industrial uses associated with the manufacturing operations of British American Tobacco Australasia (BATA). It was rezoned in 2013 to support mixed use development including high density residential uses.

The site has frontages to Banks Avenue to the west, Westfield Drive to the south, Bunnerong Road to the east and Heffron Road to the north. The site borders land zoned for industrial purposes and currently occupied by BATA's remaining site operations.

The site has been cleared of its former industrial buildings and construction of the approved development under DA2017/1022 has commenced.

2.2 Surrounding Area

The surrounding land uses in the vicinity of the sites comprise:

- · North: Low density residential uses. Pagewood shops are located to the north-east.
- · East: Low density residential uses.
- South: Westfield Eastgardens shopping centre. The servicing area of the shopping centre borders the site's southern boundary. Commercial and industrial uses are located further to the south-west.
- · West: Bonnie Doon Golf Course and associated club house.

2.3 Existing Consent

Development Application 10730 of 2014 for a Stage 1 concept proposal to allow for the comprehensive redevelopment of the site for mixed use was approved by the Land and Environment Court on 7 August 2015. Condition 7 of the consent states the following:

"(7) Separate Stage 2 and future development consent shall be sought for demolition of any structures and any civil and built development."

In effect, the Stage 1 consent establishes the development parameters for the future development of the site but it does not allow for the construction of buildings or works associated with the project. All physical work will be the subject of separate development applications lodged with Council.

In accordance with Condition 7 of the Stage 1 consent, and the provisions of Clause 83B(3) of the EP&A Act, DA2017/1022 was lodged with Bayside Council for assessment. On 5 October 2017, the former Sydney Planning Panel issued its consent (DA2017/1022) for the following development:

"Integrated Development Application for the construction of a residential flat building consisting of one level of basement car parking, a podium and two towers, 1×6 storeys and 1×8 storeys. The development will accommodate 167 apartments and a child care centre."

Development has commenced in accordance with the above consent.

3 Proposed Modification to DA2017/1022

3.1 Proposed Modification

The proposed modification involves an amendment to Condition 69. The condition imposes a requirement on the Applicant to enter into a legal agreement with Council that would facilitate the payment of a bond, monies from which may be drawn upon by Council to establish, re-establish or maintain landscaping. This is not a valid condition. All landscaping depicted on the approved landscaping plan relates to land that is within, and will be remain entirely within private ownership.

Condition 69 is proposed to be deleted and replaced by a standard landscape maintenance condition as follows.

Bold denotes new text, deleted text shown in strikethrough:

69 The Applicant is to enter into an agreement with Council, to be prepared by Council's solicitors, at the applicant's expense, providing for the lodgement of a bond in the sum of \$69,000 for a period of five (5) years after practical completion of landscape works, to ensure establishment and maintenance of the landscaping in accordance with the plan. The lodgement of the bond shall not preclude the Council from initiating legal proceedings, should the landscaping not be established and maintained in accordance with this Consent, and is not intended to limit the period of compliance with the landscaping requirements to five (5) years.

The bond may be applied by Council to the establishment and maintenance of the landscaping in accordance with the plan and Council should be entitled to recover any monies expended in excess of the bond in establishing, re-establishing, or maintaining the landscape in accordance with the plan.

The applicant is to note that the bond specified—under this condition must be remitted to Council, either in the form of monies held in trust, or as a certified banker's guarantee, together with a sum of \$69,000 (card or cheque) for disbursements associated with the preparation of the agreement, prior to the issue of an Occupation Certicate by the Principal Certifying Authority.

69 At the completion of landscaping on the site, the Applicant is required to obtain a Certificate of Compliance from the Landscape Consultant/Contractor to certify that the landscaping has been installed in accordance with the Council approved landscape plan. The Certificate is to be submitted to Bayside Council prior to the issue of the Occupation Certificate. The contractor shall be engaged weekly for a minimum period of 52 weeks from final completion of landscaping for maintenance and defects liability, replacing plants in the event of death, damage, theft or poor performance. After that time regular and ongoing maintenance is required.

Note: The above condition is entirely consistent with Condition 98 of DA16/143 for the construction of the adjacent UB5E development.

4 Section 96 Assessment

It is considered that the development is substantially the same as the original approval.

The proposal seeks to delete a condition in the consent. No physical change is proposed to the approved development.

On this basis, the proposed amendments are considered to constitute substantially the same development and are, therefore, accessible under Section 96 of the *Environmental Planning and Assessment Act*, 1979.

5 Environmental Planning Assessment

5.1 Section 79C(1)(a)(i): Environmental Planning Instruments

5.1.1 Botany Bay Local Environmental Plan 2013

Part 2 of the *Botany Local Environmental Plan 2013* (LEP) identifies that the subject site is zoned B2 Local Centre. The proposal is permitted in the zone with consent from Council.

There are no other clauses of the LEP that are particularly relevant in the assessment of the proposal.

5.2 Section 79C(1)(a)(ii): Draft Environmental Planning Instruments

There are no draft environmental planning instruments that apply to the subject site.

5.3 Section 79C(1)(a)(iii): Development Control Plans

5.3.1 Botany Development Control Plan 2013

Botany Development Control Plan 2013 (DCP) applies to the subject site. The proposed amendments do not alter the development's compliance with the provisions of the DCP.

5.4 Section 79C(1)(a)(iiia): Planning Agreements

Not applicable.

5.5 Section 79C(1)(a)(iv): Regulations

The DA has been made in accordance with the requirements contained in Clause 50(1A) of the *Environmental Planning and Assessment Regulation 2000.*

5.6 Section 79C(1)(b): Likely Impacts

There are no impacts arising from the proposal.

5.7 Section 79C(1)(c): Suitability of the Site

There are no environmental constraints on the site that would impede the proposal or render it unsuitable for the site.

5.8 Section 79C(1)(d): Submissions

Council will consider submissions at the close of the exhibition period

5.9 Section 79C(1)(e): The Public Interest

Given the absence of any demonstrable adverse impacts resulting from the proposal it is considered that the public interest would be best served by approval of the application under consideration.

6 Conclusion

The proposal seeks Council's consent to amend conditions 69 of DA2017/1022 which relates to Urban Block 4, 130-150 Bunnerong Road, Pagewood.

The proposal satisfies the relevant heads of consideration under Section 79(C) of the *Environmental Planning & Assessment Act, 1979.*

It is considered that the proposal provides an appropriate response to the planned development of the site and will assist in the orderly and economic development of the land.

The development is substantially the same as when originally approved and will have no implications upon the public domain.

Accordingly, the application should be recommended for approval.



Bayside Local Planning Panel

23/10/2018

Item No 6.4

Application Type Development Application

Application No SF18/2139 Lodgement Date 03/03/2018

Property DA-2016/143/05 - 130-150 Bunnerong Road, Eastgardens

Ward Botany Bay

Owner Karimbla Properties (No. 39) Pty Ltd

Applicant Karimbla Constructions Services (NSW) Pty Ltd

Proposal Section 4.55(1A) Application to modify Development Consent

No. 16/143 to delete Condition 67 which requires applicant to enter into a landscaping agreement and payment of bond.

No. of Submissions Nil
Cost of Development N/A

Report by Michael McCabe, Director City Futures

Officer Recommendation

That the Bayside Local Planning Panel approves the Section 4.55(1A) Modification Application to modify Development Consent No. DA-2016/143 for UB5E at 130-150 Bunnerong Road, Eastgardens as follows:

a amend Condition No. 67 to modify the duration of the landscape bond; and

b delete Condition No. 112 for simplicity purposes.

Item 6.4 313

Location Plan



Attachments

- Planning Assessment Report <u>J</u>
 Statement of Environmental Effects <u>J</u> 2

Item 6.4 314

BAYSIDE COUNCIL

Planning Assessment Report

Application Details

Application Number: 16/143/05

Date of Receipt: 3 March 2018

Property: 130-150 Bunnerong Road Eastgardens

Lot 2 in DP 1187426

Owners: Karimbla Properties (No. 39) Pty Ltd

Applicant: Karimbla Constructions Services (NSW) Pty Ltd

Proposal: Section 4.55(1A) Application to modify Development Consent No.

16/143 to delete Condition 67 which requires applicant to enter into

a landscaping agreement and payment of bond

Recommendation: Approve, subject to modified conditions.

Value: Nil No. of submissions: N/A

Author: Sumeet Badhesha, Development Assessment Planner

Date of Report: 17 September 2018

Key Issues

Section 4.55(1A) Application to modify Development Consent No. 16/143 to delete Condition No. 67 which requires applicant to enter into a landscaping agreement and payment of bond.

The application did not require public notification under Part 2 – Notification and Advertising of the BBDCP 2013 as the proposed modification was considered minor.

The key issue with this application relates to the applicant seeking to delete Condition No. 67 which requires the applicant to enter into a landscape agreement and lodgement of a bond for a period of five years after practical completion of landscape works. Rather than deletion of the condition, the length of the bond will be modified to 12 months of the relevant occupation certificate.

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

Item Bayside Planning Panel Meeting

23/10/2018

Recommendation

It is RECOMMENDED that the Bayside Planning Panel:

- Approve the Section 4.55(1A) Modification Application to modify Development Consent No. 16/143 to amend Condition No. 67 at UB5E of 130-150 Bunnerong Road, Eastgardens; and
- Resolve to modify Development Consent No. 16/143 under Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 as follows:
 - a) Amend Condition No. 67 to modify the duration of the landscape bond; and
 - b) Delete Condition No. 112 for simplicity purposes.

Background

History

Stage 1 Masterplan

Integrated Development Application No. 14/96 was received by Council on 5 May 2014 for the redevelopment of the site for a staged mixed use development involving subdivision and concept approval for the location of public road network, private access ways through the site, on-site stormwater detention including water sensitive urban design (WSUD), Building Envelopes and Building Heights facilitating approximately 2,733 dwellings on site, parking spaces in above ground and basement facilities, and provision of 8,000sqm of public open space. The Capital Investment Value CIV for these works was \$128,431,190.00, therefore the former Joint Regional Planning Panel (JRPP) was the consent authority. On 28 August 2014, this application was referred to the JRPP in accordance with Schedule 4A of the Environmental Planning & Assessment Act 1979 (EP&A Act) as it has a CIV in excess of \$20 million (Reference No. 2014/SYE/105).

On 12 September 2014, Karimbla Constructions (NSW) Pty Ltd filed a Class 1 Appeal against Council's 'deemed refusal' of the application. The application was considered at a series of Section 34 conferences, whereby a series of amended plans were considered. Council and the applicant reached a Section 34 agreement and the appeal was upheld. On 7 August 2015 the development consent was issued.

The Stage 1 Masterplan consent is a concept approval and does not grant consent for any demolition, remediation, excavation or building works. It is noted however that remediation works have commenced on-site as Category 2 works under the State Environmental Planning Policy No. 55 – Remediation of Land. The approval is limited to the massing, modulation, overall siting and setbacks, maximum height of buildings, maximum GFA, uses, maximum FSR, public domain provisions, unit mix, minimum unit sizes, indicative unit numbers, and minimum car parking provisions.



Figure 1. Approved Master plan concept subdivision plan DA-14/96

A number of modifications have been carried out to the Stage 1 Consent which include modifications to include reduction in the ground floor retail component, relocation of the civic retail square and extension of the five storey podium, additional residential units, deletion of the two childcare centres, reduction in podium height and provision of an additional level within the 6 tower forms in response to the reduced podium height, slight boundary adjustments to the subdivision, timing of deliverance of infrastructure projects, change in unit mix, size and northern setbacks at UB4 and UB3 and subsequent changes to the conditions of consent.

Subject Urban Block

The subject site forms one of seven urban blocks within the site. The overall Stage 1 Masterplan site is contained within the block bound by Bunnerong Road to the east, Banks Avenue to the west, Heffron Road to the north and Westfield Drive to the south. The subject site is located on the south-eastern corner of the entire site and has a total site area of 9,196sqm.



Figure 2. Location of UB5E within the overall site



Figure 3. Aerial Map of the subject urban block (UB5E)

Approved Development

- DA-16/143- The proposed development as carried out on UB5E which the former JRPP was approved on 16 February 2017 for the construction of a residential flat building consisting of one level of basement car parking, a 3 storey podium including car parking sleeved with apartments and 2 x 6 storey, 1 x 8 storey and 1 x 16 storey towers above. There is a total of 202 apartments approved within the development. A total GFA of 22,403sqm (FSR of 2.49:1) was approved and a total height of 53.6 metres (RL 75.6m) to the plant rooms was approved. The proposal included tree removal and landscaping across the site.
- <u>DA-16/143/02</u>- Section 4.55(1A) Modification to modify Development Consent No. 16/143
 to align the development with the adjoining UB4 development including adjustment to the
 finished ground levels, reconfiguration of the internal layout of the basement parking areas
 to allow shared parking with the UB4 development and changes to some external finishes
 and materials in response to structural requirements was approved by the Sydney Eastern
 City Planning Panel on 18 May 2018.
- <u>DA-16/143/03-</u> Section 4.55(2) Application to modify Development Consent No. 16/143 to amend the approved residential flat building development to introduce rooftop terraces/gardens to the top and podium level apartments, increase in rooftop plant room sizes and internal configuration of a number of units at UB5E was approved by the Sydney Eastern City Planning Panel on 18 April 2018.
- <u>DA-16/143/06</u>- Section 4.55(1A) Application to modify Development Consent No. 16/143 to amend Condition No. 66. This application was approved by the Bayside Planning Panel on 28 August 2018.
- <u>DA-16/143/07</u>- Section 4.55(1A) Application to modify Development Consent No. 16/143 to amend Condition Nos. 1, 61 and 64 relating to the revised arborist report. This application was approved by the Bayside Planning Panel on 28 August 2018.

Description and Assessment of the Proposed S.4.55 (1A) Modifications

The proposed modification seeks to amend Condition 67 within the consent. Condition No. 67 requires the applicant to enter into a landscape agreement and make the payment of a bond which will be held for the duration of five (5) years after practical completion of landscape works. The condition currently reads as follows:

67 The Applicant is to enter into an agreement with Council, to be prepared by Council's solicitors, at the applicant's expense, providing for the lodgement of a bond in the sum of \$40,000.00, for a period of five (5) years after practical completion of landscape works, to ensure establishment and maintenance of the landscaping in accordance with the plan. The lodgement of the bond shall not preclude the Council from initiating legal proceedings, should the landscaping not be established and maintained in accordance with this Consent, and is not intended to limit the period of compliance with the landscaping requirements to five (5) years.

The bond may be applied by Council to the establishment and maintenance of the landscaping in accordance with the plan and Council should be entitled to recover any monies expended in excess of the bond in establishing, re-establishing, or maintaining the landscape in accordance with the plan.

The applicant is to note that the bond specified under this condition must be remitted to Council, either in the form of monies held in trust, or as a certified banker's guarantee, together with a sum of \$550 (cash or cheque) for disbursements associated with the preparation of the agreement, prior to the issue of an Occupation Certificate by the Principal Certifying Authority.

The applicant seeks to delete this condition and replace with a landscape maintenance condition which requires a Certificate of Compliance to be obtained from Council's Landscape Architect to certify works are in accordance with the approve landscape plan. The applicant has provided the following justification for the removal of this condition:

"The condition imposes a requirement on the Applicant to enter into a legal agreement with Council that would facilitate the payment of a bond, monies from which may be drawn upon by Council to establish, re-establish or maintain landscaping. This is not a valid condition. All landscaping depicted on the approved landscaping plan relates to land that is within, and will be remain entirely within private ownership."

The intent of Condition No. 67 was to ensure landscaping is carried out and maintained in accordance with the approved landscape plan. Council does not support the removal of this condition as requested by the applicant, however, Council will accept a reduction in the timeframe period of the landscape bond from five (5) years to twelve (12) months after practical completion of landscape works. Council is of the opinion twelve months after practical completion of landscape works is sufficient to assess whether landscaping is established and maintained as per the approved landscape plan. This does not limit compliance to twelve months and ongoing compliance with the landscape plan is required. No other changes are recommended to be made.

The condition is recommended to be modified as follows:

67 The Applicant is to submit payment to Council of a bond in the sum of \$40,000.00, for a period of twelve (12) months after practical completion of landscape works, to ensure establishment and maintenance of the landscaping in accordance with the plan. The lodgement of the bond shall not preclude the Council from initiating legal proceedings, should the landscaping not be established and maintained in accordance with this Consent, and is not intended to limit the period of compliance with the landscaping requirements to twelve (12) months.

The bond may be applied by Council to the establishment and maintenance of the landscaping in accordance with the plan and Council should be entitled to recover any monies expended in excess of the bond in establishing, re-establishing, or maintaining the landscape in accordance with the plan.

Statutory Considerations

SECTION 4.55(1A) CONSIDERATIONS (previously Section 96(1A))

Section 4.55(1A) of the *Environmental Planning & Assessment Act 1979* states that "a consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:"

a) It is satisfied that the proposed modification is of minimal environmental impact, and

The Section 4.55(1A) modification application relates to modification to a condition, and as such, the modification will result in substantially the same development as approved under DA-16/143 and then subsequently modified. It is considered that the proposed amendment is suitable in the context of the site and the locality.

 b) It is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and

The Section 4.55(1A) modification application relates to modification to a condition, therefore the modification application is substantially the same development to which consent was originally granted.

c) It has notified the application in accordance with (i) the <u>regulations</u>, if the <u>regulations</u> so require, and (ii) a <u>development control plan</u>, if the <u>consent authority</u> is a <u>council</u> that has made a <u>development control plan</u> that requires the notification or advertising of applications for modification of a <u>development consent</u>, and

The application did not require public notification under Part 2 – Notification and Advertising of the BBDCP 2013 as the proposed modification was considered minor.

d) It has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.

No objections received as the application was never notified.

SECTION 4.42- STATUS OF CONCEPT APPLICATIONS AND CONSENT CONSIDERATIONS (previously Section 83D)

The Stage 1 Master plan consent DA-14/96 is the first of a Staged Development Application as per Section 4.42 of the Environmental Planning and Assessment Act. The subject application is a modification to a Stage 2 Development Application and as per the Section 4.42(2) it cannot be inconsistent with the Stage 1 consent. The proposed modification does not alter the conditions approved within the Stage 1 consent.

S.4.15(1) - MATTERS FOR CONSIDERATION - GENERAL (FORMERLY S.79C)

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

An assessment of the application has been carried out under the provisions of Section 4.15 of the Environmental Planning and Assessment Act, 1979. The matters of relevance to this application have been considered as follows:

<u>State Environmental Planning Policy 65- Design Quality of Residential Apartment Development</u>

The application relates to a condition that does not relate to the built form approved as part of DA-16/143 and in subsequent applications. The building will continue to be consistent with the approved design that was originally assessed against SEPP 65 and the Apartment Design Guide.

Botany Bay Local Environmental Plan 2013

The application refers to modification to a condition therefore there is no section within the Botany Bay Local Environmental Plan 2013 that is of relevance as part of this assessment. The previously conclusions that were approved in the parent DA and in subsequent modifications has not been altered as part of this application. The proposal will continue to be consistent with the objectives of the BBLEP 2013 with regard to the B4- Mixed Use zone.

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 application refers to modification to a condition therefore there is no section within the Botany Bay Development Control Plan 2013 that is of relevance as part of this assessment. The previously conclusions that were approved in the parent DA and in subsequent modifications has not been altered as part of this application. The proposal relates to landscaping agreement and payment of bond and is not contrary to the requirements of the BBDCP 2013.

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 modification relates to modification of a condition which related to a landscape agreement and bond and as such, it is considered that the proposed amendment will have no significant adverse environmental, social or economic impacts on the locality. The proposed modification will have no additional environmental impacts beyond those considered by Council during the assessment and determination of DA-16/143.

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

The suitability of the site was addressed in the original approval of DA-16/143.

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

No objections were received as the application was not required to be notified under Part 2 – Notification and Advertising of the BBDCP 2013.

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

The proposed amendment will have no significant adverse impact upon the public interest.

Conclusion

The Section 4.55(1A) Application seeks to modify Development Consent No. 16/143 which approved the demolition of existing structures and construction of a mixed use development. The modification relates only to a reduction to the length of the landscape bond period. The development as modified, is substantially the same development that was originally approved or as modified. The proposed modification will not alter the built form or character of the development, and will continue to ensure the development is carried out in an orderly manner. Therefore it is recommended that the Panel approve the proposed modifications to the proposal.

Item 6.4 - Attachment 1

Attachment

Schedule 1 - Conditions of Consent

Premises: 130-150 Bunnerong Road, Eastgardens DA No: 16/143/05

SCHEDULE OF CONSENT CONDITIONS

The development is to be carried in accordance with the following plans and endorsed with Council's stamp, except where amended by other conditions of this consent. Reference documentation is also listed.

Plans	Author	Dated / Received by Council
DA-000 Rev C F- Cover	Nettleton Tribe	Dated 2 November 2016
page- S96 roof terraces		Received 4 January 2017
		Dated 21 November 2017
		Received 19 February 2018
DA-001 Rev B- Context	Nettleton Tribe	Dated 2 November 2016
Plan- Site Plan		Received 4 January 2017
DA-002 Rev B- Building	Nettleton Tribe	Dated 2 November 2016
Articulation Plan		Received 4 January 2017
DA-100 Rev E G-	Nettleton Tribe	Dated 21 December 2016
Parking Level		Received 4 January 2017
		Dated 20 June 2017; Received
		6 July 2017
DA-101 Rev E G-	Nettleton Tribe	Dated 21 December 2016
Ground Floor Plan		Received 4 January 2017
		Dated 20 June 2017; Received
		6 July 2017
DA-102 Rev E F- Level 1	Nettleton Tribe	Dated 21 December 2016
Plan		Received 4 January 2017
		Dated 20 June 2017; Received
		6 July 2017
DA-103 Rev E G- Level 2	Nettleton Tribe	Dated 21 December 2016
Plan- S96 roof terraces		Received 4 January 2017
		Dated 21 November 2017
		Received 19 February 2018
DA-104 Rev C E- Level 3	Nettleton Tribe	Dated 2 November 2016
Plan		Received 4 January 2017
		Dated 13 November 2017;
		Received 15 November 2017
DA-105 Rev C-E- Level 4	Nettleton Tribe	Dated 2 November 2016
Plan		Received 4 January 2017
		Dated 13 November 2017;
		Received 15 November 2017
DA-106 Rev C D- Level 5	Nettleton Tribe	Dated 2 November 2016
Plan- S96 roof terraces		Received 4 January 2017
		Dated 21 November 2017
		Received 19 February 2018
DA-107 Rev C F- Level	Nettleton Tribe	Dated 2 November 2016
6-7 Plan- S96 roof		Received 4 January 2017
terraces		Dated 6 February 2018

Plans	Author	Dated / Received by Council
		Received 19 February 2018
DA-108 Rev C G- Level	Nettleton Tribe	Dated 2 November 2016
8-14- S96 roof terraces		Received 4 January 2017
		Dated 6 February 2018
		Received 19 February 2018
DA-109 Rev-A D- Level	Nettleton Tribe	Dated 2 November 2016
15 Plan- S96 penthouse		Received 4 January 2017
and roof terraces		Dated 6 February 2018
		Received 19 February 2018
DA-110 Rev B- Roof	Nettleton Tribe	Dated 2 November 2016
Terrace Plan- S96 roof	Trottiotori Tribo	Received 4 January 2017
terraces		Dated 6 February 2018
10114000		Received 3 April 2018
DA-111 Rev F- Roof	Nettleton Tribe	Dated 6 February 2018
Plan- S96 roof terraces	Trettleten Thee	Received 3 April 2018
DA-201 Rev D J- North	Nettleton Tribe	Dated 19 December 2016
Elevation- S96 roof	TVERIEROTI TIDE	Received 4 January 2017
terraces		Dated 6 February 2018
terraces		Received 19 February 2018
DA-202 Rev D-J- South	Nettleton Tribe	Dated 19 December 2016
Elevation- S96 roof	Nettieton mbe	Received 4 January 2017
terraces		Dated 6 February 2018
terraces		Received 19 February 2018
DA-203 Rev D J- East	Nettleton Tribe	Dated 19 December 2016
Elevation- S96 roof	Nettieton Tribe	Received 4 January 2017
terraces		Dated 6 February 2018
terraces		Received 3 April 2018
		Received 5 April 2016
DA-204 Rev D J- West	Nettleton Tribe	Dated 19 December 2016
Elevation- S96 roof		Received 4 January 2017
terraces		Dated 6 February 2018
		Received 3 April 2018
		(no change to the materials
		approved on 4 January 2017 in
		relation to the ground floor
		entrance into Building B)
DA-301 Rev D C-	Nettleton Tribe	Dated 30 January 2017
Amended DA- Rooftop		Received 31 January 2017
terraces- Sections 01		Dated 29 March 2018
		Received 3 April 2018
DA-301 Rev H -	Nettleton Tribe	Dated 20 June 2017; Received
Sections 01		6 July 2017
DA-302 Rev B F-	Nettleton Tribe	Dated 2 November 2016
Sections 02		Received 4 January 2017
		Dated 20 June 2017; Received
		6 July 2017
DA-430 Rev D G- GFA	Nettleton Tribe	Dated 6 January 2017
Area Plans- S96 roof		Received 7 January 2016
terraces		Dated 21 November 2017
		Received 19 February 2018
DA-501 Rev A-	Nettleton Tribe	Dated 2 November 2016
Ventilation Analysis Plan		Received 4 January 2017

Plans	Author	Dated / Received by Council
DA-506 Rev A- East and	Nettleton Tribe	Dated 2 November 2016
West Elevation		Received 4 January 2017
Comparison Plan		,
DA-507 Rev A- North	Nettleton Tribe	Dated 2 November 2016
Elevation Comparison		Received 4 January 2017
Plan		
DA-601 Rev B- Shadow	Nettleton Tribe	Dated 2 November 2016
Analysis- Winter		Received 4 January 2017
DA-602 Rev A- Solar	Nettleton Tribe	Dated 2 November 2016
Point Perspective Plan		Received 4 January 2017
DA-603 Rev A- Solar	Nettleton Tribe	Dated 2 November 2016
Analysis Plan		Received 4 January 2017
DA-604 Rev A- Solar	Nettleton Tribe	Dated 2 November 2016
Analysis- Communal		Received 4 January 2017
Open Space		reserved rediredry 2017
DA-609 Rev B- External	Nettleton Tribe	Dated 2 November 2016
Finishes		Received 4 January 2017
DA-801 Rev B- Survey	Nettleton Tribe	Dated 2 November 2016
Plan	TOURIST TIME	Received 4 January 2017
DA-1001 Rev A- Deep	Nettleton Tribe	Dated 2 November 2016
Soil Calculation	Trettieten Tribe	Received 4 January 2017
DA-1101 Rev A- Privacy	Nettleton Tribe	Dated 2 November 2016
and Screening	TVettleton Tribe	Received 4 January 2017
L-000-CS Rev D- Cover	Urbis	Dated 21 December 2016
sheet, drawing register	Cibis	Received 4 January 2017
and legend		Received 4 January 2017
L-500-PL Rev D- Ground	Urbis	Dated 21 December 2016
Floor Planting Plan	Oldis	Received 4 January 2017
L-501-PL Rev D- Ground	Urbis	Dated 21 December 2016
Floor Planting Plan	01010	Received 4 January 2017
L-502- PL Rev D-	Urbis	Dated 21 December 2016
Ground Floor Planting	0.0.0	Received 4 January 2017
Plan		Treserved 4 barraary 2017
L-503-PL Rev D- Ground	Urbis	Dated 21 December 2016
Floor Planting Plan	0.0.0	Received 4 January 2017
L-504-PL Rev D- Ground	Urbis	Dated 21 December 2016
Floor Planting Plan	0.0.0	Received 4 January 2017
L-505-PL Rev B- Level 3	Urbis	Dated 14 December 2016
Planting Plan	0.0.0	Received 4 January 2017
L-506-PL Rev B- Level 3	Urbis	Dated 14 December 2016
Planting Plan	0.00	Received 4 January 2017
L-507-PL Rev B- Level 3	Urbis	Dated 14 December 2016
Planting Plan	0.00	Received 4 January 2017
L-508-PL Rev B- Level 5	Urbis	Dated 14 December 2016
Planting Plan	- C. 1010	Received 4 January 2017
L-509-PL Rev A- Planting	Urbis	Dated 14 December 2016
Schedule	0.00	Received 4 January 2017
L01- Rev B- Level 5	Urbis	Dated 13 February 2018
Private Terrace	CIDIS	Received 19 February 2018
Landscape Plans		Neceived 13 repludity 2016
	11.1.1.	D-t1.12 F-h 2010
LO2 Doy B Typical		
L02- Rev B-Typical Details and Plant	Urbis	Dated 13 February 2018 Received 19 February 2018

Plans	Author	Dated / Received by Council
L-SK01 Rev B- Tree Retention Study (including shoring and piling)	Urbis	Dated 23 January 2017 Received 25 January 2017
L-SK01 Rev B- Tree Retention Study (basement level)	Urbis	Dated 23 January 2017 Received 23 January 2017

(Modified via DA-16/143/03) (Modified via DA-16/143/02)

Reference Document(s)	Author	Dated / Received by Council
DA Access Report Ref: MTN-011 Rev 2	Wall to Wall	Dated 8 August 2016; Received 17 August 2016
Acid Sulfate Soils Management Plan Ref: CES130805-MG-AD	Consulting Earth Scientists	Dated 21 January 2016; Received 17 August 2016
Noise Impact Assessment Report Ref: 610.13932-R1	SLR	Dated 15 July 2016; Received 17 August 2016
Architectural Design Statement	Nettleton Tribe	Dated 2 November 2016; Received 9 November 2016
ADG Compliance Table Ref: 4574	Nettleton Tribe	Dated 15 July 2015; Received 17 August 2016
Aeronautical Impact Assessment Ref: J0469 V1.0	The Ambidji Group Pty Ltd	Dated 8 August 2016; Received 17 August 2016
Arboricultural Assessment Report Revised Arboricultural Impact Assessment For Proposed Residential Development – UB5E	TALC (Tree and Landscape Consultants) Tree Wise Men Australia Pty Ltd	Dated 31 January 2017; Received 1 February 2017 Dated March 2017; Received 18 June 2018
Thermal Comfort and BASIX Assessment Ref: 9941 Rev A C	Efficient Living	Dated 22 July 2016; Received 17 August 2016 Dated 26 September 2017 Received 19 February 2018
Building Code of Australia Compliance Assessment Report Ref: 1423.88 Rev 00	AED Group	Dated July 2016; Received 17 August 2016
Construction Management	Meriton Property Services Pty Ltd	Dated April 2016; Received 17 August 2016
Crime Risk and Security Report	Meriton Property Services Pty Ltd	Dated 9 August 2016 Received 17 August 2016
Geotechnical Investigation Report Ref: GEOTLCOV24928AB-AF	Coffey Geotechnics Pty Ltd	Dated 8 August 2014; Received 17 August 2016
Landscape Report Ref: ND1501	Urbis	Dated 21 December 2016 Received 4 January 2017
Quantity Surveying Cost Report	Steven Wehbe	Dated 11 July 2016; Received 17 August 2016

Reference Document(s)	Author	Dated / Received by Council
Updated Remediation Action Plan Ref: 71631.12	Douglas Partners	Dated September 2013; Received 17 August 2016
Proposed Remediation Action Plan Amendment – Revision 1 Ref: 85009 Rev 1	Douglas Partners	Dated 2 September 2015; Received 17 August 2016
Site Audit Report and Site Audit Statement Ref: 6019040414_SAR_JC_NS W05	AECOM	Dated 31 March 2014; Received 17 August 2016
Reflectivity and Glare Assessment Ref: 610.13932-R6	SLR	Dated 14 July 2016; Received 17 August 2016
Stage 1 Masterplan Consent Compliance Table	Meriton Property Services Pty Ltd	Received 17 August 2016
Statement of Environmental Effects	Meriton Property Services Pty Ltd	Dated 11 August 2016; Received 17 August 2016
Stormwater Report Ref: 13- 155-5400 Rev 01	At&I	Dated July 2016; Received 17 August 2016
Stage 2 Traffic and Transport Report Ref: 237575	ARUP	Dated 19 July 2016; Received 17 August 2016
Waste Management Plan Rev C	Elephants Foot	Dated 4 August 2016; Received 17 August 2016
Qualitative Wind Assessment Ref: 610.13932.R5 L02-v0.1 5E S.96	SLR	Dated 14 July 2016; Received 17 August 2016 Dated 12 February 2018 Received 19 February 2018
Response Matrix and Cover letter to additional information issues	Meriton Property Services Pty Ltd	Received 9 November 2016 and 4 January 2017
Clause 4.6 variation to vary height development standard	Merton Property Services Pty Ltd	Dated 7 December 2016; Received 7 December 2016
Solar Perspective diagrams approved at Stage 1	-	Dated 16 December 2014; Received 4 January 2017
Solar Access Assessment- Stage 1 consent	SLR	Dated 7 December 2014; Received 4 January 2017
Statement of Environmental Effects Section 96 Application	Meriton Property Services Pty Ltd	Dated 13 February 2018; Received 19 February 2018
SEPP 65 and ADG Design Verification Statement- Rooftop terraces	Nettleton Tribe	Dated 11 April 2018; Received 11 April 2018
SEPP 65 and ADG Design Verification Statement- S.96 application	Nettleton Tribe	Dated 10 May 2018; Received 10 May 2018

(Modified via DA-16/143/03) (Modified via DA-16/143/02)(Modified via DA-16/143/07)

- This Consent relates to land in Lot 2 in DP 1187426 and, as such, building works must not encroach on to adjoining lands or the adjoining public place.
- 3 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.
- 4 All building work must be carried out in accordance with the provisions of the Building Code of Australia.
- This development is a Stage 2 consent. The development must comply with all conditions of the Stage 1 consent DA-14/96 unless modified and agreed upon by Council within this consent.
- 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 each relevant BASIX Certificate for each building in the development are fulfilled.
 - (a) Note

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
- If a replacement BASIX Certificate accompanies any subsequent application for a construction certificate, the replacement BASIX Certificate.
- (iii) BASIX Certificate has the meaning given to that term in the Environmental Planning and Assessment Regulation 2000.

CONDITIONS IMPOSED BY AN EXTERNAL AUTHORITY

Where relevant, the following external authority conditions apply:

The following conditions are imposed by Ausgrid:

Ausgrid requires kiosk substation housings to be separated from building ventilation system air intake and exhaust duct openings, by not less than 6 metres. This applies irrespective of whether the building ducted ventilation system is mechanical or natural and irrespective of whether or not fire dampers are installed in the ducts. Any portion of a building other than a BCA class 10a structure constructed from non-combustible materials, which is not sheltered by a non-ignitable blast-resisting barrier and is within 3 metres in any direction from the housing of a kiosk substation, is required to have a

- Fire Resistance Level (FRL) of not less than 120/120/120. Openable or fixed windows or glass blockwork or similar, irrespective of their fire rating, are not permitted within 3 metres in any direction from the housing of a kiosk substation, unless they are sheltered by a non-ignitable blast resisting barrier. For further details on fire segregation requirements refer to Ausgrid's Network Standard141.
- 8 Ausgrid requires the following conditions with respect to Chamber substations. For a chamber station within the property or within 6m of the development, the substation ventilation openings, including substation duct openings and louvered panels, must be separated from building air intake and exhaust openings, natural ventilation openings and boundaries of adjacent allotments, by separation distances which meet the requirements of all relevant authorities, building regulations, BCA and Australian Standards including AS 1668.2: The use of ventilation and air-conditioning in buildings - Mechanical ventilation in buildings. In addition to above, Ausgrid requires the substation ventilation openings, including duct openings and louvered panels, to be separated from building ventilation system air intake and exhaust openings, including those on buildings on adjacent allotments, by not less than 6 metres. Exterior parts of buildings within 3 metres in any direction from substation ventilation openings, including duct openings and louvered panels, must have a fire rating level (FRL) of not less than 180/180/180 where the substation contains oil-filled equipment. For further details on fire segregation requirements refer to Ausgrid's Network Standard 113.
- 9 Any work undertaken near Overhead Power lines needs to be carried out in accordance with:
 - (a) WorkCover Document ISSC 23 "Working Near Overhead Power Lines"
 - (b) Ausgrid Network Standards
 - (c) Ausgrid Electrical Safety Rules
- The location of underground cables by using Dial Before You Dig and comply with the requirements of Ausgrids Network Standard 156: Working Near or Around Underground Cables before any excavation works are undertaken.
- Existing Ausgrid easements, leases and/or right of ways must be maintained at all times to ensure 24 hour access. No temporary or permanent alterations to this property tenure can occur without written approval from Ausgrid. For further details refer to Ausgrid's Network Standard 143.
- The developer is required to make a formal submission to Ausgrid by means of a duly completed Preliminary Enquiry and/ or Connection Application form, to allow Ausgrid to assess any impacts on its infrastructure and determine the electrical supply requirements for the development (eg. whether a substation is required on site). The developer is to ensure that the proposed works do not contravene Ausgrids technical standards and statutory requirements, in regards to the safe and reliable operation of Ausgrid's network.

The following conditions are imposed by Civil Aviation Safety Authority (CASA):

- The building must not exceed a maximum height of 91 metres AHD, inclusive of all lift over-runs, vents, chimneys, aerials, antennas, lightning rods, any roof top garden plantings, exhaust flues etc.
- The proponent must ensure obstacle lighting arrangements have a remote monitoring capability, in lieu of observation every 24 hours, to alert SACL reporting staff of any outage. For detailed requirements for obstacle monitoring within the OLS of an aerodrome, refer to subsection 9.4.10 of the MOS Part 139.
- 15 The proponent must ensure obstacle lighting is maintained in serviceable condition and any outage immediately reported to SACL.

- Separate approval must be sought under the Regulations for any cranes required to construct the buildings. Construction cranes may be required to operate at a height significantly higher than that of the proposed controlled activity and consequently, may not be approved under the Regulations. Therefore it is advisable that approval to operate construction equipment (i.e. cranes) should be obtained prior to any commitment to construct.
- 17 At the completion of the construction of the building, a certified surveyor is to notify (in writing) the airfield design manager of the finished height of the building.

The following conditions are imposed by the NSW Roads and Maritime Services (RMS):

- Roads and Maritime raises no objection to the development proposal on property grounds provided all buildings and structure, together with any improvements integral to the future use of the site is wholly within the freehold property (unlimited in height or depth), along the Bunnerong Road boundary.
- All demolition and construction vehicles are to be contained wholly within the site as a construction zone and will not be permitted on Bunnerong Road.
- 20 A Road Occupancy Licence should be obtained from Transport Management Centre for any works that may impact on traffic flows on Bunnerong Road during construction activities.
- The developer is to submit design drawings and documents relating to the excavation of the site and support structures to Roads and Maritime for assessment, in accordance with Technical Direction GTD2012/001. The developer is to submit all documentation at least six (6) weeks prior to commencement of construction and is to meet the full cost of the assessment of Roads and Maritime.

The report and any enquiries should be forwarded to:

Project Engineer, External Works Sydney Asset Management Roads and Maritime Services PO Box 973 Parramatta CBD 2124

Telephone 88492114 Fax 88492766

If it is necessary to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owners of the roadway is/are given at least seven (7) days' notice of the intention to excavate below the base of the footings. The notice is to include complete details of the work.

A Construction Traffic Management detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control should be submitted to Council prior to the issue of a Construction Certificate.

The following conditions are imposed by Sydney Water:

Sydney Water does not object to the proposed development, subject to the following:

23 Stormwater

Sydney Water requires the removal of Sydney Water stormwater assets within the development site and the construction of a new chamber over Sydney Water's stormwater culvert at Westfield Drive. Sydney Water would not be prepared to take ownership of any drainage works within the development site. Detailed requirements will be provided in the *Asset Creation Process*, as part of the Section 73 application phase.

For further information regarding stormwater requirements for this development application, please contact Jeya Jeyadevan of Land and Waterways on 02 8849 6118 or email jeya.jeyadevan@sydneywater.com.au.

24 Water

- a) The existing water mains along the eastern boundary of this site are the 375mm and 250mm, cross connected by a 100mm main in Bunnerong Road.
- b) The existing network will have sufficient capacity to provide water supply to the development area by connecting to the existing 250mm main in Bunnerong Road, with a new cross connection between both 250mm and 375mm mains. This point is shown overleaf.
- c) Water reticulation within the site need to be extended from the connection point in Bunnerong Road and to be sized & configured according to the Water Supply Code of Australia WSA 03-2011-3.1 (Sydney Water Edition - 2012).
- d) Detailed drinking water requirements will be assessed at the Section 73 application phase.

25 Wastewater

- The proposed development will be serviced by the 375mm main intersecting the development site.
- Detailed wastewater requirements will be provided at the Section 73 application phase.

26 Sydney Water E-Planning

Sydney Water has an email address for planning authorities to submit statutory or strategic planning documents for review. This email address is urbangrowth@sydneywater.com.au

CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE COMMENCEMENT OF ANY WORKS

- Prior to commencement of any works, application(s) shall be made to Council's Customer Services Counter and obtained the following approvals and permits on Council's property/road reserve under Road Act 1993 and Local Government Act 1993: (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,
 - Permit to construction works, place and/or storage building materials on footpaths, nature strips,
 - (c) Permit to install temporary ground anchors in public land,
 - (d) Permit to discharge ground water to Council's stormwater drainage system,
 - (e) Permit for roads and footways occupancy (long term/ short term),
 - (f) Permit to construct vehicular crossings, footpaths, kerbs and gutters over road reserve,
 - (g) Permit to open road reserve area, including roads, footpaths, nature strip, vehicular crossing or for any purpose whatsoever, such as relocation / readjustments of utility services,
 - (h) Permit to place skip/waste bin on footpath and/or nature strip, and

- (i) Permit to use any part of Council's road reserve or other Council lands.
- Erosion and sediment control devices shall be installed and in function 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, trees and neighbouring properties. In this regard, all stormwater discharge from the site shall meet the legislative requirements and guidelines. 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.
- A sufficient area shall be provided onsite to enable separate stockpiling of excavated materials for sampling and analysis prior to removal or re-use on site. Details of this area shall be provided in the Soil and Water Management Plan (SWMP). This plan shall incorporate and reference the construction environmental management plan and address site limitations.
- Toilet facilities are to be provided at or in the vicinity of the work site on which work involves:
 - (a) demolition and construction of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site;
 - (b) Each toilet provided:
 - (i) must be standard flushing toilet; and,
 - (ii) must be connected:

to a public sewer; or

if connection to a public sewer is not practicable to an accredited sewerage management facility approved by the Council; or,

if connection to a public sewer or an accredited sewerage management facility is not practicable to some other sewerage management facility approved by the Council.

- (c) The provisions of toilet facilities in accordance with this condition must be in place before work commences.
- This Consent shall not preclude the demolisher from giving notice to other statutory authorities, such as Sydney Water Corporation, WorkCover, etc.
- Prior to the commencement of any works, 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.
- A Soil and Water Management Plan (SWMP) 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 Soil and Water Management Plan (SWMP) 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 SWMP shall be kept on-site at all times and made available to Council Officers on request.
- 34 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 stormwater a permit to discharge to the stormwater shall be obtained from Council. Dewatering shall not commence until this is issued by Council.
- 35 In accordance with the Contaminated Land Management Act 1997, notification of all category 2 remediation work to Council is required at least 30 days prior to commencement of works.
- In order to ensure that the trees listed in the arborist report in Condition 1 above are protected during all stages of construction, and their health and structural stability ensured, the following is required:
 - Engage an Arborist to undertake any necessary tree root pruning and canopy pruning to trees to be retained.
 - b) Trees required to be retrained are to be tagged with clearly visible marking tape at a height of approx. 2 metres from ground and numbered with the corresponding number in the Arboirst Report/Landscape Plan.
 - c) Prior to commencing any works the trees shall be physically protected by fencing underneath the canopy dripline using 1.8 metre high chainwire fence to form the Tree Protection Zone (TPZ). The fence shall remain in place until all construction is complete and not altered without the consent of Council's Tree Officer.
 - d) The TPZ is to be mulched with leaf mulch to a depth of 100mm and a temporary automatic drip irrigation system installed for the entire construction delivery twice weekly deep watering. Drippers to be installed at 300mm intervals to the entire root zone of all trees.
 - e) If there is insufficient space to erect fencing in a particular area during construction, and as approved by Council, wrap the trunk with hessian or similar to a height of 2.5 metres or to the tree's first lateral branch, whichever is greater, and affix timber palings with strapping or wire (not nails.
 - f) Before any works commence on site, the Applicant is required to contact Council for an inspection of the TPZ's. Council approval is required prior commencement of any work.
 - All Construction Certificate plans, specifications and CMP shall show the trees required to be retained and the TPZ.

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

- 37 Prior to the issue of the relevant Construction Certificate, construction plans are to show for all two and three bedroom apartments the floor surface of the entry, kitchen floor and internal storage areas to be of readily maintainable and water-resistant material (not carpet).
- Prior to the issue of the relevant Construction Certificate, construction plans are to show all two and three bedroom apartments to include a fixed study desk or study nook where a separate study room has not been provided.
- Prior to the issue of the relevant Construction Certificate, construction plans are to show that all study rooms are to have a window in accordance with the requirements under SEPP 65 and the ADG.
- 40 Prior to the issue of the relevant Construction Certificate, construction plans to show that compliance with the Apartment Design Guide minimum storage rates has been achieved as follows:
 - (a) 1 Bedroom apartments 6m³

(b) 2 Bedroom apartments 8m³

(c) 3 Bedroom apartments 10m³

At least 50% of the required storage is to be located within the apartment.

41 Prior to the issue of any Construction Certificate, the following fees are to be paid:-

(a) Development Control \$12,900.00

(b) Damage Deposit \$314,700.00 (See below)(c) Section 94 Contributions \$2,714,611.95 (See below)

(d) Long Service Levy See below

42 Prior to the issue of any Construction Certificate, the payment of a monetary contribution of \$2,714,611.95 in accordance with Council's Section 94 Contributions Plan 2016 which is broken down as follows:

 a)
 Community Facilities
 \$466,913.255

 b)
 Recreation Facilities
 \$2,022,385.90

 c)
 Transport Management
 \$190,022.836

 d)
 Administration
 \$35,289.955

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

- Prior to the issue of any Construction Certificate, the required Long Service Levy payable under Section 34 of the Building and Construction Industry Long Service payments Act 1986 must 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.
- Prior to the issue of any Construction Certificate, the applicant shall lodge a Damage Deposit of \$314,700.00 (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.
- Prior to the issue of any Construction Certificate, at the proposed point of construction site entry, photographic survey showing the existing conditions of Council's and RMS infrastructure shall be submitted to Council and Principal Certifying Authority. The survey shall detail the physical conditions and identify any existing damages to the roads, kerbs, gutters, footpaths, driveways, street trees, street signs and any other Council assets fronting the property and extending to a distance of 50m from the development. Failure to do so may result in the applicant/developer 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
- 46 Prior to the issue of any Construction Certificate, a Construction Management Program shall be submitted to the Principal Certifying Authority 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
- The location and operation of any on site 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.
- (I) The methodology to control dust on site.
- Prior to the issue of any 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). 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.

- 48 Prior to the issue of the relevant Construction Certificate, the following required section(s) are to be submitted to and approved by the Principal Certifying Authority:
 - (a) All driveways/access ramps/vehicular crossings shall conform with Australian Standards AS 2890.1 and Council requirements including but not limited to Section 8(v) of the DCP Stormwater Management Technical Guidelines, and
 - (b) For commercial developments, the applicant shall provide longitudinal sections along the extremities and the centre line of each internal driveway/access ramp at a scale of 1:25. These long sections shall extend from the horizontal parking area within the property to the centre line of the roadway. The sections shall also show the clear height from the ramp to any overhead structure.
- 49 Prior to the issue of the relevant Construction Certificate, the following required section(s) are to be submitted to and approved by the Principal Certifying Authority:
 - (a) All driveways/access ramps/vehicular crossings shall conform with Australian Standards AS 2890.2 and Council requirements including but not limited to Section 8(v) of the DCP Stormwater Management Technical Guidelines,
 - (b) All service vehicles to leave the access way into the public roads in a forward direction.
 - (c) Demonstrate safe headroom clearance of 4.5m is achieved in the driveway entrance and along the along the travel path, parking and manoeuvring areas of a Medium Rigid Vehicle (MRV), including Council's Garbage Truck,
 - (d) Swept path analysis shall be provided for manoeuvring of commercial vehicles, and
 - (e) A longitudinal section plotting headroom clearance above driveway access is to be provided for assessment.
- 50 Prior to the issue of the relevant Construction Certificate, the following required section(s) are to be submitted to and approved by the Principal Certifying Authority:
 - (a) Disabled car parking spaces shall be provided and clearly marked as per the Stage 2 Traffic and Transport Report by ARUP Group, dated 19 July 2016, Australian Standards AS 2890.6, SEPP 65 Design Code and Council requirements, and
 - (b) All off street disabled parking shall have access to the adjacent road(s) and to the communal open space as per Australian Standards AS 2890.6 and Council requirements.
- Prior to the issue of any Construction Certificate, the applicant shall contact "Dial Before You Dig" to obtain a utility service diagram for, and adjacent to the property. The sequence number obtained from "Dial Before You Dig" shall be forwarded to Principal Certifying Authority. All utilities within the work zone shall be protected during construction. Any adjustments or damage to public utilities/services as a consequence of the development and associated construction works shall be restored or repaired at the applicant's expense.
- 52 <u>Prior to the issue of the relevant Construction Certificate</u>, 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:
 - (i) The additional load on the system, and
 - (ii) The relocation and/or adjustment of the services affected by the construction.
- (c) The Ausgrid lighting poles along Bunnerong Road, will need to be decommissioned and new lighting poles shall be constructed satisfying V2 lighting requirements any other requirements as specified by Council, RMS and any other service provider,
- (d) All above ground utilities shall be relocated underground in accordance with Ausgrid and any other affected and relevant service provider and is to be completed prior to the issue of the final Occupation Certificate, 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, new lighting poles, any new pits and trenches for utilities shall be confirmed with Council prior to the commencement of these works.

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.

Prior to the issue of the relevant 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 or Council for approval. (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 but not be limited to the following:

- (a) An On-Site Detention System (OSD) shall be designed according to Part 6 of the SMTG. It should be noted that OSD systems shall be designed to detain the stormwater runoff 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 1 in 5 year ARI peak flow generated from the site under the "State of Nature" condition (i.e. the site is totally grassed/turfed), rather than pre-development condition.
- Incorporate a Stormwater Quality Improvement system to ensure compliance with Section 16 of Botany Bay's SMTG,
- (c) The water quality improvement system and WSUD strategy proposal shall be designed to capture and treat at least 85% flows generated from the site.
- (d) A WSUD Strategy and MUSIC model must be prepared and submitted to Council for the development. The MUSIC model must be prepared in line with the Draft NSW MUSIC Modelling Guidelines (Sydney Metro CMA). Sydney's Water's requirements are that the water quality improvement should meet or exceed the target as described in the "Botany Bay & Catchment Water Quality Improvement Plan" which was prepared by the Sydney Metropolitan Catchment Management Authority in April 2011, and
- (e) The submission of detailed calculations including computer modelling where required supporting the proposal.

- Prior to the issue of the relevant Construction Certificate, the recommendations of the Qualitative Wind Assessment Report from SLR referred to in this consent are to be incorporated into the design in order to ensure compliance with the Councils maximum wind criteria (as set out at Part 9A.4.5.4 Wind Mitigation, Control C1 of the DCP 2013) as follows:
 - a) 10 metres/second along commercial/retail streets;
 - b) 13 metres/second along main pedestrian streets, parks and public places; and
 - c) 16 metres/second in all other streets.
- The building shall be designed in accordance with the Office of Environment and Heritage (Department of Environment, Climate Change and Water) 'NSW Road Noise Policy', and shall also meet the criteria recommended in Table 1 of Australian Standard AS 2107-2000. Suitably endorsed construction plans and specifications addressing these criteria's shall be submitted to the Principal Certifying Authority for approval prior to the release of the Construction Certificate.
- Prior to the issue of the relevant Construction Certificate, details on the mechanical plant and equipment to be submitted to the Principal Certifying Authority. The report
 - (a) identify each item of plant and equipment;
 - (b) the following additional criteria adopted by Bayside Council:
 - (i) The operation of all plant and equipment shall not give rise to an equivalent continuous (LAeq) sound pressure level at any point on any residential property greater than 5dB(A) above the existing background LA90 level (in the absence of the noise under consideration).
 - (ii) The operation of all plant and equipment when assessed on any residential property shall not give rise to a sound pressure level that exceeds LAeq 50dB(A) day time and LAeq 40 dB(A) night time.
 - (iii) The operation of all plant and equipment when assessed on any neighbouring commercial/industrial premises shall not give rise to a sound pressure level that exceeds LAeq 65dB(A) day time/night time.
 - (iv) For assessment purposes, the above LAeq sound levels shall be assessed over a period of 10-15 minutes and adjusted in accordance with EPA guidelines for tonality, frequency weighting, impulsive characteristics, fluctuations and temporal content where necessary.

Note "sensitive" positions should be selected to reflect the typical use of a property (i.e. any outdoor areas for day and evening but closer to the façade at night time), unless other positions can be shown to be more relevant.

- Prior to the issue of the relevant Construction Certificate, plans and specifications for the storage room for waste and recyclable materials shall be submitted to the Principal Certification Authority. The garbage and recycling storage area shall be adequately ventilated, roofed and screened from public view. The floor shall be made of an impervious surface, drained to sewer and include a dry arrestor pit with a removable basket. Washing facilities shall be provided within close proximity to the garbage and recycling storage area.
- Prior to the issue of the relevant Construction Certificate, the electrical kiosk and fire booster assembly (and similar utilities) must be located in an unobtrusive location

- away from vehicle and pedestrian entrances to the property and is to comply with Ausgrid and the Fire Brigade Requirements..
- 59 <u>Prior to the issue of the relevant Construction Certificate,</u> an independent review by an appropriately qualified person demonstrating consistency of the development with the Crime Prevention Through Environmental Design (CPTED) principles and strategies to be submitted to the Principal Certifying Authority.
- A Site Audit Statement will be required for this site prior to the issue of any Occupation Certificate. To ensure the necessary assessment and remediation is completed a NSW Environment Authority (EPA) Accredited Site Auditor shall be appointed to the site prior to the commencement of any remediation works, excavation or commencement of works at the site. The Site Auditor shall review and endorse any additional investigation and remediation proposed prior to the commencement of any works. Evidence of this appointment shall be provided to council prior to the issue of any construction certificate.
- Prior to the issue of any Construction Certificate, a correctly scaled Tree Retention Plan shall be submitted to and approved by the Bayside Council's Landscape Architect, which clearly indicates the 13 trees to be retained in the Westfield Drive setback and references the Arborist report revised arboricultural impact assessment for the proposed residential development UB5E prepared by Tree Wise Men dated March 2017. These trees are to be retained as identified as trees 24, 27-30, 52-55 and 57-61 within this report.
 - a) 27 to 29 3 x 17 metre high E. microcorys
 - b) 30 18m high E. punctata
 - c) 47 and 50 2 x 15 metre high E.botryoides
 - d) 51 and 52 2 x 17 metre high E. microcorys
 - e) 54 to 58 5 x 16m high E. microcorys

(Modified via DA-16/143/07)

- Prior to the issue of any Construction Certificate, the Applicant shall provide a Tree Impact Assessment and Management Plan for approval by Council's Tree Management Officer and is required to address the following as a minimum:
 - Demonstrate how the proposal complies with AS4970-2009 Protection of Trees on Development Sites for trees to be retained and AS4373-2007 -Pruning of Amenity Trees in respect to canopy pruning;
 - b) Description of measures to ameliorate potential impacts to trees to be retained. This is to include measures to ameliorate potential impacts that the proposed building works and piling/shoring Clearance Line may have on the trees to be retained in the Westfield Drive setback and evidence that the trees can be retained without detrimental impact;
 - Address how the trees are to be managed during construction to negate any impacts to the trees;
 - Recommendations for remedial or other works to the trees during or post construction including watering regime, fertilising etc;
 - e) Supporting evidence such as photographs.
- Prior to the issue of any Construction Certificate, the detailed sections through the Westfield Drive setback are to be revised to delete the 1-1.3 metre increase in soil levels throughout which is not supportive of tree retention. The natural ground line/soil levels must be maintained throughout the setback. Revised sections 1 and 2 are

- required to indicate this and the landscape plan, construction management plan and any other detailed plan updated accordingly. The sections are to be submitted to and approved by the Bayside Council's Landscape Architect.
- The landscape areas shown on the plans by Urbis, Issue D, shall be the subject of detailed construction level documentation to be submitted to and approved by the Bayside Council's Landscape Architect prior to the issue of the relevant Construction Certificate. The plans shall address the following:
 - (a) Thirteen (13) The existing significant canopy trees in the Westfield Drive setback identified within the Revised Arboricultural Impact Assessment for Proposed Residential Development – UB5E prepared by Tree Wise MMen dated March 2017 and shown on the Tree Retention Plan approved by Council in respect of the satisfaction of Condition No. 61 of this consent shall be retained and protected. These trees are as follows:

27 to 29 – 3 x 17 metre high E. microcorys 30 – 18m high E. punctate 47 and 50 – 2 x 15 metre high E. botryoides 51 and 52 – 2 x 17 metre high E. microcorys 54 to 58 – 5 x 16m high E. microcorys

(Modified via DA-16/143/07)

(b) The above trees shall be clearly transposed to the landscape plan and numbered to correspond with the Arborist report Revised Arboricultrual Impact Assessment for Proposed Residential Development – UB5E prepared by Tree Wise Men dated March 2017.

(Modified via DA-16/143/07)

- (c) Existing ground levels are to be maintained in the Westfield Drive setback. Levels shall not be altered.
- (d) The landscape plan shall indicate all proposed utility lines within the setbacks to ensure there is no conflict with retained trees or proposed trees. If a proposed utility line conflicts with an existing tree the utility will be required to be relocated
- (e) A planting/landscape design that includes not only tree retention but new significant, large canopy tree plantings on all frontages of the site, and in particular the Bunnerong Roadsetback and through to the Westfield Drive setback. There shall be a variety of tree heights in all setbacks inclusive of small, medium and large canopy trees with the majority (80-90%) being evergreen species. Species should be shade tolerant where appropriate. All trees must be of an appropriate scale to complement and ameliorate the built form and massing and to pedestrianise setbacks and entries and make use of feature or specimen trees. Feature/specimen trees are favoured suitable to the residential setting and to visually enhance the Bunnerong Road setback and soften buildings as a component of the streetscape and public domain.
- (f) Replacement large canopy trees are required in the Bunnerong Roadsetback, minimum pot size 1000 litre. Ex-ground stock may be required. E. punctata is not to be specified.
- (g) Shrubs of varying height shall be used throughout all setbacks including at the base of buildings to visually ground buildings and screen edges and facades. Lawn shall be minimized in favour of extensive mass planted areas using shrubs of varying heights and shade tolerant species as suitable. Feature/specimen architectural type planting is favoured and plants suitable to the residential setting and the visually enhance the Bunnerong Road

- building setback as a significant component of the streetscape and public domain
- (h) A planting plan to depict all plant locations, groupings and centres/spacings. There is to be a dense, layered planting of trees and shrubs of varying height and feature in all landscaped areas.
- (i) Landscape specifications detailing soil and mulch finishes, root barriers, irrigation, edge treatments and other landscape hardworks/materials such as retaining walls and paving as well as maintenance periods. Sectional construction details.
- (j) Details for all fencing, retaining walls or structures visible within the public domain of all frontages – sectional details and materials. NOTE: the use of retaining walls and pavements in the Bunnerong Road setback shall be minimized to allow ample lateral space for root establishment or large trees without confinement by barriers. Details of other landscape elements such as furniture and pedestrian amenity/security lighting within street setbacks.
- (k) All setbacks are to be under common ownership to allow survival and maintenance of the landscape scheme long term. Private terraces are outside the landscape setbacks.
- (I) All setbacks are to be automatically irrigated.
 - Landscaping shall be installed in accordance with the Council approved landscape plan only, prior to the issue of an Occupation Certificate. The landscaped areas on the property shall be maintained at all times in accordance with the final Council approved landscape documentation, the conditions of consent and Council's Landscape Technical Guidelines at all times
- Prior to the issue of the relevant Construction Certificate, a public domain improvements plan shall be submitted for approval by Bayside Council's Landscape Architect for Bunnerong Road and Westfield Drive, inclusive of the landscaped island at the base of the Westfield exit ramp. The plan shall also include the internal roads public domain details to the west and north of the site. The plan shall include but not be limited to street tree planting (in accordance with the STMP), footpath paving, street tree pit treatments and tree guards, street furniture such as seats, bollards and bike racks and ground level shrub landscaping. The plan shall be in accordance with any Council public domain detail, specification or requirement. NOTE: Minimum pot size for street trees is 400 litre. Civil drawings shall include levels and detailed footpath construction sections.
- The Applicant is to submit payment for a Tree Preservation Bond of \$170,000.00 to ensure protection of the trees listed in the arborist report in Condition No. 1 above from damage during construction. The duration of the Bond shall be for a period of 24 months after issue of the Occupation Certificate. At the completion of the 24 month period the Tree Preservation Bond shall be refunded pending a satisfactory inspection of retained trees by Council. If a tree was found to be in decline, damaged (including roots), dead, excessively pruned or removed without Council permission or, if tree protection measures were not satisfied at any time during construction, then all or part thereof of the bond shall be forfeited.
- The Applicant is to submit payment to Council enter into an agreement with Council, to be prepared by Council's solicitors, at the applicant's expense, providing for the lodgement of a bond in the sum of \$40,000.00, for a period of five (5) years twelve (12) months after practical completion of landscape works, to ensure establishment and maintenance of the landscaping in accordance with the plan. The lodgement of the bond shall not preclude the Council from initiating legal proceedings,

should the landscaping not be established and maintained in accordance with this Consent, and is not intended to limit the period of compliance with the landscaping requirements to *five* (5) years twelve (12) months.

The bond may be applied by Council to the establishment and maintenance of the landscaping in accordance with the plan and Council should be entitled to recover any monies expended in excess of the bond in establishing, re-establishing, or maintaining the landscape in accordance with the plan.

The applicant is to note that the bond specified under this condition must be remitted to Council, either in the form of monies held in trust, or as a certified banker's guarantee, together with a sum of \$550 (cash or cheque) for disbursements associated with the preparation of the agreement, prior to the issue of an Occupation Certificate by the Principal Certifying Authority.

(Modified via DA-16/143/05)

CONDITIONS WHICH MUST BE SATISFIED DURING WORKS

- 68 Construction operations shall comply with the following:
 - (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.
 - (e) Concrete trucks and trucks 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 be conducted in a suitable off-street area where wash waters do not enter the stormwater system or enter Council's land.
 - (f) The vehicular entry/exits to the site must be protected from erosion and laid with a surface material which will not wash into the street drainage system or watercourse.
 - (g) All vehicles transporting soil, sand or similar materials to or from the site shall cover their loads at all times.
- Vibration levels induced by the demolition activities shall not exceed levels listed in Standard DIN 4150-3 (1999-02), Structural vibration Part 3 Effects of vibration on structures Table 12-7. The operation of plant and equipment must not give rise to the transmission of vibration nuisance or damage to other premises. Prior to commencement a specific vibration monitor shall be set up to monitor and record the vibration levels affecting surrounding buildings.
- 70 Vibration caused by excavation and construction at any residence or structure outside the site must be limited to: a) for structural damage vibration, German Standard DIN

- 4150 Part 3 Structural Vibration in Buildings. Effects on Structures; and b) for human exposure to vibration, the evaluation criteria set out in the Environmental Noise Management Assessing Vibration: a Technical Guideline (Department of Environment and Conservation, 2006).
- During demolition, excavation and construction, care must be taken to protect Council's infrastructure and surrounding buildings, 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 demolition, excavation and construction. The area fronting the site and in the vicinity of the development shall also be make safe for pedestrian and vehicular traffic at all times. Any damage to Council's infrastructure and surrounding buildings (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.
- 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.
- 73 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.
- 74 Any material containing asbestos found on site during the demolition process shall be removed and disposed of in accordance with:
 - SafeWork 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 Operations (Waste) Regulation 2014.
 - d) NSW Environment Protection Authority Waste Classification Guidelines 2014.
- The development is to be constructed to meet the following construction noise requirements:
 - a) Construction Noise
 - Noise from construction activities associated with the development shall comply with the NSW Environment Protection Authority's Interim Construction Noise Guideline and the Protection of the Environment Operations Act 1997.
 - b) Level Restrictions
 - i) Construction period of 4 weeks and under:
 - 1 The L10 sound pressure level measured over a period of not less than 15 minutes when the construction site is in operating must not less than 15 minutes when the construction site is in operating must not exceed the background level by more than 10dB(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 06:00pm;

ii) Saturday 07:00am to 03:00pm

iii) No Construction to take place on Sundays or Public Holidays.

- d) Silencing
 - All possible steps should be taken to silence construction site equipment.
- 76 The principal contractor or owner builder must install and maintain water pollution, erosion and sedimentation controls in accordance with:
 - (a) The Soil and Water Management Plan if required under this consent;
 - (b) "Managing Urban Stormwater Soils and Construction" (2004) ('The Blue Book'); and
 - (c) Protection of the Environment Operations Act 1997.
- 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. All work on site shall cease until the council is notified and appropriate measures to assess and manage the contamination in accordance with any relevant NSW EPA adopted guidelines is completed by an appropriately qualified and experienced environmental consultant.
- 78 All remediation work must be carried out in accordance with:
 - a) NSW Office of Environment and Heritage (OEH) 'Contaminated Sites Guidelines for Consultants Reporting on Contaminated Sites';
 - NSW Environment Protection Authority (NSW EPA) guidelines under the Contaminated Land Management Act 1997;
 - State Environmental Planning Policy 55 (SEPP55) Remediation of Land;
 and
 - d) The Remedial Action Plan 'Updated Remediation Action Plan Proposed Mixed Use / Medium Density Residential Zone, Part Lot 1 in D.P. 776089, Westfield Drive, Eastgardens, NSW' prepared by Douglas Partners, Project 71631.12, dated September 2013 and
 - e) The 'Proposed Remediation Action Plan Amendment Revision 1 Part 130 150 Bunnerong Road, Pagewood' prepared by Douglas Partners, Project 85009 Rev 1 dated 2 September 2015.
- 79 The management of potential and actual acid sulfate soils shall be conducted in accordance with all recommendations within the 'Acid Sulfate Soils Management Plan 130-150 Bunnerong Road, Pagewood, NSW', Reference CES130805-MG-AD by Consulting Earth Scientists dated 21 January 2016.
- For any water from site dewatering to be permitted to go to stormwater, 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 the groundwater does not meet these guideline levels a Trade Waste permit from Sydney Water must be sought to put the groundwater to sewer.
- 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.
- 82 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.
 - (d) All imported fill shall be <u>accompanied by documentation from the supplier</u> which certifies that the material has been analysed and is suitable for the proposed land use.
- During demolition, excavation, construction and any associated delivery activities, access to the site shall be available in all weather conditions. The area shall be stabilised and protected from erosion to prevent any construction-related 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 lands.
- Results of the monitoring of relevant field parameters pertaining to conditions of this consent 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.
- An experienced Landscape Contractor shall be engaged to undertake the landscape installation and shall be provided with a copy of both the final approved landscape drawing and conditions of approval to satisfactorily construct the landscape to Council requirement.
- To ensure satisfactory growth and maintenance of the landscaping, a fully automatic drip irrigation system is required in all landscape areas, including setbacks, installed by a qualified landscape contractor. The system shall provide full coverage of all planted areas with no more than 300mm between drippers, automatic controller and backflow prevention device and shall be connected to a recycled water source, where provided. Irrigation shall comply with both Sydney Water and Council requirements as well as Australian Standards, and be maintained in effective working order at all times.
- 87 In order to ensure that the trees listed in the arborist report in Condition No. 1 above are protected during all stages of construction, and their health and structural stability ensured, the following is required:
 - a) All TPZ's are a "No-Go" zone. There shall be no access, no stockpiling, storage or sorting of waste or building materials, no construction work, no concrete mixing, no washing down of concrete mixers or tools, no chemicals mixed/disposed of, no excavation or filling, no service trenching. Any unavoidable work within the fenced zone shall be under the direction of Council's Tree Officer.
 - b) Where unavoidable foot access is required in the TPZ, provide temporary access with timber sheets to minimise soil compaction, spillage or root damage.

- c) Comply with all recommendations of the Tree Management Plan to be submitted as a condition of approval and any other Council requirement.
- d) Excavation within the TPZ and within 3 metres outward of the canopy dripline of any tree to be retained shall be carried out manually using hand tools to minimise root damage or disturbance.
- e) Tree roots 35mm in diameter or greater that require pruning shall be done only under the direction of Council's Tree Officer after a site inspection.
- f) It is the Applicant's responsibility to ensure that there is no damage to the canopy, trunk or root system (including the surrounding soil) of any tree to be retained. There shall be no canopy or root pruning unless approval has been granted by Council's Tree Officer under separate application. Approved pruning shall be undertaken by a qualified Arborist in accordance with AS 4373
- g) Masonry boundary fencing/walls or built structures shall not be located within the setback. If unavoidable they are to be to Council approval and be of piered or bridged construction to minimise damage to major or structural tree roots. Trench or strip footings are not permitted. If a tree root 35mm diameter or greater is in the location of a pier and the root cannot be cut without compromising the tree (after Council inspection and advice), the pier will need to be relocated and the root bridged.
- There shall be no pavements or change in levels in the Westfield Drive setback.
- There shall be <u>no trenching for new subsurface utilities</u> or the location of new overhead services within the primary root zone or canopy of any of the trees to be retained in the Westfield Drive setback. Any utilities close proximity to trees must accommodate tree roots without damage or pruning.
- j) The Applicant shall undertake any tree maintenance/remedial pruning as required by Council at any time during or at the completion of construction.

If there is any contravention of these tree preservation conditions, or a tree was found to be damaged (including roots), in decline, dead or pruned without permission, then Council may claim all or part of the lodged security bond prior to its release as well as require remedial pruning work. Epicormic growth is evidence of root damage.

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

- Prior to the issue of the relevant Occupation Certificate, the floor surface of the entry, dining room and kitchen floor and internal storage areas are to be water-resist for all two and three bedroom apartments.
- 89 <u>Prior to the issue of the relevant Occupation Certificate,</u> car parking is to be allocated as follows:
 - (a) Minimum 315 319 residential spaces
 - (b) 20 21 visitors spaces
 - (c) 1 car share space within the car park.

(Modified via DA-16/143/02)

90 Prior to the issue of the relevant Occupation Certificate, at least 41 bicycle spaces are to be provided in the car park.

- Any damage not shown in the photographic survey submitted to Council as per the submitted report in Condition No. 45 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 the damage deposit.
- 92 Prior to the issue of the relevant 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 all relevant standards.
- 93 Prior to the issue of the relevant Occupation Certificate, the applicant shall carry out the following works:
 - a) On Bunnerong Road, adjacent to development, reconstruct existing kerb and gutter for the full length of the property in accordance with Council's Infrastructure Specifications, and
 - On Bunnerong Road, adjacent to development, demolish existing concrete footpath and construct new footpath as per Council's Infrastructure and Landscape Architect specifications.
 - c) On Bunnerong Road, adjacent to development, demolish existing Stormwater Inlet Pit and construct new Stormwater Inlet Pit with a 2.4metre Lintel and a Steel Galvanised Grate, as per Council's Infrastructure specifications, and
 - d) On Bunnerong Road, adjacent to development, demolish existing road pavement and reconstruct road pavement full width as per Council's Infrastructure and Pavement Engineer's specifications.
- 94 Prior to the issue of the relevant 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.
- Prior to the issue of the relevant Occupation Certificate, a restriction on Use of Land and Positive Covenant(s) shall be imposed on the development. The following covenants shall be imposed under Section 88(E) of the Conveyancing Act 1919 and lodged with the NSW Land and Property Information:
 - (a) Restriction on Use of Land for On-Site Detention System. Refer to Appendix B of the SMTG for suggested wording, and
 - (b) Restriction on Use of Land for Stormwater Quality Improvement Device. Refer to Appendix E of the SMTG for suggested wording.

The terms of the 88E instruments are to be submitted to Council for review and approval and Proof of registration at the Lands and Property Information Office shall be submitted to the Principal Certifying Authority and Council prior to occupation.

- 96 A report prepared by a qualified air quality/mechanical engineer certifying that the mechanical ventilation/exhaust system as installed complies in all respects with the design and operation standards of AS 1668 Mechanical Ventilation and Air Conditioning Codes, and the relevant provisions of the Protection of the Environment Operations Act 1997 shall be submitted to Council within 21 days of the installation of the system and prior to the occupation of the premises.
- 97 Evidence of a Sydney Water permit or consent for discharge of wastewater to the sewer shall be submitted to the Principal Certifying Authority prior to the issue of the

<u>interim Occupation Certificate</u>. Where a permit or consent may not be required from Sydney Water certification shall be provided verifying that any discharges to the sewer will meet specific standards imposed by Sydney Water.

- At the completion of landscaping on the site, the Applicant is required to obtain a Certificate of Compliance from the Landscape Consultant/Contractor to certify that the landscaping has been installed in accordance with the Council approved landscape plan. The Certificate is to be submitted to Bayside Council prior to the issue of the Occupation Certificate. The contractor shall be engaged weekly for a minimum period of 52 weeks from final completion of landscaping for maintenance and defects liability, replacing plants in the event of death, damage, theft or poor performance. After that time regular and ongoing maintenance is required.
- 99 The Applicant is to submit payment of a New Street Tree Maintenance Bond of \$25,000.00. The duration of the Bond shall be limited to a period of 12 months after final Council approval of planting of the new street trees. At the completion of the Bond period the Bond shall be refunded pending an inspection of the trees by Council. If a tree is found to be dead, pruned or dying and will not recover Council will forfeit all or part of the bond to replace or maintain the tree/s, unless the Applicant undertakes this work under instruction from Council.

New street trees shall be sourced from a reputable supplier that grows to NATSPEC/Australian Standard and located and installed in accordance with the Council approved public domain plan. Two hold point inspections by Council's Tree Officer is required:

- a) prior planting trees to ensure plant stock is suitable and
- b) post planting prior to the maintenance and bond period commencing.
- 100 The condition to be inserted under the heading of <u>prior to Issue of Occupation</u>
 Certificate is to read:
 - a) That before entering a purchase/lease/occupancy agreement, or individual units are on-sold, all tenants and occupiers of the development are to be advised by the owner of the building that residents are not eligible to participate in on-street resident parking schemes.
 - b) Prior to the issue of the occupation certificate, a sign to this effect shall be located in a prominent place, to Council's satisfaction, such as a directory board or notice board, where it can easily be observed and read by persons entering the building.
 - c) Where a building is to be Strata Subdivided, a condition should be placed in the by-laws advising residents that they are not eligible to participate in onstreet resident parking schemes.
- 101 A Stage 4 Site Validation Report (SVR) shall be prepared by a suitably qualified contaminated land consultant and shall be in accordance with:
 - (a) NSW Office of Environment and Heritage (OEH) 'Contaminated Sites Guidelines for Consultants Reporting on Contaminated Sites';
 - (b) NSW Environment Protection Authority (NSW EPA) approved guidelines under the Contaminated Land Management Act 1997; and
 - (c) State Environmental Planning Policy 55 (SEPP55) Remediation of Land.

The site validation report shall provide a notice of completion of remediation works, whether there are any ongoing site management requirements and a clear statement on the suitability of the likely proposed site use. The report shall be submitted to the Principal Certifying Authority (and the Council if the Council is not the Principal

<u>Certifying Authority</u>). The report is to be submitted after completion of remediation works and prior to the issue of any occupation certificate.

To ensure that the site is suitable for the proposed use, a Site Audit Statement (SAS) completed by an accredited site auditor under the Contaminated Land Management Act 1997 shall be submitted to Council for clearly demonstrating that the site is suitable for the proposed development.

Any conditions imposed on the SAS shall form part of this consent. The accredited site auditor shall provide Council with a copy any Site Audit Report (SAR) and Site Audit Statement (SAS) prior to the release of any applicable Occupation Certificate. In circumstances where the SAS conditions (if applicable) are not consistent with the consent, a Section 96 application pursuant to the *Environmental Planning & Assessment Act 1979* shall be submitted to ensure that they form part of the consent conditions.

CONDITIONS WHICH MUST BE SATISFIED DURING THE ONGOING USE OF THE DEVELOPMENT

- 103 The use of studies as bedrooms is prohibited.
- 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.
- New street trees shall be maintained by the Applicant/Owner/Strata Corporation for a 12 month defects period after final Council approval of planting. Maintenance includes twice weekly watering to sustain adequate growth, bi-annual fertilising, mulch replenishment every 3 months minimum and weekly weed removal around the base but does not include trimming or pruning the trees under any circumstances.
- Ongoing maintenance of grass nature strips shall be undertaken by the occupier, strata or owner. Maintenance includes mowing, watering and maintaining an even coverage of grass. Maintenance <u>does not include</u> 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.
- The operation of the premises shall be conducted in such a manner as not to interfere with or materially affect the amenity of the neighbourhood by reason of noise, vibration, odour, fumes, vapour, steam, soot, ash, dust, waste water, waste products, grit, oil, or otherwise
- 108 The use of the premises shall not give rise to air impurities in contravention of the Protection of the Environment Operations Act 1997. Waste gases released from the premises shall not cause a public nuisance nor be hazardous or harmful to human health or the environment.
- 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.
- A person must not cause or permit an air conditioner to be used on residential premises in such a manner that it emits noise that can be heard within a habitable

room in any other residential premises (regardless of whether any door or window to that room is open):

- (a) Before 8 am or after 10 pm on any Saturday, Sunday or public holiday, or
- (b) Before 7 am or after 10 pm on any other day.
- The use of the premises shall not give rise to any of the following when measured or assessed at "sensitive" positions within any other property. These "sensitive" positions should be selected to reflect the typical use of a property (ie any outdoor areas for day and evening but closer to the façade at night time), unless other positions can be shown to be more relevant.

The operation of all plant and equipment when assessed on any residential property shall not give rise to a sound pressure level that exceeds LAeq 50dB(A) day time and LAeq 40 dB(A) night time.

The operation of all plant and equipment when assessed on any neighbouring commercial/industrial premises shall not give rise to a sound pressure level that exceeds LAeq 65dB(A) day time/night time.

For assessment purposes, the above LAeq sound levels shall be assessed over a period of 10-15 minutes and adjusted in accordance with EPA guidelines for tonality, frequency weighting, impulsive characteristics, fluctuations and temporal content where necessary.

The applicant being informed that this approval shall be regarded as being otherwise in accordance with the information and particulars set out and described in the Development Application registered in Council's records as Development Application No. 16/143 dated as 17 August 2016 and as further modified by DA-16/143/03 dated 22 December 2017 and as further modified by DA-16/143/02 dated 6 July 2017 and as further modified By DA-16/143/07 dated 18 June 2018 and that any alteration, variation, or extension to the use, for which approval has been given, would require further approval from Council. (DA-16/143/03) (DA-16/143/02)(DA-16/143/07)

(Deleted via DA-16/143/05)

Statement of Environmental Effects Section 96 Application

130-150 Bunnerong Road, Pagewood (UB5E)

Condition 67 (Landscape agreement and bond)

28 February 2018



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1 Introduction

This Statement of Environmental Effects (SEE) has been prepared in support of a Section 96 application to delete Condition 67 of DA2016/18.

This Statement:

- · Describes the site and its surrounding area;
- Details the nature of the proposed development; and
- Undertakes an assessment of the proposal under the heads of consideration in Section 79C
 (1) of the Environmental Planning and Assessment Act, 1979.

The conclusion is reached that the proposal is acceptable with regard to all relevant planning issues.

Page 1

2 Site and Surroundings

2.1 The Site

The site comprises an L-shaped parcel of land with an area of 103,547sqm at 130-150 Bunnerong Road, Pagewood within the former City of Botany Local Government Area (LGA). It is legally described as Lot 2 in DP 1187426. The land was formally known as Virginia Park and was previously occupied by industrial uses associated with the manufacturing operations of British American Tobacco Australasia (BATA). It was rezoned in 2013 to support mixed use development including high density residential uses.

The site has frontages to Banks Avenue to the west, Westfield Drive to the south, Bunnerong Road to the east and Heffron Road to the north. The site borders land zoned for industrial purposes and currently occupied by BATA's remaining site operations.

The site has been cleared of its former industrial buildings and construction of the approved development under DA2017/1022 has commenced.

2.2 Surrounding Area

The surrounding land uses in the vicinity of the sites comprise:

- · North: Low density residential uses. Pagewood shops are located to the north-east.
- · East: Low density residential uses.
- South: Westfield Eastgardens shopping centre. The servicing area of the shopping centre borders the site's southern boundary. Commercial and industrial uses are located further to the south-west.
- · West: Bonnie Doon Golf Course and associated club house.

2.3 Existing Consent

Development Application 10730 of 2014 for a Stage 1 concept proposal to allow for the comprehensive redevelopment of the site for mixed use was approved by the Land and Environment Court on 7 August 2015. Condition 7 of the consent states the following:

"(7) Separate Stage 2 and future development consent shall be sought for demolition of any structures and any civil and built development."

In effect, the Stage 1 consent establishes the development parameters for the future development of the site but it does not allow for the construction of buildings or works associated with the project. All physical work will be the subject of separate development applications lodged with Council.

In accordance with Condition 7 of the Stage 1 consent, and the provisions of Clause 83B(3) of the EP&A Act, DA16/143 was lodged with the former Botany Bay City Council for assessment. On 9 June 2016, the former Joint Regional Planning Panel issued its consent (DA16/143) for the following development:

"Stage 2 Development Application for the cosntruciton of a residential flat building consisting of one level of basement car parking sleeved with apartments, and 2 x 6 storey, 1 x 8 storey and 1 x 16 storey towers above."

Development has commenced in accordance with the above consent.

Page 2

3 Proposed Modification to DA16/143

3.1 Proposed Modification

The proposed modification involves the deletion of Condition 67. The condition imposes a requirement on the Applicant to enter into a legal agreement with Council that would facilitate the payment of a bond, monies from which may be drawn upon by Council to establish, re-establish or maintain landscaping. This is not a valid condition. All landscaping depicted on the approved landscaping plan relates to land that is within, and will be remain entirely within private ownership.

Condition 67 is proposed to be deleted in its entirety.

Bold denotes new text, deleted text shown in strikethrough:

67 The Applicant is to enter into an agreement with Council, to be prepared by Coouncil's solicitors, at the applicant's expense, providing for the lodgement of a bond in the sum of \$40,000.00, for a period of five (5) years after practical completion of landscape works, to ensure establishment and maintenance of the landscaping in accordance with the plan. The lodgement of the bond shall not preclude the Council from initiating legal proceedings, should the landscaping not be established and maintained in accordance with this Consent, and is not intended to limit the period of compliance with the landscaping requirements to five (5) years.

The bond may be applied by Council to the establishment and maintenance of the landscaping in accordance with the plan and Council should be entitled to recover any monies expended in excess of the bond in establishing, re-establishing, or maintaining the landscape in accordance with the plan.

The applicant is to note that the bond specified under this condition must be remitted to Council, either in the form of monies held in trust, or as a certified banker's guarantee, together with a sum of \$550 (cash or cheque) for disbursements associated with the preparation of the agreement, prior to the issue of an Occupation Certificate by the Principal Certifying Authority.

Note: Condition 98 of DA16/143 includes requirements for the completion and maintenance of landscaping.

4 Section 96 Assessment

It is considered that the development is substantially the same as the original approval.

The proposal seeks to delete a condition in the consent. No physical change is proposed to the approved development.

On this basis, the proposed amendments are considered to constitute substantially the same development and are, therefore, accessible under Section 96 of the *Environmental Planning and Assessment Act*, 1979.

5 Environmental Planning Assessment

5.1 Section 79C(1)(a)(i): Environmental Planning Instruments

5.1.1 Botany Bay Local Environmental Plan 2013

Part 2 of the *Botany Local Environmental Plan 2013* (LEP) identifies that the subject site is zoned B2 Local Centre. The proposal is permitted in the zone with consent from Council.

There are no other clauses of the LEP that are particularly relevant in the assessment of the proposal.

5.2 Section 79C(1)(a)(ii): Draft Environmental Planning Instruments

There are no draft environmental planning instruments that apply to the subject site.

5.3 Section 79C(1)(a)(iii): Development Control Plans

5.3.1 Botany Development Control Plan 2013

Botany Development Control Plan 2013 (DCP) applies to the subject site. The proposed amendments do not alter the development's compliance with the provisions of the DCP.

5.4 Section 79C(1)(a)(iiia): Planning Agreements

Not applicable.

5.5 Section 79C(1)(a)(iv): Regulations

The DA has been made in accordance with the requirements contained in Clause 50(1A) of the *Environmental Planning and Assessment Regulation 2000.*

5.6 Section 79C(1)(b): Likely Impacts

There are no impacts arising from the proposal.

5.7 Section 79C(1)(c): Suitability of the Site

There are no environmental constraints on the site that would impede the proposal or render it unsuitable for the site.

5.8 Section 79C(1)(d): Submissions

Council will consider submissions at the close of the exhibition period.

5.9 Section 79C(1)(e): The Public Interest

Given the absence of any demonstrable adverse impacts resulting from the proposal it is considered that the public interest would be best served by approval of the application under consideration.

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6 Conclusion

The proposal seeks Council's consent to amend conditions 67 of DA2017/1022 which relates to Urban Block 4, 130-150 Bunnerong Road, Pagewood.

The proposal satisfies the relevant heads of consideration under Section 79(C) of the *Environmental Planning & Assessment Act, 1979.*

It is considered that the proposal provides an appropriate response to the planned development of the site and will assist in the orderly and economic development of the land.

The development is substantially the same as when originally approved and will have no implications upon the public domain.

Accordingly, the application should be recommended for approval.



Bayside Local Planning Panel

23/10/2018

Item No 6.5

Application Type S4.56 Modification
Application No DA-2015/173/C

Lodgement Date 03/02/2018

Property 105 Ramsgate Road, Ramsgate

Ward Port Botany

Owner Investram Holdings Pty Ltd

Applicant Archivis Pty Ltd

Proposal Modification to add one(1) storey and one(1) unit to the

approved development to create a five(5) storey mixed use building containing a total of eight(8) residential units and one(1) commercial unit and changes to facade design

No. of Submissions One

Cost of Development \$2,625,715

Report by Michael McCabe, Director City Futures

Officer Recommendation

- That Development Application DA-2015/173/C, being a Section 4.56 application to amend Development Consent Number DA-2015/173, for the demolition of existing structures and the construction of a mixed use development containing seven (7) residential units and one commercial unit at 105 Ramsgate Road, Ramsgate be APPROVED and the consent amended in the following manner:
 - A. By changing the description of the approved development to include the additional dwelling as follows:

Demolition of existing structures and construction of a five(5) storey mixed use building containing eight(8) residential units and one(1) commercial unit with basement and at grade car parking.

- B. By amending the following conditions:
 - The development must be implemented in accordance with the plans listed below, the application form and on any supporting information received with the application, except as may be amended in red on the attached plans and by the following conditions.

Plans drawn by Archivis

S96 2.99 Basement Floor Plan C 23.01.18 S96 2.00 Ground Floor Plan B 23.01.18 S96 2.01 First (1st) Floor Plan B 23.01.18 S96 2.02 Second (2nd) Floor Plan B 23.01.18 S96 2.03 Third (3rd) Floor Plan B 23.01.18 S96 2.04 Fourth (4th) Floor Plan D 23.08.18

Item 6.5 360

S96 2.05 Roof Plan D 26.08.18 S96 4.01 Elevations and Materials Schedule D 26.08.18

5. The development must be implemented and all BASIX commitments thereafter maintained in accordance with BASIX Certificate Number (589553M_03) other than superseded by any further amended consent and BASIX certificate.

Note: Clause 145(1)(a1) of the Environmental Planning & Assessment Regulation 2000 provides: A certifying authority must not issue a construction certificate for building work unless it is satisfied of the following matters: -

(a1) that the plans and specifications for the building include such matters as each relevant BASIX certificate requires.

Note: Clause 154B(2) of the Environmental Planning & Assessment Regulation 2000 provides: "A certifying authority must not issue a final occupation certificate for a BASIX affected building to which this clause applies unless it is satisfied that each of the commitments whose fulfilment it is required to monitor has been fulfilled."

Note: For further information please see http://www.basix.nsw.gov.au.

10. Parking spaces shall be allocated to residential apartments / non-residential units in the development in the following manner and this shall be reflected in any subsequent strata subdivision of the development:

Allocated Spaces	Requirement / rates
Studio apartments, 1 bedroom apartments and 2 bedroom apartments	2x 1 bedroom units = 2 spaces 6 x 2-bedroom units = 6 spaces
Commercial	1 dedicated space
Shared commercial/ accessible/ loading bay	1 ground floor space

The shared commercial/accessible/loading bay space shall be labelled as common property on the final strata plan for the site.

Note: This parking allocation condition applies to any Strata Certificate issued with respect to a Consent issued in accordance with Section 81 (1)(A) of the Environmental Planning and Assessment Act 1979 or a Complying Development Certificate issued in accordance with Part 6 of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

32. The building shall be constructed to be structurally adequate to allow for the removal of the section of wall marked for removal on drawing number S96 2.00 Revision B dated 23.1.18, so as to facilitate the future potential vehicular access to Lot 1 in DP241356. Details demonstrating compliance with this requirement shall be submitted to the Principal Certifying Authority (PCA) prior to the issue of any Construction Certificate.

35. A Section 94 contribution of \$122,150.05 shall be paid to Council prior to the issue of any construction certificate. Such contributions are only used towards the provision or improvement of the amenities and services identified below. The amount to be paid is adjusted at the time of payment, in accordance with the contribution rates contained in Council's current Adopted Fees and Charges. The contribution is to be paid prior to the issue of any compliance certificate /subdivision certificate / construction certificate for works above the floor level of the ground floor. (Payment of the contribution is not required prior to any separate construction certificates issued only for demolition, site preparation works and the construction of basement levels). The contribution is calculated from Council's adopted Section 94 contributions plan in the following manner:

Open Space \$18,804.63 Community Services & Facilities \$3,283.26 Town Centre & Streetscape Improvements \$1,697.61 Pollution Control \$4.869.15 Local Infrastructure and facilities \$93,425.78 Plan Administration & Management \$69.62

Copies of Council's Section 94 Contribution Plans may be inspected at Council's Customer Service Centre, 444-446 Princes Highway, Rockdale NSW 2216.

- 38. A sample board of the proposed materials shall be submitted to Council's Manager Development Services for approval prior to the issue of the Construction Certificate. The building shall be constructed in accordance with the approved materials.
- 49. The following amendments to the landscape plans must be adhered to:
 - a. Any existing conflicts or discrepancies between the stormwater plan in terms of pit locations, particularly in the rear yard, must be resolved and correctly indicated on an amended Landscape Plan.
 - b. Stormwater and drainage systems are not to be located in, or under those areas shown as landscaped beds, or where existing or proposed trees are located.
 - c. Landscape levels, planter details, proposed soil depths and a full plant schedule (including proposed plant numbers) as per the requirements of the RDCP 2011 shall be shown.
 - d. The front portion of the site affected by the road widening reservation must consist of grass.
 - e. The fencing details (including the screen/fencing around the fire hydrant booster system) and materials must be as follows:
 - A maximum 1.8m high fence of a solid material to be provided along the southern boundary to prevent lights spill to adjacent dwelling.
 - A maximum 1.8m high fence of a solid material (to match the above) to be provided along the eastern boundary within the ground level motorcycle parking and easement area.
 - The fire hydrant booster is to be integrated into the fencing detail.

- f. A minimum soil depth of 1000mm is required for planted areas (other than turf) on the fourth storey landscaped area with direct maintenance access from unit 7.
- g. The existing Council street trees located on the nature strip at the front and side of the site are to be retained and protected.
- h. Planting of Sygygium Varieties (Lilly Pilly) (min. 45 litre bag size) within the drainage easement.
- i. Use of porous pavement within ground floor car spaces RES.1, RES.2, RET. 1, and RET. 2 and Motorcycle Parking areas.
- j. Any other relevant condition of consent.

Details shall be submitted to Council for approval prior to any issue of the Construction Certificate. The approved plan shall be part of the Construction Certificate documentation.

- 90. Ten (10) off-street car spaces shall be provided in accordance with the submitted plan and shall be sealed and line marked to Council's satisfaction. The pavement of all car parking spaces, manoeuvring areas and internal driveways shall comply with Australian Standard AS3727 Guide to Residential Pavements / Austroads Pavement Design A Guide to the Structural Design of Road Pavements 2004 except ground floor car spaces RES.1, RES. 2, RET. 1, RET. 2 and Motorcycle Parking areas shall comply with Rockdale Technical Specification Stormwater Management, Section 7.8 Porous Paving. This condition must be complied with to the satisfaction of the Certifying Authority prior to the issue of any Occupation Certificate.
- C. Imposition of the following conditions:
 - 27A. The western area of the rear balcony shall be deleted and the balcony are reduced to align with the western wall of Unit 8's ensuite. Details shall be shown on the approved construction certificate drawings.
 - 27B. Prior to the issue of the Construction Certificate, details of materials and construction details shall be submitted to the satisfaction of the building certifier to demonstrate the non-trafficable roof areas to be consistent with the approved plans.
 - 27C. The external walls of the building including attachments must comply with the relevant requirements of the National Construction Code (NCC). Prior to the issue of a Construction Certificate and Occupation Certificate the Certifying Authority and Principal Certifying Authority must:
 - (i) Be satisfied that suitable evidence is provided to demonstrate that the products and systems (including installation) proposed for use or used in the construction of external walls, including finishes and claddings such as synthetic or aluminium composite panels, comply with the relevant requirements of the NCC; and
 - (ii) Ensure that the documentation relied upon in the approval processes include an appropriate level of detail to demonstrate compliance with the NCC as proposed and as built.

Reasons for the additional conditions:

To minimise adverse impacts on neighbouring property and comply with current building standards.

3 That the objector be advised of the Bayside Local Planning Panel's decision.

RAMSGATE ROAD SP2 304 306 308 318 B4 B4 R3

Attachments

- 1 Planning Assessment Report <a>J
- 2 Draft Notice of Determination J
- 3 Roof General Arrangement Plan U
- 4 Elevations & Materials Schedule 1

BAYSIDE COUNCIL

Planning Assessment Report

Application Details

Application Number: DA-2015/173/C **Date of Receipt:** 3 February 2018

Property: 105 Ramsgate Road, RAMSGATE (Lot 69 DP 2032)

Owner: Investram Holdings Pty Ltd

Applicant: Archivis Pty Ltd

Proposal: Modification to add one(1) storey and one(1) unit to the approved

development to create a five(5) storey mixed use building containing a total of eight(8) residential units and one(1) commercial unit and changes

to facade design

Recommendation: Approved **No. of submissions:** One (1)

Author: Marta M Gonzalez-Valdes

Date of Report: 11 October 2018

Key Issues

The proposal was approved by the Land Environment Court as part of a S34 agreement with Council as a deferred commencement consent. The consent was activated on 15 August 2016. The S34 process was extensive and the proposed building was modified significantly before arriving to an agreement. The main contentious issue was the proposed height of the building, which was reduced from 5 to 4 storeys.

The proposal is now seeking to modify the building and add an additional level and residential unit to create a five storey building and a total of 8 residential units. Subsequent to a meeting with Council staff on 20 July 2018, the applicant submitted revised plans which reduced the size of the proposed new penthouse apartment in addition to slightly recessing the Ramsgate Road elevation to provide increased articulation of this level in conjunction with a greater setback along the western boundary. To further minimise any overlooking opportunities, a non-trafficable area of 1.6m was also implemented along the rear edge of the new floor level with another 2m area located on the western edge. Other improvements made to lessen the overshadow impact included deleting the roof overhanging the upper-storey's southern facing balcony.

The proposed modification will result in a non compliance with the maximum building height of 16 metres required under clause 4.3 of Rockdale Local Environmental Plan 2011 (RLEP). The variation is 230mm to the top of the lift overrun. The parapet of the proposed building and the overall building envelope comply with the building height standard.

The proposal also involves a variation to the maximum permitted floor space ratio (FSR) of 2:1 required

under clause 4.4 of the RLEP. The proposed FSR is 2.36:1 resulting in 18% variation.

The above proposed variations have been assessed against the parameters in the RLEP and relevant planning policies and are supported as explained in this report. The proposal as modified does not create unreasonable impacts to neighbouring properties, is consistent with the objectives of the zone and development standards and is in the public interest.

Recommendation

A. That Development Application DA-2015/173/C, being a Section 4.56 application to amend Development Consent Number DA-2015/173, for the demolition of existing structures and the construction of a mixed use development containing seven (7) residential units and one commercial unit at 105 Ramsgate Road, Ramsgate be APPROVED and the consent amended in the following manner:

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- 2. The development must be implemented in accordance with the plans listed below, the application form and on any supporting information received with the application, except as may be amended in red on the attached plans and by the following conditions.

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Note: For further information please see http://www.basix.nsw.gov.au.

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Allocated Spaces Requirement / rates

Studio apartments, 1 bedroom apartments and 2 bedroom apartments 2 x 1 bedroom units = 2 spaces 6 x 2-bedroom units = 6 spaces

Commercial 1 dedicated space

Shared commercial/accessible/loading bay 1 ground floor space

The shared commercial/accessible/loading bay space shall be labelled as common property on the final strata plan for the site.

Note: This parking allocation condition applies to any Strata Certificate issued with respect to a Consent issued in accordance with Section 81 (1)(A) of the Environmental Planning and Assessment Act 1979 or a Complying Development Certificate issued in accordance with Part 6 of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

- 32. The building shall be constructed to be structurally adequate to allow for the removal of the section of wall marked for removal on drawing number S96 2.00 Revision B dated 23.1.18, so as to facilitate the future potential vehicular access to Lot 1 in DP241356. Details demonstrating compliance with this requirement shall be submitted to the Principal Certifying Authority (PCA) prior to the issue of any Construction Certificate.
- 35. A Section 94 contribution of \$122,150.05 shall be paid to Council prior to the issue of any construction certificate. Such contributions are only used towards the provision or improvement of the amenities and services identified below. The amount to be paid is adjusted at the time of payment, in accordance with the contribution rates contained in Council's current Adopted Fees and Charges. The contribution is to be paid prior to the issue of any compliance certificate / subdivision certificate / construction certificate for works above the floor level of the ground floor. (Payment of the contribution is not required prior to any separate construction certificates issued only for demolition, site preparation works and the construction of basement levels). The contribution is calculated from Council's adopted Section 94 contributions plan in the following manner:

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- 38. A sample board of the proposed materials shall be submitted to Council's Manager Development Services for approval prior to the issue of the Construction Certificate. The building shall be constructed in accordance with the approved materials.
- 49. The following amendments to the landscape plans must be adhered to:
- a. Any existing conflicts or discrepancies between the stormwater plan in terms of pit locations,

particularly in the rear yard, must be resolved and correctly indicated on an amended Landscape Plan.

- b. Stormwater and drainage systems are not to be located in, or under those areas shown as landscaped beds, or where existing or proposed trees are located.
- c. Landscape levels, planter details, proposed soil depths and a full plant schedule (including proposed plant numbers) as per the requirements of the RDCP 2011 shall be shown.
- d. The front portion of the site affected by the road widening reservation must consist of grass.
- e. The fencing details (including the screen/fencing around the fire hydrant booster system) and materials must be as follows:
- A maximum 1.8m high fence of a solid material to be provided along the southern boundary to prevent lights spill to adjacent dwelling.
- A maximum 1.8m high fence of a solid material (to match the above) to be provided along the eastern boundary within the ground level motorcycle parking and easement area.
- The fire hydrant booster is to be integrated into the fencing detail.
- f. A minimum soil depth of 1000mm is required for planted areas (other than turf) on the fourth storey landscaped area with direct maintenance access from unit 7.
- g. The existing Council street trees located on the nature strip at the front and side of the site are to be retained and protected.
- h. Planting of Sygygium Varieties (Lilly Pilly) (min. 45 litre bag size) within the drainage easement.
- i. Use of porous pavement within ground floor car spaces RES.1, RES. 2, RET. 1, and RET. 2 and Motorcycle Parking areas.
- j. Any other relevant condition of consent.

Details shall be submitted to Council for approval prior to any issue of the Construction Certificate. The approved plan shall be part of the Construction Certificate documentation.

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- (3). Imposition of the following conditions:
- 27A. The western area of the rear balcony shall be deleted and the balcony are reduced to align with the western wall of Unit 8's ensuite. Details shall be shown on the approved construction certificate drawings.
- 27B. Prior to the issue of the Construction Certificate, details of materials and construction details shall be submitted to the satisfaction of the building certifier to demonstrate the non trafficable roof areas to be consistent with the approved plans.
- 27C. The external walls of the building including attachments must comply with the relevant requirements of the National Construction Code (NCC). Prior to the issue of a Construction Certificate and Occupation Certificate the Certifying Authority and Principal Certifying Authority must:
- (i) Be satisfied that suitable evidence is provided to demonstrate that the products and systems (including installation) proposed for use or used in the construction of external walls, including finishes

and claddings such as synthetic or aluminium composite panels, comply with the relevant requirements of the NCC; and

(ii) Ensure that the documentation relied upon in the approval processes include an appropriate level of detail to demonstrate compliance with the NCC as proposed and as built. Reasons for the additional conditions:

To minimise adverse impacts on neighbouring property and comply with current building standards.

B. That the objector be advised of the Bayside Planning Panel's decision.

Background

History

The development application DA-2015/173 was approved by the Land and Environment Court on 5 August 2015 under a S34 agreement with Council. The Court process was a lengthily one involving significant changes to the proposal including the deletion of the top level of the building to achieve a maximum of four storeys.

The following modification applications have been considered by Council since:

DA-2015/173/A - Section 96AA Modification - Approved by Council on 6 May 2016. The modification included deletion of the level 2 basement car park, reconfiguration of the layout to the level 1 basement car park, provision of three car parking spaces at ground level, adjacent to the southern boundary and reconfiguration of the retail toilet and fire stairs.

DA-2015/173/B - Section 96AA Modification - Approved by Council on 15 August 2016 to review the 'Part A' "deferred commencement" condition by incorporating Water NSW's 'General Terms of Approval' (condition 105a) and modification of condition 35 (revision of section 94 contributions).

DA-2015/173/C - Section 4.56 Modification - The subject of this report.

Proposal

Council is in receipt of a S4.56 modification application which seeks consent to undertake several amendments to the previously approved development application (i.e. DA-2015/173). Specifically, these modifications consist of an additional (1) floor level, comprising one (1) additional unit, in order to create a total of eight (8) units, and a number of design amendments to the façade of the previously approved (4) four-storey, mixed-use building. Although a number of other minor amendments are proposed, minimal changes are required to the original building footprint.

The proposal results in a building containing 2x one bedroom residential units, 6x two bedroom residential units and one commercial unit.

Subsequent to a s34 conference, held from Janaury 2015 until August 2015 in respect to the original 5 storey proposal (DA-2015/173), the applicant submitted amended plans to Council which reduced the scale of the building to a four (4) storey building by removing the previously intended upper (5th) level. This modification seeks to re-establish an additional floor level albeit using an alternative, more contemporary façade design in comparison to the original approval. Photo montages of the original Campbell Street elevation filed with the Land and Environment Court (Fig 1), the approved Campbell Street elevation (Fig 2) and the proposed Campbell Street elevation under this application (Fig 3) are

below:



Fig 1 - Campbell Street elevation filed with the LEC



Fig 2 - Approved Campbell Street elevation during the S34 process



Fig 3 - Revised Campbell Street elevation as proposed

Site location and context

The site is located on the south-western corner of the intersection of Ramsgate Road and Campbell Street, Ramsgate. The site is bounded by a single storey dwelling to the west and a single storey dual occupancy to the south. One site removed to the west is an at-grade Council car park. Opposite the site on the northern side of Ramsgate Road are single dwelling houses. To the east, on the opposite side of Campbell Street is a single storey brick and tile roof heritage listed building (the Sans Souci Literary Institute). Approximately 80m to the west of the site is Rocky Point Road and the Ramsgate commercial strip.

The site is rectangular in shape and has a frontage of 11.43m to Ramsgate Road, a secondary street frontage of 46.15m to Campbell Street, a western boundary of 46.15m and a southern boundary of 11.46m. The site has a total area of 527.5m2, however, approximately 190m2 of the site is zoned SP2 - *Infrastructure* and identified for the future widening of Ramsgate Road.



Statutory Considerations

Environmental Planning and Assessment Act, 1979

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

S4.56 - Modification by consent authorities of consents granted by Court Section 4.56 of the Environmental Planning & Assessment Act 1979 states:

- (1) A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court and subject to and in accordance with the regulations, modify the development consent if:
- (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and

Comment:

In the Statement of Environmental Effects (SEE) accompanying this modification, the applicant's planning consultant provided a quantitative and qualitative analysis of the proposed amendments and, based on these findings, concluded that the development was considered to be substantially the same to which consent was originally granted. In reaching this conclusion, the principles established in the Land and Environment Court Cases - Vacik Pty Ltd v Penrith City Council (Stein J. 1992) and Moto Projects Pty Ltd v North Sydney Council (Bignold 1999) were taken into consideration which determined what constituted "substantially the same development".

In Vacik Pty Ltd v Penrith City Council (Stein J. 1992), the Court determined that a consent authority must consider the following term when applying the "substantially the same development test"

.... 'substantially' when used in the section means essentially or materially or having the same essence".

During his deliberation of Moto Pty ltd v North Sydney Council (1999), Justice Bignold made the following statement to determine whether the subject modification would result in a proposal that was "essentially or materially" the same development as initially approved.

"The relevant satisfaction required by s 96(2)(a) to be found to exist in order that the modification power be available involves an ultimate finding of fact based upon the primary facts found. I must be satisfied that the modified development is substantially the same as the originally approved development. The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is "essentially or materially" the same as the (currently) approved development. The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared...".

In this case, the Court took the view that a consent authority had the power to modify a development application even though the requested amendments would still result in a breach of the applicable

statutory planning standards. It determined that the development standards within an LEP did not operate to prohibit the granting of consent, if they were not complied with, even if the application was not accompanied by a Clause 4.6 submission - seeking a variation to this standard. In this regard, the proposal is now considered to be "essentially and materially" the same development as originally approved.

- (b) it has notified the application in accordance with:
- (i) the regulations, if the regulations so require, and
- (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and

Comment: The proposal was publicly notified in accordance with the requirements of DCP 2011.

(c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and

Comment: The proposal as modified was publicly notified in accordance with the requirements of DCP 2011, additionally letters of notification were also sent to each objector who raised concerns during the assessment of the original development application.

(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.

Comment: One (1) submission in relation to the proposed modification was received. The issues raised in this submission have been further addressed in the 'Public Submission' section of this report.

S4.15 (1) - Matters for Consideration - General

S4.15 (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 The applicant has submitted a BASIX Certificate (No. 589553M_03), dated 25 January 2018, for the proposed modification to this development application. The certificate demonstrates the proposal

meets the sustainable targets.

State Environmental Planning Policy No 65—Design Quality of Residential Apartment

In accordance with clause 115(3) of the Regulations a modification to a development consent under section 4.56(1) of the Act, which relates to a residential apartment development must be accompanied by a design verification from a qualified designer. The applicant provided a statement by Archivis confirming its involvement in the design of the proposed modification and stating that the proposal complies with the objectives of State Environmental Planning Policy (Design Quality of Residential Apartment Development) - (the SEPP).

The design quality principles of the SEPP have also been considered in the assessment of this modification and were found to be satisfactory, as indicated below.

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Development

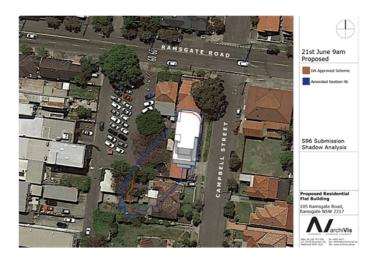
Principle 1 - Context and Neighbourhood Character

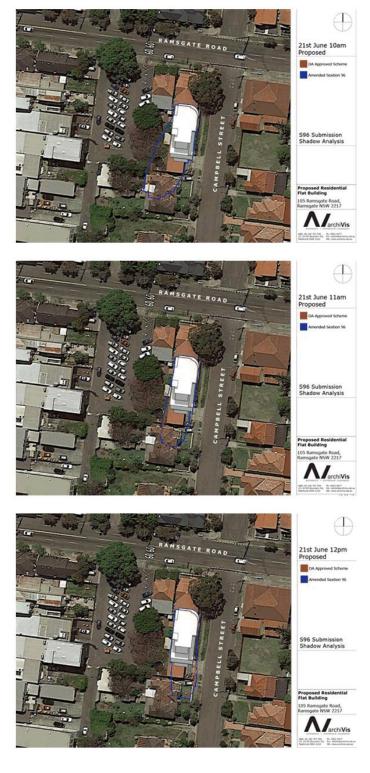
The subject site is partly zoned B4 - *Mixed Use* and partly SP2 - *Infrastructure* under the Rockdale Local Environmental Plan 2011 (RLEP). The site adjoins an R3 medium density zoned precinct to the south while an R2 low density zoning is situated to the east. Under RLEP, the site has a designated FSR of 2:1 while the adjoining, respective zoned interfaces have significantly reduced ratios of 0.6:1 and 0.5:1. As the site is located within the Ramsgate commercial area, it is considered that the proposed additional storey does not compromise the vision for the area in terms of its character. The proposed addition has been designed with appropriate setbacks to provide a transition between the mixed use, medium density and low density residential zones.

The proposal is seeking a marginal variation to the height development standard, by having the lift overrun approximately 230mm above the permissible height. Similarly, the proposal involves a variation to the FSR control by approximately 18%. These variations have been justified within the parameters of the RLEP and are supported (refer to assessment under the RLEP).

In regard to impacts, the submitted shadow diagrams confirm that non-compliance with the permissible FSR as a result of the proposed addition, will not create unreasonable impacts to neighbouring properties in terms of increased overshadowing and reductions in privacy compared to the original proposal, approved by the Land and Environment Court (refer to diagrams below).

Recessing the new floor level by an additional 6.8m results in a 12.8m rear setback which is measured from the edge of the new penthouse apartment's southern (elevation) facing wall. To further minimise any overlooking opportunities, a non-trafficable area of 1.6m has also been provided on the rear edge of the new floor level with another 2m area located on the western edge. This recessive design allows an acceptable level of privacy and overshadowing onto neighbouring southern properties.





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Principle 2 – Built Form and Scale

With the exception of the lift overrun, the height of the proposed modified development falls under the permissible 16m maximum for this B4 zoned site.

The original 4-storey proposal was approved with a zero western side setback which anticipated that any future development of the adjoining B4 zoned property (No.103 Ramsgate Road) would be of a similar, permissible land use and constructed to conjoin with the western side elevation of the completed mixed-use building. The proposed addition creates some articulation to the built form and is not considered to make a great impact to the scale of the building.

It is considered that the bulk and scale of the modified proposal is satisfactory and compatible with the future context as envisaged by the planning controls.

Principle 3 - Density

The subject site is affected by a road dedication (zoned SP2 in RLEP) and the portion of the land to be dedicated cannot be included in the assessment of density (as per clause 4.4(2) of the RLEP). The site area affected by the dedication is approximately 191 sq.m. As such the floor space ratio (FSR) have been calculated against a site area of 352.7sq.m., which excludes the SP2 zoned land. The calculated FSR is above the FSR permissible for the land (2:1). The variation is 18%

The proposed variation has been supported for the reasons stated in the assessment under Cl 4.5 of the RLEP within this report.

Principle 4 - Sustainability

The proposed modification was assessed in accordance with SEPP - BASIX and an amended BASIX certificate has been submitted (Cert. No. 589553M_03) which demonstrates that a sufficient amount of natural cross ventilation and sunlight would continue to infiltrate each of the proposed apartment's habitable living areas and the proposal performs in accordance with the targets of BASIX. The modified proposal is consistent with the sustainability principles.

Principle 5 - Landscape

The proposed modification does not include any amendments to the landscaped or private open space area(s) previously approved by the LEC for the original DA.

Principle 6 – Amenity

All living areas and balconies have been designed with either a northern or eastern orientation in addition to passive shading measures being implemented, such as cantilevered balconies, to prevent excessive heat load on all apartments over the summer period. All apartments continue having their private balconies adjacent to living areas in addition to achieving minimum ceiling heights of 2700mm in all habitable rooms. A generous amount of private storage has also been provided for each dwelling in addition to the provision of lifts which will service each floor of the completed development.

Principle 7 - Safety

The proposed modification does not compromise any of the specified 'safety' provisions when compared to those approved by the LEC for the original proposal.

Principle 8 - Housing Diversity and Social Interaction

The proposal includes a mix of apartment sizes which maximises housing choices, provides flexibility

and equality of access.

The proposal is considered to satisfy this Principle through the provision of two (2) one-bedroom units (25%) and six (6) two-bedroom units (75%). The applicant states that the unit mix has been provided in response to market demand and housing affordability. Given the size of the development, the proposal provides a diverse housing choice which includes appropriately designed communal spaces that will potentially encourage suitable opportunities for social interaction among residents.

Principle 9 – Aesthetics

The original approval proposed a variety of finishes and materials such as louvre elements, metal meshing and glass blocks/panels while the submitted modification seeks to resolve and improve these façades by limiting this palette in order to provide a more contemporary design. Additional conditions of consent are proposed to achieve a high quality development. The proposal is supported on this grounds.

Rockdale Local Environmental Plan 2011

Relevant clauses	Compliance with objectives	Compliance with standard/provision
2.3 Zone B4 Mixed Use	-	No - see discussion
4.3 Height of buildings	No - see discussion	No - see discussion
4.4 Floor space ratio	No - see discussion	No - see discussion
4.6 Exceptions to development standards	Yes - see discussion	Yes - see discussion
5.1A Development on land intended to be acquired	Yes - see discussion	Yes - see discussion
for a public purpose		
5.6 Architectural roof features	No - see discussion	No - see discussion
6.1 Acid Sulfate Soil - Class 5	Yes - see discussion	Yes - see discussion
6.2 Earthworks	Yes - see discussion	Yes - see discussion
6.4 Airspace operations	Yes - see discussion	Yes - see discussion
6.7 Stormwater	Yes	Yes - see discussion
6.12 Essential services	Yes	Yes - see discussion

2.3 Zone B4 Mixed Use

The subject site is zoned *B4 - Mixed Use* and SP2 - Infrastructure under the provisions of *Rockdale Local Environmental Plan 2011* (RLEP 2011). Refer to zoning map below.



The objectives of the B4 zone are:

- To provide a mixture of compatible land uses.
- To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.

The objectives of the SP2 zone are:

- To provide for infrastructure and related uses.
- To prevent development that is not compatible with or that may detract from the provision of infrastructure.

The proposal has been approved as a mixed use building. The proposed modification relates to an additional level, which has been setback from the edge of the building to create articulation and reduce the scale of the building. The additional height is only marginal and relates to the lift overrun, which is situated on the western facade exposed to the higher density area. The lift overrun will not be visible from the more sensitive land uses.

The additional gross floor area is supported (refer to assessment under clause 4.4 of RLEP 2011) and is considered to be compatible with the scale and bulk of development envisaged within the B4 zone. Based on this, the proposed modification is considered to be consistent with the objectives of the B4 and SP2 zones.

4.3 Height of buildings

The maximum height permitted on the site under this clause is 16 metres.

The approved height of the building is 12.6m (RL 21.74) to the top of the roof and 13.8m (RL 22.94) to the top of the lift overrun.

As a result of the additional storey, the height of the modified development will increase to 15.4m (RL 24.54) to the top of the roof and 16.23m (RL 25.34) to the top of the lift overrun.

The proposed variation is only to the top of lift overrun and in the order of 230mm.

The objectives of the height standard are:

- (a) to establish the maximum limit within which buildings can be designed and floor space can be achieved,
- (b) to permit building heights that encourage high quality urban form,
- (c) to provide building heights that maintain satisfactory sky exposure and daylight to buildings, key areas and the public domain,
- (d) to nominate heights that will provide an appropriate transition in built form and land use intensity.

The applicant has provided a justification in a similar fashion as required under Cl4.6 (though it has been established by case law that Cl4.6 does not apply to modification applications). A summary of the argument provided by the applicant is below:

- The proposal as modified complies with the objectives of the height development standard.
- 'The proposed height and scale of the development represents a appropriate transition to this
 areas [surrounding] as it represents a recessive built form, maintains the approved uses on the
 same and there are no significant impacts in terms of overshadowing'.

Comment: The proposed variation is only marginal and is concentrated to the western side of the building, which is bounded by the high density zone. The top level has been recessed from the edge of the building to achieve a better scale. The corner balcony creates a defining element in the corner and architectural interest. The proposal is a contemporary design compatible with recent developments in the area. The proposal is consistent with the objectives of this clause and the zone and is in the public interest. As such the proposed variation is supported in this instance.

4.4 Floor space ratio

In assessing the floor space ration, clause 4.5 of the RLEP is relevant. Clause 4.5 (Calculation of floor space ratio and site area), subclause (4)(a)(Exclusions from site area) states:

"The following land must be excluded from the site area:

(a) Land on which the proposed development is prohibited, whether under this Plan or any other law"

As the proposal is deemed to be prohibited in the SP2 zone, this portion of the site cannot be used for the purposes of calculating FSR. Therefore, the relevant site area for the purposes of calculating the FSR is 352.7sq.m.

The proposed development does not comply with clause 4.4(2) in RLEP 2011, which restricts the floor space ratio (FSR) to 2:1 in a B4 - *Mixed Use* zone. The maximum gross floor area (GFA) allowed on the site is 705.4sq.m. The proposed development involves a total gross floor area of 835 sq.m. on a 352.7 sq.m. site (excluding the SP2 land). This results in a FSR of 2.36:1 or 129.6sq.m. additional GFA representing a variation of 18%.

The approved scheme has a gross floor area of approximately 730sq.m., which equates to an additional 24.6 sq.m. to what it is permissible under this clause. The modified scheme represents approximately 105sq.m. additional GFA to what it was approved initially.

The applicant for the modification application has requested that a variation to the maximum FSR requirement be permitted due to the following:

"The proposal provides for eight (8) residential units with internal layouts that are flexible and provide for a good level of amenity. The retail unit on the ground floor has a floor area that can suit a range of retail opportunities, encouraging active frontages along Ramsgate Road and Campbell Street.

Council's land use, height and floor space controls indicate the vision for higher density forms emanating from the centre of the commercial strip. The proposal is located on the edge of the B4 Mixed Use zoning which the land zonings transitioning to a medium density residential zoning to its south and a low density residential zoning located to the east, opposite Campbell Street. These are accompanied with a reduced height as the zones transition away from the Ramsgate commercial strip. The proposed height and scale of the development represents a appropriate transition to these areas as it represents a recessive built form, maintains the approved uses on the same and there are no significant impacts in terms of overshadowing."

The objectives of the floor space ratio control are:

- (a) to establish the maximum development density and intensity of land use, accounting for the availability of infrastructure and generation of vehicular and pedestrian traffic, in order to achieve the desired future character of Rockdale,
- (b) to minimise adverse environmental effects on the use or enjoyment of adjoining properties,
- (c) to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing or likely to undergo a substantial transformation.

Comment: The applicant's request to vary the development standard under Clause 4.4 (*Floor Space Ratio*) has been considered. The proposed additional gross floor area is 129.6sq.m. At least 52sq.m. constitutes lobby areas. The site is subject to a significant land dedication, which has been excluded from the calculations of the FSR. The top floor has been recessed from the edge of the building. Additional articulation has been provided to the western facade as compared to the approved scheme. Impacts to neighbouring properties has not worsen significantly. The proposal provides an acceptable transition to the low density zone and is considered to comply with the objectives of the standard and the zone. The proposal is in the public interest and as such the proposed variation to the FSR standard is supported in this instance.

4.6 Exceptions to development standards

This clause is not applicable to the proposed modification. However exemptions to Clauses 4.3 (*Height of Buildings*) and 4.4 (*Floor Space Ratio*) of the RLEP have been discussed in these sections of this report.

5.1A Development on land intended to be acquired for a public purpose

As previously discussed, the subject site is partly zoned *SP2 - Infrastructure* under the provisions of RLEP 2011. The proposal is a mixed use building containing a residential component and a commercial component. Residential flat buildings and commercial uses are prohibited uses within this zone. The proposal as modified does not involve the use of the adjoining SP2 land and is consistent with this clause.

5.6 Architectural roof features

The proposed lift overrun and stairwell exceed the 16m height limit for the site. The applicant has sought to argue these as architectural roof features under Clause 5.6 of RLEP 2011. This argument is not supported as these items are purely rooftop structures. This clause is not applicable in this instance.

6.1 Acid Sulfate Soil - Class 5

Acid Sulfate Soils (ASS) – Class 5 affects the property. However, development consent was not required as the site is not within 500 metres of adjacent Class 1, 2, 3 or 4 that is below 5 AHD.

6.2 Earthworks

The proposal involves extensive excavation within the site to accommodate the basement car parking level. The impacts of the proposed earthworks were considered in the assessment of the original proposal. Conditions of consent have been imposed to ensure minimal impacts on the amenity of surrounding properties, drainage patterns and soil stability.

6.4 Airspace operations

The proposed development is affected by the Obstacle Limitation Surface (OLS) which is set at 80m AHD. The finished building height will be 16.23m (RL 25.34), to the top of the lift overrun, and therefore will not penetrate the OLS. Therefore, the application did not require approval under the Airports (Protection of Airspace) Regulations 1996, for the intrusion of the proposed development into the airspace which, under the regulations, is prescribed airspace for Sydney Airport.

6.7 Stormwater

The subject proposal involves the construction of an on-site detention system to manage stormwater which was previously approved by Council's Development Engineer, for the original proposal (DA-2015/173), and remains applicable to the proposed modification. The proposal as modified is consistent with this clause.

6.12 Essential services

Services will still be generally available on the site. Additional conditions were incorporated in the original 'Notice of Determination' for DA-2015/173 requiring consultation with the relevant utility providers in regard to any specific requirements for the provision of relevant services onto the subject development site.

S4.15 (1)(a)(iii) - Provisions of any Development Control Plan

The following Development Control Plan is relevant to this application:

Rockdale Development Control Plan 2011

The application is subject to Rockdale DCP 2011. A compliance table for the proposed development is provided below:

Relevant clauses	Compliance with objectives	Compliance with standard/provision
4.1.1 Views and Vista	Yes - see discussion	Yes - see discussion
4.1.2 Heritage Conservation - Vicinity of Heritage	Yes - see discussion	Yes - see discussion
4.2 Streetscape and Site Context - General	No - see discussion	No - see discussion
4.3.1 Open Space and Landscape Design - Residential Flat Buildings	Yes	Yes - see discussion
4.4.2 Solar Access - Residential Flat Buildings and Shop Top Housing	No - see discussion	No - see discussion
4.4.3 Natural Lighting and Ventilation - Residential	Yes	Yes - see discussion
4.4.5 Visual privacy	No - see discussion	No - see discussion

	Compliance with objectives	Compliance with standard/provision
4.5.1 Social Equity - Housing Diversity and Choice	Yes	Yes - see discussion
4.5.2 Social Equity - Equitable Access	Yes	Yes - see discussion
4.6 Parking Rates Residential Flat Buildings	Yes	Yes - see discussion
4.6 Car Park Location and Design	Yes	Yes - see discussion
5.2 RFB - Site Coverage	Yes	Yes - see discussion
5.2 RFB Front Setback	Yes	Yes - see discussion
5.2 RFB - Side Setbacks	Yes	Yes - see discussion
5.2 RFB - Rear Setbacks	Yes	Yes - see discussion
5.2 RFB - Building Design	Yes	Yes - see discussion

4.1.1 Views and Vista

The proposed addition will not have adverse impacts on the surrounding views presently enjoyed by adjacent residents. The proposal complies with the height envisaged for the B4 zone. The proposed additions make no difference to the views currently enjoyed by the residents in the low density zone.

4.1.2 Heritage Conservation - Vicinity of Heritage Item

The site is located adjacent to the Sans Souci Literary Institute at 107 Ramsgate Road which has local heritage significance due to its aesthetics as a 1920's distinctive Inter-war corner building. The proposed addition is recessed from the edge of the building and it is not considered to affect the integrity or character of this heritage item.

4.2 Streetscape and Site Context - General

The original approval proposed a variety of finishes and materials such as louvre elements, metal meshing and glass blocks/panels while the revised submission seeks to resolve and improve these façades by limiting this palette in order to provide a more minimalistic design.

4.3.1 Open Space and Landscape Design - Residential Flat Buildings

As previously highlighted in the SEPP 65 section of this report, the proposed modifications do not include any amendments to the landscaped or private open space area(s) previously approved by the LEC for the original DA.

4.4.2 Solar Access - Residential Flat Buildings and Shop Top Housing

As previously discussed, the proposed modification results in marginal impacts to the amount of sunlight currently received by adjoining properties. The applicant has submitted comparison diagrams showing shadows for the approved and proposed development. As shown on the submitted shadow diagrams from 10am the additional shadows are casts over the roof of the adjacent dwelling. From 12pm the shadows generated by the proposal move towards the front of the property creating nil impacts to the private open space and windows in habitable areas as compared to the approved scheme, except for a window on the northern wall of the property at 33 Campbell Street, which enjoys alternate sunlight access from the eastern wall. The proposal complies with the objectives and requirements of this clause.

4.4.3 Natural Lighting and Ventilation - Residential

All living areas and balconies have been designed with either a northern or eastern orientation in addition to passive shading measures being implemented, such as cantilevered balconies, to prevent excessive heat load on all apartments over the summer period. All units enjoy cross ventilation and

adequate solar access.

4.4.5 Visual privacy

The additional floor level has been orientated toward the north of the site and the proposed southern balcony is recessed form the edge of the building by a roof feature (pebbles). The new balcony is setback from the rear boundary approximately 9.7m. Given this and the height of the balcony, privacy impacts to the adjacent properties is not anticipated.

4.5.1 Social Equity - Housing Diversity and Choice

Part 4.5 of RDCP 2011 contains objectives and controls that aim to ensure that apartments in mixed use developments are flexible, maximise housing choice and provide equality of access. The proposal is considered to satisfy the relevant objectives and requirements. Compliance with the key controls are discussed below:

Provision of 10%-30% 1-bedroom units, 50-75% 2-bedroom units and 10-20% 3-bedroom units

The proposed unit mix complies with the requirements of RDCP 2011. In this case, the proposal includes 25% one-bedroom units (2) and 75% two-bedroom units (6). The applicant states that the unit mix has been provided in response to market demand and housing affordability. The proposal provides a mix of units that is consistent with surrounding development and the objectives of the clause. The mix is, therefore, considered satisfactory in this case.

4.5.2 Social Equity - Equitable Access

The Disability Discrimination Act requires the provision of 1-in-10 dwellings to be designated as an adaptable housing unit. Unit 3 has been designed as an adaptable unit which meets satisfactory compliance with the equitable access requirements specified in AS4299 -1995 - "Adaptable Housing, Class C, Essential features" and the Disability Discrimination Act.

4.6 Parking Rates Residential Flat Buildings

One (1) space has been added to the basement car parking level to be allocated to the proposed twobedroom, penthouse unit (Unit 8). The proposal complies with the car parking requirements.

4.6 Car Park Location and Design

Council's Development Engineer assessed the modified basement car parking layout, which was supported by a Traffic Design certificate prepared by McLaren Traffic Engineering, and included an additional space for the new unit (8) in the basement car park. Council's engineer confirmed that the proposal is satisfactory and in compliance with Clause 4.6 of RDCP 2011.

5.2 RFB - Site Coverage

The modified application proposes no change to the site coverage or size of the building envelope that formed part of the original approval, granted by the LEC, for DA-2015/173.

5.2 RFB Front Setback

The modified application proposes no change to the front setback which formed part of the original approval, granted by the LEC, for DA-2015/173.

5.2 RFB - Side Setbacks

The subject development site is located on the north-eastern corner of Ramsgate Road and Campbell

Street; and the modified application proposes no change to the zero (western) side setback which formed part of the original approval granted by the LEC for DA-2015/173.

The proposal is consistent with the approved setbacks. The introduction of a break in the western facade is an improvement to the building as it creates better articulation. The top floor is recessed on the street boundaries except for the balcony, which is used as an architectural element to emphasise the corner. The proposed setback for the top floor is acceptable.

5.2 RFB - Rear Setbacks

As previously highlighted in the SEPP 65 section of this report, the new floor level has been recessed by an additional 6.8m, from the rear edge of the approved 4-storey building, which results in a 12.8m setback from the rear boundary to the edge of the apartment's southern (elevation) facing wall. Although this design facilitates maintaining a suitable level of privacy and overshadowing, onto southern adjoining properties, these impacts will still be exacerbated beyond those created by the original 4-storey approval.

5.2 RFB - Building Design

As previously highlighted, the originally approved development proposed a variety of finishes and materials such as louvre elements, metal meshing and glass blocks/panels while the submitted modification seeks to resolve and improve these façades by limiting this palette in order to provide a more contemporary, minimalistic and orderly design.

S4.15(1)(a)(iv) - Provisions of regulations

Clauses 92-94 of the Regulations outline the matters to be considered in the assessment of a development application. Clause 92 requires the consent authority to consider the provisions of *AS* 2601:1991 - Demolition of Structures when demolition of a building is involved. In this regard a condition was imposed in the consent, issued for the original proposal (DA-2015/173), to ensure compliance with this standard.

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

Potential impacts related to the proposal have been considered in the original consent. The proposed addition does not generate additional impacts. The following matters have been considered in regard to the road acquisition and underground water impacts:

Roads and Maritime (RMS) land

The proposal is subject to land acquisition by the RMS. The amended proposal does not affect RMS land and the original conditions imposed by RMS still prevail.

Office of Water General Terms of Approval (GTAs)

A response from the Office of Water has not been received. However, the GTAs by Office of Water are still valid and are included in the draft consent.

S4.15(1)(c) - Suitability of the site

The relevant matters pertaining to the suitability of the site for the modified proposal have been considered in the assessment of this application. There are no known major physical constraints, environmental impacts, natural hazards or exceptional circumstances that would hinder the suitability of

the site for the proposed development as modified.

S4.15(1)(d) - Public submissions

One submission was received from the southern adjoining neighbour who expressed strong concern about the potential for increased overshadowing and reduced privacy impacts onto her property, as a result of the additional floor level, in addition to a lack of on-street parking.

Comment: Recessing the new floor level by an additional 6.8m resulted in a 12.8m rear setback measured from the rear edge of the new apartment's southern (elevation) facing wall. This recessive design ensures an acceptable level of privacy and overshadowing, onto southern adjoining properties.

The modified basement car parking layout, which was supported by a Traffic Design certificate prepared by McLaren Traffic Engineering, also included an additional space for the new unit (8) in the basement car park. This addition confirmed that the subject modification met satisfactory compliance with Clause 4.6 (*Car parking, access and movement*) of RDCP 2011. From this perspective, it is not considered that the proposed modification will result in a lack of on-street parking in close vicinity to the subject development site.

The shadow diagrams show that the proposal additional impacts from 12pm onward are not different to the approved scheme. As such the proposal complies with the solar access requirements.

S4.15(1)(e) - Public interest

The modified proposal has been assessed against the relevant planning policies applying to the site having regard to the development control objectives and SEPP 65. As demonstrated in the assessment of this application, the modified proposal provides an acceptable transition within the zones and is compatible with the vision for the Ramsgate town centre.

The proposal does not create unreasonable impacts on surrounding properties and is consistent with the objectives of the planning policies. As such the proposal as modified is in the public interest.

S7.11 Contribution towards provision or improvement of amenities or services

The proposed modification generates further demand for public infrastructure given the proposed additional unit. A Section 7.11 Contribution Payment of \$122,150.05 is payable in accordance with Council's Policy. Accordingly, condition 35 of the original consent is proposed to be amended to include the reviewed contribution.

Schedule 1 - Draft Conditions of consent

NOTICE OF DETERMINATION

Section 96 of Environmental Planning and Assessment Act, 1979

S96 Approval Date

Authority Delegated AutholTY – Bayside Planning Panel

Reference DA-2015/173/C

Contact Marta M Gonzalez-Valdes 0411 526 558

Archivis Pty Ltd U3, 83-85 Boundary Rd PEAKHURST NSW 2210



Property: 105 Ramsgate Road, RAMSGATE NSW 2217

Lot 69 DP 2032

Proposal: Construction of five (5) storey mixed use development comprising eight

(8) residential units, one (1) commercial unit, one (1) basement car

parking level and demolition of existing building

[Amendment A – S96(AA) amended on 6 May 2016] [Amendment B – S96(AA) amended on 15 August 2016]

[Amendment C - S4.55(2) amended on]

Your application to modify Development Consent No. DA-2015/173 dated 5 August 2015 was considered under Section 4.55(2) of the Environmental Planning and Assessment Act 1979 and is approved subject to the following conditions:

Your Development Application has been approved under Section 80(3) of the Environmental Planning and Assessment Act, 1979 as a deferred commencement consent.

PART A - DEFERRED COMMENCEMENT CONDITION

The consent shall not operate until you satisfy Council about the following matters:

- In accordance with section 80(3) of the Environmental Planning and Assessment Act 1979, this development consent shall not operate until the Applicant has satisfied the Council of the following matters:
 - A. An Aquifer interference activity approval for the proposed extraction works must be obtained in accordance with the requirements of the *Water Management Act 2000*. The approval must be submitted to the Council.

Note: An application must be lodged and approved directly to the NSW Office of Water for an authorisation to permit the extraction of groundwater. However, in such circumstances, special assessment and application fees will apply and the extraction of groundwater from beneath the property is only permitted for a twelve month period.

Please direct all correspondence in relation to this matter as follows:

Water Regulatory Operations – South NSW Office of Water Locked Bag 5123 Parramatta NSW 2124

The period of the Deferred Commencement is *twenty-four (24) months* from the date of this letter. It is important we hear from you about the outstanding matters above as soon as possible so as to avoid any other delay.

[Amendment A - S96(AA) amended on 6 May 2016]

[Amendment B - S96(AA) amended on 15 August 2016]

Upon receiving written notification from Council that the above requirements have been satisfied, your consent will become operable and will be subject to the following conditions:

[Deferred commencement satisfied on 15 August 2016]

PART B -GENERAL CONDITIONS

The following conditions restrict the work to the detail provided in the Development Application and are to ensure that the development is complete.

- The term of this consent is limited to a period of five (5) years from the date of the original approval. The consent will lapse if the development does not commence within this time.
- The development must be implemented in accordance with the plans listed below, the
 application form and on any supporting information received with the application,
 except as may be amended in red on the attached plans and by the following
 conditions.

Plan	Title	Rev	Dated
Number			
Plans drawn by Archivis			
S96 2.99	Basement Floor Plan	C	23.01.18
S96 2.00	Ground Floor Plan	В	23.01.18
S96 2.01	First (1st) Floor Plan	В	23.01.18
S96 2.02	Second (2 nd) Floor Plan	В	23.01.18
S96 2.03	Third (3 rd) Floor Plan	В	23.01.18
S96 2.04	Fourth (4th) Floor Plan	D	23.08.18
S96 2.05	Roof Plan	D	26.08.18
S96 4.01	Elevations and Materials	D	26.08.18
	Schedule		

[Amendment A - S96(AA) amended on 6 May 2016]

[Amendment B - S96(AA) amended on 15 August 2016]

[Amendment C - S4.55(2) amended on]

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- All new building work must be carried out in accordance with the provisions of the Building Code of Australia (BCA).
- 4. A Construction Certificate must be obtained from Council or an Accredited Certifier prior to any building work commencing.
- The development must be implemented and all BASIX commitments thereafter maintained in accordance with BASIX Certificate Number (589553M_03) other than superseded by any further amended consent and BASIX certificate.

Note: Clause 145(1)(a1) of the Environmental Planning & Assessment Regulation 2000 provides: A certifying authority must not issue a construction certificate for building work unless it is satisfied of the following matters: -

 (a1) that the plans and specifications for the building include such matters as each relevant BASIX certificate requires.

Note: Clause 154B(2) of the Environmental Planning & Assessment Regulation 2000 provides: "A certifying authority must not issue a final occupation certificate for a BASIX affected building to which this clause applies unless it is satisfied that each of the commitments whose fulfilment it is required to monitor has been fulfilled."

Note: For further information please see http://www.basix.nsw.gov.au.

[Amendment C - S4.55(2) amended on]

 A separate development application shall be submitted for the non-residential tenancy of the property. Additional conditions may be imposed on any such consent.

Note: Parking and loading provisions in a mixed use development may preclude certain uses.

- This approval is not to be construed as permission to erect any structure on or near a boundary contrary to the provisions of the Dividing Fences Act.
- 8. Excavation, filling of the site (with the exception of the area immediately under the building envelope), or construction of retaining walls are not permitted unless shown on the approved plans and authorised by a subsequent construction certificate.
- The materials and façade details approved under Condition 2 and any other relevant condition of this consent must not be altered or amended at the construction certificate stage without a prior section 96 application and approval under the Environmental Planning and Assessment Act.
- 10. Parking spaces shall be allocated to residential apartments / non-residential units in the development in the following manner and this shall be reflected in any subsequent strata subdivision of the development:

Allocated Spaces Requirement / rates

Studio apartments, 1 bedroom apartments 2 x 1 bedroom units = 2 spaces and 2 bedroom apartments 6 x 2-bedroom units = 6 spaces

Commercial 1 dedicated space Shared commercial/accessible/loading bay 1 ground floor space

The shared commercial/accessible/loading bay space shall be labelled as common property on the final strata plan for the site.

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Note: This parking allocation condition applies to any Strata Certificate issued with respect to a Consent issued in accordance with Section 81 (1)(A) of the *Environmental Planning and Assessment Act 1979* or a Complying Development Certificate issued in accordance with Part 6 of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

[Amendment C - S4.55(2) amended on]

DEVELOPMENT SPECIFIC CONDITIONS

The following conditions are specific to the Development Application proposal:

- Materials, goods or machinery shall not be stored, placed or otherwise permitted to stand between the building line and the street alignment.
- 12. The loading bay is shared with the accessible space. All loading, unloading and transfer of goods to and from the loading bay and premises shall take place wholly within the property.
 - [Amendment A S96(AA) amended on 6 May 2016]
- Parking spaces shall not be enclosed without further approval of Council. The enclosure of car spaces is not permitted unless the enclosure complies with the design requirements of AS2890.1.
- 14. The existing and future owners (Registered Proprietor) of the property will be responsible for the operation and maintenance of the detention system. The registered proprietor will:
 - i) permit stormwater to be temporarily detained by the system;
 - ii) keep the system clean and free of silt, rubbish and debris;
 - iii) maintain, renew and repair the whole or parts of the system so that it functions in a safe and efficient manner, and in doing so complete the same within the time and in the manner specified in written notice issued by the Council;
 - iv) carry out the matters referred to in paragraphs (ii) and (iii) at the proprietor's expense;
 - not make any alterations to the system or elements thereof without prior consent in writing of the Council;
 - vi) permit the Council or its authorised agents from time to time upon giving reasonable notice (but at any time and without notice in the case of emergency) to enter and inspect the land for compliance with the requirements of this clause:
 - vii) comply with the terms of any written notice issued by the Council in respect to the requirements of this clause within the time stated in the notice.
- The existing and future owners (Registered Proprietor) of the property will be responsible for the efficient operation and maintenance of the pump system.

The Registered Proprietor will:

i) permit stormwater to be temporarily detained and pumped by the system;

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- ii) keep the system clean and free of silt, rubbish and debris;
- iii) maintain, renew and repair the whole or parts of the system so that it functions in a safe and efficient manner; and in doing so complete the same within the time and in the manner specified in written notice issued by the Council;
- iv) carry out the matters referred to in paragraphs (ii) and (iii) at the proprietor's expense;
- not make alterations to the system or elements thereof without prior consent in writing of the Council.
- vi) permit the Council or its authorised agents from time to time upon giving reasonable notice (but at any time and without notice in the case of emergency) to enter and inspect the land for compliance with the requirement of this clause:
- vii) comply with the terms of any written notice issued by the Council in respect to the requirements of this clause within the time stated in the notice.
- 16. All wastewater and stormwater treatment devices (including drainage systems, sumps and traps) shall be regularly maintained in order to remain effective. All solid and liquid wastes collected from the device shall be disposed of in accordance with the Protection of the Environment Operations Act, 1997.
- 17. 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.
- 18. The use of the premises, building services, equipment (including air conditioners), machinery and, ancillary fittings shall not give rise to any "offensive noise" as defined under the provisions of the Protection of the Environment Operations Act, 1997.
- Temporary dewatering of the site to construct the subsurface structure is not permitted (unless approval is granted by the NSW Office of Water).
- 20. The proposed drainage outflow outlet pipes between the site and the kerb in Campbell Street shall be located outside the driplines of the Council street trees unless they can be installed without any damage whatsoever to the roots of the trees. Any excavations within the vicinity of the trees, including exploratory digs, shall be undertaken by hand. Under no circumstances are roots of the trees to be severed without the approval of a Council Arborist.
 - Note: The existing Council street trees located on the nature strip at the front and side of the site shall be retained and protected.
- 21. The applicant will submit for approval an archival recording of the existing building prior to demolition works and prior to any commencement of works. The record will be prepared by a suitably qualified heritage consultant according to the guidelines of the Heritage Division, NSW Office of Environment and Heritage in their document 'How to Prepare Archival Records of Heritage Items'.
 - A copy and an original of the document shall be submitted to Council. The approved original will be sent to the Local History Library and the copy will be electronically filed.
- 22. The visible light reflectivity from building materials used on the façade of the building

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shall not exceed 20% and shall be designed so as not to result in glare that causes any nuisance or interference to any person or place. A statement demonstrating compliance with these requirements shall be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate for the relevant stage of works.

- 23. The following conditions are to ensure compliance with the Australian Standards:
 - i. Bicycle parking facilities shall be designed in accordance with AS2890.3:1993.
 - The off-street parking areas associated with the subject development shall be designed strictly in accordance with AS2890.1 and AS2890.6.
 - iii. Internal height clearance shall be designed throughout the car park and access driveway in accordance with AS2890.1 and AS2890.6. Head room clearance within the car lift shall be 2.2m height minimum (for parking with people with disabilities any vehicular path of travel is to have a clearance of 2.2m and clearance above the parking bay shall be 2.5m minimum).
- 24. All proposed lights shall comply with the Australian Standard AS4282 1997 "Control of the Obtrusive Effects of Outdoor Lighting". In this regard, the lighting of the premises shall be directed so as not to cause nuisance to the owners or occupiers of adjacent/adjoining premises or to motorists on adjoining or nearby roads.
- Hot and cold water hose cocks shall be installed to the garbage room. Services or utility systems shall not be located in the garbage room.
- 26. In order to ensure the design quality I excellence of the development is retained:
 - The design architect (Nominated Registered Architect, Mr Kim Charles Jones, NSW Registration Number 6460) is to have direct involvement in the design documentation, contract documentation and constructions changes of the project;
 - The design architect is to have full access to the site and is to be authorised by the applicant to respond directly to the consent authority where information or clarification is required in the resolution of design issues throughout the life of the project;
 - Evidence of the design architect's commission is to be provided to Council prior to the release of the Construction Certificate.

The design architect of the project is not to be changed without prior notice and approval of the Council.

- 27. To minimise the visual impact of services and ensure they are integrated into the design of the building, the following measures must be implemented:
 - (i) All plumbing, other than roofwater heads and vertical downpipes, shall be concealed within the brickwork of the building. No plumbing shall be visible within the ceiling of the open carpark area at ground level.
 - (ii) Any electrical kiosks or fire booster valves shall be integrated within the footprint of the building or as shown on approved plans.
 - (iii) The carpark exhaust must be relocated to the Campbell Street frontage in the area above the driveway.

Details demonstrating compliance with these requirements shall be submitted to the Principal Certifying Authority (PCA) prior to the issue of any Construction

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Certificate.

[Amendment A - S96(AA) amended on 6 May 2016]

27A. The western area of the rear balcony shall be deleted and the balcony are reduced to align with the western wall of Unit 8's ensuite. Details shall be shown on the approved construction certificate drawings.

[Amendment C - S4.55(2) amended on]

27B. Prior to the issue of the Construction Certificate, details of materials and construction details shall be submitted to the satisfaction of the building certifier to demonstrate the non-trafficable roof areas to be consistent with the approved plans.

[Amendment C - S4.55(2) amended on]

- 27C. The external walls of the building including attachments must comply with the relevant relevant requirements of the National Construction Code (NCC). Prior to the issue of a Construction Certificate and Occupation Certificate the Certifying Authority and Principal Certifying Authority must:
 - (i) Be satisfied that suitable evidence is provided to demonstrate that the products and systems (including installation) proposed for use or used in the construction of external walls, including finishes and claddings such as synthetic or aluminium composite panels, comply with the relevant requirements of the NCC; and
 - (ii) Ensure that the documentation relied upon in the approval processes include an appropriate level of detail to demonstrate compliance with the NCC as proposed and as built.

[Amendment C - S4.55(2) amended on]

Reasons for additional conditions:

•

- 28. External paths and ground surface adjoining the walls of the building shall be graded and drained away from the building in such a manner as to not cause a nuisance to adjoining properties.
- Where natural ventilation fails to comply with the provisions of the Building Code of Australia, mechanical ventilation shall be provided in accordance with Australian Standard, 1668, Part 2.
- Ceiling heights for all habitable areas shall be a minimum of 2.7 metres and 2.4 metres for non-habitable areas, as measured vertically from finished floor level to the underside of the ceiling.
- 31. The following conditions are required to be implemented and maintained at all times to minimise crime opportunities within the site:
 - i) Monitored CCTV facilities shall be implemented throughout the development. Areas of focus include the ground floor car park (including entry and exits), driveway and loading / delivery bay and the main entry areas to the development. Digital or video technology should be used to record images from the cameras. Details to be provided <u>prior to the issue of the Construction</u> Certificate.
 - ii) A lighting maintenance policy shall be established for the development. Details

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- to be provided prior to the issue of the Construction Certificate.
- iii) Lighting shall be designed to the Australian and New Zealand Lighting Standards. Australia and New Zealand Lighting Standard 1158.1 - Pedestrian, requires lighting engineers and designers to consider crime risk and fear when selecting lamps and lighting levels.
- Signage shall be erected at entry/exit points and throughout the development to assist users and warn intruders they may be prosecuted.
- ix) Intercom facilities shall be installed into entry/exit points to enable residents to communicate and identify with people prior to admitting them to the development.
- 32. The building shall be constructed to be structurally adequate to allow for the removal of the section of wall marked for removal on drawing number S96 2.00 Revision B dated 23.1.18, so as to facilitate the future potential vehicular access to Lot 1 in DP241356. Details demonstrating compliance with this requirement shall be submitted to the Principal Certifying Authority (PCA) prior to the issue of any Construction Certificate.

[Amendment C - S4.55(2) amended on]

PRIOR TO ISSUE OF ANY CONSTRUCTION CERTIFICATE

The following conditions must be completed prior to the issue of any Construction Certificate (with ongoing obligations where indicated).

- 33. The following fees shall be paid to Council prior to the issue of any Construction Certificate. If payment is made after the end of the financial year, the amount shall be adjusted in accordance with Council's adopted fees and charges.
 - i. A Footpath Reserve Restoration Deposit of \$22,401.00. This is to cover repair of any damages, or other works to be done by Council. This includes construction, removal, or repair as required to: kerb and guttering, existing or new driveways; paved areas and concrete footpaths. The deposit may be lodged with Council in the form of a Bank Guarantee (Any proposed Bank Guarantee must not have an expiry date). The deposit will not be returned by Council until works are completed and all damage is restored and all specified works are completed by Council.
 - ii. An environmental enforcement fee of 0.25% of the cost of the works.
 - iii. A Soil and Water Management Sign (811) of \$17.00.
 - iv. A fee of \$392.00 is payable to Council for the determination of boundary levels. All boundary works, egress paths, driveways and fences shall comply with this level.
- For work costing \$25,000 or more, a Long Service Leave Levy shall be paid. For further information please contact the Long Service Payments Corporation on their Helpline 13 1441.
- 35. A Section 94 contribution of \$122,150.05 shall be paid to Council prior to the issue of any construction certificate. Such contributions are only used towards the provision or improvement of the amenities and services identified below. The amount to be paid is

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adjusted at the time of payment, in accordance with the contribution rates contained in Council's current Adopted Fees and Charges. The contribution is to be paid prior to the issue of any compliance certificate / subdivision certificate / construction certificate for works above the floor level of the ground floor. (Payment of the contribution is not required prior to any separate construction certificates issued only for demolition, site preparation works and the construction of basement levels). The contribution is calculated from Council's adopted Section 94 contributions plan in the following manner:

Open Space	<i>\$18,804.63</i>
Community Services & Facilities	<i>\$3,283.26</i>
Town Centre & Streetscape Improvements	\$1,697.61
Pollution Control	<i>\$4.869.15</i>
Local Infrastructure and facilities	<i>\$93,425.78</i>
Plan Administration & Management	<i>\$69.62</i>

Copies of Council's Section 94 Contribution Plans may be inspected at Council's Customer Service Centre, 444-446 Princes Highway, Rockdale NSW 2216.

[Amendment B - S96(AA) amended on 15 August 2016]

[Amendment C - S4.55(2) amended on]

- 36. Prior to the issue of any Construction Certificate a certificate from a practicing Structural Engineer, registered with NPER, stating that the subsurface structural components located on the boundary of the public road, including but not limited to the slabs, walls and columns, have been designed in accordance with all SAA Codes for the design loading from truck and vehicle loads, shall be submitted to Council for approval.
- 37. In the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance or owner builder's permit in force in accordance with Part 6 of that Act, that such a contract or permit is in place.
- 38. A sample board of the proposed materials shall be submitted to Council's Manager Development Services for approval prior to the issue of the Construction Certificate. The building shall be constructed in accordance with the approved materials.
 - [Amendment C S4.55(2) amended on]
- 39. Compliance with Council's Development Control (DCP) 2011 in relation to requirements for access. Compliance with this condition will require the design and fitout of the commercial/retail areas to be in accordance with Australian Standard 1428.1-2009. Plans and specifications confirming compliance with these requirements shall be submitted to the Certifying Authority for approval prior to the issue of any construction certificate.

Note: Compliance with Council's Development Control Plan (DCP) 2011 and the Building Code of Australia does not necessarily guarantee that the development meets the full requirements of the Disability Discrimination Act (DDA) 1992. It is the responsibility of the applicant to make the necessary enquiries to ensure that all aspects of the DDA legislation are met.

40. Compliance with Council's Development Control Plan (DCP) 2011 – Requirements for Access. Compliance with this condition requires a minimum of 2 adaptable car parking space/s to be provided, with 1 adaptable space to be dedicated to the adaptable unit. The car spaces shall be identified and reserved at all times and be in the vicinity to lifts

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or as close as possible to public areas and facilities. The car spaces shall have minimum dimensions in accordance with AS 2890.6 and all spaces shall have an uninterrupted minimum headroom clearance of 2.5 metres free of all obstructions, such as service pipes, fittings etc for use by vehicles fitted with roof mounted wheelchair racks. Plans and specifications confirming compliance with these requirements shall be submitted to the Certifying Authority for approval prior to the issue of any construction certificate.

41. The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. Plans will be appropriately stamped. For Quick Check agent details please contact Sydney Water.

The consent authority or a private accredited certifier must ensure that a Quick Check agent/Sydney Water has appropriately stamped the plans before issue of any Construction Certificate.

- 42. If the development is likely to disturb or impact upon telecommunications infrastructure, written confirmation from the service provider that they have agreed to the proposed works must be submitted to the Principal Certifying Authority prior to the issue of a Construction Certificate or any works commencing, whichever occurs first; and the arrangements and costs associated with any adjustment to telecommunications infrastructure shall be borne in full by the applicant/ developer.
- 43. A Construction Management Plan (CMP) shall be prepared in accordance with the requirements of all relevant regulatory approval bodies and submitted to the Certifying Authority for approval prior to the issue of any construction certificate. Prior to the commencement of works the Certifying Authority shall be satisfied that the Construction Management Plan has obtained all relevant regulatory approvals. The Construction Management Plan shall be implemented during demolition, excavation and construction.

Prior to the issue of any Construction Certificate, a Construction Traffic Management Plan (TMP) prepared by a suitably qualified person shall be submitted to and approved by the Certifying Authority. The Plan shall address, but not be limited to, the following matters:

- (a) ingress and egress of vehicles to the site;
- (b) loading and unloading, including construction zones;
- (c) predicted traffic volumes, types and routes; and
- (d) pedestrian and traffic management methods.

COPIES OF THE CMP AND TMP SHALL BE SUBMITTED TO COUNCIL.

- 44. The following conditions must be adhered to:
 - The applicant shall confer with Ausgrid to determine if an electricity distribution substation is required.
 - The applicant shall confer with Ausgrid to determine if installation of electricity conduits in the footway is required.
 - The applicant shall confer with Ausgrid to determine if satisfactory clearances to any existing overhead High Voltage mains will be affected.

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Note: No structures (including an electricity distribution substation and installation of electricity conduits) are to be installed within the 48-58 feet wide road widening reservation along Ramsgate Road.

Written confirmation of Ausgrid's requirements shall be obtained prior to issue Construction Certificate.

45. Geotechnical

There are built structures, (including public assets) which may be in the zone of influence of the proposed works and excavations on this site. A qualified practicing geotechnical engineer must prepare a Construction Methodology report demonstrating that the proposed construction method including any excavation and the configuration of the built structures will have no adverse impact on any surrounding property and infrastructure. The report must be submitted to the certifying authority for approval prior to the issue of any Construction Certificate.

Where a Private Certifier issues the Construction Certificate the document mentioned in the above paragraph must be provided to Council.

The report must include an investigation to determine the design parameters appropriate to the specific development and site. This would typically include:

- Location & level of nearby foundations/footings (site and neighbouring)
- Proposed method of excavation
- Permanent and temporary support measures for excavation
- Potential settlements affecting footings/foundations
- · Ground-water levels (if any)
- Batter slopes
- Potential vibration caused by method of excavation
- Likely vibration effects for the recommended construction equipment
- Recommended regime of construction inspections by Geotechnical engineer.
- De-watering including seepage and off site disposal rate (if any)

Adjoining buildings founded on loose foundation materials

The applicant/developer is to seek a qualified practicing geotechnical engineer to:

- (a) Provide a certificate that the construction certificate plans are satisfactory from a geotechnical perspective, with this certification to be submitted to the certifying authority for approval prior to the issue of any Construction Certificate
- (b) Confirm which proposed construction methodology is used and prepare a Construction Methodology report demonstrating that the proposed construction methods (including any excavation, and the configuration of the built structures) will have no adverse impact on any surrounding property and infrastructure. The report must be submitted to the certifying authority for approval prior to the issue of any Construction Certificate.
- (c) Inspect the works as they progress. The Inspections are to occur at frequencies determined by the geotechnical engineer.

Where a Private Certifier issues the Construction Certificate a copy of the above

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documentation must be provided to Council, once the Construction Certificate is issued for the relevant stage of works.

Note: A failure by contractors to adequately assess and seek professional engineering (geotechnical) advice to ensure that appropriate underpinning and support to adjoining land is maintained prior to commencement may result in damage to adjoining land and buildings. Such contractors are likely to be held responsible for any damages arising from the removal of any support to supported land as defined by section 177 of the Conveyancing Act 1919.

46. Affected By Council Pipes - Easement

The drainage easement along the southern boundary of the site, as shown on the approved plans, must be registered with the NSW Land and Property Information office prior to the issue of a Construction Certificate. Proof of registration must be submitted to the Certifying Authority and Council (if Council is not the certifying authority) prior to the issue of any Construction Certificate.

The drainage easement is to be in favour of Rockdale City Council and covered by a Section 88B Instrument, which may only be varied or extinguished with the consent of Rockdale City Council. A restriction to user preventing works and any fixed obstacles restricting access to the easement is required.

Any proposed construction near this easement will need to have the footings piered. Any works that are likely to cause changes to pipe location and/or alignment are to be discussed with the Council's City Assets team. Requirements for realignment are contained in Council's Technical Specification Stormwater Management – Section 8.8.

[Amendment A - S96(AA) amended on 6 May 2016]

 A. In addition to complying with the requirements of the BCA, walls separating tenancies, shall be of discontinuous construction and satisfy the Association of Australian Acoustical Consultants (AAAC) 5 Star attribute for walls and provide an D'nT, w +Crt > 50.

A report demonstrating compliance with this requirement shall be submitted to the Principal Certifying authority for approval prior to the issue of any Construction Certificate. The report is to include BCA requirements and details of the common walls between residential apartments.

A suitably qualified acoustic engineer with MIE Australia membership or employed by a consulting firm eligible for AAAC membership is to certify that the details provided in the said report satisfy the requirements of this condition, with the certification to be submitted to the Principal Certifying Authority for approval prior to the issue of any Construction Certificate.

B. In addition to complying with the requirements of the BCA floors/ceilings separating tenancies shall be constructed to satisfy the AAAC 5 Star attribute for floors and provide an L'nTw < 45.</p>

A report demonstrating compliance with this requirement shall be submitted to the Principal Certifying authority for approval prior to the issue of any Construction Certificate for each of the building stages. The report is to include BCA requirements and details of floor/ceilings between residential apartments. Apartments designed with carpet covered floors shall be identified in the report.

A suitably qualified acoustic engineer with MIE Australia membership or employed by a consulting firm eligible for AAAC membership is to certify that the

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details provided in the said report satisfy the requirements of this condition, with the certification to be submitted to the Principal Certifying Authority for approval prior to the issue of any Construction Certificate for each of the building stages.

48. Fire hydrants and boosters fronting Campbell Street must be relocated adjacent to the southern side of the ground floor driveway wall and the Campbell Street boundary.

Fire hydrants and boosters fronting Campbell Street are to be suitably screened from public view. Details to be submitted and approved by the PCA prior to the issue of any Construction Certificate.

- 49. The following amendments to the landscape plans must be adhered to:
 - Any existing conflicts or discrepancies between the stormwater plan in terms of pit locations, particularly in the rear yard, must be resolved and correctly indicated on an amended Landscape Plan.
 - Stormwater and drainage systems are not to be located in, or under those areas shown as landscaped beds, or where existing or proposed trees are located.
 - Landscape levels, planter details, proposed soil depths and a full plant schedule (including proposed plant numbers) as per the requirements of the RDCP 2011 shall be shown.
 - The front portion of the site affected by the road widening reservation must consist of grass.
 - e. The fencing details (including the screen/fencing around the fire hydrant booster system) and materials must be as follows:
 - A maximum 1.8m high fence of a solid material to be provided along the southern boundary to prevent lights spill to adjacent dwelling.
 - A maximum 1.8m high fence of a solid material (to match the above) to be provided along the eastern boundary within the ground level motorcycle parking and easement area.
 - The fire hydrant booster is to be integrated into the fencing detail.
 - f. A minimum soil depth of 1000mm is required for planted areas (other than turf) on the fourth storey landscaped area with direct maintenance access from unit 7.
 - g. The existing Council street trees located on the nature strip at the front and side of the site are to be retained and protected.
 - h. Planting of Sygygium Varieties (Lilly Pilly) (min. 45 litre bag size) within the drainage easement.
 - i. Use of porous pavement within ground floor car spaces RES.1, RES. 2, RET. 1, and RET. 2 and Motorcycle Parking areas.
 - j. Any other relevant condition of consent.

Details shall be submitted to Council for approval prior to any issue of the Construction Certificate. The approved plan shall be part of the Construction Certificate documentation.

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[Amendment A – S96(AA) amended on 6 May 2016] [Amendment C - S4.55(2) amended on]

- All south-facing windows on the upper floor levels to the units 1, 4 & 6 must be highlight windows with a minimum sill height of 1800mm above the each of the respective finished floor levels.
- 51. A Waste Management Plan shall be prepared and implemented in accordance with Rockdale Technical Specification Waste Minimisation and Management. The Waste Management Plan is to be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.
- 52. All ground floor and below ground surface runoffs shall be directed through a propriety oil and sediment filtration system prior to discharge. Details of the pit type, location, performance and manufacturer's maintenance and cleaning requirements shall be submitted and approved by the Certifying Authority prior to the issue of any construction certificate.
 - The owners/occupiers are to undertake all future maintenance and cleaning to the manufacturer's requirements.
- 53. Prior to the issue of any Construction Certificate, detailed drainage design plans for the management of stormwater are to be submitted to Principal Certifying Authority for assessment and approval. Design certification, in the form specified in Rockdale Technical Specification Stormwater Management, and drainage design calculations are to be submitted with the plans. Council's Rockdale Technical Specification Stormwater Management sets out the minimum documentation requirements for detailed design plans. Stormwater management requirements for the development site, including the final discharge/end connection point, must comply with Rockdale Technical Specification Stormwater Management.
 - (i) In accordance with Rockdale Technical Specification Stormwater Management, section 2.8.3 a development is required to provide onsite detention system. The proposed recharge trench and infiltration beds are not suitable for the location. Also the proposed road widening area shall be kept free of structures, unlimited in height or depth).
 - (ii) The basement pump storage shall be sized to contain the total volume of runoff generated by the two hour 1 in 50 year storm assuming the pumps are not operating. This is equivalent to 10.6 m³ per 100 m² of area being drained anticipated groundwater seepage capacity. All the pump storage volume is to be underground and to have minimum dual pumps.
 - (iii) To implement any required drainage measures on the base of geotechnical Engineer's advice on the drainage under the floor slab and basement walls.

Note: The detailed plans are required to incorporate an oil interceptor for the driveway and car park stormwater run-off in accordance with Rockdale Technical Specification Stormwater Management, section 7.5.4.

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PRIOR TO COMMENCEMENT OF WORKS

The following conditions must be completed prior to the commencement of works (and ongoing where indicated).

- 54. A dilapidation survey shall be undertaken of 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 and the following properties:
 - i. Lot 1 in DP241356 commonly known as 103 Ramsgate Road, Ramsgate;
 - ii. Lot 1 in DP543689 commonly known as 33 Campbell Street, Ramsgate; and
 - iii. Lot 1 in DP544687 commonly known as 33A Campbell Street, Ramsgate.

Any damage caused to other properties during construction shall be rectified. A copy of the dilapidation survey and an insurance policy that covers the cost of any rectification works shall be submitted to the Accredited Certifier (AC) or Council prior to Commencement of Works. The insurance cover shall be a minimum of \$10 million.

55. A Soil and Water Management Plan shall be prepared and approved by the Certifying Authority prior to the commencement of works. The Plan must include details of the proposed erosion and sediment controls to be installed on the building site. A copy of the Soil and Water Management Plan must be kept on-site at all times and made available on request.

Soil and sedimentation controls are to be put in place prior to commencement of any work on site. The controls are to be maintained in effective working order during construction.

Council's warning sign for soil and water management must be displayed on the most prominent point on the building site, visible to both the street and site workers. The sign shall be erected prior to commencement of works and shall be displayed throughout construction.

- 56. A sign must be erected at the front boundary of the property clearly indicating the Development Approval Number, description of work, builder's name, licence number and house number before commencement of work. If owner/builder, the Owner/Builder Permit Number must be displayed.
- 57. A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:
 - i) stating that unauthorised entry to the work site is prohibited, and
 - ii) showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours.

Any such sign is to be removed when the work has been completed.

This condition does not apply to:

- iii) building work carried out inside an existing building or
- building work carried out on premises that are to be occupied continuously (both during and outside working hours) while the work is being carried out.
- 58. Prior to the commencement of work, Tree Protection Zones shall be established in accordance with AS4970-2009 (Protection of trees on Development Sites) with protective fences at least 1.8 metres high erected outside the drip lines around each of

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the Council street trees located on the nature strip at the front and side of the site which are required to be retained. The protective fences shall consist of chain wire mesh temporary fence panels securely mounted and braced to prevent movement, shall be in place prior to the commencement of any work on site and shall remain until the completion of all building and hard landscape construction. Excavations for services, waste bins, storage of materials and equipment, site residue, site sheds, vehicle access or cleaning of tools and equipment are not permitted within the Tree Protection Zones at any time.

- 59. Prior to the commencement of any work on site, a sign shall be placed in a prominent position on each protective fence identifying the area as a Tree Protection Zone and prohibiting vehicle access, waste bins, storage of materials and equipment, site residue and excavations within the fenced off area.
- 60. Where it is necessary to import landfill material onto the site to fill the land to levels shown on the plans forming part of the consent, a certificate, prepared by a suitably qualified and experienced Contaminated Land Consultant, shall be submitted to Council being the Regulatory Authority prior to the commencement of works, certifying that the imported fill is suitable for the land use.
- 61. The site shall be secured by a 1800 mm (minimum) high temporary fence for the duration of the work. To prevent overlooking to neighbouring properties from the public domain, the temporary fence shall be provided with an additional opaque material along the side and rear boundaries adjoining 103 Ramsgate Road and 28 Campbell Street. Gates shall be provided at the opening points.
 - [Amendment A S96(AA) amended on 6 May 2016]
- 62. Where construction/building works require the use of a public place including a road or footpath, approval under Section 68 of the Local Government act 1993 for a Barricade Permit is to be obtained from Council prior to commencement of work. Details of the barricade construction, area of enclosure and period of work are required to be submitted to the satisfaction of Council.
- 63. A hoarding or fence shall be erected between the work site and the public place when the work involved in the erection or demolition of a building:
 - i) is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or
 - ii) building involves the enclosure of a public place,

Where the development site adjoins a public thoroughfare, the common boundary between them must be fenced for its full length with a hoarding, unless, the least horizontal distance between the common boundary and the nearest part of the structure is greater than twice the height of the structure. The hoarding must be constructed of solid materials (chain wire or the like is not acceptable) to a height of not less than 1.8m adjacent to the thoroughfare.

Where a development site adjoins a public thoroughfare with a footpath alongside the common boundary then, in addition to the hoarding required above, the footpath must be covered by an overhead protective structure, type B Hoarding, and the facing facade protected by heavy duty scaffolding unless either:

- the vertical height above footpath level of the structure being demolished is less than 4m; or
- (ii) the least horizontal distance between footpath and the nearest part of the

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structure is greater than half the height of the structure.

The overhead structure must consist of a horizontal platform of solid construction and vertical supports, and the platform must -

- extend from the common boundary to 200mm from the edge of the carriageway for the full length of the boundary;
- (ii) have a clear height above the footpath of not less than 2.1m;
- (iii) terminate not less than 200mm from the edge of the carriageway (clearance to be left to prevent impact from passing vehicles) with a continuous solid upstand projecting not less than 0.5m above the platform surface; and
- (iv) together with its supports, be designed for a uniformly distributed live load of not less than 7 kPa

The 'B' Class hoarding is to be lit by fluorescent lamps with anti-vandalism protection grids.

Any such hoarding, fence or awning is to be removed when the work has been completed.

The principal contractor or owner builder must pay all fees and rent associated with the application and occupation and use of the road (footway) for required hoarding or overhead protection.

- 64. Toilet facilities must be available or provided at the work site before works begin and must be maintained until the works are completed at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site.
- 65. Consultation with Ausgrid is essential prior to commencement of work. Failure to notify Ausgrid may involve unnecessary expense in circumstances such as:
 - i) where the point of connection and the meter board has been located in positions other than those selected by Ausgrid or
 - where the erection of gates or fences has restricted access to metering equipment.
- 66. Where clearances to any existing overhead High Voltage mains are affected, the builder shall make arrangements with Ausgrid for any necessary modification to the electrical network in question. These works shall be at the applicant's expense. Ausgrid's requirements under Section 49 Part 1 of the Electricity Supply Act 1995 shall be met prior to commencement of works or as agreed with Ausgrid.

DURING DEMOLITION / EXCAVATION / CONSTRUCTION

The following conditions must be complied with during demolition, excavation and or construction.

- 67. A copy of the Construction Certificate and the approved plans and specifications must be kept on the site at all times and be available to Council officers upon request.
- 68. Hours of construction shall be confined to between 7.00 am and 6.30 pm Mondays to Fridays, inclusive, and between 8.00 am and 3.30 pm Saturdays with no work being carried out on Sundays and all public holidays.
- 69. Upon inspection of each stage of construction, the Principal Certifying Authority (or

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other suitably qualified person on behalf of the Principal Certifying Authority) is also required to ensure that adequate provisions are made for the following measures (as applicable), to ensure compliance with the terms of Council's approval:

- Sediment control measures
- Provision of perimeter fences or hoardings for public safety and restricted access to building sites.
- Maintenance of the public place free from unauthorised materials, waste containers or other obstructions.
- Demolition operations shall not be conducted on the roadway or public footway or any other locations, which could lead to the discharge of materials into the stormwater drainage system.
- All waste generated on site shall be disposed of in accordance with the submitted Waste Management Plan.
- 72. All excavation and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards and guarded and protected to prevent them from being dangerous to life or property.

When excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building or an adjoining allotment of land, you shall:

- i) preserve and protect the building from damage and
- ii) underpin and support the building in an approved manner, if necessary and
- iii) give notice of intention to excavate below the level of the base of the footings of a building on an adjoining allotment of land to the owner at least 7 days prior to excavation and furnish particulars of the excavation to the owner of the building being erected or demolished.

Note: The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this conditions allotment of land includes a public road and any other public place.

Works shall not encroach onto or over adjoining properties, including retaining walls, fill material or other similar works. Soil shall not be lost from adjoining sites due to construction techniques employed on the subject site.

- 73. When soil conditions require it:
 - retaining walls associated with the erection or demolition of a building or other approved methods of preventing movement of the soil shall be provided, and
 - ii) adequate provision shall be made for drainage.
- 74. All persons carrying out the approved development shall comply with the following during all stages of demolition and construction:
 - A Waste Container on Public Road Reserve Permit must be obtained prior to the placement of any waste container or skip bin in the road reserve (i.e. road or footpath or nature strip). Where a waste container or skip bin is placed in the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can

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- be obtained from Council's Customer Service Centre.
- A Road Opening Permit must be obtained prior to any excavation in the road reserve (i.e. road or footpath or nature strip). Where excavation is carried out on the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
- A Hoarding Permit must be obtained prior to the erection of any hoarding (Class A or Class B) in the road reserve (i.e. road or footpath or nature strip). Where a hoarding is erected in the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
- A Crane Permit must be obtained from Council prior to the operation of any
 activity involving the swinging or hoisting of goods across or over any part of a
 public road by means of a lift, hoist or tackle projecting over the footway.
 Permits can be obtained from Council's Customer Service Centre.
- A Permit to Dewater or Pump Out a site must be obtained prior to the discharge of pumped water into the road reserve, which includes Council stormwater pits and the kerb and gutter. Permits can be obtained from Council's Customer Service Centre.
- All demolition work shall be carried out in accordance with AS2601 2001: The Demolition of Structures and with the requirements of the WorkCover Authority of NSW
- 76. The following conditions are necessary to ensure minimal impacts during construction:
 - i. Building, demolition and construction works not to cause stormwater pollution and being carried out in accordance with Section 2.8 of Council's Stormwater Pollution Control Code 1993. Pollutants such as concrete slurry, clay and soil shall not be washed from vehicles onto roadways, footways or into the stormwater system. Drains, gutters, roadways and access ways shall be maintained free of sediment. Where required, gutters and roadways shall be swept regularly to maintain them free from sediment.
 - Stormwater from roof areas shall be linked via a temporary downpipe to an approved stormwater disposal system immediately after completion of the roof area.
 - All disturbed areas shall be stabilised against erosion within 14 days of completion, and prior to removal of sediment controls.
 - iv. Building and demolition operations such as brickcutting, washing tools or paint brushes, and mixing mortar shall not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.
 - v. Stockpiles are not permitted to be stored on Council property (including nature strip) unless prior approval has been granted. In addition stockpiles of topsoil, sand, aggregate, soil or other material shall be stored clear of any drainage line or easement, natural watercourse, kerb or road surface.
 - vi. Wind blown dust from stockpile and construction activities shall be minimised by one or more of the following methods:

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- a) spraying water in dry windy weather
- b) cover stockpiles
- c) fabric fences
- vii. Access to the site shall be restricted to no more than two 3m driveways. Council's footpath shall be protected at all times. Within the site, provision of a minimum of 100mm coarse crushed rock is to be provided for a minimum length of 2 metres to remove mud from the tyres of construction vehicles.

An all weather drive system or a vehicle wheel wash, cattle grid, wheel shaker or other appropriate device, shall be installed prior to commencement of any site works or activities, to prevent mud and dirt leaving the site and being deposited on the street. Vehicular access is to be controlled so as to prevent tracking of sediment onto adjoining roadways, particularly during wet weather or when the site is muddy. Where any sediment is deposited on roadways it is to be removed by means other than washing and disposed of appropriately.

In addition builders / demolishers are required to erect a 1.5m high fence along the whole of the street alignment other than at the two openings. Such protection work, including fences, is to be constructed, positioned and maintained in a safe condition to the satisfaction of the Principal Certifying Authority, prior to the demolition of the existing structures and commencement of building operations.

viii. Any noise generated during construction of the development shall not exceed limits specified in any relevant noise management policy prepared pursuant to the Protection of the Environment Operations Act, 1997 or exceed approved noise limits for the site.

77. The following conditions must be adhered to:

- Any pruning of branches or roots of trees growing from within adjoining properties requires the prior written consent of the tree's owners and the prior written consent of Council in the form of a Permit issued under Council's Development Control Plan 2011. The work must be carried out in accordance with AS4373:2007 by an experienced Arborist with minimum AQF Level 2 qualifications in Arboriculture.
- ii. Where drainage or paving works are proposed to be constructed in the area below the drip line of trees, the proposed works and constructions methods must not damage the tree. Where either the trees or works were not shown in detail on the approved plans, the Council approval must be obtained by contacting Council's Tree Management Officer.
- iii. Underground services such as pipelines or cables to be located close to trees, must be installed by boring or by such other method that will not damage the tree rather than open trench excavation. The construction method must be approved by Council's Tree Management Officer.
- iv. Existing soil levels within the drip line of the trees to be retained shall not be altered without reference to Council's Tree Management Officer.
- v. Building materials, site residue, machinery and building equipment shall not be placed or stored under the drip line of trees required to be retained.

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PRIOR TO ISSUE OF ANY OCCUPATION CERTIFICATE OR COMMENCEMENT OF USE

The following conditions must be complied with prior to issue of any Occupation Certificate or Commencement of Use.

- An Occupation Certificate shall be obtained in relation to the approved works prior to any use or occupation of the building.
- 79. Where Council's park/reserve is damaged as a result of building work or vehicular building traffic, this area shall be restored by Council at the applicant's expense. Repairs shall be completed prior to the issue of the Occupation Certificate.
- 80. All excess excavated material, demolition material, vegetative matter and builder's rubbish shall be removed to the Waste Disposal Depot or the Regional Tip prior to final inspection.

Note: Burning on site is prohibited.

- 81. A by-law shall be registered and maintained for the life of the development, which requires that:
 - balconies are not to be used as clothes drying areas, storage of household goods and air-conditioning units that would be visible from the public domain;
 - (b) an owner of a lot must ensure that all floor space within the lot complies with the acoustic conditions for floors specified in this consent;
 - (c) Not withstanding subclause (b), in the event that a floor covering in the lot is removed, the newly installed floor covering shall have a weighted standardized impact sound pressure level not greater than L'nT,w 45 measured in accordance with AS ISO 140.7 and AS ISO 717.2, A test report from a qualified acoustic engineer employed by a firm eligible to membership of the Association of Australian Acoustical Consultants shall be submitted to the Owners Corporation within 14 days of the installation of the new floor covering demonstrating compliance with that standard. In the event that the standard is not complied with, the floor covering shall be removed and replaced with any directions given by the Owners Corporation.
 - (d) In case of maintenance to the pipes within the drainage easement located along the southern boundary, all obstacles that may prevent the works must be removed.

Proof of registration of the By Law shall be submitted to Council prior to the issue of any Occupation Certificate.

[Amendment A - S96(AA) amended on 6 May 2016]

82. Damage to brick kerb and/or gutter and any other damage in the road reserve shall be repaired using brick kerb and gutter of a similar type and equal dimensions. All works shall be to Council's satisfaction at the applicant's expense. Repairs shall be completed prior to the issue of any Occupation Certificate.

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- 83. Ground level surfaces are to be treated with anti-graffiti coating to minimise the potential of defacement. In addition, any graffiti evident on the exterior facades and visible from a public place shall be removed forthwith. Certification in relation to these matters must be provided to the Certifying Authority for approval prior to the issue of any Occupation Certificate.
- 84. Prior to the issue of the Occupation Certificate, the area of the Council easement must be planted with Sygygium Varieties (Lilly Pilly) to a min. 45 litre bag size.
 - All landscape works are to be carried out in accordance with the approved landscape plans. This condition must be complied with to the satisfaction of the Certifying Authority prior to the issue of any occupation certificate. The landscaping is to be maintained to the approved standard at all times.
 - [Amendment A S96(AA) amended on 6 May 2016]
- 85. All works within the road reserve, which are subject to approval pursuant to Section 138 of the Roads Act 1993, shall be completed to Council's satisfaction, and accepted by Council, prior to the issue of any occupation certificate.
- 86. Vehicles shall enter and exit the site in a forward direction at all times. A plaque with minimum dimensions 300mm x 200mm shall be permanently fixed to the inside skin of the front fence, or where there is no front fence a prominent place approved by the Principal Certifying Authority, stating the following: "Vehicle shall enter and exit the site in a forward direction at all times". This condition must be complied with to the satisfaction of the Certifying Authority prior to the issue of any occupation certificate.
- 87. Prior to completion of the building works, a full width vehicular entry is to be constructed to service the property. Any obsolete vehicular entries are to be removed and reconstructed with kerb and gutter. This work may be done using either a Council quote or a private contractor. There are specific requirements for approval of private contractors and/or persons carrying out the approved development. This condition must be complied with to the satisfaction of the Certifying Authority prior to the issue of any occupation certificate.
- 88. In relation to safe egress, a warning system and speed humps will be provided within the development to ensure pedestrian safety in lieu of splayed walls.
 - A sign displaying "Give way to Pedestrians" must be erected at the driveway entrance of the site and from within the car lift. This condition must be complied with to the satisfaction of the Certifying Authority prior to the issue of any occupation certificate.
- 89. Prior to the issue of any occupation certificate, a registered surveyor shall certify that the driveway over the footpath and within the property have been constructed in accordance with the approved driveway profile(s) and the awning above the Ramsgate Road footpath is in accordance with the RMS requirements for 48-58 feet wide road widening reserve along Ramsgate Road. 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.
- 90. Ten (10) off-street car spaces shall be provided in accordance with the submitted plan and shall be sealed and line marked to Council's satisfaction. The pavement of all car parking spaces, manoeuvring areas and internal driveways shall comply with Australian Standard AS3727 Guide to Residential Pavements / Austroads Pavement Design A Guide to the Structural Design of Road Pavements 2004 except ground

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floor car spaces RES.1, RES. 2, RET. 1, RET. 2 and Motorcycle Parking areas shall comply with Rockdale Technical Specification Stormwater Management, Section 7.8 - Porous Paving. This condition must be complied with to the satisfaction of the Certifying Authority prior to the issue of any Occupation Certificate.

[Amendment A - Section 96(AA) amended on 6 May 2016]

[Amendment C - S4.55(2) amended on]

 A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Coordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

The Section 73 Certificate must be submitted to the Principal Certifying Authority prior to the issue of any occupation certificate.

- 92. The car lift system, including all associated electrical and controls systems, shall be tested and inspected by a suitable qualified and experienced person. Records of testing shall be retained and provided to the certifying authority and or Council upon request.
- 93. Testing and evaluation of the wall insulation system is to be carried out at post construction stage by a suitably qualified acoustical engineer to show an Acoustical Star Rating of 5 has been achieved in accordance with the standards prescribed by the Association of Australian Acoustical Consultants (AAAC) in accordance with the report submitted to Council with the Development Application. A report is to be submitted to the Principal Certifying authority for approval prior to the issue of any Occupation Certificate.
- 94. Testing and evaluation of the floor system is to be carried out at post construction stage by a suitably qualified acoustical engineer to show that an Acoustical Star Rating of 5 in accordance with the standards prescribed by the Association of Australian Acoustical Consultants (AAAC) and in accordance with the report submitted to Council with the Development Application has been achieved. A report is to be submitted to the Principal Certifying authority prior to the issue of any Occupation Certificate.
- 95. The noise reduction measures specified in the noise report prepared by Acoustic Logic, Revision 0, dated 22 October 2014 shall be validated by a Certificate of Compliance prepared by the acoustic consultant and submitted to the Principal Certifying Authority (PCA) prior to the issue of any Occupation Certificate. If Council is not the PCA, a copy shall be submitted to Council concurrently.
- 96. A Landscape Architect shall provide a report to the certifying authority (with a copy provided to Council, if Council is not the principal certifying authority) stating that the landscape works have been carried out in accordance with the approved plans and documentation. This condition must be complied with to the satisfaction of the Certifying Authority prior to the issue of any occupation certificate.

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- 97. Prior to the issue of any occupation certificate, a Chartered Professional Engineer shall certify that the stormwater system has been constructed in accordance with the approved plans and as required by Rockdale Technical Specification Stormwater Management. The certificate shall be in the form specified in Rockdale Technical Specification Stormwater Management and include an evaluation of the completed drainage works. A works-as-executed drainage plan shall be prepared by a registered surveyor based on a survey of the completed works. A copy of the certificate and works-as-executed plan(s) shall be supplied to the Principal Certifying Authority prior to the issue of any occupation certificate. A copy shall be provided to Council if Council is not the Principal Certifying Authority.
- 98. The internal driveway and car lift shall be floodproofed to a minimum of 300mm above the 1% Annual Exceedance Probability gutter flows. This condition must be complied with to the satisfaction of the Certifying Authority prior to the issue of any occupation certificate. The levels shall be certified by a registered surveyor prior to construction of the driveway or other openings.
 - [Amendment A S96(AA) amended on 6 May 2016]
- 99. There shall be no encroachment of paths, fencing or other improvements onto the drainage easements without Council approval. This condition must be complied with to the satisfaction of the Certifying Authority prior to the issue of any occupation certificate.
- 100. A legal right of way for vehicular access shall be created in favour of Lot 1 in DP241356 being 103 Ramsgate Road, Ramsgate over the driveway area of the common property at ground level of Lot 69 in DP2032 shown in Drawing No 3.23, Revision F, dated 12 June 2015. The terms of the right of way shall be to the written satisfaction of the Director of Planning of Rockdale City Council and must include terms to the following effect:
 - i. The right of way shall be at least 5.5 metres wide and 2.3 metres in height.
 - ii. That the right of way shall only activate upon the major redevelopment of the lot benefited for the purpose of a mixed use development.
 - That the terms of the right of way must name Rockdale City Council as an authority empowered to release, vary or modify the subject right of way.
- 101. The following instruments pursuant to the Conveyancing Act 1919 shall be created with evidence of their creation to be submitted to the Certifying Authority prior to the issue of any occupation certificate:
 - a. A positive covenant on the title of the lots that contain the stormwater detention and the car lift facilities to provide for the maintenance of these facilities.
 - b. A legal right of way provided in Condition 100.
 - c. A positive covenant on each title of the lots over the Council and RMS footpaths for overhanging elements on balcony balustrade to provide for maintenance (including any damage) that occurs to Council's Campbell Street footpath and RMS-controlled Ramsgate Road footpath.
- 102. 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.

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103. The drainage system shall be constructed in accordance with the approved drainage plans and any amendments in red. All stormwater drainage plumbing work shall comply with the NSW Code of Practice: Plumbing and Drainage and Australian Standard AS3500.

Drainage grates shall be provided at the boundary. Width of the drainage grates shall be in accordance with Rockdale Technical Specification Stormwater Management.

A silt/litter arrestor pit as detailed in Rockdale Technical Specification Stormwater Management shall be provided prior to discharge of stormwater from the site.

This condition must be complied with to the satisfaction of the Certifying Authority prior to the issue of any occupation certificate.

104. Signs shall be displayed adjacent to all stormwater drains on the premises, clearly indicating "Clean water only - No waste". This condition must be complied with to the satisfaction of the Certifying Authority prior to the issue of any occupation certificate.

INTEGRATED DEVELOPMENT/EXTERNAL AUTHORITIES

The following conditions have been imposed in accordance with Section 91A of the Environmental Planning and Assessment Act, 1979.

105. Roads and Maritime Services

 The subject property is affected by a Road Widening Order under Section 25 of the Roads Act, 1993 as published in Government Gazette 16th June, 1972 as shown by pink colour on the attached aerial – "X" (being Lot 21 DP 241356).

Any new building or structures, together with any improvements integral to the future use of the site, are to be erected clear of the land required for road (unlimited in height or depth).

Roads and Maritime does not support the construction of any new buildings or substantial structures on land affected by a road proposal.

The area required for road should be identified as a separate lot or part of the common property in any plan of subdivision.

 Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system are to be submitted to the Roads and Maritime for approval, prior to the commencement of any works.

Details should be forwarded to:

The Sydney Asset Management P O Box 973 Parramatta CBD NSW 2124

A Plan checking fee may be payable and a performance bond may be required before the Roads and Maritime's approval is issued. With regard to the Civil Works requirement please contact the Roads and Maritime's Project engineer, External Works Ph: 8849 2114.

3. The developer is to submit design drawings and documents relating to the

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excavation of the site and support structures to Roads and Maritime for assessment, in accordance with Technical Direction GTD2012/001.

The developer is to submit all documentation at least six (6) weeks prior to commencement of construction and is to meet the full cost of the assessment by Roads and Maritime.

The report and any enquiries should be forwarded to: Project Engineer, External Works Sydney Asset Management Roads and Maritime Services P O Box 973 Parramatta CBD 2124

Telephone 8849 2114 Fax 8849 2766

If it is necessary to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owner/s of the roadway is/are given at least seven (7) day notice of the intention to excavate below the base of the footings. The notice is to include complete details of the work.

Please note any modification to the existing kerb along Ramsgate Road would require Roads and Maritime's concurrence under Section 138 of the Roads Act 1993.

105A Water NSW

General

- i. An authorisation shall be obtained for the take of groundwater as part of the activity. Groundwater shall not be pumped or extracted for any purpose other than temporary construction dewatering at the site identified in the development application. The authorisation shall be subject to a currency period of 12 months from the date of issue and will be limited to the volume of groundwater take identified.
- ii. The design and construction of the building must prevent any take of groundwater after the authorisation has lapsed by making any below-ground levels that may be impacted by any water table watertight for the anticipated life of the building. Waterproofing of below-ground levels must be sufficiently extensive to incorporate adequate provision for unforseen high water table elevations to prevent potential future inundation.
- iii. Sufficient permanent drainage shall be provided beneath and around the outside of the watertight structure to ensure that natural groundwater flow is not impeded and:
 - (a) any groundwater mounding at the edge of the structure shall be at a level not greater than 10 % above the level to which the water table might naturally rise in the location immediately prior to the construction of the structure; and
 - (b) any elevated water table is more than 1.0 m below the natural ground surface existent at the location immediately prior to the construction of the structure; and

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- (c) where the habitable part of the structure (not being footings or foundations) is founded in bedrock or impermeable natural soil then the requirement to maintain groundwater flows beneath the structure is not applicable.
- iv. Construction methods and material used in and for construction shall be designed to account for the likely range of salinity and pollutants which may be dissolved in groundwater, and shall not themselves cause pollution of the groundwater.
- v. DPI Water requires documentation (referred to as 'report') comprising measurements, maps, bore logs, calculations, results, discussion and justification for various matters related to the dewatering process. Information will be required at several stages: prior to construction commencing (initial report which will accompany the application for the authorisation), at any time when an authorisation renewal is required or a significant change in activities occurs (intermediate report); and at the completion of dewatering and related operations (completion report). Reports need to be submitted to DPI Water at Parramatta Office, in a format consistent with electronic retrieval without editing restrictions; raw data should be presented in Excel spreadsheets without editing restrictions.

Prior to excavation

- vi. The following shall be included in the initial report:
 - (a) measurements of groundwater levels beneath the site from a minimum of three relevant monitoring bores, together with details of the bores used in the assessment including bore logs and three-dimensional identification information.
 - (b) a map of the site and its immediate environs depicting the water table (baseline conditions) shown relative to the topography and approved construction footprint from the surface level and below. An assessment of the potential variation in the water table during the life of the proposed building together with a discussion of the methodology and information on which this assessment is based.
 - (c) details of the present and potential groundwater flow paths and hydraulic gradients in and around the site; the latter in response to the final volumetric emplacement of the construction.
 - (d) a schedule for the ongoing water level monitoring and description of the methodology to be used, from the date of consent until at least two months after the cessation of pumping. [DPI Water prefers that monitoring be undertaken on a continuous basis using automatic loggers in boreholes.]
- vii. The Applicant shall assess the likely impacts of the dewatering activities on other groundwater users or structures or public infrastructure; this assessment will include an appropriate bore, spring or groundwater seep census and considerations relevant to potential subsidence or excessive settlement induced in nearby buildings and property, and be documented together with all calculations and information to support the basis of these in the initial report.
- viii. Groundwater quality testing of samples taken from outside the footprint of the proposed construction, with the intent of ensuring that as far as possible the natural and contaminant hydrochemistry of the potential dewatered groundwater is understood, shall be conducted on a suitable number of samples and tested by a NATA-certified laboratory. Details of the sampling locations and the protocol

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used, together with the test results accompanied by laboratory test certificates shall be included in the initial report. An assessment of results must be done by suitably qualified persons with the intent of identifying the presence of any contaminants and comparison of the data against accepted water quality objectives or criteria for the intended dewatering purpose. In the event of adverse quality findings, the Applicant must develop a plan to mitigate the impacts of the hydrochemistry on the dewatered groundwater and present the details of all assessments and plans in the initial report.

- ix. Groundwater quality testing generally in accordance with Clause viii (above), shall be undertaken on any anniversary or other renewal or alteration of any dewatering authorisation.
- x. A reasonable estimate of the total volume of groundwater to be extracted shall be calculated and included in the initial report; together with details and calculation methods for the parameters and supporting information to confirm their development or measurement (e.g. permeability predicted by slug-testing, pump-testing or other means).
- A copy of a valid consent for the development shall be provided in the initial report.
- xii. The method of disposal of pumped water shall be nominated (i.e. reinjection, drainage to the stormwater system or discharge to sewer) and a copy of the written permission from the relevant controlling authority shall be provided in the initial report. The disposal of any contaminated pumped groundwater (sometimes called "tailwater") must comply with the provisions of the Protection of the Environment Operations Act 1997 and any requirements of the relevant controlling authority.
- xiii. Contaminated groundwater (i.e. above appropriate NEPM 2013 thresholds) shall not be reinjected into any aquifer. The reinjection system design and treatment methods to remove contaminants shall be nominated and included in the initial report and any subsequent intermediate report as necessary. The quality of any pumped water that is to be reinjected must be demonstrated to be compatible with, or improve, the intrinsic or ambient groundwater in the vicinity of the reinjection site.

During excavation

- xiv. Engineering measures designed to transfer groundwater around and beneath the basement shall be incorporated into the basement construction to prevent the completed infrastructure from restricting pre-existing groundwater flows.
- xv. Piping, piling or other structures used in the management of pumped groundwater shall not create a flooding hazard or induce mounding of groundwater. Control of pumped groundwater is to be maintained at all times during dewatering to prevent unregulated off-site discharge.
- xvi. Measurement and monitoring arrangements to the satisfaction of DPI Water are to be implemented. Weekly records of the volumes of all groundwater pumped and the quality of any water discharged are to be kept and a completion report provided after dewatering has ceased. Records of groundwater levels are to be kept and a summary showing daily or weekly levels in all monitoring bores provided in the completion report.
- xvii. Pumped groundwater shall not be allowed to discharge off-site (e.g. adjoining

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- roads, stormwater system, sewerage system, etc.) without the controlling authority's approval and/or owner's consent/s. The pH of discharge water shall be managed to be between 6.5 and 8.5. The requirements of any other approval for the discharge of pumped groundwater shall be complied with.
- xviii. Dewatering shall be undertaken in accordance with groundwater-related management plans applicable to the excavation site. The requirements of any management plan (such as acid sulfate soils management plan or remediation action plan) shall not be compromised by the dewatering activity.
- xix. The location and construction of groundwater extraction works that are decommissioned are to be recorded in the completion report. The method of decommissioning is to be identified in the documentation.
- xx. Access to groundwater management works used in the activity is to be provided to permit inspection when required by DPI Water under appropriate safety procedures.

Following excavation

- xxi. Following completion of the dewatering operations, the applicant shall submit to DPI Water, Parramatta Office, the completion report which shall include:
 - (a) detail of the volume of water taken, the precise periods and location of water taken, the details of water level monitoring in all of the relevant bores;
 - (b) a water table map depicting the aquifer's settled groundwater condition and a comparison to the baseline conditions; and
 - (c) a detailed interpreted hydrogeological report identifying all actual resource and third party impacts, including an assessment of altered groundwater flows and an assessment of any subsidence or excessive settlement induced in nearby buildings and property and infrastructure.
- xxii. The completion report is to be assessed by DPI Water prior to any certifying agency's approval for occupation or use of the completed construction.

[Amendment B - S96(AA) inserted on 15 August 2016]

ROADS ACT

 Construction related activities must not take place on the roadway without Council approval.

Short-term activities (including operating plant, materials delivery) that reduce parking spaces, affect access to a particular route or prevent or restrict the passage of vehicles along the road must not occur without a valid Temporary Roadside Closure Permit

Activities involving occupation of the parking lane for durations longer than allowed under a Temporary Roadside Closure Permit require a Construction Zone Permit and must not occur prior to the erection of Works Zone signs by Council's Traffic and Road Safety Section.

Permit application forms should be lodged at Council's Customer Service Centre allowing sufficient time for evaluation. An information package is available on request.

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- 107. Where applicable, the following works will be required to be undertaken in the road reserve at the applicant's expense:
 - i) construction of a concrete footpath along the frontage of the development site;
 - ii) construction of a new fully constructed concrete vehicular entrance/s;
 - removal of the existing concrete vehicular entrance/s, and/or kerb laybacks which will no longer be required;
 - reconstruction of selected areas of the existing concrete Footpath/vehicular entrances and/or kerb and gutter;
 - v) construction of paving between the boundary and the kerb;
 - vi) removal of redundant paving;
 - vii) construction of kerb and gutter
- 108. All footpath, or road and drainage modification and/or improvement works to be undertaken in the road reserve shall be undertaken by Council, or by a Private Licensed Contractor subject to the submission and approval of a Private Contractor Permit, together with payment of all inspection fees. An estimate of the cost to have these works constructed by Council may be obtained by contacting Council. The cost of conducting these works will be deducted from the Footpath Reserve Restoration Deposit, or if this is insufficient the balance of the cost will be due for payment to Council upon completion of the work.
- 109. All driveway, footpath, or road and drainage modification and/or improvement works to be undertaken in the road reserve shall be undertaken in accordance with Council's Subdivision and Civil Works Construction Specification (AUS-SPEC 1). Amendment to the works specification shall only apply where approved by Council. Where a conflict exists between design documentation or design notes and AUS-SPEC 1, the provisions of AUS-SPEC 1 shall apply unless otherwise approved by Council.
- 110. This Roads Act approval does not eradicate the need for the Contractor to obtain a Road Opening Permit prior to undertaking excavation in the road or footpath.
- 111. The following details shall be submitted to Council for assessment and approval pursuant to Section 138 of the Roads Act 1993, in relation to the awning over footpath or public land:
 - i) Detailed design plans and specifications, including structural details; and
 - ii) Design certificate.

The awning shall be designed by a Chartered Professional Engineer (Structural). **Note:** Awnings are required to be set back a minimum of 600 mm from the kerb face and be a minimum height of 2.4 metres above the footpath level. Drainage from the awning shall be connected to the stormwater system for the development.

Following completion of the installation of the awning a certificate from a Chartered Professional Engineer (Structural) shall be submitted to Council stating that the awning has been constructed in accordance with the design plans and specifications.

112. Following completion of concrete works in the footpath reserve area, the balance of the area between the fence and the kerb over the full frontage of the proposed development shall be turfed with either buffalo or couch (not kikuyu) or landscaped. If

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landscaping is proposed rather than turfing, details shall be submitted to the Property and Community Services Department for approval.

DEVELOPMENT CONSENT ADVICE

- You are advised to consult with your utility providers (i.e. Energy Aust, Telstra etc) in order to fully understand their requirements before commencement of any work
- b. Telstra Advice Dial Before You Dig

Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets, please contact Dial before You Dig at www.1100.com.au or telephone on 1100 before excavating or erecting structures (This is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contacting the Dial before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial before You Dig service in advance of any construction or planning activities.

c. Telstra Advice - Telecommunications Act 1997 (Commonwealth)

Telstra (and its authorised contractors) are the only companies that are permitted to conduct works on Telstra's network and assets. Any person interfering with a facility or installation owned by Telstra is committing an offence under the Criminal Code Act 1995 (Commonwealth) and is liable for prosecution. Furthermore, damage to Telstra's infrastructure may result in interruption to the provision of essential services and significant costs. If you are aware of any works or proposed works which may affect or impact on Telstra's assets in any way, you are required to contact: Telstra's Network Integrity Team on phone number 1800810443.

d. If Council is appointed as the Principal Certifying Authority (PCA), a fee shall be paid before a Construction Certificate is issued. If the fee is paid after the end of the financial year, it will be adjusted in accordance with Council's adopted fees and charges. The fees charged encompass all matters related to ensuring that the

proposed development is carried out in accordance with the approved plans and any post inspection issues that may arise.

- e. Where Council is **not** engaged as the Principal Certifying Authority for the issue of the Subdivision Certificate (Strata), and the Section 88B Instrument contains easements and/or covenants to which Council is a Prescribed Authority, the Council must be provided with all relevant supporting information (such as works-as-executed drainage plans and certification) prior to Council endorsing the Instrument.
- f. All asbestos fibre demolition material and asbestos dust shall be handled, stored and removed in accordance with the relevant legislation and guidelines including:
 - Work Health and Safety Act 2011
 - Work Health and Safety Regulation 2011
 - Code of Practice for the Safe Removal of Asbestos [NOHSC: 2002 (2005)]

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- Code of Practice for the Management and Control of Asbestos in Workplaces [NOHSC: 2018 (2005)]
- Protection of the Environment Operations (Waste) Regulation 2005

All work procedures shall be devised to minimise the release of dust and fibres. A checklist of safety precautions when working with asbestos is available in Health & Safety Guidelines prepared by the WorkCover Authority of NSW. Collection, storage and transportation is subject to the Protection of the Environment Operations (Waste) Regulation 2005.

- g. Hazardous and/or intractable wastes arising from the demolition process shall be removed and disposed of in accordance with the requirements of the relevant statutory authorities (NSW WorkCover Authority and the NSW Environment Protection Authority), together with the relevant regulations, including:
 - Work Health and Safety Act 2011
 - Work Health and Safety Regulation 2011
 - Protection of the Environment Operations (Waste) Regulation 2005
- Demolition and construction shall minimise the emission of excessive noise and prevent "offensive noise" as defined in the Protection of the Environment Operations Act 1997. Noise reduction measures shall include, but are not limited to the following strategies:
 - choosing quiet equipment
 - choosing alternatives to noisy activities
 - relocating noise sources away from affected neighbours
 - educating staff and contractors about quiet work practices
 - informing neighbours of potentially noise activities in advance
 - equipment, such as de-watering pumps, that are needed to operate on any evening or night between the hours of 8 p.m. and 7 a.m. or on any Sunday or Public Holiday, shall not cause a noise nuisance to neighbours of adjoining or nearby residences. Where the emitted noise exceeds 5 dB(A) [LAeq(15m)] above the background sound level [LA90] at the most affected point on the nearest residential boundary at any time previously stated, the equipment shall be acoustically insulated, isolated or otherwise enclosed so as to achieve the sound level objective.
- In the event of any inconsistency between conditions of this approval and the drawings/documents referred to in condition 2, the conditions of this approval prevail.
- A new Construction Certificate may be required to be submitted to and approved by your Principal Certifying Authority prior to carrying out works the subject of the proposed amendment/s.

[Amendment A - S96(AA) amended on 6 May 2016]

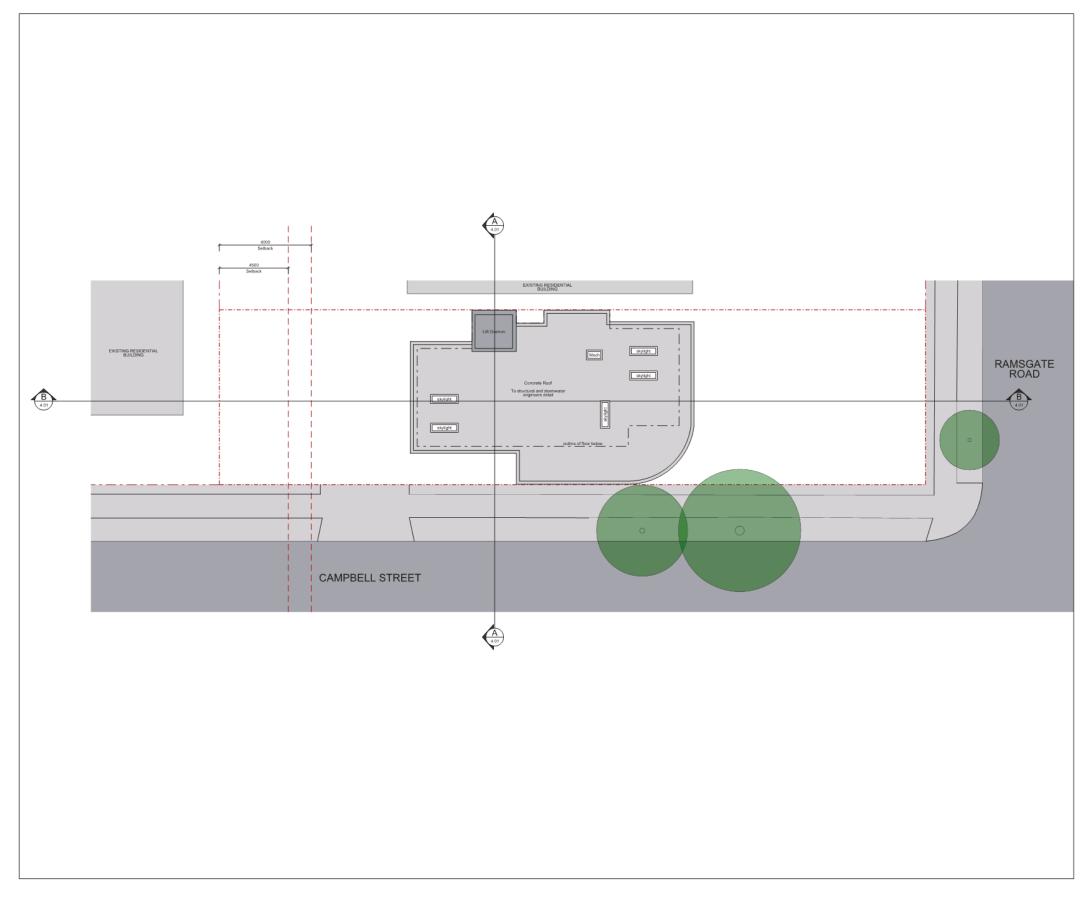
Should you	have	any further	queries	please	contact	Marta M	Gonzalez-V	/aldes o	n 0411	526
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Luis Melim Manager Development Services

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Bayside Local Planning Panel 23/10/2018





S96 Amendments:
- Roof amended to suit new penthouse design and facade updates.
- Lift overrun reduced in accordance with advice received from Kone lifts.



Nass Hijazi No. 105 Ramsgate Road, Ramsgate NSW 2217

Residential Development No. 105 Ramsgate Road, Ramsgate NSW 2217

Roof General Arrangement Plan

S96 SUBMISSION

Scale	Date	Drawn	Checked		
1:200 @ A3	September 2017	MM	SN		
Jab No.	Drawing No.		Issue		
17 09 13	S96 2.0	S96 2.05			
Nom	inated Architect: Benjamin G	Sin Yee - Reg.	9342		
DA	Architect: JSA Studio S96	Design: Arch	i-QS		
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Item 6.5 – Attachment 3 419 Bayside Local Planning Panel 23/10/2018



Item 6.5 – Attachment 4



Bayside Local Planning Panel

23/10/2018

Item No 6.6

Application Type Modification Application to approved residential flat building

and attached dwelling development

Application No SF18/2179 Lodgement Date 20/04/2018

Property DA-14/214/04 - Supplementary Planning Assessment

Report - 5 Myrtle Street, Botany

Ward Botany Bay

Owner Agility Assets Holding Pty Ltd
Applicant Agility Assets Holding Pty Ltd

Proposal Section 4.55(2) Application to modify Development Consent

No. 14/214 to an approved residential flat building and townhouse development to raise floor levels and building heights, additional three units, reconfiguration of units, window changes and basement parking to add stackers.

No. of Submissions Re-notification- Three (3) objections

Cost of Development 0

Report by Michael McCabe, Director City Futures

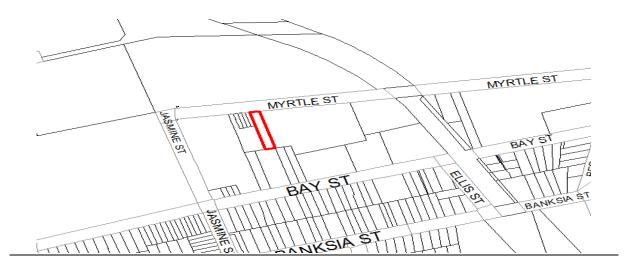
Officer Recommendation

- That the Bayside Local Planning Panel approve Section 4.55(2) Application to modify Development Consent No. 14/214 to an approved residential flat building and town house development to provide three additional units, reconfigure the car parking level to provide four car stackers, window changes, minor external façade changes, landscaping and changes to conditions at 5 Myrtle Street, Botany as follows:
 - a mend Condition No. 1 to reference the amended plans and documents;
 - b amend Condition No. 4 to reference an updated BASIX Certificate;
 - c amend Condition No. 20(e) and 22 to include additional Section 7.11 Contributions for the additional three units;
 - d amend Condition No. 23 to reflect unit sizes that are consistent with the ADG unit sizes;
 - e delete Condition No. 37(a) which refers to an older version of the stormwater plans;
 - f amend Condition No. 39 which refers to landscape plans for the development;
 - g amend Condition No. 105 which refers to the car parking allocation within the basement car parking level; and

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- h amend Condition No. 118 to refer to the subject modification application.
- i add Condition No. 109A relating to basement car parking signage for reverse parking only and maximum height clearances;
- j add Condition No. 109B relating to positive covenant for the maintenance of the car stackers.
- 2 That any objectors be notified of the determination made by the Planning Panel.

Location Plan



Attachments

- 1 Supplementary Planning Assessment Report <u>U</u>
- 2 Previous Planning Assessment Report- Deferred from 24 July 2018 Meeting !
- 3 Site Analysis Plan J
- 4 Elevations J
- 5 Section and East Elevation J.
- 6 Shadow Diagrams U
- 7 Swept Path Analysis J
- 8 Sight Line Diagram J

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BAYSIDE COUNCIL

Supplementary Planning Assessment Report

Application Details

Application Number: 14/214/04

Date of Receipt: 20 April 2018

Property: 5 Myrtle Street Botany

Lot B DP 382442

Owners: Agility Assets Holding Pty Ltd
Applicant: Agility Assets Holding Pty Ltd

Proposal: Section 4.55(2) Application to modify Development Consent No.

14/214 to an approved residential flat building and townhouse development to raise floor levels and building heights, additional three units, reconfiguration of units, window changes and basement

parking to add stackers

Recommendation: Approve the development, subject to conditions.

Value: N/A

No. of submissions: Round One: Eight (8) submissions

Round Two: Eight (8) submissions Third Round: Three (3) submissions

Author: Angela Lazaridis, Senior Development Assessment Planner

Date of Report: 12 October 2018

Key Issues

On 24 July 2018, the subject 4.55(2) Application was referred to the Bayside Planning Panel (BPP) for determination. The report that was presented by Council to the Panel had a recommendation for refusal as a number of issues were left outstanding. The Panel deferred the application to allow the applicant the opportunity to prepare well documented plans to show the changes of the modifications as compared to the approved plans. This also included an assessment under SEPP 65 sight lines and RLS for adjoining properties ground floor and courtyards to the west relative to the proposed pathway and necessary landscaping on the subject site, details of the car stacker and manoeuvring in the car park area and overshadowing diagrams both lavational and ground level.

This Supplementary report provides a response to the amended information provided by the applicant to address the outstanding matters raised by the Panel.

On 7 August 2018, the applicant provided Council with a response to the key issues that were raised by Council relating to overshadowing, visual privacy, non-compliances with floor levels and building separation, car parking manoeuvring, and building height which resulted in a development that was excessive for the site.

The amended plans were re-notified to objectors for a period of fourteen (14) days between 10 August and 24 August 2018. Three (3) objections were raised from the re-notification and the issues are discussed in the report below.

The additional information provided has been reviewed and the application is recommended for approval subject to amended conditions of consent attached to this supplementary report.

Recommendation

It is RECOMMENDED:

- That the Bayside Local Planning Panel approve Section 4.55(2) Application to modify Development Consent No. 14/214 to an approved residential flat building and town house development to provide three additional units, reconfigure the car parking level to provide four car stackers, window changes, minor external façade changes, landscaping and changes to conditions at 5 Myrtle Street, Botany.
- 2. That Development Consent No. 14/214 under Section 4.55(2) of the Environmental Planning and Assessment Act 1979 be modified as follows:
 - a) Amend Condition No. 1 to reference the amended plans and documents;
 - b) Amend Condition No. 4 to reference an updated BASIX Certificate;
 - Amend Condition No. 20(e) and 22 to include additional Section 7.11 Contributions for the additional three units;
 - d) Amend Condition No. 23 to reflect unit sizes that are consistent with the ADG unit sizes;
 - e) Delete Condition No. 37(a) which refers to an older version of the stormwater plans;
 - f) Amend Condition No. 39 which refers to landscape plans for the development;
 - g) Amend Condition No. 105 which refers to the car parking allocation within the basement car parking level; and
 - h) Amend Condition No. 118 to refer to the subject modification application.
 - i) Add Condition No. 109A relating to basement car parking signage for reverse parking only and maximum height clearances;
 - j) Add Condition No. 109B relating to positive covenant for the maintenance of the car stackers.
- 3. That any objectors be notified of the determination made by the Planning Panel.

Assessment of the Panel's deferment

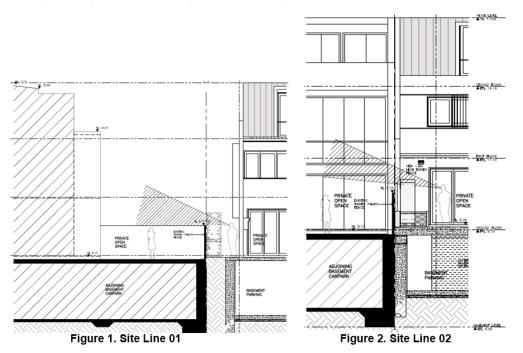
Building height and visual privacy concerns

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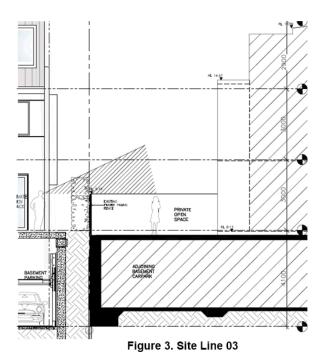
The application that was presented originally to the Panel demonstrated an increased building height between 10.47m to 11.37 metres. This was 470mm to 1.37 metres above the approved building height of 10 metres and the BBLEP 2013 development standard. The increased building height was considered in the previous report and demonstrated that there would be additional impacts on the neighbouring residents relating to solar amenity, visual privacy and surveillance.

The applicant has amended their design to revert back to the approved building height of 10 metres which is consistent with the previous scheme as well as compliant with the BBLEP 2013 development standard.

The applicant provided a plan showing site lines from the subject site at the proposed ground level onto the neighbouring properties and this is demonstrated in the figures below. The first figure demonstrates Sight Line 01 which shows that at ground level along the western corridor leading to the central and rear buildings, the ground level is slightly higher (300mm) than the neighbouring property at 1-3 Myrtle Street. The proposed landscaped buffer in addition to the side boundary fence inhibits any direct overlooking into the courtyards of the adjoining properties. This is also the case with Site Line 02 and 03 where the degree of overlooking into the neighbouring courtyards is not significant as the side boundary fence obstructs any direct views into private open space and into the principal living areas. Therefore the changes to a compliant height and reasonable ground level is acceptable.



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In regards to the additional windows along the western elevation on the ground and first floor levels of the central and rear buildings, the applicant has proposed some type of screening however Condition No. 26(a) of the consent continues to apply in this case requiring amended CC plans to demonstrate that the first-floor windows along this elevation have a minimum sill height of 1.7 metres. This will prevent any additional overlooking to occur onto the adjoining site. The southern elevation of the rear building was approved with privacy screening over the bedroom windows to hinder overlooking into the southern properties at 82 Bay Street. The measures taken or conditioned relating to visual privacy are acceptable in this case.

Overshadowing/solar amenity

The reduction in the height of the buildings, from a greater height demonstrated in the original plans lodged with this modification application to a now compliant height, has demonstrated a significant improvement in the amount of overshadowing that will be presented onto the neighbouring properties at 1-3 Myrtle Street and 9-19 Myrtle Street. While there is a very slight increase in overshadowing onto the adjoining sites than what was approved in the original development application, the change is considered miniscule and does not further reduce the amount of sunlight that is received by the neighbouring sites that had not originally been considered. As advised by the Panel, the applicant provided both lavational and at ground level. The below figures demonstrate the proposed and existing shadows cast onto 1-3 Myrtle Street and 9-19 Myrtle Street during winter solstice.

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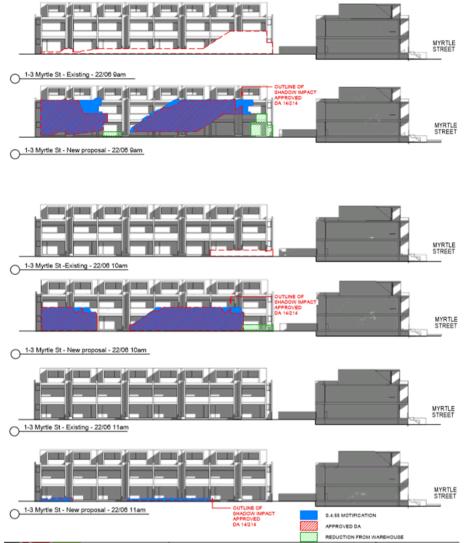


Figure 4. Elevational shadow diagrams at 1-3 Myrtle Street (9am to 11am winter solstice)

As demonstrated in the above figure, a slight increase will occur at 9am to the bedrooms of three of the adjoining units however from 10am onwards the additional shadow cast as part of this modification does not result in any greater impact than what was considered under DA-14/214. The latest version of the amended plans is considered acceptable in assessing the solar amenity on the neighbouring properties.

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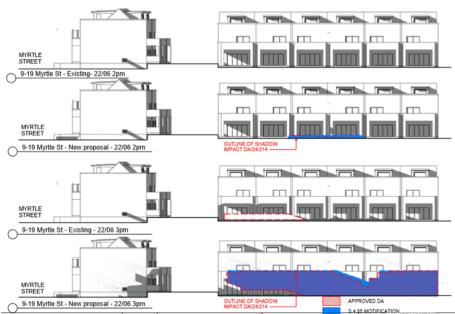


Figure 5. Elevational shadow diagrams at 9-19 Myrtle Street (2pm to 3pm winter solstice)

As demonstrated above, the degree of additional overshadowing from this modification on 9-19 Myrtle Street is demonstrated in blue and is not significant therefore the amended plans and proposal is accepted in this instance.

Car stacker and manoeuvring within the basement car parking level

This application originally proposed to raise the basement car parking level to be partially above ground in addition to the installation of four car stackers as well as reconfiguration of the car parking level. These changes resulted in implications to the height of the overall development and subsequent issues with solar and visual privacy being maintained on the neighbouring sites. The amended plans provided after the deferment by the Panel demonstrate that the car parking level is now located back below ground with a slightly deeper basement towards the southern end of the site to accommodate the car stackers. The conditions that were originally imposed by NSW Office of Water with the original consent continue to apply regarding to dewatering. The amended plans were accompanied by a swept path analysis plan as well as details relating to the car stacker.

Further amended plans were provided on 12 October 2018 which included swept path analysis showing the manoeuvrability into the car stacker spaces. The applicant's traffic engineer has reviewed the current changes to the basement and confirm that reverse actions into the car stacker are acceptable with the imposition of having a sign installed within the basement stating reverse entry only. The applicant's traffic engineer also provided Council with a revised swept path analysis report on 15 October 2018 which will form as a referenced document in Condition No. 1 of the consent. Council's development engineer has reviewed this new material and has provided the following commentary:

"The access to spaces U1 and U3 are not ideal as 4 movements are required to enter/exit the car parking space and the swept paths are not intuitive. Outside of this I raise no objections to the proposed access depicted in the swept path analysis for the rear of the car parking area in the basement as they are now physically possible. I believe signage to the effect of indicating that vehicles are to utilise certain vehicular movements to obtain access will be necessary. The headroom for all spaces within the car stacker appears to be approximately 1.7-1.8m which will negatively restrict the ability for some vehicles (SUVs in particular) from being able to utilise the spaces. Prominent headroom clearance signs will be definitely necessary. Flowing on from this, damage to the car stackers can occur and a positive covenant for the car stacker's maintenance and efficient operation will be ideal since they are required to service the developments off street parking requirements under the relevant legislation.

As indicated in McLaren's report, due to the nature of the stackers chosen with the smallest platform width in order to fit them in, the individual off street parking spaces result in a non-compliance with AS/NZS 2890.1:2004 and larger stackers with greater usable platform width would be required to depict compliance. The installation of these stackers we will have to accept this non-compliance (primarily impacting the opening of doors) which is somewhat acceptable. It is also noted that there is no in ground pit proposed for the car stacker to allow the independent use of the car stacker, so each stacker will need to be allocated to a single dwelling unit.

Upon further review, signage to the effect of "reverse only" will be necessary for vehicular spaces U1, U3 and U4 in conjunction with the maximum height for a vehicle entering the car stacker spaces U1-U4. Further signage for U1 depicting the ideal vehicular movements would be ideal to assist in residents accessing the space in the unconventional manner required. This will then allow for the arrangement to be a suitable arrangement for residents and makes the layout acceptable."

Based on the feedback received by Council's Development Engineer, appropriate conditions have been imposed in the modified consent relating to the car stackers and signage, positive covenant and maximum height clearance.

While there continues to be a shortfall of two visitor car parking spaces, the non-compliance is satisfactory in this instance considering the size of the site and the basement car parking has been exacerbated further with the car stackers. While there is limited car parking spaces on the southern side of Myrtle Street, the site is located opposite Botany Aquatic Centre in addition to the northern side of Myrtle Street comprising of some on-street car parking if necessary. The nearest bus stop to the site is in close proximity should visitors utilise this mode of transport. It is considered that the modified plans have addressed how the car stackers will operate and how the car parking will function and this is accepted.

Building Separation

The development approved a building separation between the townhouses at the northern side of the site and the central building of 12 metres. The plans that were presented to the Panel demonstrated a reduced building separation of 11.3 metres which was unacceptable. The latest amended plans demonstrate that the buildings have reverted back to a 12 metre separation on the upper levels which is adequate. To achieve this, the applicant has shifted the townhouse development forward to align with the existing townhouses along 1-3 Myrtle Street. The front setback was approved at 4.3 metres is now proposed at 3.6 metres. This is supported.

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Floor Levels

The previous plans demonstrated inconsistencies with the ground floor levels and the sections/elevations. The amended plans have been modified to demonstrate consistency in the floor levels and to achieve appropriate floor to floor heights as originally approved in the parent consent/plans. This issue has now been resolved.

Deep Soil and Landscaping

The proposed changes to the basement to allow for greater space to manoeuvre vehicles within the car stacker spaces has resulted in a reduced deep soil area. The development was originally approved with a total of 122.4sqm of deep soil. The previous plans presented to the Panel had a total of 124.2sqm and the latest round of plans have a total of 85.7sqm. This results in a total percentage of 8.8% deep soil. While this figure is a reduction in area, the percentage complies with the minimum requirement outlined within the ADG.

The development continues to provide appropriate landscaping commensurate to the amount that was approved in the parent DA. The proposal will utilise the landscaping along the western boundary as a privacy buffer between the subject site and 1-3 Myrtle Street which continues to be appropriate.

Statutory Considerations

Section 4.55(2) Modification Considerations

Section 4.55(2) of the Environmental Planning & Assessment Act 1979 states that "a consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:"

 a) It is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and

The Section 4.55(2) Application relates to amendments to an approved development to raise floor levels and building heights, additional three units, reconfiguration of units, window changes and basement parking to add stackers and as such, the proposed amendments are considered suitable in the context of the site and the locality as they will have a significant impact on the neighbouring properties.

b) It has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and

The modification does not require consultation with the Minister.

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c) It has notified the application in accordance with (i) the regulations, if the regulations so require, and (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and

In accordance with Part 2 – Advertising and Notification of the Botany Bay Development Control Plan (BBDCP) 2013, the latest revised amended plans were notified for 14 days between 10 August to 24 August 2018 as a third round of notification for this modification application.

d) It has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.

The re-notification of the revised plans resulted in three (3) submissions. The key issues of these submissions are summarised below:

• Privacy and direct vision into adjoining rear yard to developments fronting Bay Street

<u>Comment:</u> The privacy measures along the southern elevation of the rear building has not been modified as approved. The two upper levels have appropriate screens imposed over the windows to prevent overlooking. In addition to the screening, the rear building is setback 6 metres which is compliant with the building separation requirements of the ADG.

• Overdevelopment of the site

<u>Comment:</u> The issue of overdevelopment of the site was considered in the report below. The applicant had amended the plans to revert back to a design which is consistent with the approved development.

Solar amenity onto the southern properties

<u>Comment:</u> The original development considered the solar amenity of the development onto the neighbouring sites. The subject site to the south fronting Bay Street was under construction at the time of approval of the DA however the development proposed a 6 metre setback from the rear boundary which was consistent with the controls under the BBDCP 2013 and the RFDC at the time. The building separation at the rear is appropriate and the amount of overshadowing is not inconsistent with surrounding developments to the site. The proposal does not change the approved setback and does not change the approved height of the development therefore there is no further overshadowing other than approved.

Noise during construction

<u>Comment:</u> Appropriate conditions have been imposed relating to construction noise and hours of construction.

Noise from the finished dwellings to the neighbouring properties

<u>Comment:</u> The noise from human behavior is outside the scope of assessment in this modified application. The development has been designed so that the principal open space for two of the units is on the ground floor. The balconies approved and

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proposed are not too large to accommodate a large number of people therefore there should be minimal noise sources from the development.

· Lack of on-street car parking along Myrtle Street

<u>Comment:</u> Car parking has been discussed in the report above and in the previous report presented to the Panel and Council. The proposal accommodates car parking for all the residential units however there is a shortfall of 2 visitor spaces which has been discussed above.

• Dilapidation report for demolition of the development

<u>Comment:</u> The site has commenced demolition and the neighbours have enquired whether a dilapidation report has been carried out as they have not been approached by the developer. The original consent did have a dilapidation report commissioned for the site however this is a couple of years old however still reliant on. Any damage that occurs during the demolition and construction of the development, the applicant can follow up with the developer/builder.

 Traffic issues along Myrtle Street and Jasmine Street and on-street car parking arrangement

<u>Comment:</u> Concerns are raised regarding to the existing situation of Myrtle and Jasmine Streets traffic and car parking. The objector has suggested removing onstreet car parking along the street in close proximity to basement ramps. This issue falls outside the scope of the assessment of this modification. The issue should be raised with the traffic committee or traffic engineers for comment.

 Standard of living has been reduced due to the noise emitted from developments and traffic management. This results in an overdevelopment of the area and not in the public interest

<u>Comment:</u> Noise that is emitted from existing neighbouring development cannot be considered as part of this application however it is key to note that all private open spaces are located internally and are not facing any of the neighbouring sites, with the exception of the southern neighbour. This however is acceptable as there is adequate building separation proposed. The traffic management of the development will be considered with the strata approved however the car parking level has been discussed in the report above, particularly relating to the shortfall in the visitor car parking spaces and the functionality of the car stackers. The proposal addressed many of the issues that were raised in the previous report which resulted in the development being overdevelopment however the slight non-compliances that remain are not significant to warrant a refusal of the proposed modification.

Section 4.55(2)(3) Modification Considerations

Section 4.55(2)(3) of the Environmental Planning and Assessment Act 1979 states that "In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application."

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An assessment of the application has been carried out under the provisions of Section 4.15 of the Environmental Planning and Assessment Act, 1979. The matters of relevance to this application have been considered.

S.4.15(1) - Matters for Consideration - General

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 modification application was accompanied by an amended BASIX Certificate No. 556595M_03 prepared by Partners Energy Management committing to environmental sustainable measures.

State Environmental Planning Policy No. 55 - Remediation of Land

The provisions of SEPP No. 55 have been considered in the assessment of the development application, as the proposed development involves excavation for a basement car park. Clause 7 of State Environmental Planning Policy 55 requires Council to be satisfied that the site is or can be made suitable for its intended use at the time of determination of an application. Consideration of SEPP No. 55 was carried out within the assessment of DA-14/214. The proposal provides a slight increase in the depth of the basement to accommodate the car stackers proposed. The original consent provided conditions from NSW Office of Water relating to excavation and dewatering and this proposal will not modify these conditions as they are still relevant.

State Environmental Planning Policy (SEPP) No. 65 – Design Quality of Residential Apartment Building

The provisions of State Environmental Planning Policy No. 65 'Design Quality of Residential Apartment Building' have been considered in the assessment of the Modification Application. Key criteria such as solar amenity, building separation, cross ventilation and visual privacy has been considered in the discussion section above. The amended plans have resolved these issues and are now considered acceptable.

Botany Bay Local Environmental Plan 2013 (BBLEP)

The provisions of the Botany Bay Local Environmental Plan (BBLEP) 2013 have been considered in the assessment of the Modification Application and the following information is provided:

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
Landuse Zone	Yes	The site is zoned R3 Medium Density Residential.
Is the proposed use/works permitted with development consent?	Yes	The application was approved as a residential flat building or multi-dwelling housing which continues to be permissible subject to Council's consent.

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Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
Does the proposed use/works meet the objectives of the zone?	Yes	The proposed development is consistent with the following objectives of the R3 Medium Density Residential 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.
What is the height of the building?		The maximum permissible height is 10 metres in accordance with the BBLEP 2013.
Does the height of the building comply with the maximum building height?	Yes	The amended plans revert back to a 10 metre height proposed therefore is compliant with the development standard.
What is the proposed FSR? Does the FSR of the building comply with the maximum FSR?	No – Refer to Note 1	The maximum permissible FSR for the subject site is 0.85:1 (824.245sqm). DA-14/214 was approved with an FSR of 1.01:1 (986sqm). The current proposal seeks an FSR of 1.04:1
:Is the proposed development in a R3/R4 zone? If so does it comply with site of 2000m2 min and maximum height of 22 metres and maximum FSR of 1.65:1?	N/A	(1,016sqm) The area of the subject site is 969.7sqm. No bonus provision applies.
Is the site listed in Schedule 5 as a heritage item or within a Heritage Conservation Area?	N/A	The subject site is not heritage listed nor is it within a heritage conservation area.
The following provisions in Part 6 of BBLEP apply— 6.1 – Acid Sulfate Soils 6.2 – Earthworks 6.3 – Stormwater Management 6.8 – Airspace Operations 6.9 – Development in areas subject to aircraft noise	N/A	There is no substantial change to the conclusions approved in DA-14/214.

Note 1 - Floor Space Ratio Non-Compliance

As discussed in the previous report, the cumulative impact of the exceedance in height, FSR, reduced building separation and car parking contributed to a development that was excessive. As demonstrated above, the majority of the issues have been resolved with the exception of the FSR which continues to be greater than that approved in the parent DA. The proposal had an FSR of 1.01:1 and the revised plans propose an FSR of 1.04:1. The difference in the amount of GFA that exceeds the approval is 30sqm. The floor area has been dispersed around the site therefore the building footprint has not significantly been modified by the latest round of plans. As demonstrated above, the additional floor area does not significantly impact the neighbouring properties solar amenity or building

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separation. Therefore considering the above, the slight non-compliance in floor area is acceptable.

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

There are no current Draft EPIs applicable to this development

S4.15(1)(a)(iii) - Provisions of any Development Control Plan

Botany Bay Development Control Plan 2013 (BBDCP)

The modified proposal has been assessed against the relevant controls contained in the Botany Bay Development Control Plan 2013 (BBDCP 2013). The majority of the issues have been addressed in the discussion section of the report above therefore a comprehensive analysis of the BBDCP 2013 is not necessary in this case.

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

As outlined in the assessment above, the proposed development will not have significant adverse environmental, social or economic impacts in the locality.

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

The proposed modifications do not alter previous conclusions regarding site suitability.

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

Further to the two rounds of notification that had occurred prior to the application being presented to the Panel, the latest round of amended plans were re-notified between 10 August to 24 August 2018. Three submissions were received during this period and have been summarised above.

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

It is considered that granting approval to the proposed development will have significant will not have significant impact on the public interest.

Section 7.11 Contributions

The proposed modification results in an additional three units to the development. The consent conditioned Section 7.11 Contributions (Section 94) therefore the condition will be amended to add the contribution to the three new units.

Based on the Section 94 Contributions Plan 2016, the following contribution applies:

2 x one bedroom unit @ \$20,000.00 = \$40,000.00

1 x four bedroom unit @ \$20,000.00 = \$20,000.00

Therefore the total additional contributions for the proposed modification is \$60,000.00.

Conclusion

The proposed modification application has been reviewed by Council in lieu of amended plans provided after the deferment by the Panel. The amended plans have demonstrated compliance with the building height, building separation, reverted the basement car park to below ground, and addressed issues raised relating to solar amenity and visual privacy. The amended proposal is satisfactory and is recommended for approval.

An assessment against the relevant SEPP's, the BBLEP and the BBDCP 2013 have been carried out and the proposal is consistent with the approved development and the controls and regulations that are applicable.

The submissions received as part of the re-notification of the latest round of plans have been considered and the issues raised have been addressed or are existing circumstances approved in the original DA.

Attachment

Schedule 1 - Conditions of Consent

Premises: 5 Myrtle Street Botany DA No: DA-14/214/04

SCHEDULE OF CONSENT CONDITIONS

GENERAL CONDITIONS

 The development is to be carried in accordance with the following plans and reference documentation listed below and endorsed with Council's stamp, except where amended by other conditions of this consent.

Drawing N°	Author	Dated Received
DA01 Rev E- Site		
Analysis/Roof Plan		Dated May 2015;
DA02 Rev E- Basement and	1	Received 4 May 2015
Ground Floor Plans (DA-		
14/214/02)		
DA01- Site Analysis/Roof	1	Dated July 2018;
Plan Rev 8		Received 8 August 2018
DA02- Basement Floor Plan]	Dated July 2018;
Rev 9		Received 8 August 2018

DA03- Ground Floor Plan Rev 9	Derek Raithby Architecture	Dated July 2018; Received 8 August 2018
	Architecture	
DA04- First Floor Plan Rev 9		Dated July 2018;
DAGE Consul Floor Blow	_	Received 8 August 2018
DA05- Second Floor Plan		Dated July 2018;
Rev 9		Received 8 August 2018
DA06- Elevations Rev 9		Dated July 2018; Received 8 August 2018
DA07- Section A-A and East		Dated July 2018;
Elevations Rev 9		Received 8 August 2018
DA13- Window/Door	-	Dated July 2018;
Schedule Rev 6		Received 8 August 2018
DA14- Diagram Adaptable		Dated July 2018;
Design Rev 6		Received 8 August 2018
DA17- B85 (Realistic) Vehicle		Dated August 2018;
Turning Diagrams Rev 2		Received 8 August 2018
DA18- Sight Line Diagram		Dated August 2018;
Rev 1		Received 8 August 2018
CC02- Ground Floor Plan		Dated October 2015;
(DA-14/214/02)		Received 10 November
		2015 (DA-14/214/02)
DA03 Rev E- First and		Dated May 2015;
Second Floor Plans		Received 4 May 2015
DA04 Rev E F- Elevations		Dated May 2015;
		Received 4 May 2015
		Dated January 2016
		Received 22 January
		2016
DA05 Rev E F - East		Dated May 2015;
Elevation and Long Section		Received 4 May 2015
		Dated January 2016
		Received 22 January
		2016
DA08 Rev E- External Finishes		Dated May 2015;
		Received 4 May 2015
DA09 Rev E- Site		Dated May 2015;
Management Plan		Received 4 May 2015
DA10 Rev E - Landscape		Dated May 2015;
Concept Plan		Received 4 May 2015
DA13 Rev E- Calculations		Dated May 2015;
		Received 4 May 2015
DA11 Rev D- Entry Detail		Dated July 2014;
Pedestrian		Received 12 September
DA12- Driveway Profile		2014
Survey Plan	Bee & Lethbridge	Dated 30 May 2014;
-	Quality Surveying	Received 12 September
	& Development	2014
	Solutions	
Draft Plan of Subdivision of Lot	Warren L Bee	Dated 7 May 2015;
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(DA-14/214/02) (DA-14/214/03)(**DA-14/214/04)**

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Reference Documents	Author	Date Received
Statement of Environmental Effects (Clause 4.6 included)	Glendinning Minto & Associates P/L	Dated September 2014; Received 26 September 2014
Geotechnical Investigation Report	Robert Sirasch	Dated 23 August 2014; Received 12 September 2014
Environmental Site Assessment	Environmental Investigations Australia	Dated 18 July 2014; Received 12 September 2014
Traffic and Parking Assessment	McLaren Traffic Engineering	Dated 30 July 2014; Received 12 September 2014
Swept Path Analysis	McLaren Traffic Engineering	Dated 15 October 2018; Received 15 October 2018
Security Management Plan	Derek Raithby Architecture	Dated July 2014; Received 12 September 2014
SEPP 65 Design Verification Statement	Derek Raithby Architecture	Received 12 September 2014 Received 8 August 2018
Waste Management Plan	Derek Raithby Architecture	Dated June 2014; Received 12 September 2014 Dated March 2018; Received 20 April 2018
BASIX Certificate No. 556595M_03	Prepared by Partners Energy Management	Dated 4 July 2014; Received 12 September 2014 Dated 29 March 2018; Received 20 April 2018
Access and Adaptable Housing Report	Accessibility Solutions (NSW) Pty Ltd	Dated 25 July 2014; Received 12 September 2014
Acoustic Report	Sebastian Giglio Acoustic Consultant	Dated 18 July 2014; Received 12 September 2014
Nathers Certificate	-	Dated 4 July 2014; Received 12 September 2014

(DA-14/214/04)

This Consent relates to land Lot B in DP 382442, and as such, building works must not
encroach on to adjoining lands or other public places, except as otherwise permitted by
this consent.

3.

- All building work must be carried out in accordance with the provisions of the Building Code of Australia;
- b) All plumbing stacks, vent pipes, stormwater downpipes including balcony drainage and the like shall be kept within the building and suitably concealed from view.

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- This Condition does not apply to the venting to atmosphere of the stack above roof level:
- All air conditioning units shall be appropriately treated to ensure that they are concealed from view and compliant with Australian Standard AS1668.2; and
- d) The basement of the building must be designed and built so that on completion, the basement is a "fully tanked" structure, i.e. it is designed and built to prevent the entry of ground water / ground moisture into the inner parts of the basement car park.
- Pursuant to clause 97A(3) of the Environmental Planning & Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in the relevant BASIX Certificate No. 556595M_03 dated 4 July 2014 29 March 2018 and received by Council on 12 September 2014 20 April 2018 for the development are fulfilled. (DA-14/214/04)
 - a) Relevant BASIX Certificate means:
 - 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: -
 - 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: -
 - Has appointed a principal certifying authority; and,
 - 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 person's intention to commence the erection of the building.
- All costs associated with these development conditions shall be borne by the applicant.
 If, when actioning these conditions Council's solicitor is required to act on behalf of
 Council, then Council's solicitor's fees and charges shall also be borne by the Applicant.
- 7. An experienced Landscape Contractor shall be engaged to undertake all landscaping (site and public domain) work and shall be provided with a copy of both the approved landscape drawing and the conditions of approval to satisfactorily construct the landscape to Council requirements. The contractor shall be engaged weekly for a minimum period of 52 weeks from final completion of landscaping for maintenance and

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- defects liability, replacing plants in the event of death, damage, theft or poor performance. After that time regular and ongoing maintenance is required.
- 8. The public footpath in Myrtle Street shall be constructed in accordance with the approved <u>Public Domain Plan</u> and Council specifications. The footpath dimensions, location, paver type and construction methods shall be in accordance with these specifications. Hold points and Council inspections are required after formwork setback and to prior pouring the concrete blinding slab, at the commencement of paving works and at final completion as a minimum. Any pavers shall be ordered allowing for adequate lead time for manufacture (10-12 weeks).

CONDITIONS IMPOSED BY EXTERNAL AUTHORITIES.

- 9. The following conditions imposed by Ausgrid are as follows:
 - a) In relation to the possible excavations within 2 metres of existing underground power cables the applicant should refer to Ausgrid Network Standard Working Near or Around Underground Cables NS156 available from Ausgrid web site.
 - b) Additionally the applicant should submit an Application for Connection to Ausgrid (if they have not already) to arrange the power supply to the development including temporary builders supply if required.
- 10. The following conditions imposed by Sydney Water are as follows:
 - a) The developer is required to obtain a Section 73 Compliance Certificate from Sydney Water prior to the issue of a Construction Certificate. Issuing of the Certificate will confirm that the proponent has met Sydney Water's detailed requirements, which include:
 - Correctly sized water and wastewater mains; extensions or amplifications to existing water and wastewater systems (if necessary);
 - ii) Building over/adjacent to Sydney Water's infrastructure;
 - iii) Payment of Sydney Water charges; and
 - iv) The completion of any other requirements.
 - b) Adjustments to existing Sydney Water systems resulting from developer activity will be charged to the particular development. Developers are advised to engage the services of a Water Servicing Coordinator (WSC) to obtain a Section 73 Certificate and manage the servicing aspects of their projects. Details are available from any Sydney Water Customer Centre on 13 20 92 or Sydney Water's website at www.sydneywater.com.au.
 - c) Building Over/Adjacent to Sydney Water's Pipes and Structures;
 - A 225mm Sydney Water sewer main traverses the development site. Any development on site, which may impact on this asset, will be required to comply with Sydney Water's guidelines for building over or adjacent to Sydney Water's Assets, or relocated as indicated in the development application.
 - d) In relation to any proposed landscaping, Sydney Water emphasises the potential for tree roots to cause damage to water and sewer pipes. There are a number of tree species that are of concern to Sydney Water because they have significant biomass and/or invasive root systems, which can cause cracking or blockage of Sydney Water assets. Pipe damage inturn may increase the risk of

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sewer overflows under certain weather conditions, and significantly increases maintenance costs to the water and sewer system.

Trade Waste

i) A Trade waste Licence is required for the disposal of wastewater from any future industrial or commercial development. A trade waste permit to discharge must be obtained before discharge into the sewer can commence. This application can be made to Sydney Water at the Section 73 Certificate application stage. The applicant can contact Customer Services Division, Rockdale (Sales and Service South Unit) on 9551 4620 for assistance with applying for a trade waste permit.

Water Conservation Measures - BASIX

- Installation of AAA (or higher) rated water conservation devices such as dual flush toilets, showerhead fittings and tap fittings; and
- iii) Connection to an appropriate recycled water supply (if available) or installation of rainwater tanks or an equivalent communal system (with a minimum specified volume), to meet a range of appropriate water needs, such as toilet flushing, cold water supply to washing machines, and irrigation.
- 11. The following conditions have been imposed by Sydney Airport Corporation Limited (SACL). The proposed development is to comply with the following requirements issued by (SACL) dated 13 October 2014. The conditions are as follows:

Height Restrictions

- a) The PROPERTY DEVELOPMENT at 5 MYRTLE STREET, BOTANY, lies within an area defined in schedules of the Civil Aviation (Buildings Control) Regulation, which limit the height of structures to 50 feet (15.24 metres) above existing ground height (AEGH) without prior approval of the Civil Aviation Safety Authority;
- b) In this instance, Peter Bleasdale, an authorised person of the Civil Aviation Safety Authority (CASA), under Instrument Number: CASA 229/11 in the capacity as Airfield Design Manager has advised that he has "no objection to the erection of the proposed development to a maximum height of 17.09metres above Australian Height Datum (AHD)";
- The approved height is inclusive of all lift over-runs, vents, chimneys, aerials, TV antennae, construction cranes etc;
- Should you wish to exceed 24 metres above Australian Height Datum (AHD), a new application must be submitted;
- e) Should the height of any temporary structure and/or equipment be greater than 50 feet (15.24 metres) above existing ground height (AEGH), a new approval must be sought in accordance with the *Civil Aviation (Buildings Control) Regulations Statutory Rules 1988*, No.161;
- Construction cranes may be required to operate at a height significantly higher than that of the proposed controlled activity and consequently, may not be approved under the Airports (Protection of Airspace) Regulations;
- g) SACL advises that approval to operate construction equipment (i.e. cranes) should be obtained prior to any commitment to construct;
- h) Information required by Sydney Airport prior to any approval is to include:

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- the location of any temporary structure or equipment, i.e. construction cranes, planned to be used during construction relative to Mapping Grid of Australia 1994:
- the swing circle of any temporary structure/equipment used during construction;
- the maximum height, relative to Australian Height Datum (AHD), of any temporary structure or equipment i.e. construction cranes, intended to be used in the erection of the proposed structure/activity;
- iv) the period of the proposed operation (i.e. construction cranes) and desired operating hours for any temporary structures.
- Any application for approval containing the above information, should be submitted to SACL at least 35 days prior to commencement of works in accordance with the Airports (Protection of Airspace) Regulations Statutory Rules 1996, No.293, which now apply to this Airport;
- Under Section 186 of the Airports Act 1996, it is an offence not to give information to the Airport Operator that is relevant to a proposed "controlled activity" and is punishable by up to 50 penalty units;
- k) The height of the prescribed airspace at the site is approximately 51.0 metres above Australian Height Datum (AHD). In accordance with Regulation 9 of the Airports (Protection of Airspace) Regulations Statutory Rules 1996, No. 293, "a thing to be used in erecting the building, structure or thing would, during the erection of the building, structure or thing, intrude into PANS OPS airspace for the Airport, cannot be approved."

Bird and Obstacle Hazard Management

- To minimise the potential for bird habitation and roosting, the applicant must ensure that non-bird attracting plant species are used in any landscape design;
- All trees to be planted shall not be capable of intruding in to the Obstacle Limitation Surface when mature.
- 12. The following conditions are imposed by the NSW Office of Water and must be complied with:

<u>General</u>

- a) An authorisation shall be obtained from NSW Office of Water for the take of groundwater as part of the activity. Groundwater shall not be pumped or extracted for any purpose other than temporary construction dewatering at the site identified in the development application. The authorisation shall be subject to a currency period of 12 months from the date of issue and will be limited to the volume of groundwater take identified in the authorisation.
- b) The design and construction of the building must prevent any take of groundwater after the authorisation has lapsed by making any below-ground levels that may be in contact with groundwater watertight for the anticipated life of the building. Waterproofing of below-ground levels must be sufficiently extensive to incorporate adequate provision for reasonably foreseeable high water table elevations to prevent potential future inundation.
- c) Construction methods and material used in and for construction shall be designed to account for the likely range of salinity and pollutants which may be dissolved in groundwater, and shall not themselves cause pollution of the groundwater.

Prior to excavation

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- d) Measurements of groundwater levels beneath the site from a minimum of three monitoring bores shall be taken. These measurements should be included in a report provided to the NSW Office of Water in support of the dewatering licence application, along with a schedule and indicative level predictions for the proposed ongoing water level monitoring from the date of consent until at least two months after the cessation of pumping shall be included in the report.
- e) A reasonable estimate of the total volume of groundwater to be extracted shall be calculated and a report provided to the NSW Office of Water. Details of the parameters (e.g. permeability predicted by slug-testing, pump-testing or other means) and calculation method shall be included in the report submitted to the NSW Office of Water in support of the dewatering licence.
- f) A copy of a valid development consent for the project shall be provided in the report to the NSW Office of Water.
- g) Groundwater quality testing shall be conducted on a suitable number of samples using a suitable suite of analytes and completed by a NATA-certified laboratory, with the results collated and certificates appended to a report supplied to the NSW Office of Water. Samples must be taken prior to the substantial commencement of dewatering, and a schedule of the ongoing testing throughout the dewatering activity shall be included in the report. Collection and testing and interpretation of results must be done by suitably qualified persons and NATA certified laboratory identifying the presence of any contaminants and comparison of the data against accepted water quality objectives or criteria.
- h) The method of disposal of pumped water shall be nominated (i.e. reinjection, drainage to the stormwater system or discharge to sewer) and a copy of the written permission from the relevant controlling authority shall be provided to the NSW Office of Water. The disposal of any contaminated pumped groundwater (sometimes referred to as "tailwater") must comply with the provisions of the Protection of the Environment Operations Act 1997 and any requirements of the relevant controlling authority.
- i) Contaminated groundwater (i.e. above appropriate NEPM 2013 investigation thresholds) shall not be reinjected into any aquifer without the specific authorisation of the NSW Environment Protection Authority (any such discharge would be regulated through a licence issued under the Protection of the Environment Operations Act 1997 [POEO Act]). The reinjection system design and treatment methods to remove contaminants shall be nominated and a report provided to the NSW Office of Water. The quality of any pumped water that is to be reinjected must be compatible with, or improve the intrinsic or ambient groundwater in the vicinity of the reinjection site.

During excavation

- j) Engineering measures designed to transfer groundwater around the basement shall be incorporated into the basement construction to prevent the completed infrastructure from restricting pre-existing groundwater flows.
- k) Piping, piling or other structures used in the management of pumped groundwater shall not create a flooding hazard. Control of pumped groundwater is to be maintained at all times during dewatering to prevent unregulated off-site discharge.
- Measurement and monitoring arrangements to the satisfaction of the NSW Office
 of Water are to be implemented. Monthly records of the volumes of all groundwater
 pumped and the quality of any water discharged are to be kept and a report
 provided to the NSW Office of Water after dewatering has ceased. Daily records

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- of groundwater levels are to be kept and a report provided to the NSW Office of Water after dewatering has ceased.
- m) Pumped groundwater shall not be allowed to discharge off-site (e.g. adjoining roads, stormwater system, sewerage system, etc) without the controlling authorities approval and/or owners consent. The pH of discharge water shall be managed to be between 6.5 and 8.5. The requirements of any other approval for the discharge of pumped groundwater shall be complied with.
- n) Dewatering shall be undertaken in accordance with groundwater-related management plans applicable to the excavation site. The requirements of any management plan (such as acid sulfate soils management plan or remediation action plan) shall not be compromised by the dewatering activity.
- The location and construction of groundwater extraction works that are abandoned are to be recorded and a report provided to the NSW Office of Water after dewatering has ceased. The method of abandonment is to be identified in the documentation.
- p) Access to groundwater management works used in the activity is to be provided to permit inspection when required by the NSW Office of Water under appropriate safety procedures.

Following excavation

- q) All monitoring records must be provided to the NSW Office of Water after the required monitoring period has ended together with a detailed interpreted hydrogeological report identifying all actual resource and third party impacts.
- 13. The following conditions are imposed by the NSW Police and must be complied with. The conditions are outlined as follows, and relevant details shall be included in the plans and documentation submitted with the Construction Certificate:
 - a) Passive Surveillance
 - i) As the proposed development may be exposed to Break Enter and Steals, Stealing, Steal from persons, Malicious Damage and Steal from Motor Vehicle offences, a closed circuit television system (CCTV) which complies with the Australian Standard Closed Circuit Television System (CCTV) AS:4806:2006 needs to be implemented to receive, hold or process data for the identification of people involved in ant- social or criminal behavior. The system is obliged to conform with Federal, State or Territory Privacy and Surveillance Legislation.
 - iii) This system should consist of surveillance cameras strategically located in and around the development to provide maximum surveillance coverage of the area, particularly in areas which are difficult to supervise.
 - 1 Cameras should be strategically mounted outside the development buildings and within the car parking areas to monitor activity within these areas.
 - One or more cameras should be positioned at the entry and exit points to monitor these areas (underground car park, foyer entrance).
 - iii) Lighting (lux) levels for this development must be commensurate with a medium crime risk identified in this evaluation. The emphasis should be on installing low glare/high uniformity lighting levels in line with Australian Standard AS:1158.

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

- 14. Where not already provided, a Section 73 Certificate under the Sydney Water Act 1994 must be obtained <u>prior to the issue of the Subdivision Certificate</u>, Application must be made through an authorised Water Servicing Coordinator. Please refer to "Your Business" section of Sydney Water's website as www.sydneywater.com.au then "edevelop" icon or telephone 132092.
 - 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 coordinator, since building of water/sewer extensions can be time 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.
- 15. 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.

16.

- Positive Covenant and Restriction on Use of the land shall be created to all proposed lots to ensure that car parking for the residential part is not to be to sublet or used for any other purposes;
- b) Additional Easements benefiting the proposed townhouse allotments shall be created pursuant to Section 88B of the Conveyancing Act 1919, that provide direct access to the basement lifts, garbage rooms, car wash bays, building services and fire exits.
- 17. In order to ensure that the required on-site detention system will be adequately maintained, Positive Covenant and Restriction on the Use of Land on the Title under Section 88B of the Conveyancing Act 1919 shall be created in favour of Council as the benefiting authority for the as-built on-site detention system on proposed Lots 1, 2 and 3
- 18. A copy of the Building Management Statement and By-Laws for each of the proposed lots shall be submitted to Council for approval <u>prior to the issue of the Subdivision Certificate</u>. The Building Management Statement and By-Laws shall address all conditions associated with the ongoing use of the development within this consent and include:
 - Responsibilities with regard to the ongoing maintenance of the building and landscaped areas at the property in accordance with the plans and details approved under this Development Consent;
 - b) Responsibilities with regard to the maintenance of artificial features at the property in accordance with the plans and details approved under this Development Consent;
 - Responsibilities regarding the maintenance of the car wash bay the Owners Corporation / building owner;
 - d) Responsibilities for ensuring owners and/or tenants have adequate and hygienic waste sterile, disposal and collection arrangements and for ensuring the waste storage area is appropriately maintained and kept in a clean and safe state at all times:

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- Responsibilities to ensure that receptacles for the removal of waste, recycling etc. are put out for collection between 4.00pm and 7.00pm the day prior to collection, and, on the day of collection, being the day following, returned to the premises before 12.00 noon;
- The Owners Corporation/Executive Committee obligations under clauses 177, 182, 183, 184, 185 and 186 of the Environmental Planning and Assessment Regulation 2000;
- g) Responsibilities to ensure that wastewater and stormwater treatment devices (including drainage systems, sumps and traps) are regularly maintained in order to remain effective. All solid and liquid wastes collected from the devices shall be disposed of in a manner that does not pollute waters and in accordance with the Protection of the Environment Operations Act 1997;
- h) The linen plan must include details of any easements, encroachments, rights of way, including right of footway, restriction as to user or positive covenants and include a Section 88B Instrument under the *Conveyancing Act, 1919*. Council is to be nominated as the only authority permitted to release, vary or modify any easements, encroachments, rights of way, restriction as to user or positive covenants;
- A graffiti management plan for the removal of graffiti and similar vandalism within seven (7) days of its occurrence and surface re-instatement;
- j) 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:
- k) CCTV surveillance of all public areas within the development site; and
- I) Maintenance of inbuilt acoustic measures for aircraft noise.
- m) The Owners Corporation/Executive Committee obligations to ensure the ongoing maintenance of traffic light system and any repair works needed will be required to be carried out as soon as possible.

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

- 19. Prior to the release of the Construction Certificate the required Long Service Levy payable under Section 34 of the Building and Construction Industry Long Service payments Act 1986 must 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.
- 20. The applicant must, prior to the release of the approved development plans, pay the following fees:

a) Builders Security Deposit \$40,500.00;b) Development Control \$5,000.00;

c) Waste Levy \$2,000.00;d) Tree Preservation Bond \$2,500.00

e) Section 94 Contributions \$200,000.00 \$260,000.00

(DA-14/214/04)

The applicant is to submit payment for a Tree Preservation Bond of \$2500 to ensure protection of two (2) Council street trees (*Eucalyptus* sp. and *Melaleuca* sp) in the nature strip and blister fronting the adjoining property to the north east of the site from damage during construction. The duration of the Bond shall be limited to a period of 24 months after issue of the Occupation Certificate. At the completion of the 24 month period the Tree Preservation Bond shall be refunded pending a satisfactory inspection by a qualified Arborist and a report to Council. If a tree was found to be in decline, damaged (including roots), dead or pruned without Council permission or, if tree protection measures were not satisfied at any time during construction, then Council will forfeit all, or part thereof, of the bond. The Tree Preservation Bond was calculated using the Thyer Tree Evaluation method.

- 21. Prior to the issue of the Construction Certificate, any sub-surface OSD tank or infiltration trench is required to be partially or wholly located underneath the driveway or paved areas to maximize the area available for deep soil, effective and site responsive tree planting and landscaping on the property. If this cannot be achieved the OSD shall cover no more than 50% of the landscape area, be appropriately located to allow effective tree planting and be constructed so that the top of the structure is 1.2m below final surface levels.
- 22. The City of Botany Bay being satisfied that the proposed development will increase the demand for public amenities within the area, and in accordance with Council's Section 94 Contributions Plans listed below a contribution of \$200,000.00 \$260,000.00 is required to be paid to Council prior to the release of the Construction Certificate.

Community Facilities - Citywide \$20,800.00
Recreation Facilities- Citywide \$218,400.00
Transport Management- Citywide \$18,200.00
Administration \$2,600.00

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 fees applicable at that time.

(DA-14/214/04)

- 23. Plans submitted with the Construction Certificate shall demonstrate compliance with the following:
 - a) All residential unit sizes excluding balconies as a minimum must be as follows:
 - i) Studio = 60m² 35sqm
 - ii) 1 bedroom = **75m² 50sqm**
 - iii) 2 bedroom = 100m2 70sqm
 - iv) 3 Bedroom = 130m² 90sqm

(DA-14/214/04)

24. All plumbing stacks, vent pipes, stormwater downpipes and the like shall be kept within the building and suitably concealed from view. This condition does not apply to the venting to atmosphere of the stack above roof level. Details shall be submitted to the Principal Certifying Authority prior to issue of the Construction Certificate.

25.

- a) Prior to the issue of any Construction Certificate, amended plans shall be submitted to the Principal Certifying Authority demonstrating that any front fence constructed shall have the overall height not higher than 1.5m and the height of the solid section of the fence shall be limited to 500mm. Minimum 50% opening shall be provided in the slats area of the fence to provide adequate sight distance.
- b) Any wall or fence or solid object on either side of the driveway/vehicular crossing where it meets the Council's road reserve at the boundary shall comply with sight distances stipulated in Australian Standard AS 2890.1. Details shall be submitted to the Principal Certifying Authority prior to issue of the Construction Certificate.
- c) Fences and gates shall be designed to swing into the site only.

26.

- a) Prior to the issue of the Construction Certificate, amended plans shall be submitted to the Principal Certifying Authority demonstrating that the first floor windows along the western elevation of Building 2 and 3 are converted into highlight windows with a minimum sill height of 1.7m.
- b) Prior to the issue of the Construction Certificate, amended plans or documentation needs to be submitted to Council for approval to demonstrate that the proposed development is fully compliant with BCA provisions, particularly in relation to room heights. The proposed ground floor and first floor levels of the development are to have a minimum ceiling height of 2.7 metres and the second floor a minimum room height of 2.4 metres.
- c) Prior to the issue of the Construction Certificate, details or documentation shall be submitted to the Principal Certifying Authority demonstrating that storage areas in the dwellings and the basement car park are provided on the plans and are secured and have a minimum height of 1.5 metres.
- 27. Prior to the issue of any Construction Certificate, the applicant shall lodge a Damage Deposit of \$40,500.00 (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.
- 28. Prior to the issue of any Construction Certificate, at the proposed point of construction site entry, photographic survey showing the existing conditions of Council's infrastructure shall be submitted to Council and Principal Certifying Authority. The survey shall detail the physical conditions and identify any existing damages to the roads, kerbs, gutters, footpaths, driveways, street trees, street signs and any other Council assets fronting the property and extending to a distance of 50m from the development. Failure to do so may result in the applicant/developer being liable for any construction related

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damages to these assets. Any damage to Council's infrastructure during the course of this development shall be restored at the applicant's cost.

 The proposed development will result in substantial excavation that has the potential to affect adjoining buildings and proposed public infrastructure.

Prior to the issue of the Construction Certificate, the applicant shall:

- seek independent advice from a Geotechnical Engineer on the impact of the proposed excavations on the adjoining properties;
- detail what measures are to be taken to protect those properties from undermining during construction; and
- provide Council with a certificate from the engineer on the necessity and adequacy
 of support for the adjoining properties.

All recommendations of the Geotechnical Engineer are to be carried out during the course of the excavation. The applicant must give at least seven (7) days notice to the owner and occupiers of the adjoining allotments before excavation works commence.

- A 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.
 - The proposed phases of construction works on the site and the expected duration of each construction phase,
 - 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,
 - 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,
 - 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 on site crane. Please note that a crane may require prior approval from Sydney Airports Corporation.

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The location of any Construction Zone (if required) approved by Council's Traffic Committee, including a copy of that approval.

- 31. 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,
 - nominate a contact person who is to have authority without reference to other persons to comply with instructions issued by Council's Traffic Engineer, RMS or the Police, and
 - c) indicate the construction vehicle access points of the site,
 - d) indicate the frequency of truck movements.
 - assess anticipated traffic generation associated with the construction of the proposed development and its impact upon the surrounding road network, onstreet parking and pedestrian movements,
 - f) ensure all traffic (including worker's vehicles) generated from the construction activities shall enter and leave the site in a forward direction, and
 - g) 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.

- 32. Prior to the release of the Construction Certificate, the following required section(s) are to be submitted to and approved by Council:
 - All driveways/access ramps/vehicular crossings shall conform to Australian Standards AS 2890.1 and Council requirements (including E-01, E-04, E-07 and E-16 of Council's Infrastructure Standard Drawings),
 - b) For developments with basement carparking, the applicant shall provide longitudinal sections along the extremities and the centre line of each internal driveway/access ramp at a scale of 1:25. These long sections shall extend from the horizontal parking area within the property to the centre line of the roadway. The sections shall also show the clear height from the ramp to any overhead structure.
 - The applicant shall provide 16 resident car parking spaces that must be clearly linemarked and signposted,
 - The applicant shall provide one (1) visitor car parking spaces that must be linemarked and signposted, and
 - e) A minimum of one (1) 3.5m wide carwash bay with the appropriate drainage systems shall be provided for resident use.
- 33. Prior to the release of the Construction Certificate, the following required section(s) are to be submitted to and approved by Council:

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- a) One (1) disabled car parking space shall be provided and clearly marked as per Australian Standards AS 2890.6, SEPP 65 Design Code and Council requirements, and
- b) All off street disabled parking shall have access to the adjacent road(s) and to the communal open space as per Australian Standards AS 2890.6 and Council requirements.
- 34. Prior to the release of the Construction Certificate, a plan (written and/or diagrammatic) shall be submitted and approved by the Engineering and Regulatory Services Department, 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.
- 35. Prior to the issue of any Construction Certificate, the applicant shall contact "Dial Before You Dig" to obtain a utility service diagram for, and adjacent to the property. The sequence number obtained from "Dial Before You Dig" shall be forwarded to Principal Certifying Authority. All utilities within the work zone shall be protected during construction. Any adjustments or damage to public utilities/services as a consequence of the development and associated construction works shall be restored or repaired at the applicant's expense.
- 36. To ensure that utility authorities and Council are advised of any effects to their infrastructure by the development, the applicant shall:
 - 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:
 - i) The additional load on the system, and
 - ii) The relocation and/or adjustment of the services affected by the construction.

Any costs in the relocation, adjustment, and provision of land or support of services as requested by the service authorities, beneficiaries and Council are to be the responsibility of the developer.

- 37. 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 (PCA) for approval. (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, Sydney Water regulations and the BCA. All drawings shall correspond with the approved architectural plans.) The plans shall incorporate but not be limited to the following:
 - a) The provisions made in the Stormwater Management Plans by ACOR, dated 18 July 2014 (DA-14/214/04)
 - b) The On-Site Detention System (OSD) shall be designed according to Part 6 of the SMTG. It should be noted that OSD systems shall be designed to detain the stormwater runoff from the site for all storm events up to and including 1 in 100 year ARI storm.

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- c) Any stormwater discharge to Council's Kerb and Gutter is limited to 10L/s. If higher discharge is proposed, provision must be made to connect to Council's pit and pipe system. Maximum permissible site discharge (PSD) shall be based on 1 in 5 year ARI peak flow generated from the site under the State of Nature condition (i.e. the site is totally grassed/turfed), rather than pre-development condition.
- d) No pump-out shall be used to drain seepage from the basement due to the elevated water table level. That is the basement shall be designed as a "fully tanked" structure,
- e) The pump-out can only be utilized to dispose runoff that may enter the basement carpark from driveway access to the basement,
- The pump out system from the basement carpark proposed shall discharge to the on-site stormwater detention system,
- g) The water originating from the pump put system in the basement car park shall NOT be directed to the Rainwater Re-use Tank and must not be used as grey water under any circumstance.
- All stormwater runoff from the site shall pass through a pollution control device capable of removing litter and sediment (e.g. Gross Pollutant Trap, (GPT)) prior to entering Council's drainage systems. As such, details of the pollution control device shall be shown on stormwater management plan and submitted to the PCA for approval prior to the issue of any construction certificate, and
- Detail calculations including computer modelling (electronic and paper) shall be submitted demonstrating the adequacy of the stormwater management plan in fulfilling all requirements of Council's SMTG.
- 38. Fire booster assemblies and electrical kiosks are to be housed within the building structure. All above-ground utilities must be appropriately sited and located in unobtrusive locations away from pedestrian entrances to the site and public spaces. These items reduce the visual amenity of the development, public spaces or the public domain. The location of these utilities is to be approved by Council's Landscape Architect prior to their installation.
- 39. A revised landscape plan The Landscape Concept Plan by Derek Raithby Architecture (Drawing number DA 10, Issue E, dated May 2015) shall be submitted to and approved by the City of Botany Bay Council Landscape Architect prior to Issue of Construction Certificate. The landscape documentation is to be prepared by a suitably qualified Landscape Architect, in accordance with Council's Landscape DCP and include the following amendments: (DA-14/214/04)
 - a) Substitute 2 x Callistemon salignus within deep soil garden beds at the front of the site for 2 x Harpulia pendula 200L pot size, to provide improved amelioration of the development and streetscape amenity.
 - b) Increase the deep soil planning bed on the western side of the driveway by 0.5m (reduce the western splay of the drive-way by 0.5m). This will provide a larger area to allow canopy trees to flourish and ameliorate the development.
 - c) A planting plan at 1:100 showing all plant locations/groupings and plant centres/species. Increase planting densities of ground covers and shrubs. Incorporate additional medium to large shrubs within landscape areas to ensure there is a dense layered planting scheme consisting of trees, shrubs and groundcovers in all landscape areas.

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- d) Along the western boundary substitute Syzigium australe for Elaeocarpus eumundi to provide a taller screen and privacy to residents whose patios back onto this boundary.
- e) Along the southern boundary substitute Eriostemon sp. for Syzigium austral.
- f) Elevated planter box sectional details and drainage details. All planter box depths and dimensions shall be in accordance with Council's DCP and capable of supporting medium to large trees.
- g) Indicate areas of paving, amenity/pedestrian lighting, furniture and fences. Include a schedule of materials.
- h) Indicate the location of all basement structures relative to the landscape areas.
- 40. A Public Domain Landscape Plan is required for Myrtle Street. The plan shall be submitted to and approved by the City of Botany Bay Council Landscape Architect <u>prior</u> to Issue of Construction Certificate. The landscape plan shall include the following amendments:
 - Treatment of the nature strip and footpath to CoBB specification. Location of any above ground electrical pillars needs to be considered and shown on plan.
 - b) One (1) Eucalyptus gummifera (Red Bloodwood) tree, pot size 100 litre and minimum height of 1.8 metres, shall be installed in the Myrtle Street nature strip on the western side of the proposed driveway.
- 41. Prior to the issue of the Construction Certificate, planter boxes constructed over a concrete slab shall be built in accordance with the following requirements:
 - a) Ensure soil depths and dimensions in accordance with Council's DCP allowing a minimum soil depth of 1 metre to support trees. The base of the planter must be screeded to ensure drainage to a piped internal drainage outlet of minimum diameter 90mm, with no low points elsewhere in the planter. There are to be no external weep holes.
 - b) A concrete hob or haunch shall be constructed at the internal join between the sides and base of the planter to contain drainage to within the planter.
 - c) Planters are to be fully waterproofed and sealed internally with a proprietary sealing agent and applied by a qualified and experienced tradesman to eliminate water seepage and staining of the external face of the planter. All internal sealed finishes are to be sound and installed to manufacturer's directions prior to backfilling with soil. An inspection of the waterproofing and sealing of edges is required by the Certifier prior to backfilling with soil.
 - d) Drainage cell must be supplied to the base <u>and</u> sides of the planter to minimize damage to the waterproof seal during backfilling and facilitate drainage. Apply a proprietary brand filter fabric and backfill with an imported lightweight soil suitable for planter boxes compliant with AS 4419 and AS 3743. Install drip irrigation including to lawns.
 - Finish externally with a suitable paint, render or tile to co-ordinate with the colour schemes and finishes of the building.
- 42. Prior to the issue of the Construction Certificate, a Stage 3 Remedial Action Plan (RAP) shall be prepared by a suitably qualified and experienced contaminated land consultant and in accordance with:

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- a) NSW Office of Environment and Heritage (OEH) 'Contaminated Sites Guidelines for Consultants Reporting on Contaminated Sites';
- NSW Environment Protection Authority (NSW EPA) approved guidelines under the Contaminated Land Management Act 1997; and
- c) State Environmental Planning Policy 55 (SEPP55) Remediation of Land.

The RAP shall incorporate all findings and recommendations in the detailed site investigation 'View East Developments Pty Ltd – 5 Myrtle Street, Botany, NSW – Environmental Site Assessment' (Report No. E22225) by Environmental Investigation Services dated 18 July 2014 for the site, it shall clearly state proposed clean-up objectives, and demonstrate how the site can be made suitable for the proposed residential use.

The RAP shall be submitted to Council prior to the commencement of any remedial action and prior to the issue of a construction certificate.

- 43. An Erosion and Sediment Soil and Water Management Plan (ESCP) shall be prepared in accordance with the Landcom Managing Urban Stormwater Soils and Construction 4th Edition (2004) and submitted to the Principal Certifying Authority prior to the release of the Construction Certificate. 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 during the construction works. A copy of the ESCP shall be kept on-site at all times and made available to Council Officers on request.
- 44. A sufficient area shall be provided onsite to enable separate stockpiling of excavated materials for sampling and analysis prior to removal or reuse on site. Details of this area shall be provided in the Erosion and Sediment Control Plan (ESCP) prior to the release of the construction certificate. This plan shall incorporate and reference the construction environmental management plan and address site limitations.
- 45. The measures required in the acoustical assessment report prepared by Sebastian Giglio, Acoustic Consultant, dated 18 July 2014, Report Number 2542/DO2a, shall be undertaken in accordance with the provisions of AS 2021 2000: Acoustics Aircraft Noise Intrusion Building Siting and Construction to establish components of construction to achieve indoor design sound levels in accordance with Table 3.3 of AS2021 2000 shall be incorporated into the construction of the building. The work detailed in the report includes:
 - a) Appropriate acoustic glazing to stated windows and doors,
 - b) Detailed roof and ceiling construction,
 - c) Wall and ceiling corner details and,
 - d) External door specification.
 - e) Acoustically treated mechanical ventilation.

Note: In many cases the applicant chooses to install air conditioning to meet mechanical ventilation requirements above. If they do it will require consideration of the noise from the air conditioner (advice concerning noise from air conditioners is attached below).

46. A suitable intercom system linked to all units within the development shall be provided at the vehicle entrance to the basement car parking area to ensure any visitors to the

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site can gain access to the visitor parking located within the basement car park. The details of the intercom system shall be submitted to Principal Certifying Authority prior to the issue of a Construction Certificate and its location and specifications endorsed on the construction drawings.

- 47. To ensure that utility authorities and Council are advised of any effects to their infrastructure by the development, the applicant shall:
 - 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:
 - i) The additional load on the system; and
 - The relocation and/or adjustment of the services affected by the construction.

Any costs in the relocation, adjustment, and provision of land or support of services as requested by the service authorities, beneficiaries and Council are to be the responsibility of the developer.

- 48. Prior to the release of the Construction Certificate, the following required section(s) are to be submitted to and approved by Council:
 - A minimum 1 disabled car parking space shall be provided and clearly marked as per Australian Standards AS 2890.6, SEPP 65 Design Code and Council requirements; and
 - b) All off street disabled parking shall have access to the adjacent road(s) and to the communal open space as per Australian Standards AS 2890.6 and Council requirements.
- 49. A Stage 4 Site Validation Report (SVR) shall be prepared by a suitably qualified contaminated land consultant and shall be in accordance with:
 - a) NSW Office of Environment and Heritage (OEH) 'Contaminated Sites Guidelines for Consultants Reporting on Contaminated Sites';
 - b) NSW Environment Protection Authority (NSW EPA) approved guidelines under the Contaminated Land Management Act 1997; and
 - c) State Environmental Planning Policy 55 (SEPP55) Remediation of Land.

The site validation report shall provide a notice of completion of remediation works, whether there are any ongoing site management requirements and a clear statement on the suitability of the likely proposed site use. The report shall be submitted to the Principal Certifying Authority (and the Council if the Council is not the Principal Certifying Authority). The report is to be submitted after prepared on completion of remediation works and a copy of the report is to be provided prior to the issue of the Construction Occupation Certificate.

(DA-14/214/02)

To ensure that the site is suitable for the proposed use, a Site Audit Statement (SAS)
completed by an accredited site auditor under the Contaminated Land Management Act

1997 shall be submitted to Council prepared on completion of remediation works clearly demonstrating that the site is suitable for the proposed development. This shall be provided prior to the release of the Occupation Certificate. Any conditions imposed on the SAS shall form part of this consent. The accredited site auditor shall provide Council with a copy of the Site Audit Report (SAR) and Site Audit Statement (SAS) prior to the issuing of the Construction Occupation Certificate. In circumstances where the SAS conditions (if applicable) are not consistent with the consent, a Section 96 application pursuant to the Environmental Planning & Assessment Act 1979 shall be submitted to ensure that they form part of the consent conditions. (DA-14/214/02)

- 51. Prior to the issue of the Construction Certificate, construction plans shall be revised and submitted to Principal Certifying Authority. The revised construction plans shall address the following issues:
 - a) The minimum width of vehicle access ramp to the basement car parking area can be 3 metres wide subject to the following:
 - Traffic light system shall be designed and provided to the top and bottom of the ramp. Detailed location of traffic lights and vehicle waiting area shall be shown on the construction plans.
 - ii) The vehicular crossing in the proposed blister island on Myrtle Street shall be a minimum of 5.5metres wide and the distance between the pedestrian footpath and the blister island shall not be less than 6 metres in order to allow a vehicle to wait away from pedestrian and vehicle traffic.

CONDITIONS WHICH MUST BE SATSIFIED PRIOR TO THE COMMENCEMENT OF ANY DEVELOPMENT OR WORK

- 52. 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: -
 - Has been informed in writing of the licensee name and contractor licence number, and;
 - 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: -
 - Has been informed in writing of the persons name and owner-builder permit number, or:
 - iii) 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.
- 53. Prior to the commencement of works, the applicant must inform Council, in writing, of:
 - 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: -

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- 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.
- 54. 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.
- 55. Building plans must be lodged at a Sydney Water Quick Agent for approval prior to
- This Consent shall not preclude the demolisher from giving notice to other statutory authorities, such as Sydney Water Corporation, WorkCover, etc.
- 57. The Applicant must indemnify Council against all loss of or damage to the property of others and injury or death to any persons which may arise out of or in consequence of the carrying out of the work on Council's road reserve and against all claims, demands, proceedings, costs, charges and expenses whatsoever in respect thereof or in relation thereto. In this regard, the Applicant shall take out a public liability policy during the currency of the works in the sum of not less than \$20,000,000 and to be endorsed with City of Botany Bay Council as principal, and keep such policy in force at the Applicant's own expense. A certificate from the Applicant's insurers to this effect shall be lodged with Council before any works is commenced.
- 58. 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.
- 59. 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: -
 - Permit to erect hoarding on or over a public place, including Council's property/road reserve
 - 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 place skip/waste bin on footpath and/or nature strip
 - e) Permit to use any part of Council's road reserve or other Council lands.
- The demolisher shall lodge with Council, and at least forty-eight (48) hours prior to the commencement of work:
 - a) Written notice, indicating the date when demolition of the building is to commence.
 - b) This persons full name and address.
 - c) Details of Public Liability Insurance.

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- 61. In order to ensure that two (2) Council street trees (*Eucalyptus* sp. and *Melaleuca* sp.) in the nature strip and blister fronting the adjoining property to the north east of the site are retained and protected during construction, and their health and structural stability ensured, the following is required:
 - a) A Consultant Arborist AQF Level 5 shall be engaged from site establishment to the post-construction period to erect tree protection zones and signage, inspect and advise on all works during the entire construction period, monitor tree health and to authorize and undertake tree canopy and root pruning where necessary only and to the minimum only so that the health or structural stability of the trees is not impacted.
 - b) Trees to be retained are to be tagged with clearly visible marking tape at a height of approx. 2 metres from ground and numbered with the corresponding number in the Tree Report.
 - c) Prior to commencing demolition/any works the tree/s is/are to be physically protected by fencing underneath the canopy dripline using 1.8 metre high chainwire fence to form the Tree Protection Zone (TPZ). The area within the fencing is to be mulched with leaf mulch to a depth of 100mm and a weekly deep watering program undertaken during construction. The fence shall remain in place until construction is complete.
 - d) If there is insufficient space to erect fencing in a particular area, wrap the trunk with hessian or carpet underlay to a height of 2.5 metres or to the tree's first lateral branch, whichever is greater, and affix timber palings around the tree with strapping or wire (not nails).
 - e) Before any works commence on site, the Applicant is required to contact Council for an inspection and/or provide photographic evidence of the fenced TPZ's. Council approval is required prior commencement of any work.
 - All detailed Construction Certificate plans shall show trees to be protected and the TPZ.
 - g) The TPZ's are "No-Go" zones. There shall be no access to the property excluding the existing crossover, no stockpiling, storage or sorting of waste or building materials, no construction work, no concrete mixing, strictly no washing down of concrete mixers or tools, no chemicals mixed/disposed of, no excavation or filling, no service trenching. Any unavoidable work within the fenced zone shall be under the direction of Council's Tree Officer or Consultant Arborist.
 - Where unavoidable foot access is required in the TPZ, provide temporary access with timber sheets to minimise soil compaction, spillage or root damage.
 - Excavation within the TPZ and within a nominated radial dimension from the tree trunk as determined by the consultant Arborist in accordance with AS 4970: 2009

 Protection of Trees on Development Sites shall be carried out manually using hand tools or light machinery to minimise root damage or disturbance.
 - j) No tree roots greater than 30mm in diameter shall be pruned without further assessment by Council's Tree Officer and the consulting Arborist and only following the submission of further Arborists reports to Council so as not to unduly impact or stress the tree.
 - k) Ensure no damage to the canopy, trunk or root system (including the surrounding soil) of any tree to be retained. There shall be no canopy pruning unless approval has been granted by Council's Tree Officer under application from the consultant

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- Arborist. Approved pruning shall be undertaken by a qualified Arborist in accordance with AS 4373.
- For retained trees on the private property adjoining, the developer is required to consult with Council and advise prior to any tree works taking place.
- m) Care shall be taken with construction work in the primary root zone of all existing neighbouring trees to be retained, including the Council Street tree on the southern corner of Church Avenue and Kent Road. These trees must be retained and construction works are to accommodate tree roots, branches and canopy without damage or impact. Trees are not to be pruned back to the boundary fence line under any circumstances. The canopy may otherwise overhang the property.
- n) The Applicant will be required to undertake any tree maintenance or remedial pruning works required by Council or the Consultant Arborist at the completion of construction

If there is any contravention of these tree preservation conditions, or a tree was found to be damaged (including roots), in decline, dead or pruned without permission, then Council may claim all or part of the lodged security bond prior to its release as well as require remedial pruning work. Epicormic growth is evidence of root damage.

- 62. All management measures recommended and contained within the Erosion and Sediment Control Plan (ESCP) submitted as part of the construction certificate 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 and made available to council officers on request.
- 63. The vehicular entry/exits to the site must be protected from erosion and laid with a surface material which will not wash into the street drainage system or watercourse.
- 64. Shaker pads are to be installed at the entry/exit points to the site to prevent soil material leaving the site on the wheels of vehicles and other plant and equipment.
- 65. For any water from site dewatering to be permitted to go to 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 shall be provided in this report.

Reports shall be <u>provided to council prior to discharge of groundwater to the stormwater</u> system.

DURING WORKS

- 66. The proposed development shall comply with the following:
 - 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;
 - 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;

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- iii) The Development Approval number; and
- The name of the Principal Certifying Authority including an afterhours contact telephone number.
- b) Any such sign is to be removed when the work has been completed.
- The demolisher shall comply with Australian Standard 2601 2001 "Demolition of Structures".
- 68. 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.
- 69. 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).
- 70. Any material containing asbestos found on site during the demolition process shall be removed and disposed of in accordance with:
 - 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.
- 71. 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.
 - AS4361.2-1998 Guide to Lead Paint Management-Residential and Commercial Buildings

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- 72. In order to ensure safe handling of asbestos materials, the re-use or sale of asbestos building materials is strictly prohibited.
- 73. No demolition materials shall be burnt or buried on the site.
- 74. 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.
- 75. Adequate precautions must be taken to control the emission of dust from the site during construction work. These precautions could include minimizing soil disturbance, use of water sprays, erecting screens and not carrying out dusty work during windy conditions.
- 76. The applicant is responsible for the installation and protection of all regulatory/ parking / street signs fronting the site during construction. Any damaged or missing street signs as a consequence of the construction works associated with the development shall be replaced at full cost to the applicant.
- 77. During Construction and any associated deliveries activities, the applicant shall ensure that all works and measures have been implemented in accordance with following approved plans at all times:
 - a) Approved Erosion and Sediment Control Plan;
 - b) Approved Construction Traffic Management Plan;
 - c) Approved Construction Management Plan; and
 - d) Approved Waste Management Plan.
- 78. 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.
- 79. Inspections must be conducted by Council's Engineer at the following occasions:
 - 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, and
 - f) Final inspection of Council's footpath.
- 80. 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.

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- 81. 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) Any retained 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, piering, or underpinning prior to the commencement of any work. The construction shall not undermine, endanger or destabilise any adjacent structures.
 - Retaining walls associated with the erection of a building or other approved methods of preventing movement or other approved methods of preventing movement of the soil must be provided where necessary, and
 - f) Adequate provision must be made for drainage.
- 82. 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 07:00am 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.

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83.

- 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.
- 84. 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.
- 85. 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.
- 86. 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.
- 87. Should the applicant encounter acid sulphate soils during the excavation works, work is to cease and an Acid Sulphate Soils Management Plan (prepared by a suitably qualified and experienced environmental/geotechnical consultant) shall be submitted to the Principal Certifying Authority prior to the continuance of works. This report shall include any site specific procedures and mitigation measures required and shall include a site analysis from a NATA registered laboratory. The report shall provide details of the following:
 - Site specific mitigation measures to both minimise the disturbance of acid sulphate soils as well as any measures relating to acid generation and acid neutralisation of the soil;
 - b) Management of ASS affected excavated material;
 - c) Measures taken to neutralise the acidity of any ASS affected material; and

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d) Run-off control measures for the ASS affected soil.

A copy of the report shall be submitted to Council. All necessary recommendations of the report shall be implemented prior to the commencement of building works.

- 88. Any material containing asbestos found on site during the demolition process shall be removed and disposed of in accordance with:
 - 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.
- 89. 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.
- 90. The principal contractor or owner builder must install and maintain water pollution, erosion and sedimentation controls in accordance with:
 - The Erosion and Sediment Control Plan;
 - b) "Managing Urban Stormwater Soils and Construction" (2004) Landcom ('The Blue Book'); and
 - c) Protection of the Environment Operations Act 1997.
- 91. All remediation work must be carried out in accordance with:
 - a) NSW Office of Environment and Heritage (OEH) 'Contaminated Sites Guidelines for Consultants Reporting on Contaminated Sites';
 - NSW Environment Protection Authority (NSW EPA) guidelines under the Contaminated Land Management Act 1997;
 - c) State Environmental Planning Policy 55 (SEPP55) Remediation of Land; and
 - The Remedial Action Plan (RAP) required to be submitted prior to the issue of the Construction Certificate.
- 92. 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 2005.

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.

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- 93. Toilet facilities are to be provided at or in the vicinity of the work site on which work involves:
 - demolition and construction of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site;
 - b) Each toilet provided:
 - i) must be standard flushing toilet; and,
 - ii) must be connected:
 - 1 to a public sewer; or
 - 2 if connection to a public sewer is not practicable to an accredited sewerage management facility approved by the Council; or,
 - 3 if connection to a public sewer or an accredited sewerage management facility is not practicable to some other sewerage management facility approved by the Council.
 - The provisions of toilet facilities in accordance with this condition must be in place before work commences.

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

- 94. 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.
- Prior to the issue of the Occupation Certificate, a Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water.

Note: Make an early application for the certificate, as there may be water and sewer pipes to be built and this can take some time. This can also impact on other services and building, driveway or landscape design.

Application must be made through an authorised Water Servicing Coordinator. For help visit www.sydneywater.com.au > Plumbing, building and developing > Developing > Land development or telephone 13 20 92.

- 96. Prior to the issue of an Occupation Certificate, the fencing adjacent to the site vehicular entrance shall be designed and constructed to ensure there is adequate sight distance between the pedestrians and the vehicles leaving the site. In addition, it shall be ensured that all access gates swing into the site and not out onto the streets.
- 97. At the completion of landscaping on the site, the Applicant is required to obtain a Certificate of Compliance from the Landscape Consultant to certify that the landscaping has been installed in accordance with the Council approved landscape plan. The Certificate is to be submitted to the City of Botany Bay Council prior to the issue of an Occupation Certificate.
- 98. 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

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- at the applicant's expense to Council's satisfaction, prior to occupancy of the development and release of damage deposit.
- 99. Prior to the issue of any Occupation Certificates, 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.
- 100. Prior to the issue of any Occupation Certificate, the applicant shall carry out the following works in Public Domain and Road Reserve areas:
 - Extend the existing street treatment on Myrtle Street at the front of the property.
 The works shall include but not limited to:
 - i) Construction of on street angle parking bays,
 - ii) Extension of existing traffic calming devices,
 - iii) Reconstruction of existing kerb and gutter, and
 - iv) Reconstruction of existing concrete footpath.

<u>Note</u>: To ensure satisfactory performance of the completed external public infrastructure works, a maintenance period of twelve (12) months shall apply to all public domain works completed in relation to this application. The performance period shall commence from the issue date of the Final Occupation Certificate.

- 101. 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.
- 102. Prior to the issue of the Occupation Certificate, the Principal Certifying Authority is to ensure that any electrical kiosk, fire booster assembly or similar utilities must be located in an unobtrusive location away from vehicle and pedestrian entrances to the property and not within the landscaped street setback. The utilities must be screened by a built screen enclosure and/or landscaping so as not to reduce the visual amenity of the development or the streetscape and public domain. The location of, and screening treatment surrounding these utilities is to be approved by Council's Landscape Architect prior to their installation.
- 103. Prior to the issue of the Occupation Certificate, new street tree at the pot size specified shall be installed in the accordance with the approved landscape plan. The trees shall be sourced from a reputable supplier that grows stock to the NATSPEC specifications. A Dial-Before-You-Dig enquiry is required prior to all planting Council is not liable for any damage to subsurface infrastructure during public domain works. Two hold point inspections are required: prior planting trees to ensure plant stock is suitable and post-planting.
- 104. Prior to the issue of the Final Occupation Certificate, the Principal Certifying Authority is to ensure all units within the development are connected to an intercom system located at the vehicle entrance to the car parking area to ensure visitors to the site can access the visitor parking.

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105. Prior to the issue of the Occupation Certificate, seventeen twenty-one (17-21) off-street car parking bays shall be provided to the development as shown on the approved architectural plans. All parking bays and loading bays shall be line marked. The allocation of parking bays shall be in accordance with the following:

a) 1 bedroom unit
 b) 2/3 bedroom unit
 c) Visitor parking
 d) One (1) parking space/unit;
 d) One (1) parking spaces.

(DA-14/214/04)

- 106. Prior to the issue of the Occupation Certificate, a restriction on Use of Land and Positive Covenant(s) shall be imposed on the development. The following covenants shall be imposed under Section 88(E) of the Conveyancing Act 1919 and lodged with the NSW Land and Property Information:
 - Restriction on Use of Land for On-Site Detention System. Refer to Appendix B of the SMTG for suggested wording, and
 - b) Restriction on Use of Land for Stormwater Quality Improvement Device. Refer to Appendix E of the SMTG for suggested wording.

The terms of the 88 E instruments are to be submitted to Council for review and approval and Proof of registration at the Lands and Property Information Office shall be submitted to the Principal Certifying Authority and Council prior to occupation.

107. Prior to release of the Occupation Certificate the developer must submit to the Principal Certification Authority an acoustic report to verify that the measures stated in the acoustic report have been carried out and certify that the construction meets the above requirements. The report must be prepared by a qualified practicing acoustic engineer (who is a member of either the Australian Acoustical Society or the Association of Australian Acoustical Consultants).

108.

- a) The property shall be serviced by underground supply of electricity, telecommunications and any other current above ground service supply from the appropriate authorities main street supply system.
- b) The following works shall be completed <u>prior to the issuing of an Occupation Certificate:</u>
 - i) The existing above ground electricity, telecommunications, and any other cables in the street adjoining the site shall be replaced at the applicant's expense by underground cables to the relevant Energy Australia and other standards. The applicant shall also be responsible for the replacement of existing street lights with new standards in accordance with Council's and Energy Australia's guidelines.
- 109. Prior to the issue of any Occupation Certificate, documentation from a practising civil engineer shall be submitted to the Principal Certifying Authority certifying that the car parking areas, circulation roadway, vehicle access ramp, traffic light system and vehicular access paths have been constructed generally in accordance with the approved construction plan(s) and comply with AS2890.1 requirements. The internal parking facilities shall be clearly designated, sign posted and line marked. Signage and line marking shall comply with the current Australian Standard.

109A.

- a) Prior to the issue of the relevant Occupation Certificate, signage shall be prominently prior to entering the car stacker systems numbered U1, U3 and U4 detailing the following wording "reverse in only". Signage indicating the required vehicular movements (as shown in McLaren Engineering swept paths dated 11 October 2018) to access the off street mechanical parking spaces U1-4 needs to be displayed in a prominent location near the subject off street mechanical parking spaces.
- b) Prior to the issue of the relevant Occupation Certificate, maximum height signage shall be erected prominently prior to entering the car stacker systems, indicating the maximum height clearance the mechanical parking facility is designed to, detailed in the manufacturers specifications prepared by Klaus Multiparking Systems singlevario 2061-170.
- 109B. Prior to the issue of the relevant Occupation Certificate, a positive covenant pursuant to the Conveyancing Act 1919 shall be created on the title of the lots that contain the mechanical parking facility to provide for the ongoing maintenance of the mechanical parking facility. Bayside Council must be provided with all relevant supporting information (such as installation certification and a maintenance plan) prior to Council endorsing the Instrument.

CONDITIONS WHICH MUST BE SATISFIED FOR THE ONGOING USE

110.

- a) That before entering a lease/occupancy agreement, all tenants and occupiers of the development are to be advised by the owner of the building that residents are not eligible to participate in on-street resident parking schemes.
- b) Prior to the issue of the occupation certificate, a sign to this effect shall be located in a prominent place, to Council's satisfaction, such as on a the notice board in the communal room, where it can easily be observed and read by persons entering the building.
- 111. New street trees shall be maintained by the Applicant/Owner/Strata Corporation for a 24 months after final inspection by Council. Maintenance includes twice weekly watering within the first 6 months then weekly thereafter to sustain adequate growth and health, bi-annual feeding, weed removal round the base, mulch replenishment at 3 monthly intervals (to 75mm depth) and adjusting of stakes and ties. Maintenance but does not include trimming or pruning of the trees under any circumstances.
- 112. Ongoing maintenance of the road verge, footpath and nature strip in Myrtle Street shall be undertaken by the owner/body corporate/Strata Corporation. Maintenance includes mowing, watering and maintaining the landscaping in these areas at all times. Maintenance does not include pruning, trimming, shaping or any work to street trees at any time.

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- 113. 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.
- 114. To ensure satisfactory growth and maintenance of the landscaping, a fully automatic drip irrigation system is required in all landscaped areas. The system shall be installed by a qualified landscape contractor and provide full coverage of planted areas with no more than 300mm between drippers, automatic controllers and backflow prevention devices, and should be connected to a recycled water source. Irrigation shall comply with both Sydney Water and Council requirements as well as Australian Standards, and be maintained in effective working order at all times.
- 115. 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.
- 116. Council's footway (area between property boundary and street kerb) is to be kept clean, tidy, washed and maintained at the applicant's expense.

117.

- 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.
- 118. The applicant being informed that this approval shall be regarded as being otherwise in accordance with the information and particulars set out and described in the Development Application registered in Council's records as Development Application No. 14(214) dated as 12 September 2014 and as further amended by Section 96(1A) Application No. 14(214).02 dated 2 October 2015 14(214).03 dated 22 January 2016 and as further amended by Section 4.55(2) Application No. 14/214/04 dated 20 April 2018 and that any alteration, variation, or extension to the use, for which approval has been given, would require further approval from Council. (DA-14/214/02) (DA-14/214/03) (DA-14/214/04)

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ADVISORY NOTES

- 119. The following advisory notes are imposed by the NSW Police
 - i) Digital technology should be used to receive, store and process data recording equipment should be secured away from public access areas to restrict tampering with the equipment and data. This equipment needs to be checked and maintained on a regular basis.
 - ii) It is crucial even in the development stage that these cameras are installed as soon as power is available to the site.
 - iii) Any proposed landscaping and vegetation should adhere to the following principles:
 - 1 Shrubs, bushes, plants should remain under 900mm in height.
 - Branches of large trees should start at a height of two (2) metres and higher. This will assist with natural surveillance and reduce hiding spots and dark areas for potential offenders.
 - iv) By angling fire egress inlet walls 45 degrees or more, opportunities for entrapment, loitering and vandalism can be reduced.
 - v) Any proposed seating area, playground or grass area should be positioned somewhere which can be viewed easily by the community. Consider whether the area will be used enough to warrant its development. Areas which area isolated, unused and maintained poorly become a breeding ground for anti social behaviour.
 - vi) Care should be taken when using glazing in entry foyers. At night the vision of departing occupants can be affected by reflections on the interior of the glass (can't see outside). Mirroring can be reduced by using appropriate external lighting.
 - vii) The configuration of car parking spaces can impact the risk to car thieves. Grid rows increase natural surveillance. Avoid dark spots, corners and isolated car spaces.
 - viii) Public laundries, garbage disposal areas and other communal spaces should not be located in a buildings 'leftover space'. Poor supervision of communal facilities can greatly increase the risk of predatory crime, theft and vandalism. Areas that are unused or sporadically used after hours and unsupervised should not be accessible to the public.
 - ix) Uneven building alignments, insert doorways and hidden entrances should be avoided. They can facilitate predatory crimes, thefts, malicious damage and other offences.
 - x) Bicycle parking areas should be located within view of capable guardians. The provision of covered lockable racks to secure bicycles increases the effort required to commit crime.

b) Lighting

- Lighting sources should be compatible with requirements of any surveillance system installed within the development. (Poor positioning choices in relation to light can cause glare on the surveillance screens).
- ii) The luminaries (light covers) should be designed to reduce opportunities for malicious damage. Lighting within the development needs to be checked and maintained on a regular basis.

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- iii) A limited amount of internal lighting should be left on at night to enable patrolling police, security guards and passing people to monitor activities within the business.
- iv) Improved lighting needs to extend from the development towards adjacent streets. Consideration must be given to pedestrians walking from the development to surrounding streets for the purpose of catching public transport etc. Areas adjoining pathways should be illuminated to avoid opportunities for concealment and entrapment.

c) Territorial Reinforcement

- i) Clear street number signs should be displayed and appropriately positioned at the front of the business to comply with Local Government Act, 1993 Section 124 (8). Failure to comply with any such order is an offence under Section 628 of the Act. Offences committed under Section 628 of the Act attract a maximum penalty of 50 penalty units (currently \$5500) for an individual and 100 penalty units (currently \$11000) for the corporation. The numbers should be in contrasting colours to the building materials and be larger than 120mm.
- Warning signs should be strategically posted around the buildings to warn intruders of what security treatments have been implemented to reduce opportunities for crime.
 - 1 Warning, trespasser will be prosecuted
 - 2 Warning, these premises are under electronic surveillance
- iii) Directional signage should be posted at decision making points (e.g. Entry/egress points) to provide guidance to the uses of the development. This can also assist in access control and reduce excuse making opportunities by intruders.
- iv) A Fire Safety Statement must be prominently displayed within the development to comply with the Environmental Planning & Assessment Regulations (1994) Clause 80GB. The annual fire safety statement is a statement issued by the owner of a building.
- Signage needs to be provided at fire exits to assist occupants to identify exits in emergency situations.
- Signage needs to be provided to assist occupants to identify fire suppression equipment, e.g. extinguishers, fire hoses etc.
- vii) A graffiti management plan needs to be incorporated into the maintenance plan for the development. Research has shown that the most effective strategy for reducing graffiti attacks is the quick removal of such material generally within 24 hours.
- viii) Graffiti resistant materials and anti-graffiti coating should be utilised throughout the development.

d) Space Management

i) An Emergency control and evacuation plan which complies with the Australian Standard, Emergency Control Organisation and Procedures for Buildings, Structures and Workplace, AS:3745:2002 should be prepared and maintained by your development to assist management and staff in the event of an emergency. This standard sets out the requirements for the development of procedures for the controlled evacuation of the building, structures and workplaces during emergencies. Further information in relation to planning for emergencies can be obtained from Emergency

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NSW http://www.emergency.nsw.gov.au or Emergency Management Australia http://www.ema.gov.au or Emergency Management Australia http://www.ema.gov.au or Emergency Management Australia http://www.ema.gov.au or Emergency Management http://www.ema.gov.au or Emergency http://www.ema.gov.au

ii) It is not advised to install storage cages or similar for the residents in the underground car park. If it is required, consider that they should not be constructed in an isolated area. The cages are easy targets when they have little supervision. CCTV cameras must cover this area if they are constructed. Solid steel housing and quality key locks should be used to prevent access.

e) Access Control

- The door and door frames to these premises should be of solid construction.
- iii) Doors should be fitted with locks that comply with the Australian Standard Mechanical Locksets for doors in buildings, AS:4145:1993, to restrict unauthorised access and the Building Code of Australia (fire regulations). This standard specifies the general design criteria, performance requirements and procedures for testing mechanical lock sets and latch sets for their resistance to forced entry and efficiency under conditions of light to heavy usage. The standard covers lock sets for typical doorways, such as wooden, glass or metal hinged swinging doors or sliding doors in residential premises. Requirements for both the lock and associated furniture are included. Certain areas may require higher level of locking devices not referred to in this standard (eg. Locking bars, electronic locking devices and detection devices) Dead locks are recommended for residential units.
- iii) There are some doors within the premises which are designated as fire exits and must comply with the Building Code of Australia. This means that they provide egress to a road or open space, an internal or external stairway, a ramp, a fire isolated passageway, a doorway opening to a road or open space. The doors in the required exits must be readily open-able without a key from inside that face the person seeking egress, by a single hand downward action or pushing action on a single device which is located between 900mm and 1.2m from the floor.
- Any sliding doors must be fitted with lockable bolts in the bottom and top of the door frame.
- v) The windows and window-frames to these premises should be of solid construction. These windows should be fitted with locks with comply with the Australian Standard Mechanical Locksets for windows in buildings, AS:4145 http://www.standards.org.au to restrict unauthorised access. This standard specifies the general design criteria, performance requirements, and procedures for testing mechanical lock sets and latch sets for their resistance to forced entry and efficiency under conditions of light to heavy usage. The standard covers lock sets for typical windows, such a wooden, glass or metal hinged swinging windows or sliding windows in residential and business premises, including public buildings, warehouses and factories. Requirements for both the lock and associated furniture are included. Certain areas may require higher level of locking devices not referred to in this standard. (e.g. locking bars, electronic locking devices, detection devices, alarms).
- vi) The main access to the underground car park should have restricted access with a security pass. The opening/closing mechanism should be

- protected from vandalism and tampering. All exit doors from the car park should have striker plates installed to minimise chance of tampering.
- vii) The main entry/egress doors to the development should have an electronically operated lock which require security swipe pass for entry. The lifts operating in the building should have the same security swipe pass technology. When an occupant buzzes in a visitor the lift should recognise the floor the occupant resides and only allow the visitor access to that floor in the lift

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BAYSIDE COUNCIL

Planning Assessment Report

Application Details

Application Number: DA-14/214/04 **Date of Receipt:** 20 April 2018

Property: 5 Myrtle Street, Botany

Lot B DP 382442

Owners: Agility Assets Holding Pty Ltd
Applicant: Agility Assets Holding Pty Ltd

Proposal: Section 4.55(2) Application to modify Development Consent No.

14/214 to an approved residential flat building and townhouse development to raise floor levels and building heights, additional three units, reconfiguration of units, window changes and basement

parking to add stackers

Recommendation: Refusa Value: N/A

No. of submissions: Round One: Eight (8) submissions

Round Two: Eight (8) submissions

Author: Angela Lazaridis, Senior Development Assessment Planner

Date of Report: 6 July 2018

Key Issues

The former City of Botany Bay Council approved on 13 May 2015 at a Development Committee Meeting Development Application No. 14/214 for an integrated development for the demolition of all existing structures, excavation, remediation, construction of 3 x three storey residential flat buildings comprising of 2 x townhouses and 8 apartments with single level basement car parking to provide 17 car parking spaces and Stratum and Strata Title Subdivision to create 3 stratum Lots and 8 Strata Lots at 5 Myrtle Street, Botany.

Bayside Council received the subject application to modify DA-14/214 on 20 April 2018 seeking consent to modify the development to raise floor levels and building heights, additional three units, reconfiguration of units, window changes and basement parking to add stackers.

The application was placed on public exhibition for a fourteen (14) day period from 4 May to 18 May 2018. Eight (8) objections were received during the public notification period. The amended plans provided to Council were sent to the objectors on 3 July 2018 with a period of seven (7) days to comment. Eight (8) objections were received as part of the second round of notification. Discussion relating to the issues that were raised in the submissions are discussed in greater detail in the report below. The key points raised in the submissions include significant bulk concerns from the increase in height and FSR, privacy and overshadowing concerns, car parking non-compliances which will exacerbate the car parking provided on the street as well as garbage collection and construction management issues.

The points that were raised by the objectors are valid and support the argument to refuse the application.

Key issues in the assessment of the modified proposal include additional height and FSR which results in an overdevelopment of the site, non-compliances in car parking, building separation, overshadowing and visual privacy onto the neighbouring properties and landscaped and communal open space area. The proposal seeks to raise the basement to be partially above ground which will push the overall height of the development by 470mm to 1.37 metres above the 10 metre height requirement. This is partially due to the imposition of four car stackers within the car parking level to accommodate the additional units proposed. The proposal also will increase the FSR of the development from originally approved at 1.01:1 to 1.06:1 (based on Council's calculations) which is greater than the 0.85:1 FSR requirement for the site. The proposal seeks to provide a greater non-compliance to what was allowed within DA-14/214. The combination of both these variations compared to the size of the site results in an overdevelopment of the site.

In regards to overshadowing, as the proposal seeks a height increase, the degree of overshadowing onto the neighbouring properties to the south, west and east will worsen. This is demonstrated in the shadow diagrams that have been provided with the application. Additionally the increase in the floor level above the ground levels of the surrounding sites will contribute to additional visual privacy concerns to the private open space and principal living areas of the neighbouring properties. This is discussed in greater detail in the report below.

When considering the car parking required for the site, the proposal has a two car parking space shortfall as the development does not provide for 2 visitor spaces. The proposal has incorporated car stackers towards the rear of the car parking level however the applicant has not demonstrated how these stackers will work within the development.

In regards to landscaping, communal open space and building separation, the proposal seeks to reduce these areas to lower than acceptable levels and therefore cannot be supported.

The modification application has been assessed in accordance with the relevant requirements of the Environmental Planning and Assessment Act 1979 (EPA Act) and is recommended for refusal, subject to the reasons of refusals.

Recommendation

- 1. That the Section 4.55(2) Application to modify Development Consent No. 14/214 to an approved residential flat building and townhouse development to raise floor levels and building heights, additional three units, reconfiguration of units, window changes and basement parking to add stackers at 5 Myrtle Street, Botany be REFUSED pursuant to Section 4.6(1)(b) of the Environmental Planning and Assessment Act 1979 for the following reasons:
 - a. The proposed modification is contrary to State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development and the design criteria and guidelines of the following sections of the Apartment Design Guide:
 - i. Part 2F Building Separation
 - ii. Part 3F Visual Privacy
 - iii. Part 4A Solar and Daylight Access

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iv. Part 4C - Ceiling Heights

(State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development and the Apartment Design Guide)

- The proposed modification fails to satisfy the primary aims and objectives of the Botany Bay Local Environmental Plan 2013, and in particular the following specific Clauses 1.2(2):
 - to create a highly liveable urban place through the promotion of design excellence in all elements of the built environment and public domain;
 - g) to protect residential amenity.

(Environmental Planning and Assessment Act 1979 s4.15(1)(a)(i)).

- c. That the Bayside Planning Panel is not satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) of the Botany Bay Local Environmental Plan 2013 in regards to the height of building (Clause 4.3) and Floor Space Ratio (Clause 4.4). (Environmental Planning and Assessment Act 1979 s.4.15(1)(a)(i)).
- d. The proposal is contrary to Table 1 of Part 3A.2 of the Botany Bay Development Control Plan 2013 as the proposal does not comply with the required car parking provisions for visitor car parking spaces. (Environmental Planning and Assessment Act 1979 s.4.15(1)(a)(iii))
- e. The proposal is contrary to Control C1 of Part 4C.2.4- Landscaped Area and Deep Soil Planting of the Botany Bay Development Control Plan 2013 as the proposal further reduces the non-compliant landscaped area provided on the site. (Environmental Planning and Assessment Act 1979 s.4.15(1)(a)(iii))
- f. The proposal is contrary with the Control C2 of Part 4C.4.1 Dwelling Mix and Layout of the Botany Bay Development Control Plan 2013 as the proposal provides 46% one bedroom units which is inconsistent with the maximum 25% one bedroom units permissible for the site. (Environmental Planning and Assessment Act 14979 s.4.15(1)(a)(iii)).
- g. The proposal is contrary to Control C5 and C6 of Part 4C.4.2 Family Friendly Apartment Buildings of the Botany Bay Development Control Plan 2013 as the proposal has not adopted family friendly units for any of the two and four bedroom units/dwellings. (Environmental Planning and Assessment Act 1979s s.4.15(1)(a)(iii))
- h. The proposed development is not suitable in the context of the site and locality and is considered to be an overdevelopment of the site. (Environmental Planning and Assessment Act 1979 s4.15(1)(c)).
- Given the inadequate provision of parking, height and FSR exceedance, overshadowing, visual privacy and additional bulk, granting approval to the development will have an adverse impact on the public interest (Environmental Planning and Assessment Act 1979 s4.15(1)(e)).
- 2. That any objectors be notified of the determination made by the Planning Panel.

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Background

History

Approved Development

Development Application No. 14/214 for an integrated development for the demolition of all existing structures, excavation, remediation, construction of 3 x three storey residential flat buildings comprising of 2 x townhouses and 8 apartments with single level basement car parking to provide 17 car parking spaces and Stratum and Strata Title Subdivision to create 3 stratum Lots and 8 Strata Lots at 5 Myrtle Street, Botany was approved by the Development Committee meeting on 13 May 2015.

The following table was the key controls assessed under the original DA that are relevant to the proposal:

Control	Required	Proposal	Complies
Site Area	N/A	The site has a total area of 969.7sqm.	N/A
GFA	824.245sqm (max) calculated based on permissible FSR under BBLEP 2013	986sqm	No however approved
FSR	0.85:1 under BBLEP 2013	1.01:1	
Site Coverage	45% (436.37sqm) under BBLEP 2013	552.8sqm (57%)	No however approved
Car Parking	For multi-dwelling housing/ residential flat building- 1 space/studio or one bedroom dwelling; 2 spaces/ two (2) or more bedrooms dwelling; 1 designated visitor space/ 5 dwellings	Total of 10 dwellings proposed – 17 car spaces provided (1 space per one bedroom units, 2 spaces per 2 bedroom units) 1 visitor car space/car wash bay	No however approved
Deep Soil	25% (242.4sqm)	122.4sqm (12.6% of site area)	No - Merit Assessment
Height	10 metres	Maximum height of 10m	Yes

The following figures demonstrate the approved development on the site:

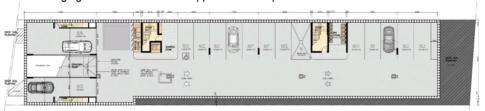


Figure 1. Approved Basement Layout

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Figure 2. Approved Northern Elevation

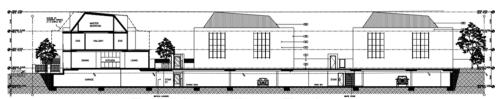


Figure 3. Approved Western Elevation

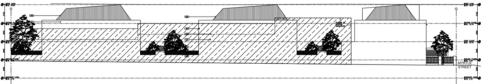


Figure 4. Approved Eastern Elevation

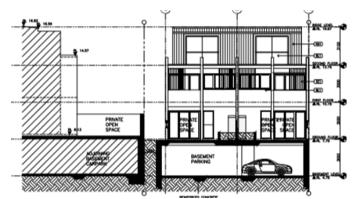


Figure 5. Approved Southern Elevation

Section 96(1A) Application (DA-14/214/02) to modify Development Consent No. 14/214 for minor internal reconfiguration to the two rear buildings (Units 5C, 5D, 5G and 5H) and to modify Condition Nos. 49 and 50 relating to the timing of a Site Validation Report and Site Audit Statement was approved under delegated authority on 22 February 2016.

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Section 96(1A) Application (DA-14/214/03) to modify Development Consent No. 14/214 to amend the external finish from face brick to cement render and white finish paint was approved under delegated authority on 8 April 2016.

Application History

Council sent the applicant an additional information letter by email on 7 June 2018 raising all the issues relating to the proposal and the following was sent:

- Proposed height is excessive and not consistent with the direct neighbours to the east and west particularly at the street level and rear portion of the site. The neighbouring properties were approved with different controls and received bonus provisions as their site area is greater than 2,000sqm. This does not apply to the subject site;
- Any departure to the approved FSR of 1.01:1 will not be supported particularly as the proposal seeks to amend the FSR to 1.11:1. This is a 30.6% variance to the standard. Additionally the waste rooms have not been included within GFA therefore the FSR is likely to be increased further:
- The impact of shifting the car parking level above ground and increasing the height of the development has increased negative impacts onto the neighbours particularly relating to solar amenity and visual privacy;
- The unit mix for one bedroom units is at 67% which is excessively high in this area and will not be supported;
- The function of the car stackers has not been thought out particularly as they are located close to the edge of the basement wall therefore manoeuvring into and out of the space in a forward direction will not work;
- The additional four units results in the provision for additional visitor car spaces to be
 provided within the development. The original DA was approved with a shortfall of one
 space. The additional units will require a total of 3 visitor spaces where one has been
 provided:
- The floor levels do not align with the neighbouring dwellings along Myrtle Street therefore
 there is not a consistent streetscape character for the street. The increase height
 increases the bulk of the development particularly when comparing the direct neighbours
 to the east and west:
- Changes to the rear setback of the southern building result in a portion of the building encroaching within the 6 metre setback zone that was approved with the development application:
- From the plans particularly relating to the COS and the POS, it is noted that there has been in a reduction in the overall landscaped area approved on the site.

A meeting was held on 13 June 2018 between Council and the applicant and the applicant was requested to address the above points. Amended plans were submitted to Council on 22 June 2018.

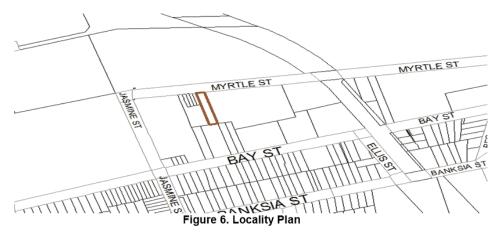
Site Description

The subject site is legally known as Lot B DP 382442. The site is situated on the southern side of Myrtle Street between Jasmine Street to the west and Sydenham Botany Goods Railway Line to the east. The site has a north-west to south-east orientation with north being the front of the site (Myrtle Street) and south being the rear of the site.

The site is trapezoidal in shape and is located in the R3 Medium Density Residential zone. The land is relatively flat with a slight fall of approximately 400mm from the southern to northern side of the site. The site has a splayed street frontage width of 13.525 metres, a rear

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boundary width of 13.43 metres, an eastern boundary length of 71.94 metres and western boundary length of 72.86 metres. It has a surveyed total area of 969.7sqm.



The subject site comprises of a two storey brick light industrial building with flat metal roof ancillary office component at the front of the site with a single storey brick warehouse/factory to its rear. The existing building is setback approximately 10 metres from the front boundary with the front setback area being used for car parking and vehicle manoeuvring. The existing building which otherwise extends the length of the site is provided with varying setbacks ranging from 0m to approximately 3m.



Figure 7. Subject Site

The subject site is an isolated site being surrounded by recently constructed residential development within a R3 Medium Density Residential Zone. The light industry premise is currently vacant and is no longer in operation. There is no significant vegetation on the site and the site is not a heritage item or within a heritage conservation area.

The southern side of Myrtle Street supports a number of recently developed three storey residential apartments with basement car parking. The street frontage on the immediate adjoining properties to the east and west consist of two storey townhouses with a loft level and balconies facing the street. This is evident at 1-3 Myrtle Street (Figure 3) in which the proposed

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development has been designed in a similar manner. 1-3 Myrtle Street consists of twelve townhouses with basement parking. Four of these townhouses are Torrens Titled and face Myrtle Street while the remaining eight townhouses located behind, running parallel to the sites side boundaries. They have an east to west orientation with west being the front entries and east being their rear courtyards. The development has a maximum height of 9m and FSR of 0.96:1. This site was approved with bonus provisions as the site is greater than 2,000sqm.



Figure 8. Front elevation of 1-3 Myrtle Street



Figure 9. Front elevation of 9-19 Myrtle Street

The adjoining property to the east is 9-19 Myrtle Street (Figure 4) which comprises of sixty dwellings and basement car parking for 137 car spaces. There are seven separate buildings over the site with Buildings 1 to 6 containing two and three bedroom townhouses with attics in the roof space. Building 7 contains 28 apartments over six levels with the upper two storeys recessed so to present as a four level building with the two upper levels within the roof space. This building is located towards the centre of the site. The development has an FSR of 1.03:1. This site was approved with bonus provisions as the site is greater than 2,500sqm.

Description of the Proposed s.4.55 Modifications

The Section 4.55(2) modification application seeks consent, in its amended form, to raise floor levels and building heights, additional three units, reconfiguration of units, window changes and basement parking to add stackers.

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The specifics of the proposal are as follows:

- Underground basement has been raised to be partially above ground. This raises the height of the development from 10 metres by 470mm to 1.37 metres;
- Four sets of car stackers are proposed within the car parking level;
- Basement has been extended along the western boundary therefore loss of deep soil area;
- Increase the number of units/dwellings from 10 to 13;
- Unit sizes have been decreased to match the sizes within the apartment design guide;
- Change the unit mix to include 2 x4 bedroom terrace dwellings; 4 x 2 bedroom units, 1 x 4 bedroom unit and 6 x 1 bedroom units;
- Increase in the FSR from the approved 1.01:1 to 1.06:1 (including the garbage room within the basement):
- Reduction in finished floor levels within the terrace dwellings from 3.1 metres to 3 metres;
- Access to private open space to the rear building on the ground floor has been modified due to basement change;
- New windows proposed along the western elevation of the central and rear building;
- · Changes to the landscaped and communal area on the site;
- Building separation between the terrace dwellings and the central building has been reduced from 12 metres to 11.3 metres; and
- Reconfiguration of the units.

The figures below demonstrate the changes proposed as part of this modification:

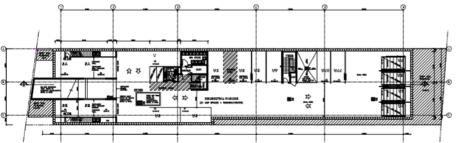
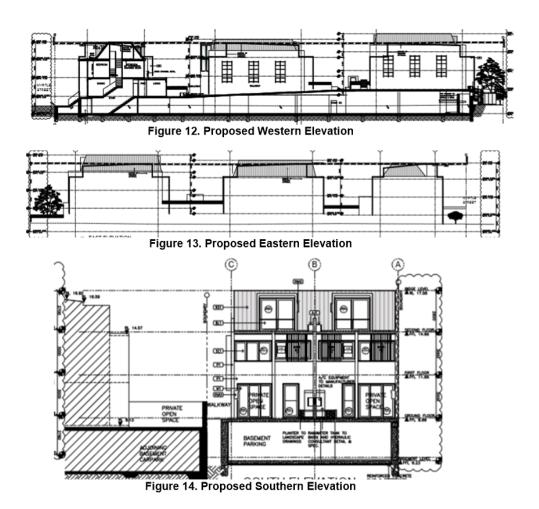


Figure 10. Proposed modification to basement level



Figure 11. Proposed Northern Elevation

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Assessment of the Proposed s.4.55 Modifications

Modification No. 1 – Increase in the height of the development as a result of raising the underground basement to be predominantly aboveground

The proposal seeks to amend the approved height of 10 metres for each of the buildings on the site. The front building facing Myrtle Street originally proposed a non-compliance in the height however amended plans were submitted which demonstrated the building to comply with 10 metres. The central building has been amended from 10 metres to 10.47 metres therefore there is a non-compliance of 470mm for this structure. The rear building has the largest non-compliance with a variation of 1.37 metres totalling a height of 11.37 metres. The result of the height exceedance is due to the applicant/owner not wanting to retain the basement belowground due to the cost of tanking and dewatering involved with the site located in a groundwater zone. The proposal originally had the basement completely above ground ltem

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however the latest round of amended plans demonstrated that the basement car parking is partially above and below ground with it mostly above ground. The proposal also incorporates four car stackers which are located at the southern side of the basement level to accommodate the number of car parking spaces required for the development. The car stackers require additional height hence why the height and bulk of the rear building is greater than the two northern buildings.

The northern building which contains the two townhouses has slightly been elevated due to the car parking level however the height of 10 metres has been retained. This is due to the finished floor levels between each floor having been reduced from 3.1 metres to 3 metres. This is considered inadequate in allowing services to be provided between each floor while complying with the 2.7 metres ceiling height requirement under the BCA. It was also noted on the amended plans that the FFL that was provided on the floor plans was inconsistent with the FFL that were provided on the elevations.

The height of development will raise the basement out of the ground therefore there is approximately 1.25m to 2.5m of the car parking level above ground. This will impact on the levels of the subject site when compared to the neighbouring sites to the east and west and to a degree the site to the south. The eastern elevation has been approved to be built to the boundary therefore the additional height will result in a higher blank wall along this boundary which will contribute to greater negative amenity on these neighbours. The western elevation will have the car parking wall and possibly a retaining wall where the deep soil area is proposed that is located above the ground level of 1-3 Myrtle Street. In addition to this, the walkway which connects the front, central and rear blocks and communal open space will be elevated and will require at a minimum a 1.8 metre high fence to address privacy. Therefore the wall along this boundary will be at least 3 metres in height. This will contribute to bulk and overshadowing issues onto the private open space and the living areas to the townhouses and units as part of this development.

The change in the levels also impacts the rear elevation of the rear building. The floor level of the units will be located approximately 2.5 metres above the ground level private open space below and will be accessed by external stairs. This is contradictory to the requirements within both the ADG as well as Part 4C of the DCP 2013 which requires private open space to be at ground level connected to the principal living areas of the units. Additionally, there will be an issue from a surveillance point of view as you cannot directly view the POS from the living areas due to the change in levels.

The applicant has attempted to address the exceedance in height by providing a Clause 4.6 variation with the modification application. This has been discussed in greater detail in the report below.

The key impact of the additional height is overshadowing particularly to the neighbouring properties to the east, west and south. In the original proposal approved under DA-14/214, the approved development overshadowed a majority of the neighbouring private open space and balconies at 1-3 Myrtle Street between 9am to 11am mid-winter. It was considered as part of that development application, that the degree of overshadowing was acceptable and additional overshadowing would create a significant non-compliance onto the neighbouring site. Figure 15 below shows the degree of shadowing approved. Figure 16 demonstrates the degree of overshadowing that the current proposal will create onto 1-3 Myrtle Street. As demonstrated in the approved plans, the most overshadowing would occur during 9am and slowly would improve throughout the morning. The overshadowing was contained to the townhouses/units towards the centre and southern side of the development with the ground floor mostly impacted. The current proposal demonstrates that both the ground and first floors of the neighbouring developments would be impacted by the additional height between 9am to 11am with the ground floor of the previously impacted townhouses now not receiving any

sunlight in the morning. This is also to their private open space areas which are orientated to the east of the townhouses. As demonstrated, 1-3 Myrtle Street are exposed to greater overshadowing impact.

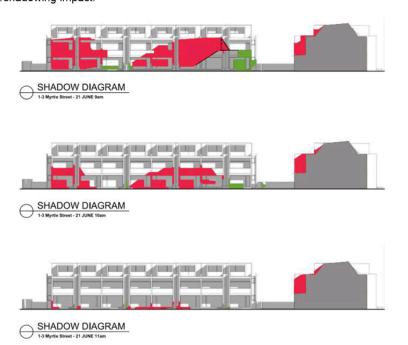


Figure 15. Approved solar analysis of the neighbouring site at 1-3 Myrtle Street (9am to 11am mid-winter)

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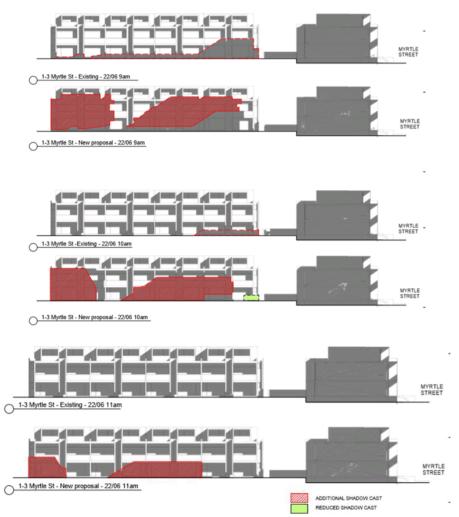


Figure 16. Proposed solar analysis of the neighbouring site at 1-3 Myrtle Street (9am to 11am mid-winter)

In comparison with 1-3 Myrtle Street, 9-19 Myrtle Street will be impacted by the development in the afternoon hours. As demonstrated in Figure 17, the approved development was only impacted at 3pm. The current proposal will increase the amount of overshadowing so that the ground floor to a number of units will receive some overshadowing at 2pm, while the overshadowing experienced at 3pm has worsened at mid-winter. The applicant has not provided shadow diagrams in spring equinox therefore Council cannot determine the degree of overshadowing at these times.

In regards to the southern neighbour which fronts Bay Street, when the development application was under consideration in 2014/2015, this development was under construction therefore the assessment of private open space and principal living areas was not significantly

looked upon. However this site has completed construction and occupation and it is demonstrated on the plans that there will be overshadowing over onto their site. The applicant has not demonstrated on the plan the development and distances of the buildings or private open space areas of the neighbouring site onto the shadow diagrams therefore it is difficult to determine what will be impacted on the neighbouring site. As the site is north-south orientated, it is expected that the neighbouring site will receive overshadowing.

NO IMPACT AT 12PM, 1 PM & 2PM



Figure 17. Approved solar analysis of the neighbouring site at 9-19 Myrtle Street (2pm-3pm mid-winter)

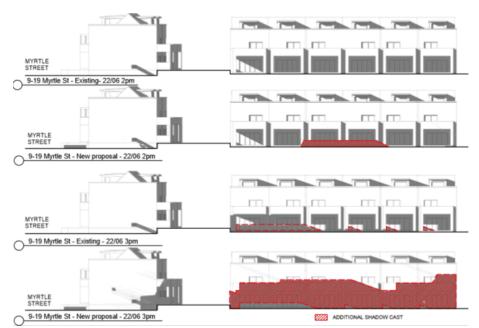


Figure 18. Proposed solar analysis of the neighbouring site at 9-19 Myrtle Street (2pm-3pm mid-winter)

As demonstrated in the points above, the additional height to the approved development will create additional bulk particularly to the rear. It will have adverse impacts to the amenity of the neighbouring sites particularly relating to solar amenity and visual privacy and bulk along the

boundary walls. Therefore for these reasons, the proposal should not be supported and be refused.

Modification No. 2 - Modifications to the basement and car parking numbers

The proposal seeks to modify the basement and car parking numbers to match the proposed additional 3 units. The basement was originally approved below ground and contained a total of 17 car parking spaces which included 16 spaces for the residential component and one space as a visitor car parking space. The development approved a shortfall in one visitor car parking space.

The proposal currently seeks to amend the car parking level to raise the basement between 1.5 metres to 2.5 metres so that the majority of the level is located partially above ground. Due to the additional 3 units proposed and minor reconfiguration of the existing units, the number of car parking spaces is to be modified. The proposal contains two x townhouses, six x one bedroom units, one x four bedroom units and four x two bedroom units. Therefore the total number of car parking spaces required is 20 residential spaces. The proposal will require a total of three visitor car parking spaces therefore an overall total of 23 car parking spaces is required to be accommodated on the site.

The proposal demonstrates that there are 21 car parking spaces in the car parking level. This is a shortfall of 2 visitor car parking spaces. The proposal can accommodate the residential car parking spaces through the use of four car stackers proposed at the rear of the site. This results in an increase to the height of the basement as well as the overall height of the development. The car stackers do not present a suitable solution particularly as the applicant has not demonstrated how the stackers mechanically work particularly the one that is closest to the eastern wall as no swept path diagrams have been provided to show cars entering and exiting the space in a forward direction. Additionally, the approved building envelope of the basement has been increased with the western side extending into the deep soil area to allow for another car spaces to be provided to meet the additional units. This is not acceptable.

The proposal also removes an existing secondary lift access to the levels above located towards the centre of the site therefore the rear building does not provide for accessible access to the units on the first and second level as previously approved. The loss in visitor car parking spaces will exacerbate the car parking situation along Myrtle Street by relying on street parking for any visitors. It is also anticipated that the residents of the development may not use the car stackers if they cannot appropriately function and there is available car parking on the street. Therefore for the purposes of the additional units and the non-compliances within the development, the proposal is not supported.

Modification No. 3 - Increase in the number of dwellings/units from 10 to 13

The modified proposal seeks to increase the overall number of dwellings/units on the site from 10 to 13. The proposal seeks to add an additional three x one bedroom units as well as reconfigure a number of existing units to allow for greater number of two and four bedroom units. The development was originally approved two x 3 bedroom townhouses, 4×1 bedroom units and 4×2 bedroom units. The unit mix that was approved included 40% 1 bedroom units, 40% 2 bedroom units and 20% 3 bedroom units. As part of this proposal, the unit proposed will increase the overall percentage of 1 bedroom units across the site greater by providing 46% 1 bedroom units, 31% 2 bedroom units and 23% 4 bedroom units. The proposal does not comply with Control C2 of Part 4C.4.1- Dwelling Mix and Layout which requires a development with 10 or more dwellings to have a maximum of 25% one bedroom units. The original proposal had a total of 8 units therefore the control did not apply in this case however

this current proposal will have 11 units. The increase in the number of one bedroom units is not supported.

Additionally, the increase in the number of units proposed results in an increase in the FSR proposed to allow for the units to have acceptable amenity and unit sizes. The proposal was approved with an FSR of 1.01:1. The applicant had originally provided a scheme which proposed an FSR of 1.11:1 which Council would not support. The amended plans provided a reduced scheme however the proposal continues to be greater in FSR with an overall FSR of 1.04:1 proposed by the applicant. Council has calculated the development ton include the waste room which is partially aboveground within the FSR calculations therefore the overall FSR for the development is 1.06:1. The additional GFA is approximately 39sqm. While this may not be a large number, considering the size of the site, any additional GFA would add to the bulk of the development.

The proposal reduces the approved unit sizes of the development which originally were larger than the sizes currently proposed which match the sizes within the ADG. However, the two bedroom units do not comply with the requirements for the ADG which require a second bathroom to be provided. It is also noted that there is a change in the approved 12 metre building separation between the front and central building with the separation reduced to 11.3 metres. This does not comply with the minimum building separation between internal buildings of 12 metres as stipulated within the ADG.

The additional units also increase the amount of overlooking the development may have onto the neighbouring properties as additional windows are proposed along the western elevation of the central and rear buildings. This issue was raised in the originally development application and the number of windows along the western elevation were to be restricted. This has not been considered as part of this proposal as not privacy screens are proposed along this elevation.

In hindsight, the additional units and GFA and non-compliances with building separation and visual privacy concerns result in an overdevelopment of the site which will provide a yield greater than what was anticipated by Council. The gradual creep in FSR which was originally approved in DA-14/214 as a non-compliance will have adverse impacts onto the surrounding properties as well as on the site itself. Therefore the proposal is not supported.

Modification No. 4 - Changes to the landscaped and communal open space

The proposal seeks to modify the approved landscaping and communal open space areas on the ground floor. The proposal was originally approved with a total landscaped area of 228.4sqm (24%) and total communal open space area of 120sqm (12.4%). Both these controls were approved as a non-compliance. The proposal seeks to reduce the total amount of landscaped area to 222sqm (23%) and the amount of deep soil to 127.7sqm (13%). Any reduction in the amount of landscaped area particularly on a site as constrained as this one is not recommended and should provided for greater landscaped relief between the buildings and the side and rear boundaries of the site. Therefore the proposal is not supported.

Statutory Considerations

Section 4.55(2) Modification Considerations

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Section 4.55(2) of the Environmental Planning & Assessment Act 1979 states that "a consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:"

 a) It is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and

The Section 4.55(2) Application relates to amendments to an approved development by increasing the height and FSR of the development, creating an additional three units, raising the basement level and providing four car stackers, and as such, the proposed amendments are not considered suitable in the context of the site and the locality as they will have a significant impact on the neighbouring properties.

b) It has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and

The modification does not require consultation with the Minister.

c) It has notified the application in accordance with (i) the regulations, if the regulations so require, and (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and

In accordance with Part 2 – Advertising and Notification of the Botany Bay Development Control Plan (BBDCP) 2013, the modification application was notified for 14 days between 4 May to 18 May 2018. The proposal underwent a second round of notification to the objectors for a period of 7 days between 3 July to 10 July.

d) It has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.

The proposal underwent two rounds of notification with the first round receiving 8 objections and the second round receiving 4 objections. As the proposal is recommended for refusal, a summary of the objections from the second round of notification is provided below. Council's officer is of the opinion that the issues that are raised contribute to the recommendation for refusal as the proposal is not in the public interest and is an overdevelopment of the site:

Height exceedance

Objector's Comment: The proposal continues to exceed the height criteria by 470mm and 1.37 metres which will lead to significantly increased shadow effects on neighbouring properties to a higher degree than the approved application.

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Officer's Comments: The height exceedance will create additional overshadow and privacy issues onto the neighbouring properties. The bulk of the development particularly to the south is greater than what was approved with the basement being predominantly above ground. This issue is a reason for refusal of the proposal.

Privacy

Objector's Comment: Privacy issues from the walkway on the western side of Blocks 2 and 3 will be located 650mm above the backyards of the townhouses at 1-3 Myrtle Street which may contribute to overlooking. Additionally, windows on the western side of blocks 2 and 3 would be overlooking the back yards and into the first floor bedrooms of the neighbouring development.

Officer's Comments: There is concerns relating to privacy from the western elevation windows that are proposed as well as the level difference between the subject site and the surrounding sites to the west, east and south. The proposal will contribute negatively to overlooking to the neighbouring sites. This issue is a reason for the refusal of the proposal.

Overdevelopment

Objector's Comment: Severe overdevelopment of this small site- two townhouses and 11 strata units plus basement car parking cannot be accommodated within the site appropriately.

Officer's Comment: The proposal exceeds the height and FSR as what was originally approved and creates adverse impacts on the surrounding development which contributes to the site being overdeveloped. This issue is a reason for the refusal of the proposal.

• Parking Issue

<u>Objector's Comment:</u> Parking on the street is currently exacerbated by surrounding development who do not use their basement car parking spaces. Given that the proposal is reliant on highly ineffective car stacking mechanisms, coupled with a basement area that would be very 'tight' for ease of manoeuvring/parking, it is highly likely that a high proportion of the residents would seek to park on the street.

Officer's Comment: It is noted that there is a car parking issue in the area and as there is a non-compliance in car parking and the option for the development to go with car stackers demonstrates that the basement car park is constrained to accommodate the appropriate car parking numbers required, shows that there is an overdevelopment on the site.

• Garbage Collection

<u>Objector's Comment</u>: Inadequate area on the street is provided to allow for garbage collection to be carried out from the street. The development would rely on a building manager to move the garbage bins to the street. Such a small development cannot afford such a building manager/cleaner to undertake this task.

Officer's Comment: This issue was raised in DA-14/214. The approved development should not impede on the existing car parking arrangement on the street. In the case of

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a building manager, the development is to dedicate a person to move garbage bins onto the kerb and back into the development.

 Issues relating to construction i.e. dust and noise mitigation, damage to neighbouring properties

<u>Objector's Comment:</u> Issues relating to construction trucks and their impact onto neighbouring properties, as well as damage to the basement of the neighbouring property and other parts of the building as well as termites that are existing within the current structure and dust and noise mitigation are raised as concerns.

Officer's Comment: These issues were originally raised as part of DA-14/214 and Council conditioned dilapidation reports, construction and traffic management plans which also discussed dust mitigation. Specific hours of construction were also conditioned within the consent.

Section 4.55(2)(3) Modification Considerations

Section 4.55(2)(3) of the Environmental Planning and Assessment Act 1979 states that "In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application."

An assessment of the application has been carried out under the provisions of Section 4.15 of the Environmental Planning and Assessment Act, 1979. The matters of relevance to this application have been considered.

a) Section 4.15)(1)(a) the provisions of any Environmental Planning Instrument and Development Control Plan and any other matters prescribed by the Regulations.

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 modification application was accompanied by an amended BASIX Certificate No. 556595M_03 prepared by Partners Energy Management committing to environmental sustainable measures. As the proposal is recommended for refusal, the BASIX Certificate is not necessary.

State Environmental Planning Policy No. 55 - Remediation of Land

The provisions of SEPP No. 55 have been considered in the assessment of the development application, as the proposed development involves excavation for a basement car park. Clause 7 of State Environmental Planning Policy 55 requires Council to be satisfied that the site is or can be made suitable for its intended use at the time of determination of an application. Consideration of SEPP No. 55 was carried out within the assessment of DA-14/214. Therefore SEPP No. 55 does not need to be assessed as part of this proposal particularly as there is no further excavation proposed.

State Environmental Planning Policy (SEPP) No. 65 – Design Quality of Residential Apartment Building

The provisions of State Environmental Planning Policy No. 65 'Design Quality of Residential Apartment Building' have been considered in the assessment of the Modification Application. The original proposal was assessed under the Residential Flat Item

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Design Code however the proposed changes to the units seek compliance with the criteria and guidelines specified within the Apartment Design Guide (ADG). The applicant has submitted an assessment against Part 3 and 4 of the ADG that relate to the proposed modifications. An assessment of the key criteria within the ADG has been carried out and is discussed below. The proposal has not shown adequate regard to the design quality principles and objectives specified in the ADG for the relevant design criteria. Key issues that relate to non-compliance include solar amenity, ceiling heights and building separation.

Note 1 - Solar Amenity

Part 4A of the ADG requires developments to provide at least 70% of apartments with a minimum of 2 hours solar access in mid-winter. The applicant has not provided any elevation shadow diagrams internally to demonstrate the additional shadowing that has resulted by the height increase. Therefore it is not clear if the units comply.

In regards to an assessment of the neighbouring sites and the overshadowing proposed, refer to the discussion under Modification No. 1 above.

The lack of information and the increase in overshadowing onto the neighbours to the east, south and west demonstrate that the proposal is not suitable for the site and should not be supported.

Note 2 - Ceiling heights

Part 4C of the ADG requires habitable areas to be provided with a 2.7 metre floor to ceiling height. The proposal demonstrates a floor to floor distance of 3 metres which was reduced from 3.1 metres. While the proposal may comply with the 2.7 metre floor to ceiling height, the 3 metres does not allow for services and lighting to be accommodated within the ceiling. Concern is raised that the proposal may not be built to comply with the BCA therefore should not be supported.

Note 3 - Building Separation

Part 2F of the ADG relates to building separation and requires development up to four storeys to have a 12 metre building separation between habitable rooms. The development was approved with a 12 metre building separation between the front townhouses and the central residential flat building. As part of this proposal, the separation has been reduced to 11.3 metres on the first floor with the ground level having an even reduced setback which was originally approved. There are some privacy screens that are proposed over the windows which will prevent any direct looking between the units however the reduction in building separation demonstrates that the applicant is trying to provide for more floor area onto a site that cannot accommodate additional bulk without it being an overdevelopment.

Note 4 - Visual Privacy

Part 3F of the ADG relates to visual privacy and requires minimum separation from development. The proposal was approved with a reduced setback from the side boundaries. However this a new development where the site layout and building orientation will need to be considered to minimise privacy. The proposal seeks to increase the basement to be partially above ground. This raises the development between 470mm to 1.37 metres towards the rear of the site therefore the walkways and windows along the western side of the site will create greater opportunity for overlooking onto 1-3 Myrtle

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Street as well as the development to the rear. Any additional overlooking is not supported by Council.

Botany Bay Local Environmental Plan 2013 (BBLEP)

The provisions of the Botany Bay Local Environmental Plan (BBLEP) 2013 have been considered in the assessment of the Modification Application and the following information is provided:

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
Landuse Zone	Yes	The site is zoned R3 Medium Density Residential.
Is the proposed use/works permitted with development consent?	Yes	The application was approved as a residential flat building or multi-dwelling housing which continues to be permissible subject to Council's consent.
Does the proposed use/works meet the objectives of the zone?	Yes	The proposed development is consistent with the following objectives of the R3 Medium Density Residential 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.
What is the height of the building?		The maximum permissible height is 10 metres in accordance with the BBLEP 2013.
Does the height of the building comply with the maximum building height?	No – Refer to Note 5	The proposed modification to the development seeks to raise the below ground basement car parking level to be predominantly above ground. This increases the height of development by 470mm to 1.37m which results in an overall height between 10 metres to 11.37 metres. A Clause 4.6 variation was originally submitted with the application. Further discussion is provided below.
What is the proposed FSR?		The maximum permissible FSR for the subject site is 0.85:1 (824.245sqm).
Does the FSR of the building comply with the maximum FSR?	No – Refer to Note 6	DA-14/214 was approved with an FSR of 1.01:1 (986sqm).

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Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
		The current proposal seeks an FSR of 1.06:1 (1,025sqm)(based on Council's calculations)
:Is the proposed development in a R3/R4 zone? If so does it comply with site of 2000m2 min and maximum height of 22 metres and maximum FSR of 1.65:1?	N/A	The area of the subject site is 969.7sqm. No bonus provision applies.
Is the site listed in Schedule 5 as a heritage item or within a Heritage Conservation Area?	N/A	The subject site is not heritage listed nor is it within a heritage conservation area.
The following provisions in Part 6 of BBLEP apply— • 6.1 – Acid Sulfate Soils • 6.2 – Earthworks • 6.3 – Stormwater Management • 6.8 – Airspace Operations • 6.9 – Development in areas subject to aircraft noise	N/A	There is no substantial change to the conclusions approved in DA-14/214.

Note 5 – Variation to the building height development standard

The modified proposal seeks to raise the overall height of the development by 470mm on the central building and 1.37 metres on the rear building, resulting in an overall height for the development meeting between 10 metres and 11.37 metres. The proposal is a modification application therefore a Clause 4.6 variation is not required in the assessment of the proposal however the applicant had provided one with lodgement to justify the noncompliance of the original scheme put forward which had a higher height proposed (12.2 metres). Subsequent to the amended plans, the clause 4.6 variation was not amended to reflect the amended heights.

Regardless of the above, Council has carried out an assessment of the impact of the additional height onto the subject approved development as well as the impact onto the neighbouring properties particularly relating to overshadowing. The reason for the height increase is by raising the basement car parking from previously approved below ground to now predominantly above ground. The reasons that were provided to Council included that a basement would not be feasible and costly to the owner as it meant excavation, dewatering and possibly remediation. Additionally an increase height was required to accommodate the four car stackers proposed as part of this proposal.

The applicant has demonstrated within their amended plans that the two terrace dwellings that are fronting Myrtle Street having a finished floor level (FFL) between each level of 3

metres. This also extends to the residential units in the central and rear buildings. This FFL to FFL is considered inadequate to contain all the services necessary for a development of this type. It also limits the amenity of the future occupants of each dwellings by possibly having restricted and non-compliant ceilings.

Secondly, the increase in the height is predominantly evident along the rear building with a height of 1.37 metre variation above the height requirement proposed. As discussed above within Modification No. 1 point of the assessment of the proposal and within the ADG section of the report, the amended scheme will significantly increase the amount of overshadowing onto the neighbouring private open space areas and principal living areas of the neighbouring properties at 1-3 Myrtle Street and 9-19 Myrtle Street. The additional height will create an adverse impact onto these neighbours. Overshadowing was considered under DA-14/214 and it was demonstrated at that time that any additional height or FSR will increase the amount of overshadowing to the neighbours. Therefore the proposal is not in the public interest.

The additional height from raising the basement partially above ground will impact on the boundaries at both the western, southern and eastern sides of the site. The proposal will result in a higher boundary wall that will form the outer basement wall in addition to the side fence that is to be located over the wall. This results in a larger bulk when viewed on the neighbouring sites to the east, west and south and as discussed above, considerable overshadowing to their private open space.

The additional height proposed is not consistent nor complies with the objectives of the standard, as the proposal does not ensure a built form that has been designed in a coordinate or cohesive manner. The reduced FFL, the additional overshadowing and the necessity in having car stackers which push the bulk up demonstrate that the design is not cohesive. While there are taller buildings in close proximity, located within the Jasmine in the Park development on the western side of the street, the site does not allow for bonus provisions unlike the western site which allowed a height of 22 metres. The site was originally and still is a constrained site therefore any additional height or FSR would be considered an overdevelopment of the site. The 10 metre control was established and set within the BBLEP to reflect the desired future character of the area which is predominantly two/three storey townhouses or units. While the built form is maintained as a three storey structure from the street, the rear building is a four storey structure which was not originally envisaged as the desired future character in the area. This is a result of the site being isolated. Should the site have been consolidated with one of the neighbouring sites at time of their construction, bonus provisions and desired future character could have been considered favourably. In this case, it does not.

The proposal does not comply with clause 4.3(1)(d) of BBLEP 2013 which states that the proposal should minimise visual impact, disruption of view, loss of privacy and solar access. These points have not been addressed appropriately as there is loss in privacy, solar access and views and the bulk of the development would restrict views to the northern vistas.

As demonstrated above, there are a number of issues in supporting the additional height of the development particularly on how it provides an adverse impact onto the surrounding development relating to visual privacy, overshadowing, views and increased bulk. Council does not support the additional height and does not support any Clause 4.6 variation to this development standard.

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Note 6 - Variation to the Floor Space Ratio development standard

The modified proposal seeks to vary the approved FSR of 1.01(986sqm) to an FSR of 1.06:1 (1,025sqm) (as calculated by Council). The applicant has provided an FSR calculation of 1.04:1 however the waste room within the above-ground car park has not been calculated as FSR. The development standard for this is 0.85:1 therefore it is evident that the original development application (DA-14/214) was approved with a non-compliance. Similar to the building height non-compliance, the applicant has provided a Clause 4.6 variation which originally sought to amend the proposal to have an increased FSR of 1.11:1 which was not supported by Council. The clause 4.6 variation has not been amended however as the proposal is subject to a Section 4.55(2) Application, there is no requirement to provide a Clause 4.6 variation to justify the proposal.

The increase in FSR is a result in minor variations in the units that have been approved as well as the three new units proposed as part of this proposal. The additional FSR amends the approved building separation of 12 metres as originally approved to now 11.3 metres. This is discussed in greater detail in the report above. The additional FSR assists in providing compliant unit sizes which have been reduced in size to now ADG compliant unit sizes. The reconfiguration of units to allow for three additional units results in greater yield on the site to the point where the proposal is considered an overdevelopment. The original Development Application was approved with a non-compliance for the site as the site was constraint. Any additional non-compliance will create even more development on a site that cannot accommodate greater yield without creating adverse impacts to the surrounding properties.

The proposal is inconsistent with the objectives of Clause 4.4 of the BBLEP 2013. In regards to sub clause (a), the objective states that the proposal is to establish standard for the maximum development density and intensity of land use. To utilise the neighbouring sites which are over 2,000sqm in area each to justify allowing the subject site to adopt the bonus provision of 1.65:1 is not supported. The site is constrained and to allow any more floor area will result in non-compliances in car parking which is already evident as there was a non-compliance approved on original DA as well as reduced building separation and setbacks. The proposal is also inconsistent with the built form of the direct neighbours regarding height and bulk which are predominantly two and three storey in nature. Therefore inconsistent with sub-clause (b).

Sub-clause (c) states the proposal is to maintain an appropriate visual relationship between new development and the existing character of areas. The proposal seeks to retain the approved nil boundary setback along the eastern elevation and the setback approved along the western elevation however by internal reconfiguring the units and the addition of thee new units proposed, the likelihood of greater overlooking onto the neighbouring sites is more prominent as the proposal seeks to provide more windows along the western elevation. The additional FSR in combination with the additional height proposed does not retain the visual relationship that was approved between the site and the surrounding medium density residential.

In regards to sub-clause (e), Clause 4.4 states that the proposal is to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain. The additional FSR and three units creates additional impacts on the eastern, western and southern direct neighbours and to their private open space and living areas. The additional overlooking and overshadowing as well as views are inhibited from the amended proposal. Detail regarding these three points have already been discussed elsewhere within the report.

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Finally sub-clause (f) states that the proposal is to provide an appropriate correlation between the size of a site and the extent of any development on that site. This sub-clause is the most relevant in this argument as the site is an isolated site and the owner/applicant seeks to maximise the development on the site in comparison to what has been approved around it. The size of the site is less than 1,000sqm where all surrounding sites have a site area of over 2,000sqm each and where development with a bonus. If the applicant was to adopt a bonus of that magnitude, the proposal would result in a higher development and would cover more expanse within the site. The amount of landscaped and communal open space area would be reduced and additional issues would come to the fore. As specified prior, Council had originally acknowledged within DA-14/214 that the site was constrained and allowed for some variance to the FSR. The applicant is now seeking a greater variance on the FSR that was previously varied. This is considered an overdevelopment of the site and Council is not in support of allowing FSR greater than what was originally approved.

As discussed, the proposal will be an overdevelopment on the site and is inconsistent with the objectives of Clause 4.4 of the BBLEP 2013. Therefore, the additional FSR is not supported.

Botany Bay Development Control Plan 2013 (BBDCP)

The modified proposal has been assessed against the relevant controls contained in the Botany Bay Development Control Plan 2013 (BBDCP 2013) and the following information has been provided:

Part 3A - Parking & Access

An assessment against Clause 3A.2 of the BBDCP 2013 has been provided below. The proposal is considered to be satisfactory against Council's car parking requirements for multi-dwelling housing and residential apartments.

Control	Proposed	Complies
C2 Multi dwelling	Total of 2 townhouses and 11	
housing/residential flat	units.	
building		
 1 space/studio or one 	Six x 1 bedroom = 6 car spaces	Yes
bedroom dwelling;	Four x 2 bedroom = 8 spaces	Yes
2 spaces/two (2) or more bedroom	Three x 4 bedroom = 6 spaces	Yes
dwellings;	1 shared visitor/car wash bay	No – Refer to
parking space/5	parking space provided.	Note 7
	C2 Multi dwelling housing/residential flat building 1 space/studio or one bedroom dwelling; 2 spaces/two (2) or more bedroom dwellings; 1 designated visitor	C2 Multi dwelling housing/residential flat building • 1 space/studio or one bedroom dwelling; • 2 spaces/two (2) or more bedroom dwellings; • 1 designated visitor parking space/5 Total of 2 townhouses and 11 units. Six x 1 bedroom = 6 car spaces Four x 2 bedroom = 8 spaces Three x 4 bedroom = 6 spaces 1 shared visitor/car wash bay parking space provided.

Note 7 – Car Parking

Part 3A.2 Control C2 Table 1 states that residential flat buildings require one parking space for each one bedroom unit, and two parking spaces for each two or more bedroom units. Additionally, 1 visitor parking space must be provided per 5 dwellings. The development generates 23 parking spaces but has provided only 21 parking spaces. The proposal meets the resident's car parking requirement yet falls short on visitor car parking space by two. The original DA had a shortfall in one car parking space however due to the additional units proposed and the requirement to provide an additional visitor space, the car parking shortfall has worsened. The car parking plan demonstrates the constraint

of the car parking level with the necessity in providing car stackers to accommodate the additional car spaces generated from the extra units and unit reconfiguration. This demonstrates that the site is too small to accommodate all the car parking within one level.

Part 4C - Residential Flat Building

Part	Control	Proposed	Complies
4C.2.2 Streetscape Presentation	C1 New development must be compatible in building bulk and scale with adjoining residential developments and reflect the patterns of buildings in the streetscape. It must respond to building setbacks, building height and treatment of the building facades	The proposal raises the basement slightly at the street frontage level and the applicant has amended the plans to align with the floor levels of the neighbouring site to the west. However the proposal has resulted in reduced floor levels of 3 metres.	Unacceptable
4C.2.4 Landscaped Area and Deep Soil Planting	C1 A residential flat development must have a minimum landscaped area of 35% and a maximum unbuilt upon area of 20%.	Landscaped Area approved: 228.4sqm (24%) Landscaped Area proposed: 222sqm (23%)	No – Refer to Note 8
4C.3.2 Fences	C8 The maximum height of side or rear fences is 1.8 metres. Side fences located between the street frontage and its respective building line are not to exceed 1 metre in height.	Due to the ground levels between the subject site and adjoining sites being different with the subject site having a raised ground level, the boundary walls along the eastern and western side will increase where the basement is proposed. Particularly along the western side where there will be a wall in addition to fencing on top will create approximately 3 metre high structure which will create overshadowing onto the neighbouring private open space area.	No – Refer to Modification No. 1 above
4C.4.1 Dwelling Mix and Layout	C2 The combined total number of one-bedroom dwellings shall not exceed 25% of the total number of dwellings within any single site area in residential zones. All 2 and 3 bedroom apartments are to satisfy the family friendly controls.	The development proposes 4x one bedroom apartments which is equivalent to 40%.	No – Refer to Note 9
4C.4.2 Family Friendly	C5 Two bathrooms are required. One bathroom is to be a shared bathroom which is	The proposal provides for 3 x 4 bedroom units/townhouses and 4 x 2 bedroom units. The	No – Refer to Note 10

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Apartment Buildings	accessible off a common corridor. This shared bathroom is to have a bathtub, and is to be large enough to allow for parental supervision. C6 The private outdoor space is to be clearly visible from the kitchen. C8 The storage room is to be located near the entry, and be of adequate proportions to accommodate large household items including strollers, wheeled toys, suitcases, and sporting equipment.	four 2 bedroom units are located on the ground floor in the central and rear buildings. These were previously approved as one bedroom plus study. Each of the units do not provide for an additional bathroom and the rear building units do not have their private open space directly level with the principal living areas.	
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Note 8 - Landscaped Area

Part 4C.2.4 Control C1 requires a minimum landscaped area of 35%. The site has a total area of 969.7sqm and the development was originally approved with 228sqm or 24%. The proposal seeks to reduce the landscaped area to 222sqm or 23%. The site is an isolated and narrow site and full compliance with landscaping is not possible and was considered in the parent DA however the proposal seeks to reduce further the amount of landscaped area on the site which is not supported as it removes landscaping that helps soften the built form of the buildings as well as landscaping buffering between the surrounding developments

Note 9 - Unit Mix

Part 4C.4.1 Control C2 states that the combined total number of one-bedroom dwellings should not exceed 25% of the total number of dwellings on a single site. The development was approved with four one bedroom units which had a unit mix of 40% however it was considered acceptable at the time as the site is an isolated site with a site area of 969.7sqm and the number of dwellings on site was limited to 10 units. The current proposal seeks consent for six one bedroom units which increases the unit mix of one bedrooms to 46%. This demonstrates that the applicant seeks to provide more units within the development within the existing envelope however the increase in the one bedroom units in combination with the other issues raised within the report further confirms that the proposal is an overdevelopment of the site. The additional units also will have implications with the car parking as there is a shortfall in visitor spaces.

Note 10 - Family Friendly Apartments

Pat 4C.4.2 requires 2 + bedrooms are to be meet the family friendly controls of the DCP 2013. When the original proposal was approved, the family friendly controls were not imposed as they were a later addition to the DCP however the current proposal seeks to convert a number of one bedroom units to two bedroom and the three bedroom units/townhouses into four bedroom. The two bedroom units do not comply with Control C5 as they do not provide a second bathroom. The rear building at the ground floor does not comply with Control C6 which requires kitchens and living areas to have direct views to the private open space as the floor levels proposed as a result of the basement change does not allow for direct surveillance to this area.

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S.4.55(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.4.55(1)(b) - Likely Impacts of Development

As outlined in the assessment above, the proposed development will have significant adverse environmental, social or economic impacts in the locality.

S.4.55(1)(c) - Suitability of the site

The proposal is not suitable for the constrained and narrow site as it is considered to be an overdevelopment of the site. The additional yield and height proposed will have impacts onto the neighbouring properties relating to overshadowing, privacy and bulk particularly to the rear.

Any other conclusions that were approved as part of the DA-14/214 have not been amended however as the proposal is recommended for refusal, the works approved under previous applications should be carried out.

S.4.55(1)(d) - Public Submissions

The application was placed on public exhibition for a fourteen (14) day period from 4 May to 18 May 2018. Eight (8) objections were received during the public notification period. The amended plans provided to Council were sent to the objectors on 3 July 2018 with a period of seven (7) days to comment. Eight (8) objections were received as part of the second round of notification. The submissions have been discussed above in the report.

S.4.55(1)(e) - Public interest

It is considered that granting approval to the proposed development will have significant adverse impact on the public interest predominantly relating to its impact onto the neighbouring sites considering overshadowing, visual privacy additional bulk and car parking non-compliances.

Conclusion

Council received Section 4.55(2) Application on 20 April 2018 to modify Development Consent No. 14/214 to an approved residential flat building and townhouse development to raise floor levels and building heights, additional three units, reconfiguration of units, window changes and basement parking to add stackers at 5 Myrtle Street, Botany.

The application underwent two rounds of notification with the first round receiving a total of eight objections while the second round received a total of eight objections. The issues listed in the objections related to overshadowing, visual privacy, bulk relating to height and FSR, car parking and garbage collection. The points raised support the argument to refuse the application.

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The modifications proposed result in an overdevelopment of the site. The additional height particularly to the rear will result in significant overshadowing to the properties to the east, west and south and overlooking as a result of the higher ground level proposed from raising the basement partially aboveground. The applicant has provided a Clause 4.6 variation for both the height and FSR which is not supported as it does not meet the objectives of the zone or Clause 4.3 and 4.4. Therefore the modifications are not suitable for the site.

The application has been assessed under the *Environmental Planning and Assessment Act 1979* and the development application is recommended for refusal.

Attachment

Schedule 1 - Reasons of Refusal

Premises: 5 Myrtle Street, Botany DA No: 14/214/04

SCHEDULE OF REASONS OF REFUSAL

- The proposed modification is contrary to State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development and the design criteria and guidelines of the following sections of the Apartment Design Guide:
 - a) Part 2F Building Separation
 - b) Part 3F Visual Privacy
 - c) Part 4A Solar and Daylight Access
 - d) Part 4C Ceiling Heights

(State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development and the Apartment Design Guide)

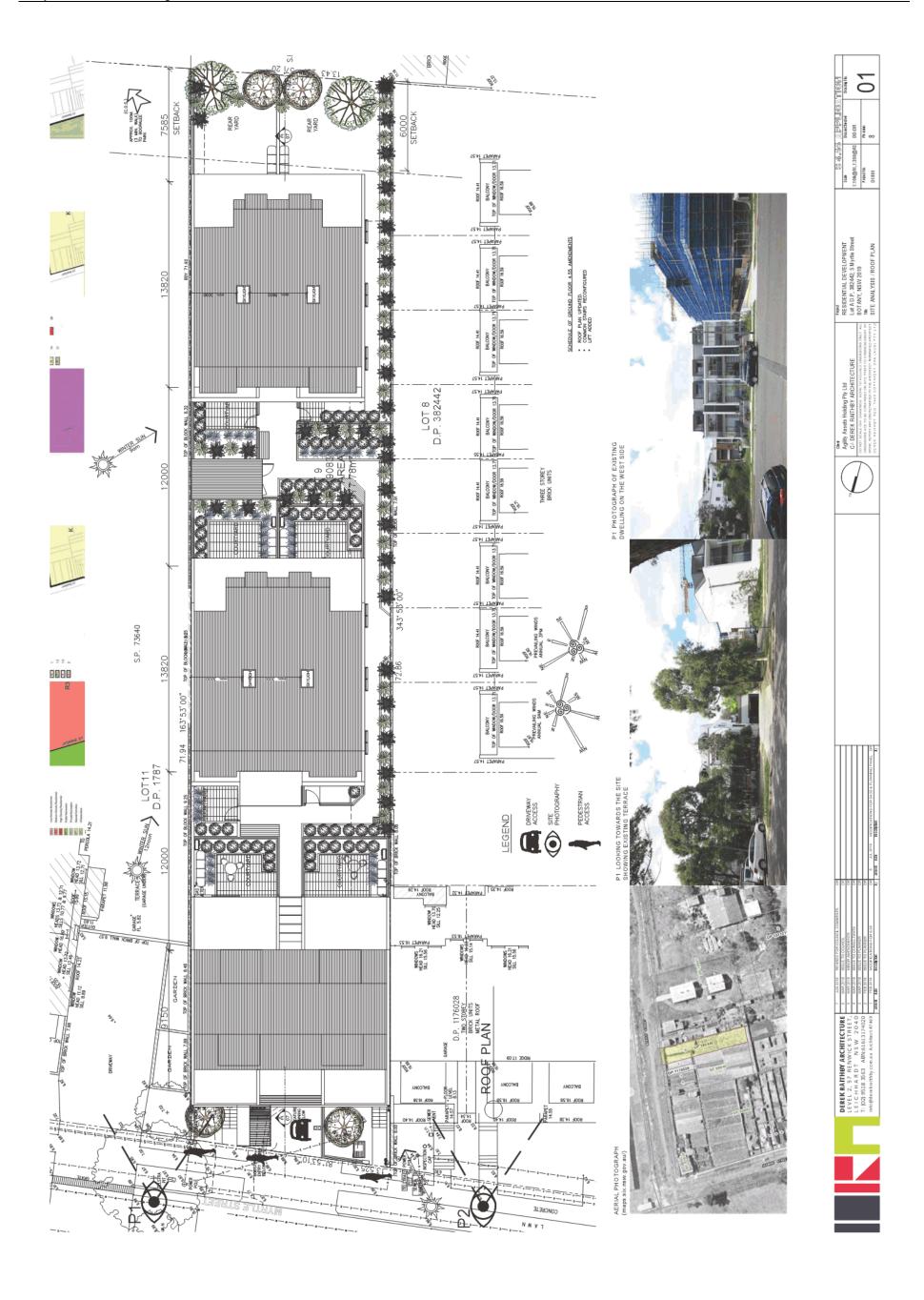
- The proposed modification fails to satisfy the primary aims and objectives of the Botany Bay Local Environmental Plan 2013, and in particular the following specific Clauses 1.2(2):
 - to create a highly liveable urban place through the promotion of design excellence in all elements of the built environment and public domain;
 - g) to protect residential amenity.

(Environmental Planning and Assessment Act 1979 s4.15(1)(a)(i)).

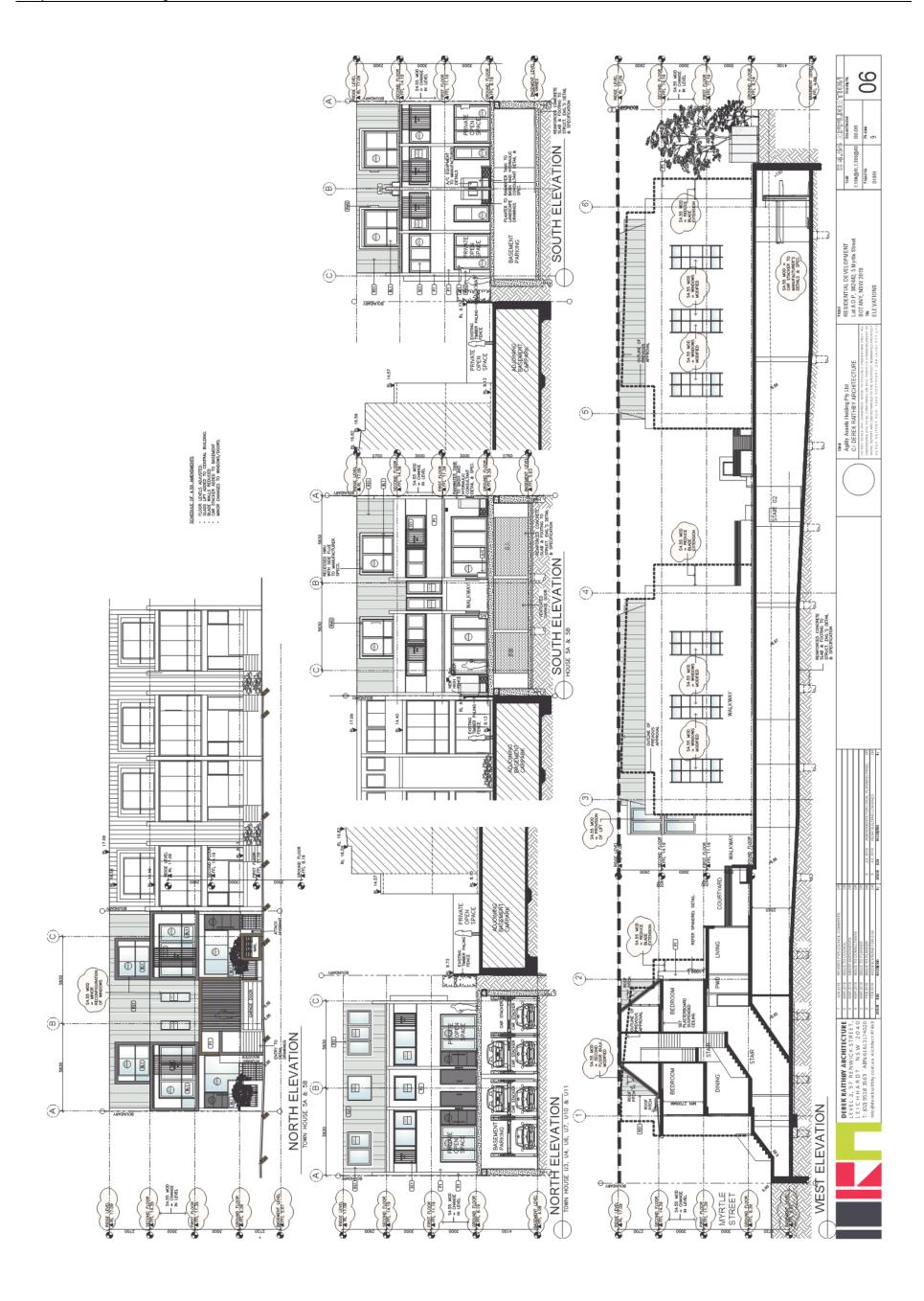
That the Bayside Planning Panel is not satisfied that the applicant's written request
has adequately addressed the matters required to be demonstrated by Clause 4.6(3)
of the Botany Bay Local Environmental Plan 2013 in regards to the height of building

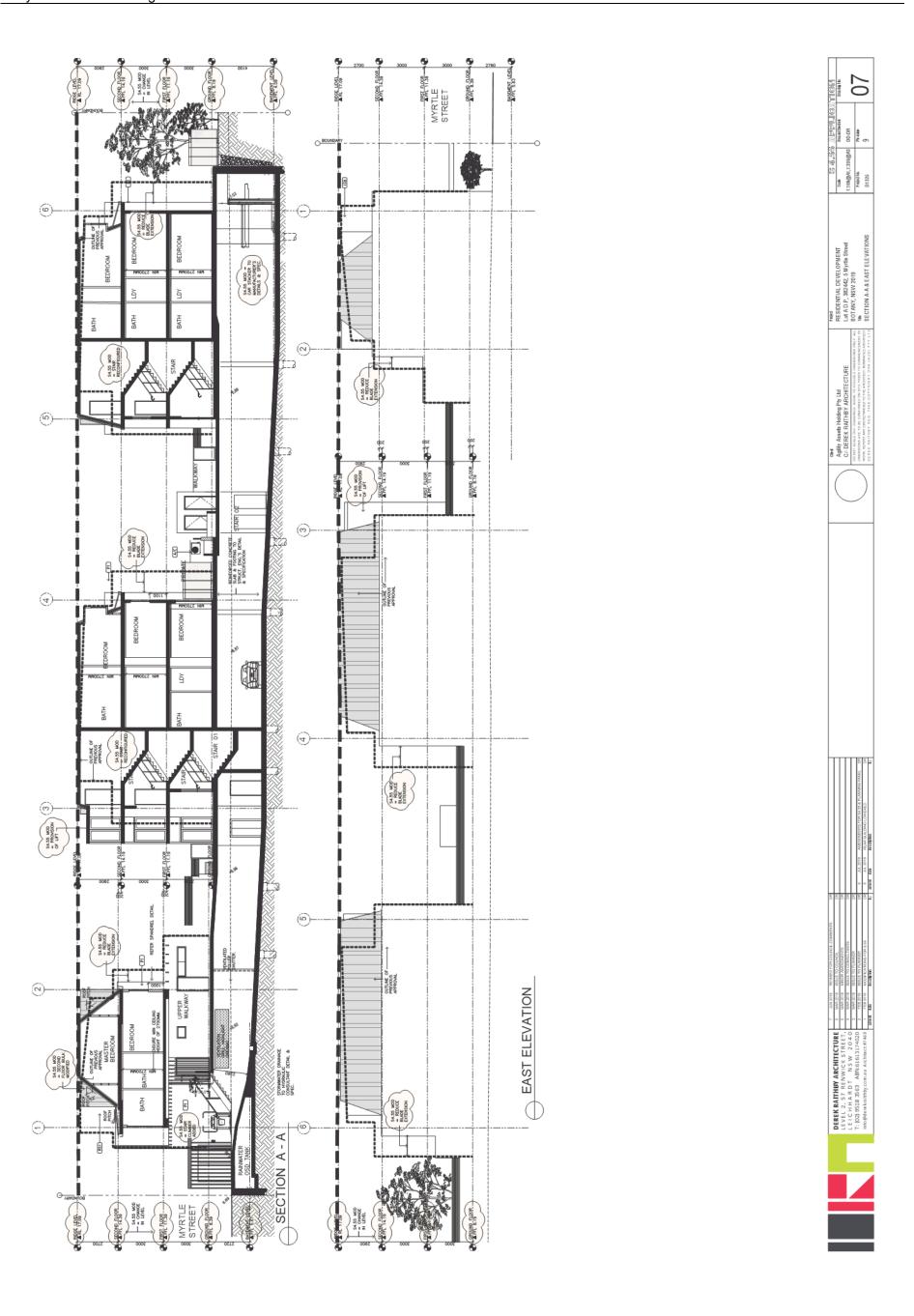
- (Clause 4.3) and Floor Space Ratio (Clause 4.4). (Environmental Planning and Assessment Act 1979 s.4.15(1)(a)(i)).
- 4. The proposal is contrary to Table 1 of Part 3A.2 of the Botany Bay Development Control Plan 2013 as the proposal does not comply with the required car parking provisions for visitor car parking spaces. (Environmental Planning and Assessment Act 1979 s.4.15(1)(a)(iii))
- The proposal is contrary to Control C1 of Part 4C.2.4- Landscaped Area and Deep Soil Planting of the Botany Bay Development Control Plan 2013 as the proposal further reduces the non-compliant landscaped area provided on the site. (Environmental Planning and Assessment Act 1979 s.4.15(1)(a)(iii))
- The proposal is contrary with the Control C2 of Part 4C.4.1 Dwelling Mix and Layout
 of the Botany Bay Development Control Plan 2013 as the proposal provides 46% one
 bedroom units which is inconsistent with the maximum 25% one bedroom units
 permissible for the site. (Environmental Planning and Assessment Act 14979
 s.4.15(1)(a)(iii)).
- 7. The proposal is contrary to Control C5 and C6 of Part 4C.4.2 Family Friendly Apartment Buildings of the Botany Bay Development Control Plan 2013 as the proposal has not adopted family friendly units for any of the two and four bedroom units/dwellings. (Environmental Planning and Assessment Act 1979s s.4.15(1)(a)(iii))
- 8. The proposed development is not suitable in the context of the site and locality and is considered to be an overdevelopment of the site. (Environmental Planning and Assessment Act 1979 s4.15(1)(c)).
- Given the inadequate provision of parking, height and FSR exceedance, overshadowing, visual privacy and additional bulk, granting approval to the development will have an adverse impact on the public interest (Environmental Planning and Assessment Act 1979 s4.15(1)(e)).

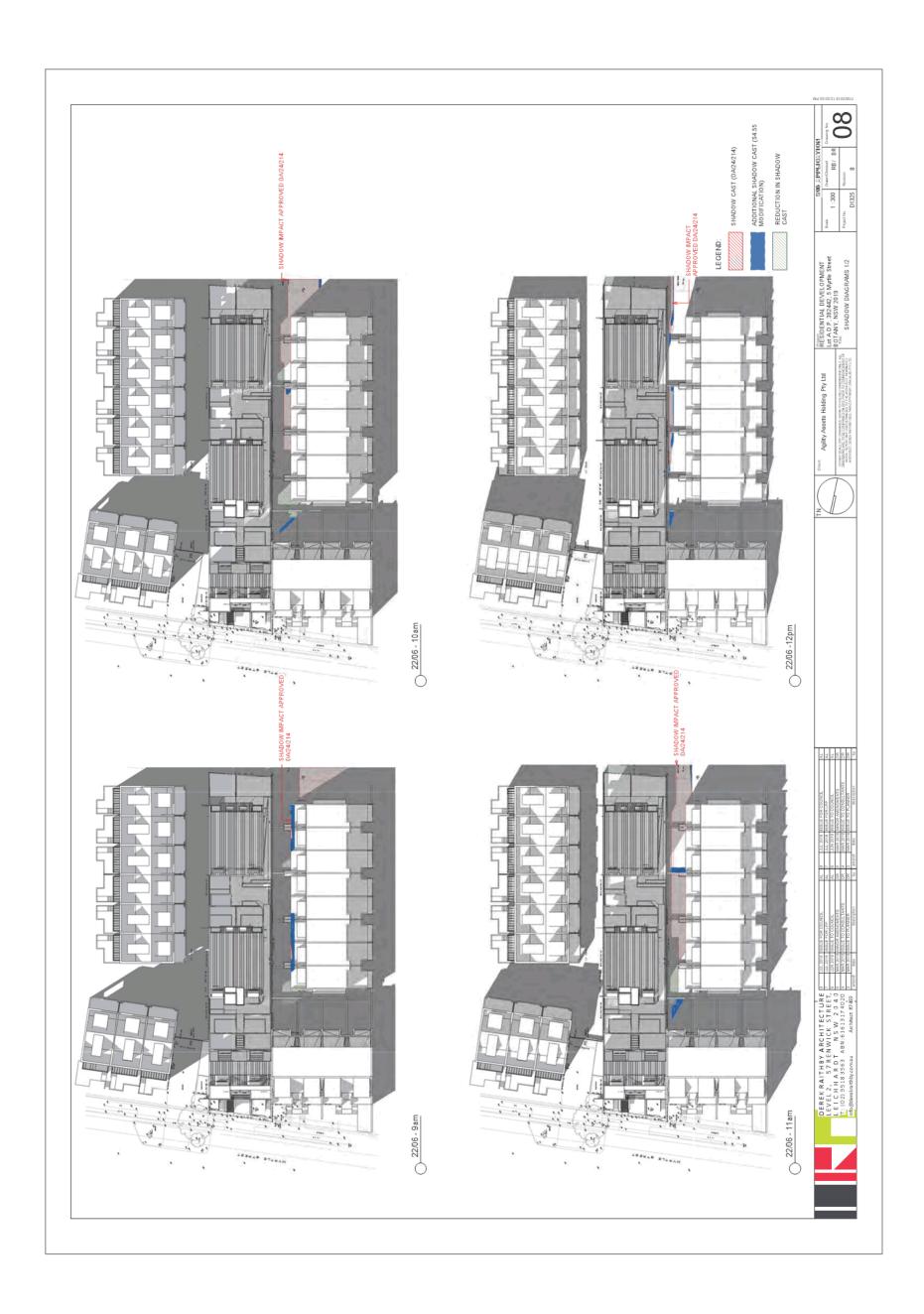
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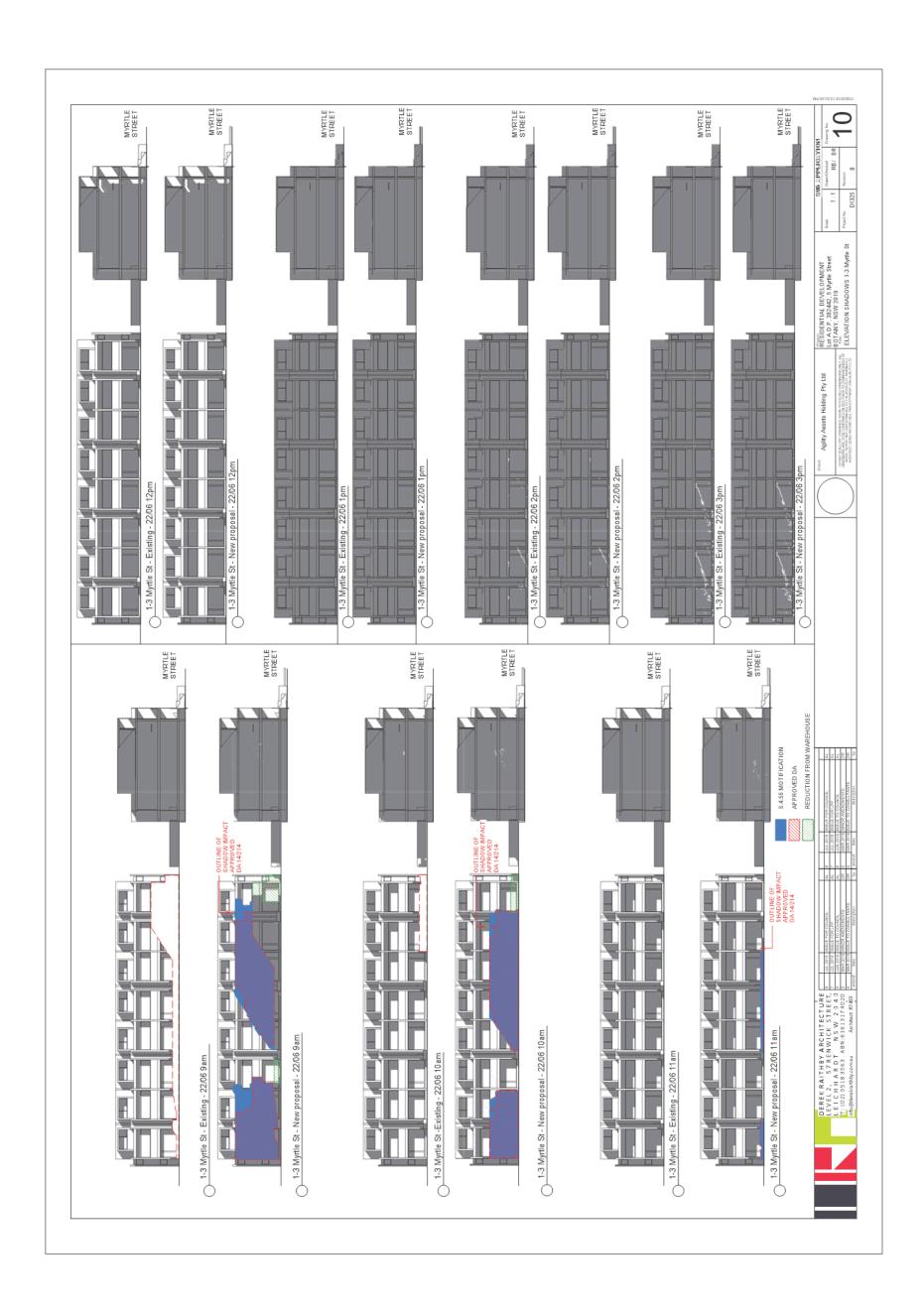
Item 6.6 – Attachment 3 504

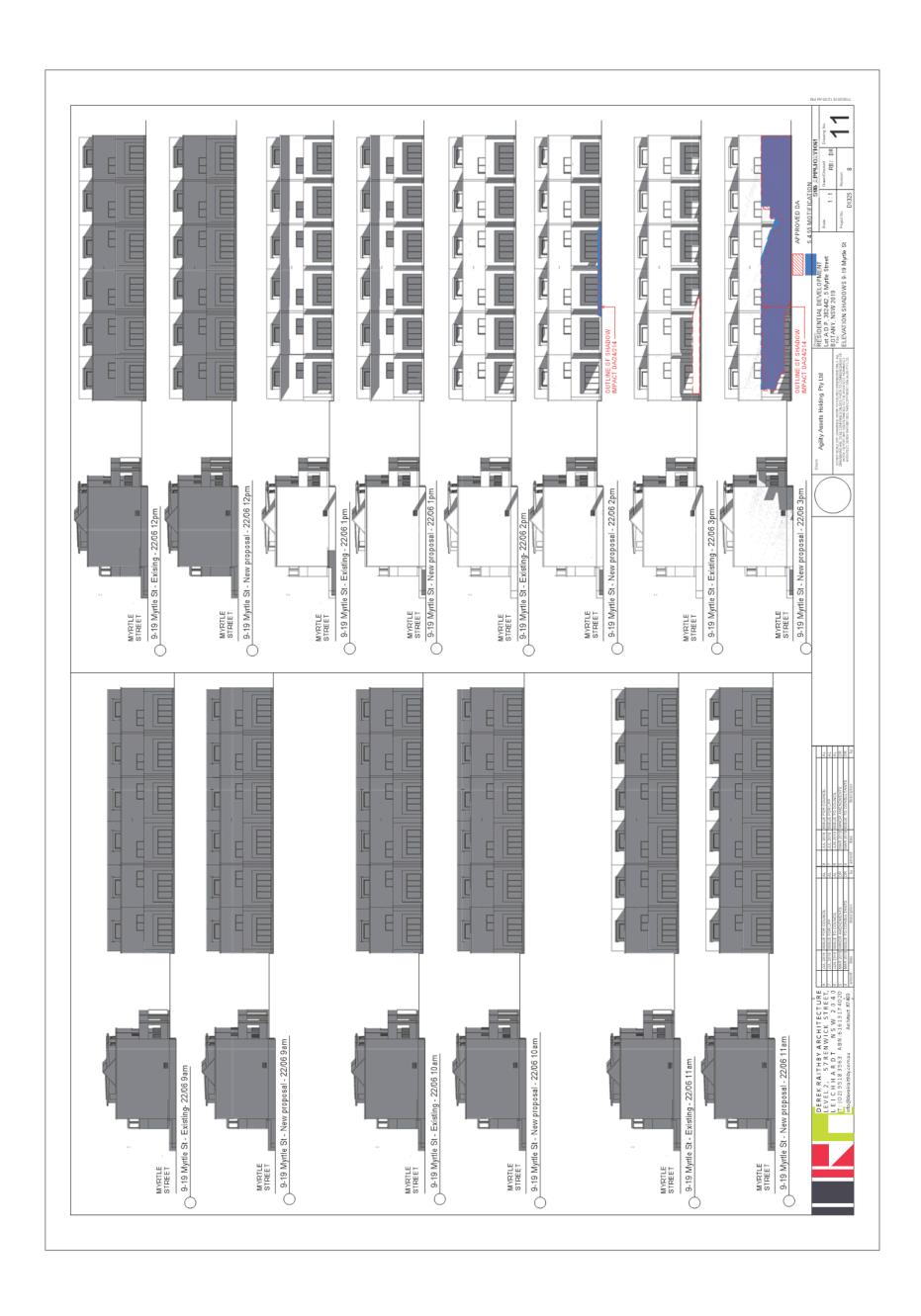


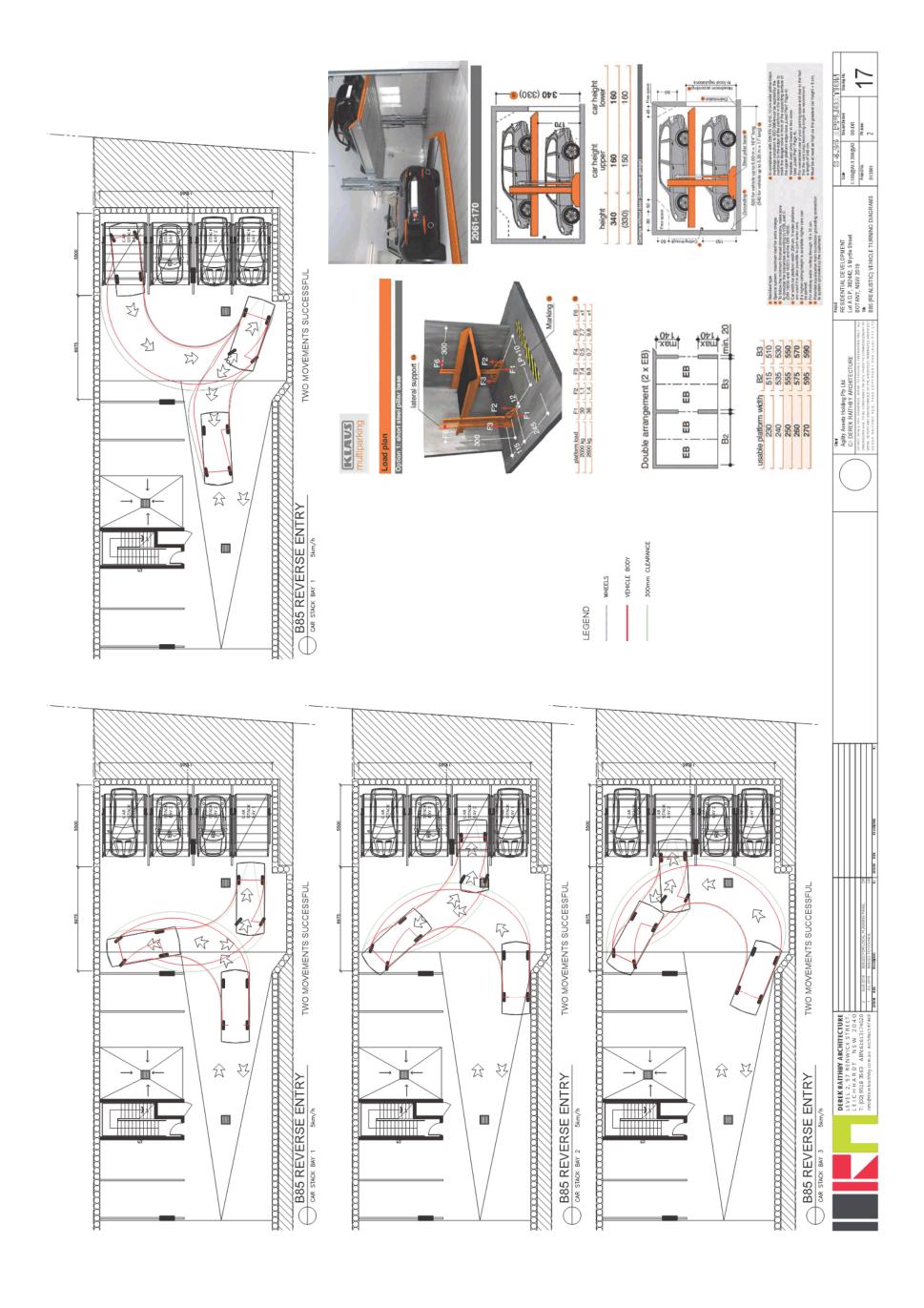


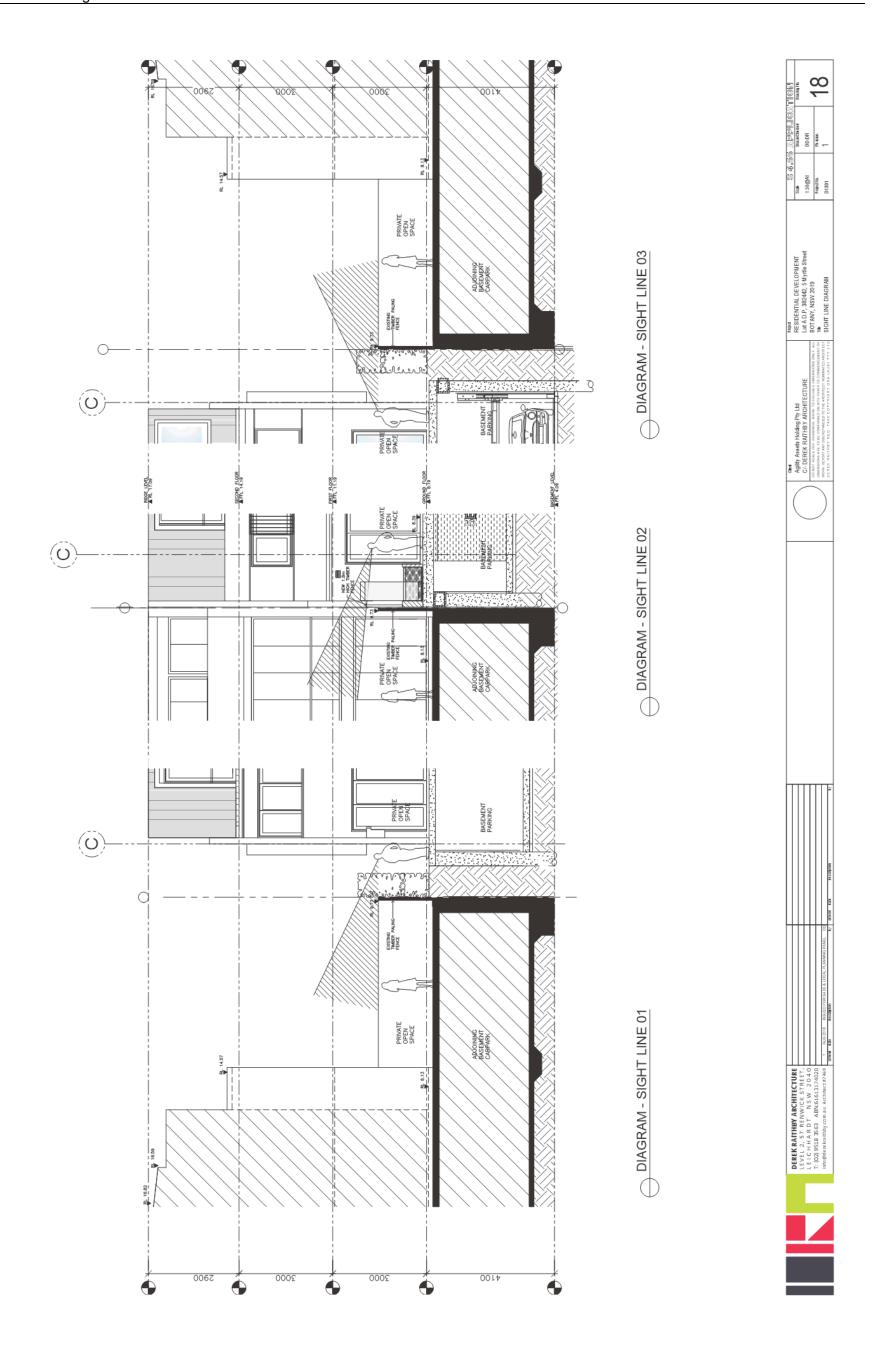














Bayside Local Planning Panel

23/10/2018

Item No 6.7

Application Type **Development Application**

Application No DA-2017/517 Lodgement Date 11/10/2017

Property Supplementary Planning Assessment Report - 1B Park

Road Sans Souci

Ward Port Botany

Owner FIP Holdings Victoria Pty Ltd

Applicant Mr Nathan Elali

Proposal Construction of a four (4) storey residential flat building

comprising twelve (12) units and basement carparking.

No. of Submissions Nil

Cost of Development \$4,750,493.00

Report by Michael McCabe, Director City Futures

Officer Recommendation

- That the Bayside Local Planning Panel exercising the functions of the Council as the consent authority pursuant to s4.16 of the Environmental Planning and Assessment Act 1979 approves a variation to the floor space ratio prescribed by cl4.4 of the Rockdale Local Environmental Plan 2011, as it is satisfied that the applicant's request has adequately addressed the matters required to be demonstrated by cl4.6 of that Plan, and the proposed development would be in the public interest because it is consistent with the objectives of that particular standard and the objectives for development within the zone.
- That the Bayside Local Planning Panel exercising the functions of the Council as the consent authority pursuant to s4.16 of the Environmental Planning and Assessment Act 1979 approves a variation to the maximum permissible height of the building prescribed by cl4.3 of the Rockdale Local Environmental Plan 2013, as it is satisfied that the applicant's request has adequately addressed the matters required to be demonstrated by cl4.6 of that Plan, and the proposed development would be in the public interest because it is consistent with the objectives of that particular standard and the objectives for development within the zone.
- That Development Application DA-2017/517 for the Construction of a four (4) storey residential flat building comprising twelve (12) units and basement carparking be APPROVED pursuant to Section 4.16 (1)(a) of the Environmental Planning and Assessment act 1979 and subject to the conditions of consent attached to this report.

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Location Plan



Attachments

- 1 Supplementary BPP report <u>U</u>
- 2 Previous Planning Assessment Report !
- 3 Elevation Plans <u>U</u>
- 4 Landscape Plans J.
- 5 Materials and Finishes <u>1</u>
- 6 Project Diagrams J
- 7 Project Images <u>J</u>
- 8 Shadow Diagrams <u>J</u>
- 9 Site Analysis Plan U
- 10 Statement of Environmental Effects U
- 11 Street Elevation Plan J
- 12 Amended clause 4.6 Floor Space Ratio 4
- 13 Amended Clause 4.6 Height 4

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Application Details

Application Number: DA-2017/517

Date of Receipt: 11 October 2017

Property: 1B Park Road, Sans Souci (Alternatively known as 368 Rocky

Point Road, Sans Souci)

Lot X DP 162302

Owner: FIP Holdings Victoria Pty Ltd

Applicant: Mr Nathan Elali

Proposal: Construction of a four (4) storey residential flat building

comprising twelve (12) units and basement carparking.

Recommendation: Approval subject to conditions

Value: \$4,750,493.00

Author: Eric Alessi – Development Assessment Planner

Date of Report: 9 October 2018

Key Issues

The subject development application was referred to the Bayside Local Planning Panel (BPP) on 28 August 2018 with a recommendation of approval subject to conditions.

At the meeting the BPP resolved:

- That this item be deferred to allow the applicant to submit Clause 4.6 requests for variations to the FSR and height for the amended plans and to clearly demonstrate the differences in what a compliant scheme would provide for in terms of overshadowing and FSR.
- 2. That the above information is to be provided to the Council to allow assessment and, if necessary, re-notification within two weeks and for the matter to be referred back to the Panel in a timely manner.

In response to the above, the applicant submitted amended documentation on 20 September 2018 which includes: An Amended Clause 4.6 addressing the variation to clause 4.3 Height of Buildings and an Amended Clause 4.6 addressing the variation to clause 4.4 Floor Space Ratio. The submitted documentation has adequately addressed the concerns raised by the BPP. The amended documentation was notified from 26 September 2018 to the 9 October 2018 and no objections have been received.

Recommendation

It is RECOMMENDED:

That the Bayside Local Planning Panel exercising the functions of the Council as the consent authority pursuant to s4.16 of the Environmental Planning and Assessment

Act 1979 approves a variation to the floor space ratio prescribed by cl4.4 of the Rockdale Local Environmental Plan 2011, as it is satisfied that the applicant's request has adequately addressed the matters required to be demonstrated by cl4.6 of that Plan, and the proposed development would be in the public interest because it is consistent with the objectives of that particular standard and the objectives for development within the zone.

- That the Bayside Local Planning Panel exercising the functions of the Council as the consent authority pursuant to s4.16 of the Environmental Planning and Assessment Act 1979 approved a variation to the maximum permissible height of the building prescribed by cl4.3 of the Rockdale Local Environmental Plan 2013, as it is satisfied that the applicant's request has adequately addressed the matters required to be demonstrated by cl4.6 of that Plan, and the proposed development would be in the public interest because it is consistent with the objectives of that particular standard and the objectives for development within the zone.
- That Development Application DA-2017/517 for the Construction of a four (4) storey residential flat building comprising twelve (12) units and basement carparking be APPROVED pursuant to Section 4.16 (1)(a) of the Environmental Planning and Assessment act 1979 and subject to the conditions of consent attached to this report.

Assessment of the Panel's deferment

Deferral Reason

That this item be deferred to allow the applicant to submit Clause 4.6 requests for variations to the FSR and height for the amended plans and to clearly demonstrate the differences in what a compliant scheme would provide for in terms of overshadowing and FSR.

The applicant has submitted amended 4.6 variation for the height and the variation to the floor space ratio. The amended clause 4.6 statements has been examined and are discussed below.

<u>RLEP 2013: Clause 4.3 – Height of Buildings and Clause 4.6 – Exceptions to development standards</u>

The subject site has a maximum allowable building height of 14.5 metres. The proposed development has a maximum height of 17.62 metres when measured from the top of the lift overrun. This represents a breach of the height of 3.12 metres. The fire stairs, plant room and roof pergolas are also non-compliant. The parapet of the building is below 14.5 metres. Figure 1 below shows the extent of the non-compliance.

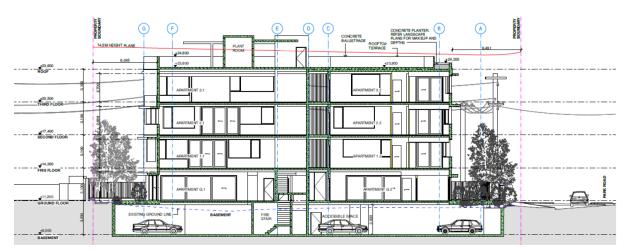


Figure 1: Extract from the 4.6 variation statement showing height limit across the site

The amended 4.6 contains comparison renders for the building showing the building without the features on the rooftop which breach the height and with the proposed feature breaching the height.

Shadow Diagrams

Contained within Annexure B of the revised section 4.6 are shadows diagrams showing comparisons for shadows that would be cast by a compliant scheme and shadows cast by the mass of the building above the height limit. Included are hourly diagrams for the 22nd of June between 9:00am and 3:00pm showing shadows on a site plan and shadows on an elevation plans for the neighboring residential flat building. The elevation plans show that there will not be additional overshadowing to habitable rooms of the neighboring residential flat building with the exception of partial overshadowing for one window at 12:00pm June 22 that would receive substantial overshadowing by a compliant scheme.

Comment

Clause 4.6 of the Rockdale Local Environmental Plan 2011 requires that a consent authority not give consent for a development that contravenes a development standard unless the applicant demonstrates the following:

- (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 applicants 4.6 variation statement addresses clause 4.6(3)(a). The justification can be summarised as follows:

 Compliance with the development standard is unreasonable or unnecessary in accordance with the principles set out in Wehbe V Pittwater Council (2007) NSW LEC 827 with a particular emphasis on principle 1 which requires that 'The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary'.

The justification in the statement has been considered by the assessment officer and is supported.

The applicant has addressed Clause 4.6(3)(b) which requires that an application demonstrate that there are sufficient environmental planning grounds to justify contravening the development standards.

The applicant's justification for the proposed height breach is summarised below:

- The building height non-compliance is limited to the top portion of the lift overrun. The structures are primarily located at the centre of the building. This location and the minimal bulk of this structure will ensure it will not be highly visible from the public domain, and the impact to adjoining properties will be negligible. Photomontages showing the building from the street frontages with and without the roof structure are provided at **Annexure A** and demonstrate that the portions of the building above the 14.5m height limit are not visualy intrusive on the skyline nor do they add to the appearance of building bulk when viewed from the adjoining streets and public domain;
- Except for this minor area of non-compliance for the topmost portion of the lift shaft, the fire stairs, plant room, and roof top pergola, the building itself to the rooftop parapet is well below the height limit at 14.5m. The result of this is that the vast majority of the bulk of the building sits well below the height limit;
- The rooftop provides high quality communal open space. In order to provide equitable access to this space the lift overrun must necessarily breach the height control, in this instance by 3.12m. Therefore, this non-compliance provides substantial benefits to the development without impacting neighbouring sites;
- The additional shadowing that will be caused by the height non-compliance is negligible. The minor portion of shadows for the portion of the lift overrun over the height limit is insignificant and acceptable. The shadow diagrams provided at **Annexure B**, clearly show there is minimal additional overshadowing by the lift overrun, plant rooms and fire stairs.
- The breach will not result in any adverse impacts on neighbouring properties in relation to privacy as the portion of the building over the height limit will not enable overlooking;
- The roof top communal open space provides a consolidated open space with good solar access for future residents as encourages by the Apartment Design Guide (Part 3D) and is Council's preferred location for the communal open space;
- The proposed roof form creates variety in the skyline and urban environment (see Annexure A) and contributes to the aesthetic and environmental design and performance of the building.
- The non-compliant portions contain no residential or habitable floor area; and
- Despite the minor non-compliance, the objectives of the building height clause have been achieved as demonstrated above.

The justification provided by the applicant has been considered by the assessment officer and is supported. The following comments are made in addition to the justification substantiated in the applicant's clause 4.6 exception:

- The bulk of the building is under the height limit. The exceedance in the height limit is limited to the parts of the building servicing the rooftop terrace.
- The part of the building exceeding the building height is setback from the street minimising the visual dominance when viewed from the street.
- The parts of the building that exceed the building height are to service the rooftop terrace.
- The proposal is consistent with the objectives of clause 4.3 Height of Buildings and the objectives of the R4 High Density Residential Zone.
- The departure of the standard is not contrary to the public interest.

Clause (4)(a)(ii) requires the consent authority to be satisfied that the proposed development is consistent with the objectives of the zone and particular standard being varied.

The objective of the standard are achieved notwithstanding non-compliance with the standard. The objectives of the standard are as follows:

(a) to establish the maximum limit within which buildings can be designed and floor space can be achieved.

The extent of the height variation is limited to the lift overrun and ancillary facilities for the rooftop terrace. The bulk of the building remains under the maximum permissible height limit.

(b) to permit building heights that encourage high quality urban form,

The proposal maintains a high quality urban form and have been designed to meet the Rockdale Development Control Plan minimum floor to ceiling height of 2.7 metres. The exceedance of the maximum permissible building height is to allow for communal open space on the rooftop terrace which was recommended by the design review panel and encouraged by the Apartment Design Guide.

(c) to provide building heights that maintain satisfactory sky exposure and daylight to buildings, key areas and the public domain,

The amended 4.6 variation statement contains shadow diagrams within the appendix which shows the extent of the additional overshadowing as a result of the exceedance of the maximum permissible building height. The diagrams show that there will be minimal additional overshadowing within the site and to adjoining properties as a result of the variation.

(d) to nominate heights that will provide an appropriate transition in built form and land use intensity.

The bulk of the building is consistent with the adjoining residential flat buildings.

The proposal will be consistent with the objectives of the R4 - High Density Residential zone as follows:

• To provide for the housing needs of the community within a high density residential environment.

The proposal provide addition residential units providing for the housing needs of the community. The variation to the standard has minimal impact on existing neighbouring residences.

• To provide a variety of housing types within a high density residential environment.

The proposal provides a mixture of unit types and is compliant with the Apartment Design Guide and Rockdale Development Control plan in this regard.

• To enable other land uses that provide facilities or services to meet the day to day needs of residents.

The proposal does not conflict with the above.

Based on the above the 4.6 variation for the height is in the public interest.

<u>RLEP 2013: Clause 4.4 – Floor Space Ratio and Clause 4.6 – Exceptions to development standards</u>

The applicant has submitted an amended 4.6 variation statement for the floor space ratio. The site has a maximum floor space ration of 1:1 in the Rockdale LEP floor space ratio map. The application proposes a Gross Floor Area of 969.43 over a site area of 896 square metres. This represents a FSR or 1.08:1 or 8.2% over the maximum permissible floor space ratio.

The amended clause 4.6 variation statement has been accompanied by a Gross Floor Area Plan which shows that areas which have been included in the Gross Floor Area calculation. The plans shows that all habitable areas have been included but excludes common circulation areas and balconies in accordance with the definition of Gross floor area contained within the Rockdale LEP. The definition from the Rockdale LEP is as follows:

gross floor area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes:

- (a) the area of a mezzanine, and
- (b) habitable rooms in a basement or an attic, and
- (c) any shop, auditorium, cinema, and the like, in a basement or attic, but excludes:
- (d) any area for common vertical circulation, such as lifts and stairs, and
- (e) any basement:
- (i) storage, and
- (ii) vehicular access, loading areas, garbage and services, and
- (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
- (g) car parking to meet any requirements of the consent authority (including access to that car parking), and
- (h) any space used for the loading or unloading of goods (including access to it), and
- (i) terraces and balconies with outer walls less than 1.4 metres high, and
- (j) voids above a floor at the level of a storey or storey above.

Comment

Clause 4.6 of the Rockdale Local Environmental Plan 2011 requires that a consent authority not give consent for a development unless the applicant demonstrates the following:

- (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 applicants 4.6 variation statement addresses clause 4.6(3)(a). The justification can be summarised as follows:

 Compliance with the development standard is unreasonable or unnecessary in accordance with the principles set out in Wehbe V Pittwater Council (2007) NSW LEC 827 with emphasis on principle 1 which requires that 'The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary'.

The justification has been assessed by the assessment officer and is supported.

The applicant has addressed Clause 4.6(3)(b) which requires that an application demonstrate that there are sufficient environmental planning grounds to justify contravening the development standards.

The applicant's justification for the proposed floor space ratio variation is summarised below:

- The non-compliance is minor and will have no adverse impacts on adjoining properties with regards to visual, aural and privacy impacts or overshadowing, and to require strict compliance would mean removing parts of the building without resulting in a real planning benefit to neighborhood character or amenity.
- To insist on strict compliance would thwart and preclude the redevelopment of the land to a reasonable standard, and not allow reasonable development potential.
- The proposed FSR non-compliance will enable the orderly and economic redevelopment of the subject site in accordance with the intensions of the Environmental Planning and Assessment Act, 1979. There is no planning purpose to be served by limiting the FSR strictly to the maximum allowable given the floor space has been distributed in manner which results in an absence of amenity related impacts.
- The development has been designed to provide a high quality urban outcome, with 1, 2 and 3 bedroom units designed so as to not impact on the privacy and amenity of neighboring properties. The three dimensional building envelope complies with height and setback requirements with the minor exception of small rooftop elements which do not add to the FSR. Insisting on strict compliance in this instance would result in the reduction in size of some units, thus reducing the internal amenity for future residents and/or the variety of apartment sizes; and
- Despite the minor non-compliance, the objectives of the building height clause have been achieved as demonstrated above.

The justification provided by the applicant has been considered by the assessment officer and is supported. The following comments are made in addition to the justification substantiated in the applicant's clause 4.6 exception:

- The non-compliance will have minimal adverse impact on adjoining properties.
- The bulk and scale of the development is similar to adjoining residential flat buildings.
- The development has been designed to provide a high quality urban outcome.
- The side setbacks meet the Development Control Plan and Apartment Design Guide separation controls.

Clause (4)(a)(ii) requires the consent authority to be satisfied that the proposed development is consistent with the objectives of the zone and particular standard being varied. The objective of the standard are achieved notwithstanding non-compliance with the standard. The objectives of the standard are as follows:

(a) to establish the maximum development density and intensity of land use, accounting for the availability of infrastructure and generation of vehicular and pedestrian traffic, in order to achieve the desired future character of Rockdale.

It is not anticipated that the variation will result in additional demand for vehicular traffic or local infrastructure.

(b) to minimise adverse environmental effects on the use or enjoyment of adjoining properties,

There will be no adverse impact on adjoining properties as a result of the variation.

(c) to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing or likely to undergo a substantial transformation.

The variation will not result in the bulk of the building being significantly greater than adjoining building. The proposal has a similar Floor Space Ratio to the adjacent residential flat building.

The proposal is consistent with the objectives of the zone as follows:

• To provide for the housing needs of the community within a high density residential environment.

The proposal provides housing needs to the community and complies with the Rockdale Development Control Plan and Apartment Design Guide.

- To provide a variety of housing types within a high density residential environment.
- The proposal provides a mixture of unit types.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

The proposal does not conflict with the above.

Based on the above the 4.6 variation for the floor space ratio is in the public interest.

Deferral Reason

That the above information is to be provided to the Council to allow assessment and, if necessary, re-notification within two weeks and for the matter to be referred back to the Panel in a timely manner.

The revised documentation has been assessed by council as discussed above and is supported. The proposal was placed on public exhibition from the 26 September 2018 to the 9 October 2018 with the amended 4.6 variation statements. No submissions were received.

Additional Matters

To rectify an issue that was identified relating to the basement and driveway ramp, and to be consistent with the traffic report, the applicant submitted amended plans for the basement and vehicle ramp as well as plans for the first and second floor to convert a three bedroom unit into a two bedroom unit. As such condition 2 has been amended to reflect the basement plan and vehicle ramp plan in the traffic report. Unit 1.3 has been amended to a 2 bedroom unit from a 3 bedroom unit to be consistent with the traffic report. Conditions 30 and 31 have been added to address inconsistencies between the levels in the section plans and the first and second floor plan and inconsistencies between the basement plan and section plans.

The Section 7.11 (Former Section 96) fees have been amended to be \$64,390.31 from \$64,417.35 due to the reduction of one three (3) bedroom unit.

Conclusion

1. The issues raised by the Bayside Local Planning Panel at their meeting of 28 August 2018 have been addressed by way of submission of updated clause 4.6 exception. Therefore, it is recommended that the Panel determine the application in accordance with the recommendation provided.

Attachment

Schedule 1 – Conditions of Consent

Premises: 1B Park Road Sans Souci DA No: DA-2017/517

GENERAL CONDITIONS

1. The term of this consent is limited to a period of five (5) years from the date of the original approval. The consent will lapse if the development does not commence within this time.

2. The development must be implemented substantially in accordance with the plans listed below, the application form and on any supporting information received with the application, except as may be amended in red on the attached plans and by the following conditions.

Plan/Dwg No.	Drawn by	Dated	Received by Council
DA103 (Street Elevations) Revision G	Marcus Trimble	23.03.2018	28.03.2018
DA104 (Basement & Ground Floor Plan) Revision H	Marcus Trimble	13.04.2018	14.06.2018
DA105 (First & Second Floor Plan)	Marcus Trimble	13.04.2018	28.08.2018
DA106 (Third Floor & Roof Plan) Revision G	Marcus Trimble	23.03.2018	28.03.2018
DA107 (Adaptable Unit Plans) Revision G	Marcus Trimble	23.03.2018	28.03.2018
DA200 (Elevations) Revision G	Marcus Trimble	23.03.2018	28.03.2018
DA201 (Sections) Revision G	Marcus Trimble	23.03.2018	28.03.2018
DA202 (Sections 2) Revision G	Marcus Trimble	23.03.2018	28.03.2018
TX.05 Vetrical Clearance Test B99 Design Vehicular Ramp)	Marcus Trimble	13.04.2018	14.06.2018
DA500 (Materials and Finishes) Revision G	Marcus Trimble	23.03.2018	28.03.2018
RPR-L101 (Paving Plan) Rev 04	Tyrrellstudio	28.05.2018	14.06.2018
RPR-L102 (Planting Plan) Rev 04	Tyrrellstudio	28.05.2018	14.06.2018
RPR-L103 (Irrigation Plan) Rev 04	Tyrrellstudio	28.05.2018	14.06.2018
RPR-L104 (Third Floor + Roof Paving Plan) Rev 02	Tyrrellstudio	28.05.2018	14.06.2018
RPR-L105 (Third Floor + Roof Planting Plan) Rev 02	Tyrrellstudio	28.05.2018	14.06.2018
RPR-L106 (Third Floor + Roof Irrigation Plan) Rev 02	Tyrrellstudio	28.05.2018	14.06.2018

RPR-L201 (Planting + Material Images) Rev 04	Tyrrellstudio	28.05.2018	14.06.2018
RPR-L202 (Details:Planting) Rev 02	Tyrrellstudio	28.05.2018	14.06.2018

- 3. All new building work must be carried out in accordance with the provisions of the Building Code of Australia (BCA).
- 4. A Construction Certificate must be obtained from Council or an Accredited Certifier prior to any building work commencing.
- 5. The development must be implemented and all BASIX commitments thereafter maintained in accordance with BASIX Certificate Number (824597M_02) other than superseded by any further amended consent and BASIX certificate.
 Note: Clause 145(1)(a1) of the Environmental Planning & Assessment Regulation 2000 provides: A certifying authority must not issue a construction certificate for building work unless it is satisfied of the following matters: -
- (a1) that the plans and specifications for the building include such matters as each relevant BASIX certificate requires.

Note: Clause 154B(2) of the Environmental Planning & Assessment Regulation 2000 provides: "A certifying authority must not issue a final occupation certificate for a BASIX affected building to which this clause applies unless it is satisfied that each of the commitments whose fulfilment it is required to monitor has been fulfilled." Note: For further information please see http://www.basix.nsw.gov.au.

- 6. This approval is not to be construed as permission to erect any structure on or near a boundary contrary to the provisions of the Dividing Fences Act.
- 7. Parking spaces shall be allocated to residential apartments / non-residential units in the development in the following manner and this shall be reflected in any subsequent strata subdivision of the development:

Allocated Spaces

Studio apartments, 1 bedroom apartments and 2 bedroom apartments 1 space per apartment

3 bedroom apartments and 3+ bedroom apartments 2 spaces per apartment

Non-Allocated Spaces

Residential Visitor Spaces 1 space per 5 apartments

Parking calculations that are not whole numbers must be rounded up to the nearest whole number.

All residential visitor spaces, car wash bays and loading bays shall be labelled as common property on the final strata plan for the site.

Note: This parking allocation condition applies to any Strata Certificate issued with respect to a Consent issued in accordance with Section 4.18(1)(A) of the *Environmental Planning and Assessment Act 1979* or a Complying Development Certificate issued in accordance with Part 6 of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.*

8. Stormwater works area to be undertaken in accordance with the Stormwater Management Report prepared by IGS Integrated Group Services titled '368 Rocky Point Road - Stormwater Management Report' dated 28 July 2017.

Development specific conditions

The following conditions are specific to the Development Application proposal.

- 9. The use of the premises, building services, equipment, machinery and, ancillary fittings shall not give rise to an "offensive noise" as defined under the provisions of the Protection of the Environment Operations Act, 1997.
- The use of mechanical plant including air conditioners, fans, compressors, condensers, freezers, swimming pool or spa pumps (whether commercial or domestic) shall not cause sound pressure levels in excess of the criteria given in the NSW Industrial Noise Policy – 2000.
- 11. Residential air conditioners shall not cause 'offensive noise' as defined by the Protection of the Environment Operations Act 1997 or contravene provisions of the Protection of the Environment (Noise Control) Regulation 2008 where emitted noise from a residential air conditioner can be heard within a habitable room in any other residential premises at night.
- 12. Temporary dewatering of the site to enable the construction of the subsurface structure shall not be carried out unless a permit has been issued pursuant to the Water Management Act 2000, and, in the case where water is to be pumped into the public road, a permit has been issued pursuant to the Roads Act 1993.
- 13. Bicycle parking facilities shall be designed in accordance with AS2890.3:1993.
- 14. The off-street parking areas associated with the subject development shall be designed strictly in accordance with AS2890.1 and AS2890.6.
- 15. Internal height clearance shall be designed throughout the car park and access driveway in accordance with AS2890.1 and AS2890.6.
- 16. All existing and proposed lights shall comply with the Australian Standard AS4282 1997 "Control of the Obtrusive Effects of Outdoor Lighting". In this regard, the lighting of the premises shall be directed so as not to cause nuisance to the owners or occupiers of adjacent/adjoining premises or to motorists on adjoining or nearby roads.
- 17. The development shall be insulated to achieve an Acoustical Star Rating of 5 in accordance with the standards prescribed by the Association of Australian Acoustical Consultants (AAAC). A report prepared by a consultant accredited by the AAAC demonstrating that the proposal meets the requirements is to be prepared and submitted to the principal certifying authority prior to issue of the Construction Certificate.
- 18. The development shall have an impact isolation between floors which achieves an Acoustical Star Rating of 5 in accordance with the standards prescribed by the Association of Australian Acoustical Consultants (AAAC). A report prepared by a consultant accredited by the AAAC demonstrating that the proposal meets the requirements is to be prepared and submitted to the principal certifying authority prior to issue of the Construction Certificate.

19.

- a) In order to ensure the design quality I excellence of the development is retained:
 - A registered architect is to have direct involvement in the design documentation, contract documentation and construction stages of the project;

- The design architect is to have full access to the site and is to be authorised by the applicant to respond directly to the consent authority where information or clarification is required in the resolution of design issues throughout the life of the project;
- iii) Evidence of the design architect's commission is to be provided to Bayside Council prior to issue of the Construction Certificate.
- b) The design architect of the project is not to be changed without prior notice and approval of Bayside Council.
- 20. Stormwater and drainage systems are not to be located in, or under those areas shown as landscaped beds, or where existing or proposed trees are located.
- 21. Podium landscaping and paved areas shall be drained into the stormwater drainage system. All waterproofing for planters on slab shall be installed and certified by a licensed waterproofing contractor.
- 22. All pavements shall comply with AS/NZ 4586:1999 standards Class W (low) for slip resistance on both private and Council property.
- 23. The approved completed landscape works shall be maintained for a period not less than 12 months.

On completion of the maintenance period, a Landscape Architect shall provide a report to the certifying authority (with a copy provided to Council if Council is not the principal certifying authority) stating the landscape maintenance has been carried out in accordance with approved landscape plans and designated specifications before release of the nominated landscape bond.

- 24) Prior to Issue of Construction Certificate the landscape plan approved under condition 2 are to be amended to the satisfaction of the Principal Certifier addressing the following issues:
- a. All plant species that are not groundcovers, shrubs and trees shall be shown on plans as a planting plan, in the right location and scale.
- b. Private terraces of G2 and G3 shall address privacy issues. Screen planting shall be provided in deep soil (G3) or in built in planter boxes over slab (in the case of Northern area of G2).
- c. To ensure growth of tree in shade area replace one Banksia integrifolia with one (1) Tristaniopsis laurina in south-east corner.
- d. Planting Type 2, screen planting shall include some trees like, Elaeocarpus reticulatus and Waterhousia floribunda, to be positioned in strategic location to ensure screening of living areas of upper levels of proposed development.
- e. Planter bed along western boundary (Rocky Point Road) shall provide a larger planting to ensure a strong level of screening and shade. Planting shall include screen planting and some trees in order to provide privacy to ground units, shade to ground and upper floors, and general amenity.
- f. Include one (1) Corymbia eximia (Yellow Bloodwood) in south- western area adjacent to Rocky Point Road, or similar tree to reach a minimum of ten meters height to provide amenity and mitigate the bulk of built form proposed.
- g. Terrace Common Open Space. Southern roof terrace shall include a planter box minimum 700mm wide to provide screen planting. Roof terrace planting shall include

trees in built in planter boxes, or climbers with pergola in terrace area, to provide a share area of use to the residents in BBQ area.

- h. Specifications of planter bed depth on top of OSD shall be indicated in landscape plan. Depth shall be able to sustain all species proposed in plant mix 3.
- i. All landscape areas, including planters on slab shall be automatic irrigated and linked to the stormwater drainage system as a WSUD principle.
- j. Planter boxes constructed over a concrete slab shall be built in accordance with the Apartment Design Guide.

Ensure the soil depth can sustain the proposed planting:

i. Trees over 8 meters

Minimum soil volume 150 cubic metres Minimum soil depth 1.3 metre

ii. **Medium trees** (8 metre canopy diameter at maturity)

Minimum soil volume 35 cubic metres

Minimum soil depth 1 metre

iii. **Small trees** (4 metre canopy diameter at maturity)

Minimum soil volume 9 cubic metres

Minimum soil depth 800mm

iv. Shrubs

Minimum soil depths 500-600mm

v. Groundcover

Minimum soil depths 300-450mm

Any subsurface drainage requirements are in addition to the minimum soil depths quoted above

- k. Frontage works application shall be submitted to council prior issue of Construction Certificate. Frontage works consists of Civil and Landscape works. Landscape works shall include planting along Park Road, (LGA managed road) with two (2) Lophostemon confertus, (Brush Box) along Park Road as per Rockdale Street Tree Master Plan. Planting along Rocky Point Road, (State Road, RMS managed road) verge strip shall be planted with five (5) Magnolia grandiflora, (Magnolia) as per Rockdale Street Tree Master Plan.
- 25. Privacy measures are to be maintained for the life of the development and not removed without prior Council consent including the following:
 - -Privacy louvers on the eastern elevation.
 - -Planter garden bed for unit 3.3.
- 26. Internal lift dimensions are to be a minimum size of 2.1m x 1.5m.
- 27. Deep soil along the eastern elevation is to continue along the existing ground height.
- 28. Intercom facilities shall be installed into entry/exit points to enable residents to communicate and identify with people prior to admitting them to the development. This includes access to the basement visitor car-parks.
- 29. Ceiling heights for all habitable areas shall be a minimum of 2.7 metres as measured vertically from finished floor level to the underside of the ceiling.

Ceiling heights for all non-habitable areas shall be a minimum of 2.4 m as measured vertically from finished floor level to the underside of the ceiling.

Prior to issue of the construction certificate

The following conditions must be completed prior to the issue of the Construction Certificate.

- 30. The following fees shall be paid to Council prior to the issue of a Construction Certificate. If payment is made after the end of the financial year, the amount shall be adjusted in accordance with Council's adopted fees and charges.
 - i. A Footpath Reserve Restoration Deposit of \$36,184.00. This is to cover repair of any damages, or other works to be done by Council. This includes construction, removal, or repair as required to: kerb and guttering, existing or new driveways; paved areas and concrete footpaths. The deposit may be lodged with Council in the form of a Bank Guarantee (Any proposed Bank Guarantee must not have an expiry date). The deposit will not be returned by Council until works are completed and all damage is restored and all specified works are completed by Council.
 - ii. An environmental enforcement fee of 0.25% of the cost of the works.
 - iii. A Soil and Water Management Sign of \$18.00.
- 31. For work costing \$25,000 or more, a Long Service Leave Levy shall be paid. For further information please contact the Long Service Payments Corporation on their Helpline 13 1441.
- 32. An application for Driveway Works (Public Domain Construction Vehicle Entrance/Driveway Application) / Frontage Works (Public Domain Frontage Works Construction Application) shall be made to Council's customer Service Centre prior to issue of the Construction Certificate. All boundary frontage works, egress paths, driveways and fences shall comply with the approval. A fee is payable to Council. If payment is made after the end of the financial year, the amount shall be adjusted in accordance with Council's adopted fees and charges.
- 33. A Section 94 contribution of \$64,390.31 shall be paid to Council. Such contributions are only used towards the provision or improvement of the amenities and services identified below. The amount to be paid is adjusted at the time of payment, in accordance with the contribution rates contained in Council's current Adopted Fees and Charges. The contribution is to be paid prior to the issue of the construction certificate for works above the floor level of the ground floor. (Payment of the contribution is not required prior to any separate construction certificates issued only for demolition, site preparation works and the construction of basement levels). The contribution is calculated from Council's adopted Section 94 contributions plan in the following manner:

Child Care Services	\$353.61
Community Services	\$378.86
Library Services	\$5119.45
Sans Souci Regional Open Space Fund	\$9485.67
Sans Souci City Wide Open Space Fund	\$15,003.06
Sans Souci Local Open Space Fund	\$9027.26
Sans Souci Local TC & Streetscape Fund	\$1,339.39

Sans Souci City Wide TC & Streetscape Fund \$1686.16

Sans Souci Pollution Control Management \$8678.38

Sans Souci Administration & Management \$386.84

Sans Souci Local Infrastructure and Facilities \$12,931.63

Copies of Council's Section 94 Contribution Plans may be inspected at Council's Customer Service Centre, Administration Building, 444-446 Princes Highway, Rockdale.

34. Prior to the issue of the Construction Certificate, the approved plans must be submitted to Sydney Water Tap in[™] online service to determine whether the development will affect any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met.

Sydney Water's Tap in[™] online service is available at: <a href="https://www.sydneywater.com.au/SW/plumbing-building-b

- 35. The subsurface structure shall be designed with a waterproof retention system (ie tanking and waterproofing) with adequate provision for future fluctuation of the water table if the subsurface structure is below the ground water table. The subsurface structure is required to be designed with consideration of uplift due to water pressure and "flotation" (buoyancy) effects. Subsoil drainage around the subsurface structure must allow free movement of groundwater around the structure, but must not be connected to the internal drainage system. The design of subsurface structure, tanking and waterproofing, and subsoil drainage shall be undertaken by a suitably experienced Chartered Professional Engineer(s). Design details and construction specifications shall be included in the documentation accompanying the Construction Certificate.
- 36. A stormwater pit is be constructed over Council Stormwater pipe to facilitate the property connection. The pit can be located within the driveway layback with a butterfly grate to Council specifications.
- 37. Prior to the issue of the Construction Certificate, the design and construction of the off-street car & bicycle parking facilities shall comply with Australian Standard AS 2890 parking series and shall certified accordingly by a suitably qualified engineer. In addition to that the following shall be addressed
 - (a) A loading and unloading facility is to be provided via a combined visitor and loading and unloading parking space. The Loading and unloading within the site shall be designed and be restricted to a B99 vehicles not exceeding.
 - (b) Car Wash Bay The required car wash bay shall be a minimum 3.5m wide and shall be signposted and appropriately line- marked to state that this space shall be used as a car wash bay.
 - (c) Parking spaces must not be enclosed without further approval of Council. The enclosure of car spaces is not permitted unless the enclosure complies with the design requirements of AS2890.1.2004.
 - (d) The longitudinal profile of the access and any ramps within the parking facilities must comply with the Ground Clearance and headroom requirements of the Standard.
 - (e) The car parking facilities must be appropriately line marked and signposted in accordance with the requirements of Section 4 of AS/NZS2890.1-2004.

- 38. Floor plans for the first and second levels are to be amended to be consistent with the section plans. Details shall be provided with the plans accompanying the Construction Certificate.
- 39. Section plans are to be amended to be consistent with Basement & Ground Floor Plan Revision H. Details shall be provided with the plans accompanying the Construction Certificate.
- 40. A visitor car space shall also operate as a car wash bay. A tap shall be provided. A sign shall be fixed saying 'Visitor Car Space and Car Wash Bay'. The runoff shall be directed and treated as per Rockdale Technical Specification Stormwater Management. Details shall be provided with the plans accompanying the Construction Certificate.
- 41. All surface runoff shall be directed through a propriety oil and sediment filtration system prior to discharge. Details of the pit type, location, performance and manufacturer's maintenance and cleaning requirements shall be submitted and approved prior to the issue of the construction certificate.
 - The owners/occupiers are to undertake all future maintenance and cleaning to the manufacturer's requirements.
- 42. Prior to the issue of the Construction Certificate, detailed drainage design plans for the management of stormwater are to be submitted to Principal Certifying Authority for assessment and approval. Design certification, in the form specified in Rockdale Technical Specification Stormwater Management, and drainage design calculations are to be submitted with the plans. Council's Rockdale Technical Specification Stormwater Management sets out the minimum documentation requirements for detailed design plans. Stormwater management requirements for the development site, including the final discharge/end connection point, must comply with Rockdale Technical Specification Stormwater Management.
- 43. The recommendations contained within acoustic report titled '368 Rocky Point Road Traffic Noise Intrusion' prepared by Wilkinson Murray dated May 2017 are to be including on the construction plans and approved by the principal certifying authority.
- 44. A traffic management system is to be designed for the basement ramp to provide for priory one-way access on the 3.6m wide ramp that provides for access in both directions. The system is to be able to detect the location of vehicles and designate priority to vehicles entering the basement form Park Road using a traffic light system. The proposed system is to be submitted and approved by Council prior to the issue of the Construction Certificate and included in the proposal. The system is to be maintained for the life of the development.

Prior to commencement of works

The following conditions must be completed prior to the commencement of works.

45. A dilapidation survey shall be undertaken of all properties and/or Council infrastructure, including but not limited to all footpaths, kerb and gutter, stormwater inlet pits, and road carriageway pavements, in the vicinity which could be potentially affected by the construction of this development. Any damage caused to other properties during construction shall be rectified. A copy of the dilapidation survey and an insurance policy that covers the cost of any rectification works shall be submitted to the Accredited Certifier (AC) or Council prior to Commencement of Works. The insurance cover shall be a minimum of \$10 million.

46. A Soil and Water Management Plan shall be prepared. The Plan must include details of the proposed erosion and sediment controls to be installed on the building site. A copy of the Soil and Water Management Plan must be kept on-site at all times and made available on request.

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.

Council's warning sign for soil and water management must be displayed on the most prominent point on the building site, visible to both the street and site workers. The sign shall be erected prior to commencement of works and shall be displayed throughout construction.

47. A Construction Management Plan (CMP) shall be prepared in accordance with the requirements of all relevant regulatory approval bodies. Access to the site for construction purposes via rocky point Road is not permitted. Prior to the commencement of works the Certifying Authority shall be satisfied that the Construction Management Plan has obtained all relevant regulatory approvals. The Construction Management Plan shall be implemented during demolition, excavation and construction.

Prior to the issue of the relevant Construction Certificate, a Construction Traffic Management Plan (TMP) prepared by a suitably qualified person shall be submitted to and approved by the Certifying Authority. The Plan shall address, but not be limited to, the following matters:

- (a) ingress and egress of vehicles to the site;
- (b) loading and unloading, including construction zones;
- (c) predicted traffic volumes, types and routes; and
- (d) pedestrian and traffic management methods.
- Copies of the CMP and TMP shall be submitted to Council.
- 48. Vibration monitoring equipment must be installed and maintained, under the supervision of a professional engineer with expertise and experience in geotechnical engineering, between any potential source of vibration and any building identified by the professional engineer as being potentially at risk of movement or damage from settlement and/or vibration during the excavation and during the removal of any excavated material from the land being developed.

If vibration monitoring equipment detects any vibration at the level of the footings of any adjacent building exceeding the peak particle velocity adopted by the professional engineer as the maximum acceptable peak particle velocity an audible alarm must activate such that the principal contractor and any sub-contractor are easily alerted to the event.

Where any such alarm triggers all excavation works must cease immediately. Prior to the vibration monitoring equipment being reset by the professional engineer and any further work recommencing the event must be recorded and the cause of the event identified and documented by the professional engineer.

Where the event requires, in the opinion of the professional engineer, any change in work practices to ensure that vibration at the level of the footings of any adjacent building does not exceed the peak particle velocity adopted by the professional engineer as the maximum acceptable peak particle velocity these changes in work practices must be documented and a written direction given by the professional engineer to the principal contractor and any sub-contractor clearly setting out required work practice.

The principal contractor and any sub-contractor must comply with all work directions, verbal or written, given by the professional engineer.

A copy of any written direction required by this condition must be provided to the Principal Certifying Authority within 24 hours of any event.

Where there is any movement in foundations such that damaged is occasioned to any adjoining building or such that there is any removal of support to supported land the professional engineer, principal contractor and any sub-contractor responsible for such work must immediately cease all work, inform the owner of that supported land and take immediate action under the direction of the professional engineer to prevent any further damage and restore support to the supported land.

Note: Professional engineer has the same mean as in Clause A1.1 of the BCA. **Note:** Building has the same meaning as in section 4 of the Act i.e. "building includes part of a building and any structure or part of a structure".

Note: Supported land has the same meaning as in section 88K of the Conveyancing Act 1919.

- 49. A sign must be erected at the front boundary of the property clearly indicating the Development Approval Number, description of work, builder's name, licence number and house number before commencement of work. If owner/builder, the Owner/Builder Permit Number must be displayed.
- 50. Where it is necessary to import landfill material onto the site to fill the land to levels shown on the plans forming part of the consent, a certificate, prepared by a suitably qualified and experienced Contaminated Land Consultant, shall be submitted to Council being the Regulatory Authority prior to the commencement of works, certifying that the imported fill is suitable for the land use.
- 51. The site shall be secured by a 1800 mm (minimum) high temporary fence for the duration of the work. Gates shall be provided at the opening points.
- 52. Toilet facilities must be available or provided at the work site before works begin and must be maintained until the works are completed at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site.

During demolition / excavation / construction

The following conditions must be complied with during demolition, excavation and or construction.

- 53. A copy of the Construction Certificate and the approved plans and specifications must be kept on the site at all times and be available to Council officers upon request.
- 54. Hours of construction shall be confined to between 7 am and 6.30 pm Mondays to Fridays, inclusive, and between 8 am and 3.30 pm Saturdays with no work being carried out on Sundays and all public holidays.
- 55. Upon inspection of each stage of construction, the Principal Certifying Authority (or other suitably qualified person on behalf of the Principal Certifying Authority) is also required to ensure that adequate provisions are made for the following measures (as applicable), to ensure compliance with the terms of Council's approval:
 - Sediment control measures
 - Provision of perimeter fences or hoardings for public safety and restricted access to building sites.
 - Maintenance of the public place free from unauthorised materials, waste containers or other obstructions.
- 56. A Registered Surveyor's check survey certificate or compliance certificate shall be forwarded to the certifying authority detailing compliance with Council's approval at the following stage/s of construction:
 - i. After excavation work for the footings, but prior to pouring of concrete, showing the area of the land, building and boundary setbacks.
 - ii. Prior to construction of each floor level showing the area of the land, building and boundary setbacks and verifying that the building is being constructed at the approved level.
 - iii. Prior to fixing of roof cladding verifying the eave, gutter setback is not less than that approved and that the building has been constructed at the approved levels.
 - iv. On completion of the building showing the area of the land, the position of the building and boundary setbacks and verifying that the building has been constructed at the approved levels.
 - v. On completion of the drainage works (comprising the drainage pipeline, pits, overland flow paths, on-site detention or retention system, and other relevant works) verifying that the drainage has been constructed to the approved levels, accompanied by a plan showing sizes and reduced levels of the elements that comprise the works.
- 57. 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.
- 58. All contractors shall comply with the following during all stages of demolition and construction:
 - A Waste Container on Public Road Reserve Permit must be obtained prior to the placement of any waste container or skip bin in the road reserve (i.e.

- road or footpath or nature strip). Where a waste container or skip bin is placed in the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
- A Road Opening Permit must be obtained prior to any excavation in the road reserve (i.e. road or footpath or nature strip). Where excavation is carried out on the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
- A Hoarding Permit must be obtained prior to the erection of any hoarding (Class A or Class B) in the road reserve (i.e. road or footpath or nature strip).
 Where a hoarding is erected in the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
- A Crane Permit must be obtained from Council prior to the operation of any
 activity involving the swinging or hoisting of goods across or over any part of
 a public road by means of a lift, hoist or tackle projecting over the footway.
 Permits can be obtained from Council's Customer Service Centre.
- A current Permit to Dewater or Pump Out a site must be obtained prior to the discharge of pumped water into the road reserve, which includes Council stormwater pits and the kerb and gutter. Permits can be obtained from Council's Customer Service Centre.
- 59. If groundwater is encountered during construction of the pool the pumped discharge from temporary dewatering shall be reinjected by either of the following methods:
 - Discharge to the approved absorption system for the development site, or
 - Discharge to a temporary absorption system designed and certified by a
 qualified Engineer. The absorption system must comply with Rockdale
 Technical Specification Stormwater Management and be designed for rainfall
 over the excavated area and the expected pump rate for the dewatering
 operation.
- 60. The following conditions are necessary to ensure minimal impacts during construction:
 - i. Building, demolition and construction works not to cause stormwater pollution and being carried out in accordance with Section 2.8 of Council's Stormwater Pollution Control Code 1993. Pollutants such as concrete slurry, clay and soil shall not be washed from vehicles onto roadways, footways or into the stormwater system. Drains, gutters, roadways and access ways shall be maintained free of sediment. Where required, gutters and roadways shall be swept regularly to maintain them free from sediment.
 - ii. Stormwater from roof areas shall be linked via a temporary downpipe to an approved stormwater disposal system immediately after completion of the roof area.
 - iii. All disturbed areas shall be stabilised against erosion within 14 days of completion, and prior to removal of sediment controls.
 - iv. Building and demolition operations such as brickcutting, washing tools or paint brushes, and mixing mortar shall not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.

- v. Stockpiles are not permitted to be stored on Council property (including nature strip) unless prior approval has been granted. In addition stockpiles of topsoil, sand, aggregate, soil or other material shall be stored clear of any drainage line or easement, natural watercourse, kerb or road surface.
- vi. Wind blown dust from stockpile and construction activities shall be minimised by one or more of the following methods:
 - A. spraying water in dry windy weather
 - B. cover stockpiles
 - C. fabric fences
- vii. Access to the site shall be restricted to no more than two 3m driveways. Council's footpath shall be protected at all times. Within the site, provision of a minimum of 100mm coarse crushed rock is to be provided for a minimum length of 2 metres to remove mud from the tyres of construction vehicles.

An all weather drive system or a vehicle wheel wash, cattle grid, wheel shaker or other appropriate device, shall be installed prior to commencement of any site works or activities, to prevent mud and dirt leaving the site and being deposited on the street. Vehicular access is to be controlled so as to prevent tracking of sediment onto adjoining roadways, particularly during wet weather or when the site is muddy. Where any sediment is deposited on roadways it is to be removed by means other than washing and disposed of appropriately.

In addition builders / demolishers are required to erect a 1.5m high fence along the whole of the street alignment other than at the two openings. Such protection work, including fences, is to be constructed, positioned and maintained in a safe condition to the satisfaction of the Principal Certifying Authority, prior to the demolition of the existing structures and commencement of building operations.

- viii. Any noise generated during construction of the development shall not exceed limits specified in any relevant noise management policy prepared pursuant to the Protection of the Environment Operations Act, 1997 or exceed approved noise limits for the site.
- 61. All existing trees located within the site may be removed.
- 62. The management of potential and actual acid sulfate soils shall be conducted in accordance with all recommendations within the Acid Sulfate Soils Management Plan by Senversa dated 10 July 2017.
- 63. 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.
- 64. Any material containing asbestos found on site during the demolition or excavation process shall be removed and disposed of in accordance with:
 - a) SafeWork 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 Operations (Waste) Regulation 2014.
 - d) NSW Environment Protection Authority Waste Classification Guidelines 2014.

Prior to issue of occupation certificate or commencement of use

The following conditions must be complied with prior to issue of the Occupation Certificate or Commencement of Use.

- 65. An Occupation Certificate shall be obtained in relation to the approved works prior to any use or occupation of the building.
- 66. Where Council's park/reserve is damaged as a result of building work or vehicular building traffic, this area shall be restored by Council at the applicant's expense. Repairs shall be completed prior to the issue of the Occupation Certificate.
- 67. A by-law shall be registered and maintained for the life of the development, which requires that :
 - (a) balconies are not to be used as clothes drying areas, storage of household goods and air-conditioning units that would be visible from the public domain;
 - (b) an owner of a lot must ensure that all floor space within the lot complies with the acoustic conditions for floors specified in this consent;
 - (c) Not withstanding subclause (b), in the event that a floor covering in the lot is removed, the newly installed floor covering shall have a weighted standardized impact sound pressure level not greater than L'nT,w 45 measured in accordance with AS ISO 140.7 and AS ISO 717.2, A test report from a qualified acoustic engineer employed by a firm eligible to membership of the Association of Australian Acoustical Consultants shall be submitted to the Owners Corporation within 14 days of the installation of the new floor covering demonstrating compliance with that standard. In the event that the standard is not complied with, the floor covering shall be removed and replaced with a floor covering that conforms to that standard in accordance with any directions given by the Owners Corporation.
 - Proof of registration of the By Law shall be submitted to Council prior to the issue of the Occupation Certificate.
- 68. All landscape works are to be carried out in accordance with the approved landscape plans prior to the issue of an Occupation Certificate for the approved development. The landscaping is to be maintained to the approved standard at all times.
- 69. All works within the road reserve, which are subject to approval pursuant to Section 138 of the Roads Act 1993, shall be completed and accepted by council.
- 70. The width of the double driveway at the boundary shall be a maximum of 6 metres
- 71. All off-street car spaces shall be provided in accordance with the submitted plan and shall be sealed and line marked to The Relevant Australian Standards.
- 72. 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.
- 73. Testing and evaluation of the wall insulation system is to be carried out at post construction stage by a suitably qualified acoustical engineer to show an Acoustical Star Rating of 5 has been achieved in accordance with the standards prescribed by the Association of Australian Acoustical Consultants (AAAC) in accordance with the report submitted to the Principal Certifying Authority. If Council is not the PCA, a copy shall be submitted to Council concurrently.
- 74. Testing and evaluation of the floor system is to be carried out at post construction stage by a suitably qualified acoustical engineer to show that an Acoustical Star Rating of 5 in accordance with the standards prescribed by the Association of

- Australian Acoustical Consultants (AAAC) and in accordance with the report submitted to the Principal Certifying Authority. If Council is not the PCA, a copy shall be submitted to Council concurrently.
- 75. The noise reduction measures specified in the noise report prepared by Wilkinson Murray dated May 2017 titled '368 Rocky Point Road Traffic Noise Intrusion' shall be validated by a Certificate of Compliance prepared by the acoustic consultant and submitted to the Principal Certifying Authority (PCA) prior to the issue of an Occupation Certificate. If Council is not the PCA, a copy shall be submitted to Council concurrently.
- 76. A Landscape Architect shall provide a report to the certifying authority (with a copy provided to Council, if Council is not the principal certifying authority) stating that the landscape works have been carried out in accordance with the approved plans and documentation.
- 77. Where applicable prior to occupation, a chartered professional engineer shall certify that the tanking and waterproofing has been constructed in accordance with the approved design and specification. A copy shall be provided to Council if council is not the Principal Certifying Authority.
- 78. Prior to occupation a Chartered Professional Engineer shall certify that the stormwater system has been constructed in accordance with the approved plans and as required by Rockdale Technical Specification Stormwater Management. The certificate shall be in the form specified in Rockdale Technical Specification Stormwater Management and include an evaluation of the completed drainage works. A works-as-executed drainage plan shall be prepared by a registered surveyor based on a survey of the completed works. A copy of the certificate and works-as-executed plan(s) shall be supplied to the Principal Certifying Authority. A copy shall be provided to Council if Council is not the Principal Certifying Authority.

Prior to issue of subdivision certificate

The following conditions must be complied with prior to the issue of the Subdivision Certificate or the Strata Certificate.

79. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Coordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

The Section 73 Certificate must be submitted to the Principal Certifying Authority prior to release of the Subdivision/Strata Certificate.

80. All visitor car parking spaces are to be clearly shown as common property on the Subdivision/Strata Certificate for the strata subdivision.

- 81. A positive covenant shall be provided over the on-site detention system. A Section 88B Instrument and four copies shall be lodged with the Subdivision/Strata Certificate.
- 82. Where the installation of electricity conduits is required in the footway, the builder shall install the conduits within the footway across the frontage/s of the development site, to Energy Australia's specifications. Energy Australia will supply the conduits at no charge. A Road Opening Permit must be obtained from Council prior to the installation of the conduits. The builder is responsible for compaction of the trench and restoration of the footway in accordance with Council direction. A Compliance Certificate from Energy Australia shall be obtained prior to the issue of the Subdivision Certificate.
- 83. The Granting of service easement shall be undertaken to the satisfaction of the principal Certifier.
- 84. The rooftop terrace area is to be clearly shown as common property on the Subdivision/Strata Certificate for the strata subdivision.

Integrated development/external authorities

The following conditions have been imposed in accordance with Section 91A of the Environmental Planning and Assessment Act, 1979.

85. The following conditions are required by the Roads and Maritime Services:

Roads and Maritime Services Conditions

- 1. A Construction Traffic Management detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control should be submitted to Council prior to the issue of a Construction Certificate.
- 2. The developer is to submit design drawings and documents relating to the excavation of the site and support structures to Roads and Maritime for assessment, in accordance with Technical Direction GTD2012/001. The developer is to submit all documentation at least six (6) weeks prior to commencement of construction and is to meet the full cost of the assessment by Roads and Maritime. Details should be submitted to Suppiah Thillai: suppiah.thillai@rms.nsw.gov.au If it is necessary to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owner/s of the roadway is/are given at least seven (7) days notice of the intention to excavate below the base of the footings. The notice is to include complete details of the work.
- 3. Should the post development storm water discharge from the subject site into the Roads and Maritime system exceed the pre-development discharge, detailed design plans and hydraulic calculations of any changes are to be submitted to Roads and Maritime for approval, prior to the commencement of works on site. Details should be submitted to Suppiah Thillai: suppiah.thillai@rms.nsw.gov.au A plan checking fee will be payable and a performance bond may be required before Roads and Maritime approval is issued. With regard to the Civil Works requirement please contact the Roads and Maritime Project Engineer, External Works Ph: 8849 2114 or Fax: 8849 2766.
- 4. Roads and Maritime raises no objection to the development proposal on property grounds provided all buildings and structures, together with improvements integral to the future use of the site are wholly within the freehold property (unlimited in height or

depth), along the Rocky Point Road boundary. However, proponent should be advised that the subject property is within the broad area currently under investigation for the proposed F6 Extension (F6E) Corridor. Further information about the corridor, please contact the F6 Team on 1800 789 297 or F6Extension@rms.nsw.gov.au, or by visiting http://www.rms.nsw.gov.au/projects/sydney-south/f6/index.html

5. Rocky Point Road is identified in the NSW Governments 2013 Sydney Clearways Strategy for a possible future clearway. Full time No Stopping restrictions are to be implemented along the full Rocky Point Road frontage of the development site. This restriction should be implemented prior to the commencement of any demolition works relating to the proposed development. Prior to the installation of the parking restrictions the applicant is to contact Roads and Maritime CBD & East Network and Safety Unit on phone: (02) 8849 2367, or by email development.sydney@rms.nsw.gov.au for a works instruction. Roads and Maritime may, in the future, supplement the No Stopping restriction with Clearways. Parking for all vehicles associated with the proposed development should be fully contained within the development site and must not encroach onto any state road. Council should be satisfied that the parking provision for the proposed development is adequate to cater for all current and future demand.

All service vehicles (including garbage collection, building maintenance vehicles and removalists), must service this property from within the development or from the local road network.

- 6. All demolition and construction vehicles are to be contained wholly within the site (or on Park Road) and vehicles must enter the site before stopping. A construction zone will not be permitted on Rocky Point Road.
- 7. A Road Occupancy Licence should be obtained from Transport Management Centre for any works that may impact on traffic flows on Rocky Point Road during construction activities.
- 8. All works/signposting associated with the subject development (including public utility adjustment/relocation works) shall be at no cost to Roads and Maritime.
- 86. The following conditions area required by Ausgrid:

Ausgrid Conditions

Supply of Electricity

It is recommended for the nominated electrical consultant/contractor to provide a preliminary enquiry to Ausgrid to obtain advice for the connection of the proposed development to the adjacent electricity network infrastructure. As assessment will be carried out based on the enquiry which may include whether or not:

- The existing network can support the expected electrical load of the development.
- A substation may be required on-site, either a pad mount kiosk or chamber style and;
- Site condition or other issues that may impact on the method of supply.

Conduit Installation

The need for additional electricity conduits in the footway adjacent to the development will be assessed and documented in Ausgrids Design Information, used to prepare the connection project design.

Proximity to Existing Network Assets

There are existing overhead electricity network assets in Rocky Point Road. Safework NSW Document - Work Near Overhead Powelines: Code of Practice, outlines the minimum safety separation requirements between these mains/poles to structures within the development throughout the construction process. It is a statutory requirement that these distances be maintained throughout construction. Special consideration should be given to the positioning and operating of cranes and the location of any scaffolding.

The "as constructed" minimum clearances to the mains should also be considered. These distances are outlined in the Ausgrid Network Standard, NS220 Overhead Design Manual. This document can be sourced from Ausgrid's website, www.ausgrid.com.au.

Should the existing overhead mains require relocating due to the minimum safety clearances being compromise in either of the above scenarios, this relocation work is generally at the developers cost. It is also the responsibility of the developer to ensure that the existing overhead mains have sufficient clearances from all types of vehicles that are expected to be entering and leaving the site.

Underground Cables

There area existing underground electricity network assets in Park Rd. Special care should also be taken to ensure that driveways and any other construction activities within the footpath area do not interfere with the existing cables in the footpath. Ausgrid cannot guarantee the depth of cables due to possible changes in ground levels from previous activities after the cables were installed. Hence it is recommended that the developer locate and record the depth of all known underground services prior to any excavation in the area.

Should ground anchors be required in the vicinity of the underground cables, the anchors must not be installed with in 300mm of any cable, and the anchors must not pass over the top of any cable.

Safework Australia - Excavation Code of Practice, and Ausgrid's Network Standard NS156 outlines the minimum requirements for working around Ausgrid's underground cables.

Roads Act

87. Construction related activities must not take place on the roadway without Council approval.

Short-term activities (including operating plant, materials delivery) that reduce parking spaces, affect access to a particular route or prevent or restrict the passage of vehicles along the road must not occur without a valid Temporary Roadside Closure Permit.

Activities involving occupation of the parking lane for durations longer than allowed under a Temporary Roadside Closure Permit require a Construction Zone Permit and must not occur prior to the erection of Works Zone signs by Council's Traffic and Road Safety Section.

Permit application forms should be lodged at Council's Customer Service Centre

- allowing sufficient time for evaluation. An information package is available on request.
- 88. Where applicable, the following works will be required to be undertaken in the road reserve at the applicant's expense:
 - construction of a concrete footpath along the frontage of Park Road and Rocky point Road;
 - Reinstatement of a grass verge between property line and the new footpath
 - · construction of a new fully constructed concrete vehicular entrance;
 - removal of the existing concrete vehicular entrance/s, and/or kerb laybacks which will no longer be required;
 - Construction of kerb and gutter in Park Road
 - Construction of Kerb in Rocky Point Road.
 - Reconstruction of Kerb Pram Ramp at the intersection of Park Road and Rocky Point Road
- 89. All footpath, or road and drainage modification and/or improvement works to be undertaken in the road reserve shall be undertaken by Council, or by a Private Licensed Contractor subject to the submission and approval of a Private Contractor Permit, together with payment of all inspection fees. An estimate of the cost to have these works constructed by Council may be obtained by contacting Council. The cost of conducting these works will be deducted from the Footpath Reserve Restoration Deposit, or if this is insufficient the balance of the cost will be due for payment to Council upon completion of the work.
- 90. This Roads Act approval does not eradicate the need for the Contractor to obtain a Road Opening Permit prior to undertaking excavation in the road or footpath.
- 91. Any driveway works to be undertaken in the footpath reserve by a private contractor requires an "Application for Consideration by a Private Contractor" to be submitted to Council together with payment of the application fee. Works within the footpath reserve must not start until the application has been approved by Council.
- 92. Following completion of concrete works in the footpath reserve area, the balance of the area between the fence and the kerb over the full frontage of the proposed development shall be turfed with either buffalo or couch (not kikuyu).

Development consent advice

- You are advised to consult with your utility providers (i.e. Energy Aust, Telstra etc) in order to fully understand their requirements before commencement of any work.
- b) Dial Before You Dig

Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets, please contact Dial before You Dig at www.1100.com.au or telephone on 1100 before excavating or erecting structures (This is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contacting the Dial before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or

- assets on the relevant property via contacting the Dial before You Dig service in advance of any construction or planning activities.
- c) Demolition and construction shall minimise the emission of excessive noise and prevent "offensive noise" as defined in the Protection of the Environment Operations Act 1997. Noise reduction measures shall include, but are not limited to the following strategies:
 - choosing quiet equipment
 - choosing alternatives to noisy activities
 - relocating noise sources away from affected neighbours
 - educating staff and contractors about quiet work practices
 - informing neighbours of potentially noise activities in advance
 - equipment, such as de-watering pumps, that are needed to operate on any
 evening or night between the hours of 8 p.m. and 7 a.m. or on any Sunday or
 Public Holiday, shall not cause a noise nuisance to neighbours of adjoining or
 nearby residences. Where the emitted noise exceeds 5 dB(A) [LAeq(15m)]
 above the background sound level [LA90] at the most affected point on the
 nearest residential boundary at any time previously stated, the equipment shall
 be acoustically insulated, isolated or otherwise enclosed so as to achieve the
 sound level objective.
- d) All site works shall comply with the occupational health and safety requirements of the NSW WorkCover Authority.



28/08/2018

Item No 6.7

Application Type Development Application

Application No DA-2017/517 Lodgement Date 11/10/2017

Property 1B Park Road, Sans Souci (Alternatively known as: 368

Rocky Point Road, Sans Souci)

Ward Botany Bay

Owner FIP Holdings Victoria Pty Ltd

Applicant Mr Nathan Elali

Proposal Construction of a four(4) storey residential flat building

comprising twelve (12) units and basement carparking.

No. of Submissions NIL

Cost of Development \$4,750,493

Report by Michael McCabe, Director City Futures

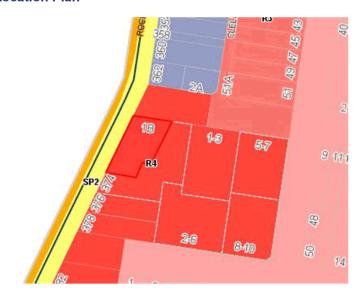
Officer Recommendation

- 1 That the Bayside Local Planning Panel support the variation to clause 4.3 Height of Buildings in the Rockdale Local Environmental Plan 2011 in accordance with the request under clause 4.6 submitted by the applicant.
- 2 That the Bayside Local Planning Panel support the variation to clause 4.4 Floor Space Ratio in the Rockdale Local Environmental Plan 2011 in accordance with the request under clause 4.6 submitted by the applicant.
- That Development Application DA-2017/517 for the Construction of a four(4) storey residential flat building comprising twelve (12) units and basement carparking be APPROVED pursuant to Section 80 (1)(a) of the Environmental Planning and Assessment act 1979 and subject to the conditions of consent attached to this report.

Item 6.7 502

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Location Plan



Attachments

- Planning Assessment Report <u>1</u>
 Site Analysis Plan and Site Plan <u>1</u>
 Street Elevations Plan <u>1</u> 2 3 4 5 6 7 8 9 10

- Elevation Plans Landscape Plans Landscape Plans Project Diagrams Project Images Project Images Challens Plans Landscape Plans

- Shadow Diagrams <u>1</u>
 Statement of Environmental Effects <u>1</u>

Item 6.7 503

BAYSIDE COUNCIL

Planning Assessment Report

Application Details

Application Number: DA-2017/517

Date of Receipt: 11 October 2017

Property: 1 B Park Road, SANS SOUCI (Lot X DP 162302)

Owner: FIP Holdings Victoria Pty Ltd

Applicant: Mr Nathan Elali

Proposal: 1B Park Road, SANS SOUCI NSW 2219 (Alternatively known as : 368

Rocky Point Road, SANS SOUCI NSW 2219) - Construction of a four(4) storey residential flat building comprising twelve (12) units and basement

carparking Approved

No. of submissions: None.
Author: Eric Alessi
Date of Report: 12 July 2018

Key Issues

Recommendation:

- The proposal partially exceeds the maximum permissible height on the land to accommodate a lift overrun, fire stairs and plant room for the rooftop terrace. The maximum permissible height for the land is 14.5 metres and the building is 16.5 metres in height at its highest point. The applicant has submitted a detailed section 4.6 variation submission for the height.

- The proposal exceeds the maximum permissible Floor Space Ratio applying to the land which is 1:1. The proposal will have an overall FSR of 1.09:1 with a gross floor area of 969.31 over a site area of 896 square metres. The applicant has submitted a detailed section 4.6 submission for the FSR.

Recommendation

- That the Bayside Planning Panel support the variation to clause 4.3 Height of Buildings in the Rockdale Local Environmental Plan 2011 in accordance with the request under clause 4.6 submitted by the applicant.
- That the Bayside Planning Panel support the variation to clause 4.4 Floor Space Ratio in the Rockdale Local Environmental Plan 2011 in accordance with the request under clause 4.6 submitted by the applicant.
- That Development Application DA-2016/399 for the Construction of a four(4) storey residential
 flat building comprising twelve (12) units and basement carparking be APPROVED pursuant to

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Item 6.7 - Attachment 1

⁻ The proposal will create additional overshadowing to the neighbouring residential flat building which will result in some habitable windows not receiving direct sunlight during mid-winter. A detailed assessment is provided under section 4.4.2 of this report.

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Section 80 (1)(a) of the Environmental Planning and Assessment act 1979 and subject to the conditions of consent attached to this report.

Background

History

The following development applications have been considered for the site:

- DA-2014/100, Demolition of existing service station, approved on 25.11.2013
- DA-2010/100, Remove & replace existing sign with new illuminated 7m high petrol price sign, approved on 15.10.2009
- DA-2001/857, Proposed new canopy over fuel pumps to replace existing canopy, approved on 20.04.2001
- DA-1994/1, Proposed Addition of two underground petrol tanks plus new signs for 7-eleven store, approved on 26.05.1994

The site was formally a services station and consent for the demolition of the station has been granted as noted above. There is an recently constructed residential flat building neighbouring the site at 374 Rocky Point Road (DA-2011/179). According to the Council report for this building the applicant submitted sufficient information to demonstrate every reasonable effort to acquire the corner (the subject site for this application) was made at the time.

Proposal

Council is in receipt of a development application DA-2017/517 at 1 B Park Road Sans Souci, which seeks consent to carry out the construction of a four(4) storey residential flat building comprising twelve (12) units and basement carparking. More specifically the proposal consists of:

Residential Flat Building consisting of 5×1 bedroom, 5×2 bedroom and 2×3 bedroom apartments comprising of a total of (12) apartments.

Basement consisting of:

- Fourteen (14) residential car parking spaces, three (3) visitor parking spaces, two (2) bicycle and one (1) motorbike space.
- Residential storage cage.
- Bin store room.

Ground Floor consisting of:

- Pedestrian Access
- 1 x 1 bedroom, 2 x 2 bedroom apartments

First Floor consisting of:

• 1 x 1 bedroom, 1 x 2 bedroom and 1 x 3 bedroom apartments

Second Floor consisting of:

• 1 x 1 bedroom, 1 x 2 bedroom apartments and 1 x 3 bedroom apartments

Third Floor consisting of:

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2 x 1 bedroom and 1 x 2 bedroom apartments

Site location and context

The site is on the corner of Rocky Point Road and Park Road and is zoned R4 High Density Residential. The site is known as Lot X DP 162302, 1B Park Road Sans Souci (also known as 368 Rocky Point Road, Sans Souci, 2219). The site is an irregular shape with a boundary length along Rocky Point Road of 40.44 metres and a boundary width along Park Road of 24.5 metres. The total area of the block is 896 sq.m (by title according to the submitted survey plan). The topography of the site is such that it is relatively flat however there is a slight fall between the site and the neighbouring property at 374 Rocky Point Road.

The former service station on the site has been demolished and the site contains no building work. Adjoining the site to the east and south is land zoned R4 - High Density Residential. Opposite the site on Rocky Point Road is land zoned R3 Medium Density Residential. To the north of the site is a commercial and retail area with buildings up to three storeys. This land is zoned B4 Mixed use. Surrounding the site on an L shaped block is 374 Rocky Point Road which is a part two (2) storey and part four (4) storey residential flat building.

The site is affected by acid sulphate soils - Class 5. There are no trees of significance on the site.

Statutory Considerations

Environmental Planning and Assessment Act, 1979

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

S4.15 (1) - Matters for Consideration - General

S4.15 (1)(a)(i) - Provisions of Environmental Planning Instruments

The following Environmental Planning Instruments are relevant to this application:

Greater Metropolitan REP No. 2 – Georges River Catchment

The aims and objectives of the plan require that stormwater runoff from the subject site is not increased and that the quality of the water released will not impact adversely on groundwater and on the water quality and river flows within the Georges River or its tributaries.

Council is required to address the planning principles contained within Part 2 of this Regional Environmental Plan.

The proposal has been accompanied by an Acid Sulphate Soil Management Plan which demonstrates adequate adequate measures to minimise disturbance to Acid Sulfate Soils which are set out in the Acid Sulfate Soils Assessment and Management Guildelines prepared by the Acid Sulfate Soils Management Advisory Committee. The proposal has been accompanied by detailed stormwater management plans in accordance with Council's Technical Specifications Stormwater to ensure that the impacts of stormwater into nearby streams is minimised.

The proposal achieves the Regional Environmental Plan objectives.

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State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 The applicant has submitted a BASIX Certificate for the proposed development. The Certificate number is 824597M 02

The commitments made result in the following reductions in energy and water consumption:

Reduction in Energy Consumption 35% Reduction in Water Consumption 41% Thermal Comfort Pass

A condition has been imposed on the consent to ensure that these requirements are adhered to.

State Environmental Planning Policy (Infrastructure) 2007

The provisions contained within State Environmental Planning Policy (Infrastructure) 2007 were taken into consideration in the assessment of the application as follows:

Clause 101 - Development with frontage to classified road

The proposed development is located on land with a frontage to a classified road being Rocky Point Road. In this regard, clause 101 - Development with frontage to a classified road, of the SEPP must be considered before consent can be granted. The clause is as follows:

- (1) The objectives of this clause are:
- (a) to ensure that new development does not compromise the effective and ongoing operation and function of classified roads, and
- (b) to prevent or reduce the potential impact of traffic noise and vehicle emission on development adjacent to classified roads.
- (2) The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:
- (a) where practicable, vehicular access to the land is provided by a road other than the classified road, and
- (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:
- (i) the design of the vehicular access to the land, or
- (ii) the emission of smoke or dust from the development, or
- (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and
- (c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.

The proposed vehicle access is from Park Road to the side of the site satisfying 2 (a) of the above. The proposal was referred to the Roads and Maritime Services which raised supported the proposal subject to conditions which have been incorporated into the consent. Accordingly the proposal is consistent with 2 (b) of the above. The proposal will have no adverse effect on the safety, efficiency and ongoing operation of the classified road. Traffic noise is discussed below.

Clause 102 - Impact of road noise or vibration on non-road development

Clause 102 applies to land adjacent to a road with a daily traffic volume of more than 40,000 vehicles

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per day. According to the Roads and Martime Services online publication 'Traffic Volume Viewer', the daily traffic volume for Rocky Point Road is over 40,000 vehicles. Therefore clause 102 applies. The clause is as follows:

- 102 Impact of road noise or vibration on non-road development
- (1) This clause applies to development for any of the following purposes that is on land in or adjacent to the road corridor for a freeway, a tollway or a transitway or any other road with an annual average daily traffic volume of more than 40,000 vehicles (based on the traffic volume data published on the website of RMS) and that the consent authority considers is likely to be adversely affected by road noise or vibration:
- a) residential accommodation,
- (b) a place of public worship,
- (c) a hospital,
- (d) an educational establishment or centre-based child care facility.
- (2) Before determining a development application for development to which this clause applies, the consent authority must take into consideration any guidelines that are issued by the Secretary for the purposes of this clause and published in the Gazette.
- (3) If the development is for the purposes of residential accommodation, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded:
- (a) in any bedroom in the residential accommodation—35 dB(A) at any time between 10 pm and 7 am,
- (b) anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.
- (4) In this clause, freeway, tollway and transitway have the same meanings as they have in the Roads Act 1993.

The proposal was accompanied by an Acoustic Report, prepared by Wilkinson Murray and dated May 2017. The report provides minimum construction requirements to meet the internal noise goals. The noise goals for the report are consistent with the requirements of the infrastructure SEPP being 35 dBA for sleeping areas and 40 dBA for living/work areas. A condition will be place on the draft notice of determination requiring the proposal to be constructed in accordance with the recommendations contained within the report and this is to be certified by a suitably qualified acoustic consultant prior to the issue of the occupation certificate.

clause 45 - works within the vicinity of electricity infrastructure

The application is subject to clause 45 of the SEPP as the development proposes works within five (5) metres of the vicinity of an overhead powerline and therefore in accordance with clause 45(2) the consent authority must give written notice to the electricity supply authority for the area in which the development is to be carried out, inviting comments about potential safety risks, and take into consideration any response to the notice that is received within 21 days after the notice is given. The clause is below:

- 45 Determination of development applications—other development
- (1) This clause applies to a development application (or an application for modification of a consent) for development comprising or involving any of the following:
- (a) the penetration of ground within 2m of an underground electricity power line or an electricity distribution pole or within 10m of any part of an electricity tower,
- (b) development carried out:

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- (i) within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists), or
- (ii) immediately adjacent to an electricity substation, or
- (iii) within 5m of an exposed overhead electricity power line,
- (c) installation of a swimming pool any part of which is:
- (i) within 30m of a structure supporting an overhead electricity transmission line, measured horizontally from the top of the pool to the bottom of the structure at ground level, or
- (ii) within 5m of an overhead electricity power line, measured vertically upwards from the top of the pool.
- (d) development involving or requiring the placement of power lines underground, unless an agreement with respect to the placement underground of power lines is in force between the electricity supply authority and the council for the land concerned.
- (2) Before determining a development application (or an application for modification of a consent) for development to which this clause applies, the consent authority must:
- (a) give written notice to the electricity supply authority for the area in which the development is to be carried out, inviting comments about potential safety risks, and
- (b) take into consideration any response to the notice that is received within 21 days after the notice is given.

The proposal has been referred to Ausgrid. The authority has responded granting approval for the development subject to several conditions of consent, which have been imposed on the draft Notice of Determination. The application is consistent with the provisions of the SEPP and is acceptable in this regard.

State Environmental Planning Policy No 55—Remediation of Land

Under clause 7 (1) (a) of State Environmental Planing Policy No 55 - Remediation of Land consent cannot be given to the unless consideration has been given to whether the land is contaminated. The property is identified in Council's GIS system as being potentially contaminated and is listed as a contaminated site in the EPA document 'List of NSW Contaminates Sites Notified to EPA as of 22 December 2017'. Furthermore the former use of the site was for a services station which are known to include underground petroleum storage systems which can leak into the surrounding environmental and contaminate groundwater.

Under clause 7 (1) (b) consideration must be given to whether the site is suitable for its proposed use. The clause states:

"if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out".

The application has been accompanied by a Site Audit Report prepared by Easterly Point Environmental, dated 18 March 2016 titled 'Site Audit Report 0103 - 1410R, 368 Rocky Point Road, Ramsgate NSW (Ref. 14042)', and a Site Validation Report prepared by Parsons Brinckerhoff, dated 20 November 2014 titled 'Site Validation Report Former 7-Eleven service station, 368 Rocky Point Road, Ramsgate, NSW (Store ID: 2053).

The Site Validation Report concludes the following:

- The site has been used as a fuel service station since 1956.
- In May 2013, fuel was found to be seeping through a retaining wall into the basement car park of
 the property located adjacent and to the east of the site. Mitigation measures were implemented
 and no petroleum product has since been observed to seep through the walls of the basement

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car park.

- The main fuel stored at the site was petrol, in addition a kerosene tank and a waste oil tank were held at the site.
- All storage tanks along with the site buildings were removed during the remediation and demolition work that occurred in May 2014.
- Post remediation no soil samples were identified with contaminant concentration exceeding the adopted site criteria.
- Concentration of benzene and ethylbenzene exceeded drinking water guidelines in some areas.
 Potential future residents of a high density apartment complex are unlikely to be exposed to contamination remaining in the shallow perched water underlying the site.
- Vapour intrusion risks were not identified as unacceptable to residents living in the above ground apartment complex.

The report concluded the following in relation to site suitability: "The site is zoned R4 for high density residential use purpose (Rockdale Local Environmental Plan, 2011). On assessment of the current contamination status of the site and on evaluation risks, the site would be suitable for a high density residential development compliant with its current zoning."

The above demonstrates that suitable remediation work has been undertaken on the site to make the land suitable for it's intended use. Therefore, in accordance with Clause 7 (1)(b) of SEPP 55, Council is satisfied that the land is suitable for the purpose for which the development is proposed to be carried out.

The proposal has been evaluated by Council's Environmental Scientist and is supported.

State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development

In accordance with clause 28(2) of this policy, the consent authority must take into consideration the following:

a. The advice of the Design Review Panel (DRP)

The proposal has been referred to the Design Review Panel on 23 November 2017. The design review panel made recommendations in relation to the the position of the lift core, deep soil area, Landscape design and Safety. The Panel supported the application subject to the issues discussed below being addressed.

b. The design quality of the development when evaluated in accordance with the design quality principles.

The design quality principles have been considered in the assessment of the proposal and are found to be satisfactory as indicated below.

Principle 1 - Context and Neighborhood Character

The Panel considered that the design approach responds to the context and neighbourhood character.

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Comment: The site is unique in that it has a wide frontage to Rocky Point Road and a narrow depth. There is a neighbouring residential flat building which goes around the site in L shape and has boundary setback lower than that stipulated in the ADG. The proposal has been designed to respond to the the neighbouring buildings by having a layout which maximises setbacks to neighbouring buildings.

Principle 2 - Built Form and Scale

The Panel considered the built form and scale of the proposed development to be generally appropriate subject to the following:

Moving the lift core back from the street façade to reduce the visual impact of the lift over-run.

Comment: The lift core has been setback from the street facade in the amended plans. The proposed building is of a similar height and bulk to neighbouring buildings. The proposed building provides a good level of internal amenity to all apartments.

Principle 3 - Density

The Panel considered the density to be acceptable.

Comment: The panels advice is supported.

Principle 4 - Sustainability

The development should incorporate sustainability initiatives such as solar panels, rainwater tanks as well as the provision of deep soil landscaping consistent with ADG and Council requirements.

Comment: The proposal has been accompanied by a BASIX certificate which demonstrates that the proposal meets minimum standard with regarding to energy and water consumption. The proposal provides adequate deep soil area and vegetation. The building has been designed to provide adequate solar access to all apartments incorporating minimum ceiling heights to habitable rooms of 2.7 metres. Shadow diagrams have been provided which demonstrate that all apartments will receive at least 2 hours of direct sunlight.

Principle 5 - Landscape

The Panel considered the landscape design needs to address the following:

Provision of an appropriate area of deep soil consistent with ADG and Council requirements.

- Adequate soil depth to support tree and shrub growth on any podium level planting.
- The potential to enhance the quality of communal open space at the ground floor level, including: a) potential re positioning of the OSD tank
- b) increase solar access
- c) screen planting against the neighbouring building particularly given the proximity of multiple balconies overlooking the subject site.
- The Panel recommended the use of the roof top terraces for communal open space and supports the use of planter boxes, shade structures and appropriate setbacks.
- Provision of screen planting to enhance amenity and to provide appropriate screening to the adjacent

Comment: The deep soil area has been increased in the revised plans. The proposed landscaping is

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supported by Council's landscape architect. Communal open space has been relocated to the rooftop and incorporates planter boxes and shade structures.

Principle 6 - Amenity

See comments above (Landscape).

Comment: It is considered that the overall design of the building will provides a suitable level of amenity to all apartments incorporating adequate solar access, natural light and ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.

Principle 7 - Safety

The Panel suggested that further consideration should be given to:

- A two (2) way car park access ramp to avoid conflict between vehicles entering and exiting the
 development.
- Provision of balustrade or other fall prevention measures relayed to the planter bed above the OSD tank and to the roof over the carpark entry.

Comment: The proposal incorporates solid balustrades throughout the whole buildings. The proposed driveway has been assessed by Council's Development Engineer and is supported.

Principle 8 - Housing Diversity and Social Interaction

The Panel considered that housing diversity is adequate. However provision for social interaction in the form of communal outdoor space and associated facilities needs further consideration.

Comment: Amended plans include communal open space on the rooftop.

Principle 9 - Aesthetics

The Panel supported the overall design approach.

Comment: The overall aesthetics of the buildings are compatible with the locality. Neighbouring buildings in the locality use a mixture of white coloured rendering and brickwork. The building has been broken into two sections with a central core connection the two parts reducing the bulk of the building. The proposal incorporates features to the facade including balconies and glazing of varying lengths and heights.

c. the Apartment Design Guide

The proposal has been assessed against the Apartment Design Guide (ADG)

The proposed development is considered to have performed adequately in respect to the objectives and design criteria contained within the ADG. The relevant issues are discussed below:

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CLAUSE	DESIGN CRITERIA			COMMENTS
3D - Communal and public open space	Communal open space has a minimum area equal to 25% of the site Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid winter)		a minimum the ne or a veen 9 am id winter)	The proposal contains 135 square metres of communal open space on the rooftop over a site area of 896 square metres. This equates to 15% of the total site area. The area of communal open space is supported as discussed in section 4.3.3 Communal Open Space.
3E - Deep soil zones	following mi	ones are to n nimal require Minimum dimension	ements:	The proposal deep soil area is supported as discussed in section 4.3.1 Open Space and Landscape Design.
	650m2 - 1,500m2	3m	7%	
3F Visual Privacy	Min separat boundaries: Building height	Habitable rooms and balconies	Non habitable rooms	The proposal incorporates a nine (9) metre separation distance between the proposed building and the adjacent four (4) storey residential flat building at 374 Rocky Point Road. Privacy measures are discussed in section 4.1.1 Views and Privacy.
	Up to 12m (4 storeys) Buildings on the same site combine required building separations. Gallery treated as habitable space			

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3J - Bicycle and car parking	As per Guide to Traffic Generating Developments, or per council requirement, whichever is less. Parking provided off street.	The number of vehicle parking spaces required has been calculated against requirements for Multi Dwelling Housing / Residential Flat Buildings in the Rockdale Development Control Plan 2011. The plan requires one (1) car parking space for one and two bedroom apartment and two (2) car parking spaces for three (3) bedroom apartments and one (1) visitor space per five (5) apartments. The proposal provides a total of seventeen (17) car parking spaces, including three (3) visitor spaces and a motorcycle space. The number of parking spaces complies with the requirements of the Development Control Plan.	
4A – Solar and daylight access	Living rooms + POS of at least 70% of apartments receive min 2hrs direct sunlight b/w 9am & 3 pm mid-winter	The proposal has been accompanied by shadow diagrams which show that at least 70% of apartments receive min 2hrs direct sunlight b/w 9am & 3 pm mid-winter.	
	Max 15% apartments receive no direct sunlight b/w 9am & 3pm mid- winter		
4B – Natural ventilation	Min 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Ten storeys or > are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed. Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	All apartments achieve natural cross ventilation.	
4C – Ceiling heights	Minimum ceiling heights: Habitable 2.7m Non-habitable 2.4m	The proposal has been accompanied by section plans which show the ceiling heights for all levels. There is to be a minimum floor to ceiling height of 2.7 metres for all living areas in apartments and a minimum ceiling height of 2.4 metres for non habitable living areas.	

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4D -	Minimum internal areas:			Two (2) of the one bedroom apartments are 49		
Apartment size and layout	Apartm type		linimum ernal area	square metres in area which is 1 square metres less than the required 50 square metres. All other apartments exceed the minimum required		
layout	1 bedroom		50M ²	internal areas.		
	2 bedroom	1	70m²	internal areas.		
	3 bedroom	1	90m²			
	bathroom. A increase are	as includes of Additional basea by 5m² ea Prooms incresternal area b	athrooms ach. ase			
4E –	Primary balconies as follows:		llows:	All ground level units have courtyards with an		
Private	Dwelling	Minimum	Minimum	area of over 15 square metres. All units meet the		
open	type	area	depth	minimum balcony areas except a one bedroom		
space and	Studio	4m²	-	unit on the third floor which has a balcony with an		
balconies	1 bed	8m²	2m	area of 6 square metres which is under the 8		
	2 bed	10m²	2m	square metres required.		
	3+ bed	12m²	2.4m			
	Min balcony depth contributing to the balcony area is 1m. Ground level, podium or similar - POS provided instead of a balcony: min area 15m² and min depth of 3m.					
4F – Common circulation	Max apartments off a circulation core on a single level is eight.		eight.	There will be no more than three (3) units utilising the circulation space on each level.		
and spaces		and over, ma sharing a si				

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4G –	In addition to stora	ge in kitchens.				
Storage	bathrooms and be following storage i	drooms, the	Apartment	In basement	In apartment	Total
		•	G.1 (2 bed)	6.34	3.6	9.94
	Dwelling type	Storage size	G.2 (1 bed)	3.52	3.02	6.54
		volume	G.3 (2 bed)	3.49	4.69	8.18
	Studio	4m²	1.1 (2 bed)	6.34	4.03	10.37
	1 bed	6M ²	1.2 (1 bed)	6.87	3.02	9.89
	2 bed	8m²	1.3 (3 bed)	5.59	5.04	10.63
	3 bed	10m²	2.1 (2 bed)	7.14	4.03	11.17
			2.2 (1 bed)	5.44	3.02	8.46
	At least 50% of the	e required storage	2.3 (3 bed)	3.07	3.30	6.37
	is located within a	partment	3.1 (2 bed)	6.87	4.03	10.9
			3.2 (1 bed)	3.44	3.02	6.46
			3.3 (1 bed)	3.07	3.30	6.37
			1 2.0 (. 200)	2.01		3.0.
			The proposal complies except for 1 three (3) bedroom unit.			
4H			Apartments are generally oriented so that noisy			
Acoustic			areas are located away from bedrooms.			
privacy				,		
			An acoustic report has been prepared for the			
			building for the protection of the units against			
			traffic noise. No bedrooms are located adjacent			
			to noisy areas.			
4J Noise						
and						
pollution						
4K			The proposal		٠,	
Apartment			units, five (5) two (2) bedroom units and two (2)			
mix			three (3) bedrooms.			
4L Ground			All ground flo	or apartment	s have direct	access
floor			to the street.	-		
apartments						
4M			The facade tre	eatment has I	been reviewe	d by the
Facades			1	The facade treatment has been reviewed by the design review panel and is supported.		
				.,		
4N Roof			The proposal	utilises most	of the roofen	ace as a
design			terraced area			
acaigii	I		iciiaceu alea	or the anien	ity of residerit	

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40	Recommended tree planting in		Council's Landscape Officer has assessed the
Landscape	deep soil zones		proposal and provided support.
design			
	Site area Recommended tree planting Up to 850 1 medium tree square per 50 square		
	metres	metres of deep	
		soil zone	
	Between 850	1 large tree or 2	
	- 1,500	medium trees per	
	square	90 square metres	
	metres	of deep soil zone	

Rockdale Local Environmental Plan 2011

	Compliance with objectives	Compliance with standard/provision
2.3 Zone R4 High Density Residential	Yes	Yes - see discussion
2.7 Demolition requires consent	Yes	Yes - see discussion
4.3 Height of buildings	Yes - see discussion	No - see discussion
4.4 Floor space ratio - Residential	Yes - see discussion	No - see discussion
zones		
4.6 Exceptions to development standards	Yes - see discussion	Yes - see discussion
6.1 Acid Sulfate Soil - Class 5	Yes	Yes - see discussion
6.2 Earthworks	Yes	Yes - see discussion
6.4 Airspace operations	Yes	Yes - see discussion
6.7 Stormwater	Yes	Yes - see discussion
6.12 Essential services	Yes	Yes - see discussion

2.3 Zone R4 High Density Residential
The subject site is zoned R4 - High Density Residential under the provisions of Rockdale Local Environmental Plan 2011 (RLEP 2011). The proposal is defined as Residential Flat Building which constitutes a permissible development only with development consent. The objectives of this zone are:

- To provide for the housing needs of the community within a high density residential environment.
- To provide a variety of housing types within a high density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

The proposed development is consistent with the objectives of the zone.

2.7 Demolition requires consent

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The site is vacant and no demolition work is included in the application. Demolition of the existing services station has been completed as per DA-2014/100.

4.3 Height of buildings

The heighest point of the building is 16.5m which exceeds the maximum 14.5m height permitted in Clause 4.3 (Height of buildings) of RLEP 2011. The only component of the building which exceeds the maximum permissible building height is the lift overun, fire stairs and plant room on the rooftop terrace. The bulk of the building is below the maximum permissible building height including the rooftop parapet (13.6 metres) and the floor of the rooftop terrace (12.7 metres). The applicant has submitted a detailed clause 4.6 variation statement which is contained in the Statement of Environmental Effects. The justification for the variation is discussed in section 4.6 of this report. The proposed variation to the maximum permissible building height is supported in this instance.

4.4 Floor space ratio - Residential zones

The proposal has been accompanied by a Gross Floor Area plan which shows that the total floor area is to be 913.5 square metres over a site area of 896 square metres.

The proposed development does not comply with clause 4.4(2) in RLEP 2011, which restricts the floor space ratio (FSR) to 1:1. The proposed development will result in an overall FSR of 1.02:1 with a gross floor area of 917.6 square metres having been calculated. The proposal is 21.6 square metres over the maximum permissible floor space ratio. The area has been calculated in accordance with the definition of Gross Floor Area in the Rockdale Local Environmental Plan and excludes common circulation areas included the lift core and stairwell.

The applicant has submitted a detailed clause 4.6 variation statement which is contained in the Statement of Environmental Effects. This is discussed in section 4.6 of this report. The variation is supported in this instance.

4.6 Exceptions to development standards

Clause 4.6 allows a variation to a development standard subject to a written request by the applicant justifying the variation by demonstrating:

(3)(a) that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and

(3)(b) that there are sufficient environmental planning grounds to justify the variation.

In considering the applicant's submission, the consent authority must be satisfied that:

- (i) the applicant's written request is satisfactory in regards to addressing subclause (3) above, and
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives of the relevant zone.

5(a) The consent authority must also consider whether contravention of the development standard raises any matter of significance for State or Regional environmental planning, and 5(b) the public benefit of maintaining the development standard.

Height of Buildings

The proposal seeks a variation to the maximum permissible building height as discussed in section 4.3 Height of Buildings.

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The applicant has submitted a detailed justification for the proposed variation to the development standard. The justification is summarised as follows:

- The variation does not contribute to the bulk and scale of the building overall.
- The variation is to allow the use of the rooftop area for communal open space.
- The proposal remains compliant with the minimum required floor to ceiling height.
- The proposal is consistent with all required setbacks and maintains a high standard of design.
- The variation will not result in reduced solar access to neighbouring dwellings.
- The proposal remains consistent with objectives of clause 4.3 Heights of Buildings.

The proposed variation has been considered against each objective of the clause as follows:

(a) to establish the maximum limit within which buildings can be designed and floor space can be achieved

The need for the variation to the height arises from the need to have a lift overrun to permit the use of the rooftop terrace for communal open space. There will be minimum impact on the bulk and scale of the proposal.

(b) to permit building heights that encourage high quality urban form,

The proposal maintains a high quality urban form incorporating appropriate floor to floor ceiling heights, setbacks and articulation.

(c) to provide building heights that maintain satisfactory sky exposure and daylight to buildings, key areas and the public domain

The shadow diagrams show that there will be minimal additional overshadowing as a result of the lift overrun and stairs.

(d) to nominate heights that will provide an appropriate transition in built for and land use intensity. The lift overrun will be recessed into the rooftop and not visible from the street. The height of the building is not at significant variance to neighbouring buildings and is constant with the objective of achieving a transition in height and land use intensity.

The variation to the maximum permissible building height satisfies the 'five part test' established by the NSW Land and Environmental Court where the objectives of the standard have been achieved and the standard has been previously varied by a minor degree in similar circumstances. The non-compliance will have no adverse impacts on adjoining properties with regard to visual privacy, solar access. There will be no adverse impacts on the streetscape. The proposal meets the objectives of the zone and the standard and is of minimal environmental impact. As such, the applicant's submission is supported.

Floor Space Ratio

The proposal seeks a variation to the maximum permissible floor space ratio as discussed in section 4.4 Floor Space Ratio.

The applicant has submitted a detailed justification for the proposed variation to the development standard. The justification is summarised as follows:

- The proposal meets the objectives of the zone and meets the requirements for parking and apartment mix
- The building envelope is compliant with setback and height controls with the exception of the rooftop structure.

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- The proposed building layout will not have any adverse impact on adjoining properties and does not contribute to overshadowing beyond a compliant scheme.
- The proposal matches the built form, bulk and scale of surrounding residential flat buildings and the proposed non-compliance with FSR will no be perceptible from the street.
- The non-compliance will have no adverse impacts on adjoining properties with regard to visual, aural and privacy impacts or overshadowing, and to require strict compliance would mean removing parts of the building without resulting in a real planning benefit to neighbourhood character or amenity
- (a) to establish the maximum development density and intensity of land use, accounting for the availability of infrastructure and generation of vehicular and pedestrian traffic, in order to achieve the desired future character of Rockdale,

The applicants justification is generally supported. The proposed development is in line with the type of development envisaged for the site.

- (b) to minimise adverse environmental effects on the use or enjoyment of adjoining properties, The applicants justification is generally supported. The proposed building form will not have an adverse impact beyond a compliant scheme.
- (c) to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing or likely to undergo a substantial transformation.

The applicants justification is generally supported. The proposal is generally consistent win bulk and scale with adjoining residential flat buildings. The neighbouring residential flat building at 374 Rocky Point Road, Sans Souci has an floor space ratio of 1.1:1.

The applicant has provided a statement addressing the 'five part test' established by NSW LEC Four2Five Pty Lrd v Ashfield Council [2015] NSWLEC 90. The applicants submission is generally supported. The non-compliance will have no adverse impacts on adjoining properties with regard to visual, aural and privacy impacts or overshadowing as opposed to a compliant scheme. The proposal meets the objectives of the zone and the standard and is of minimal environmental impact. As such, the applicant's submission is supported.

6.1 Acid Sulfate Soil - Class 5

Acid Sulfate Soils (ASS) – Class 5 affects the property and the property is within 500 metres of land with Class 3 Acid Sulphate Soils. The proposal has been accompanied by an Acid Sulfate Soils Management plan prepared by IGS - Intergrated Group Services dated 10 July 2017. The report identifies the chances of Acid Sulfate Soils being found on the site as low. The report contains management approaches to identify suspected Acid Sulfate Soils should any be present. Monitoring for Acid Sulfate Soils should be undertaken in accordance with the table contained within section 3.3 of the report. A condition of consent has been placed onto the consent requiring the recommended actions contained within the plan to be followed during construction.

6.2 Earthworks

Earthworks including excavation are required on site for basement level, driveway, floor slabs, excavation for key services and founding levels to the proposed new structures. The objectives and requirements of Clause 6.2 of RLEP 2011 have been considered in the assessment of this application. It is considered that the proposed earthworks and excavation will not have a detrimental impact on

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environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land. However, notwithstanding, relevant conditions are included in the draft Notice of Determination to ensure that the environmental amenity of surrounding land is maintained, and soil erosion, sedimentation, and drainage impacts are minimised.

6.4 Airspace operations

The proposed development is affected by the Obstacle Limitation Surface (OLS) which is set at 90 metres to Australian Height Datum (AHD). The proposed building height is at 27.1 AHD and in this regard, it is considered that the proposed development will have minimal adverse impact on the OLS and hence is acceptable with regards to this Clause.

6.7 Stormwater

The proposal involves the construction of an on site retention system to manage stormwater. The proposed stormwater system has been approved by Council's development engineers and is consistent with this clause.

6.12 Essential services

Services will generally be available on the site. Additional conditions have been incorporated in the draft conditions of consent requiring consultation with relevant utility providers in regards to any specific requirements for the provision of services on the site.

S4.15(1)(a)(ii) - Provisions of any Draft EPI's

No relevant proposed instruments are applicable to this proposal.

S4.15 (1)(a)(iii) - Provisions of any Development Control Plan

The following Development Control Plan is relevant to this application:

Rockdale Development Control Plan 2011

The application is subject to Rockdale DCP 2011. A compliance table for the proposed development is provided below:

Relevant clauses	Compliance with	Compliance with
	objectives	standard/provision
4.1.1 Views and Vista	Yes	Yes - see discussion
4.1.3 Water Management	Yes	Yes - see discussion
4.1.4 Soil Management	Yes	Yes - see discussion
4.1.5 Contaminated Land	Yes	Yes - see discussion
4.1.7 Tree Preservation	Yes	Yes - see discussion
4.1.9 Lot size and Site Consolidation - Residential	Yes	Yes - see discussion
flat buildings		
4.1.9 Lot size and Site Consolidation - isolated	Yes	Yes - see discussion
sites		
4.2 Streetscape and Site Context - General	Yes	Yes - see discussion
4.2 Streetscape and Site Context - Fencing	Yes	Yes - see discussion
4.3.1 Open Space and Landscape Design -	Yes	Yes - see discussion
Residential Flat Buildings		
4.3.3 Communal Open Space	Yes	Yes - see discussion
4.4.1 Energy Efficiency - Residential	Yes	Yes - see discussion

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Relevant clauses	Compliance with objectives	Compliance with standard/provision
4.4.2 Solar Access - Residential Flat Buildings	Yes - see discussion	No - see discussion
and Shop Top Housing		
4.4.3 Natural Lighting and Ventilation - Residential	Yes	Yes - see discussion
4.4.4 Glazing - General Controls	Yes	Yes - see discussion
4.4.5 Acoustic privacy	Yes	Yes - see discussion
4.4.5 Visual and Acoustic Privacy - Building	Yes	Yes - see discussion
Separation		
4.4.7 Wind Impact	Yes	Yes - see discussion
4.5.1 Social Equity - Housing Diversity and Choice	Yes	Yes - see discussion
4.5.2 Social Equity - Equitable Access	Yes	Yes - see discussion
4.6 Parking Rates Residential Flat Buildings	Yes	Yes - see discussion
4.6 Car Park Location and Design	Yes	Yes - see discussion
4.6 Vehicles Enter and Exit in a Forward Direction	Yes	Yes - see discussion
4.6 Basement Parking - General	Yes	Yes - see discussion
4.6 Driveway Widths	Yes	Yes - see discussion
4.6 Traffic - Classified Roads	Yes	Yes - see discussion
4.6 Basement Parking - Residential Flat Buildings	Yes	Yes - see discussion
4.6 Access to Parking	Yes	Yes - see discussion
4.6 Design of Loading Facilities	Yes	Yes - see discussion
4.6 Car Wash Facilities	Yes	Yes - see discussion
4.6 Pedestrian Access and Sustainable Transport	Yes	Yes - see discussion
4.7 Air Conditioning and Communication Structures	Yes	Yes - see discussion
4.7 Waste Storage and Recycling Facilities	Yes	Yes - see discussion
4.7 Service Lines/Cables	Yes	Yes - see discussion
4.7 Laundry Facilities and Drying Areas	Yes	Yes - see discussion
4.7 Letterboxes		
4.7 Hot Water Systems	Yes	Yes - see discussion
5.2 RFB - Site Coverage	Yes	Yes - see discussion
5.2 RFB Front Setback	Yes	Yes - see discussion
5.2 RFB - Side Setbacks	Yes	Yes - see discussion
5.2 RFB - Rear Setbacks	Yes	Yes - see discussion
5.2 RFB Secondary Street/Laneway Setback	Yes	Yes - see discussion
5.2 RFB - Building Design	Yes	Yes - see discussion
5.2 RFB - Building Entry	Yes	Yes - see discussion
5.2 RFB - Lift Size and Access	Yes	Yes - see discussion

 $\underline{4.1.1\ Views\ and\ Vista}$ The land in the general vicinity is generally flat and it is not anticipated that the proposal will impact on views of neighbouring properties.

 $\underline{4.1.3\ Water\ Management}$ The roofwater and runoff is to be directed to an detention tank. A stormwater plan has been submitted.

4.1.4 Soil Management

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A condition will be placed on the draft notice of determination requiring a Soil & Water Management Plan to be submitted prior to the issue of the construction certificate. The plan is to contain general erosion and sediment control strategies to ensure that the potential for impact on adjoining land and surrounding waterways is minimised.

4.1.5 Contaminated Land

The application has been accompanied by a validation report which states that 'On assessment of the current contamination status of the site and on evaluation risks, the site would be suitable for a high density residential development compliant with its current zoning.' Council has accepted the recommendations in the site validation report prepared by Parsons Brinckerhoff and the site is suitable for its proposed use.

4.1.7 Tree Preservation

The site has been cleared of all vegetation from the demolition of the existing service station. There are no street trees along Park Road or Rocky Point Road. Council's Tree Management Officer has assessed the proposal as has found the proposal satisfactory with regards to the provisions of State Environmental Planning Policy (Vegetation in non-rural areas).

4.1.9 Lot size and Site Consolidation - Residential flat buildings

The proposal will not result in any isolated sites to the adjoining properties. The allotment width is 40 metres at the Rocky Point Road frontage which is above the required 24 metre width.

4.1.9 Lot size and Site Consolidation - isolated sites

The proposal is contained within an existing allotment which is Lot X DP 162302. The proposal will not result in any isolated sites to adjoining properties.

4.2 Streetscape and Site Context - General

The proposal is located in a R4 - High Density Residential Zone. The general vicinity has a mixture of lower density and higher density residential development. Directly behind the site is a four (4) storey residential flat building. To the north of the proposal is a commercial strip along Rocky Point Road which contains one and two storey commercial and residential buildings. On the opposite side of Rocky Point Road are single and two storey dwellings.

The main façade of the building is towards Rocky Point Road, and there is a secondary frontage to Park Road. The building is broken so that there is a northern section and a southern section with a core connecting the two sections. The facade of the building features glazing and balconies which are indented into the building. The facade is to consist of corrugated precast concrete and well as concrete awnings. The building also includes aluminium windows and doors and galvanised steel fences and privacy screens. The development assessment officer sought feedback from the design review panel on the suitability of the proposed finishes and advice was that the proposed materials are suitable. The proposal meets all the controls contained within 4.2 Streetscape and Site Context within the Rockdale Development Control Plan.

The proposed residential flat building is consistent with the desired and future character of the area in terms of height, bulk and scale, and is generally appropriate in this context. The proposed built form on site complies with the required height and FSR requirements. The proposed development has been designed with appropriate use of articulation & modulation to the facades via the incorporation of balconies, pedestrian entries at ground level, upper level voids and range materials which adds visual interest to the facades.

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4.2 Streetscape and Site Context - Fencing

The proposal includes a galvanised steel post fence 1.8 metres in height around the ground floor units on the Rocky Point Road and Park Road frontage. Fencing is transparent and enables surveillance to the street. The development assessment officer requested the Design Review Panel to comment on the suitability of the fencing and no objections were received. The proposed fencing is consistent with the objectives and controls contained within section 4.2 of the Development Control Plan.

4.3.1 Open Space and Landscape Design - Residential Flat Buildings

The proposal provides a total area of landscaping at the ground of 211.4 square metres over a site area of 893 square metres. There is a garden area on the rooftop which is 70 square metres in area and a planter garden bed around the fourth floor balcony with an area of 8.3 square metres. The total area of deep soil landscaping is 124 square metres or 14% of the total site area. Part 3E of the Apartment Design Guide requires at least 7% of the site to be Deep Soil Zone with minimum dimensions of 3 metres.

Not all of the deep soil landscaped area is of a minimum dimensions of three (3) square metres. 81 square metres of the deep soil zone is less than than three (3) metres in width and 43 square metres (5%) of landscaping is wider than three (3) metres. In this regard a merit assessment has been undertaken. The proposal provides a total area of landscaped area which is more than required by the ADG and provides space for trees of a medium height. Accordingly the proposed deep soil are is acceptable.

The proposal has been referred to Council's Landscape Architect. In the referral response general support for the proposal was provided subject to conditions of consent. A revised landscaping plan was requested prior to the issue of the occupation certificate. The conditions relate to the following:

- All plant species that are not groundcovers, shrubs and trees shall be shown on plans as a
 planting plan, in the right location and scale.
- Private terraces on G2 and G3 shall address privacy issues. Screen planting shall be be provided in deep soil (G3) or in built in planter boxes over slab (in the case of Norther area of G2)
- To ensure growth of tree in shade area replace one Banksia integrifolia with one (1)
 Tristaniopsis laurina in south-east corner.
- Planting Type 2, screen planting shall include some trees like, Elaeocarpus reticulatus and Waterhousia floribunda, to be positioned in strategic location to ensure screening of living areas of upper levels of proposed development.
- Planter bed along western boundary (Rocky Point Road) shall provide a larger planting to ensure
 a strong level of screening and shade. Planting shall include screen planting and some trees in
 order to provide privacy to ground units, shade to ground and upper floors, and general amenity.
- Include one (1) Corrymbia eximia (yellow Bloodwood) in south-western area adjacent to Rocky Point Road, or similar tree to reach a minimum of ten metres height to provide amenity and mitigate the bulk or built form proposed.
- Terrace Common Open Space. Southern roof terrace shall include a planter box minimum 700mm wide to provide screen planting. Roof terrace planting shall include trees in built in planter boxes, or climbers with pergola in terrace area, to provide a share area of use to the residents in BBQ area.
- Specification of planter bed depth on top of OSD shall be indicated in landscape plan. Depth shall be able to sustain all species proposed in plant mix 3.

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- All landscape areas shall be automatic irrigated. Irrigation system shall be contacted to rain water tank.
- Frontage works application shall be submitted to council prior to issue of Construction
 Certificate with Civil and Landscape works. Landscape works shall include planting along Park
 Road, (LGA managed road) with two (2) Lophostemon confertus, (Brush Box) along Park Road
 as per Rockdale Street Tree Master Plan. Panting along Roacky Point Road, (State Road, RMS
 managed road) verge strip shall be planted with five (5) Magnolia grandiflora, (Magnolia) as per
 Rockdale Street Tree Master Plan.
- All landscape works area to be carried out in accordance with the approved landscape plans
 prior to the issue of an Occupation Certificate for the approved development. The landscaping is
 to be maintained to the approved standard at all times.
- A Landscape Architect shall provide a report to the certifying authority (with a copy provided to Council, if Council is not the principal certifying authority) stating that the landscape works have been carried out in accordance with the approved plans and documentation.

The above conditions will be incorporated into the conditions.

4.3.3 Communal Open Space

The proposal provides an area of communal open space of 147 square metres. Communal open space is located wholly within the rooftop terrace. The proposal does not strictly comply with the numerical requirements of the ADG which require that 25% of the site are be dedicated to communal open space (223 square metres). In this regard a merit assessment has been undertaken. The proposal provides a high rate of communal open space of 12.25 square metres per apartment. The proposed area of communal open space is of high quality as described below. Accordingly the proposed area of communal open space is acceptable.

The proposal has been assessed against the following:

The development must provide a communal area for the benefits of its residents at the rate of 5m² for each dwelling within the development. Where a development is unable to reasonably meet this minimum requirement (or a development containing less than 12 dwellings) an equivalent area of additional private open space is to be provided for each dwelling.

Communal open space is provided to each unit at a rate of 12.25 square metres each. This is above the minimum required 5 square metres for each dwelling.

- 3. Communal areas should:
- a. contribute positively to the amenity of the development,

Communal open space is considered usable and includes a shade structure and 70 square metres garden terrace area to contribute to the amenity of the space.

b. be conceived as part of the overall design of the building,

Communal open space is located on the rooftop terrace which is integrated into the building, and includes a 70 square metres garden terrace, solid balustrades, lift and stairwell access. Access to the communal open space is centrally located and efficiently accessed by all apartments. Access to the rooftop terrace is via the lift and stairs which is shared as the means of access to all apartments. Accordingly the communal open space is appropriately integrated into the overall building design.

c. be north facing and receive adequate solar access,

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Communal open space is located on the rooftop and receives no overshadowing.

d. have a minimum area of 40% that has sunlight at 1pm on 21 June, The rooftop terrace is not anticipated to receive any overshadowing.

e. be clearly defined to distinguish between communal and private open space, The whole rooftop level is designated to communal open space is not adjacent to any areas of private c

f. be of dimensions to suit the proposed use and requirements of the occupants, The majority of the area of communal open space is over four (4) metres in width and is usable.

g. provide for a range of recreational uses and activities, act as a catalyst for social interaction, and be supplemented with seating and shading,

A shade structure is include over part of the rooftop area.

h. be cost effective to maintain, and

There are no features contained within the area of communal open space that are anticipated to be costly to maintain.

i. contribute to stormwater management and be integrated with the on-site drainage detention system.

Council's Development Engineer has supported the proposed stormwater management system.

Control 5 support the use of rooftop areas for the purpose of communal open space as follows 'Communal open space may be accommodated on a podium or roof in a residential mixed use building provided it has adequate amenity and convenient access.'

The proposed communal open space meets the required objectives and controls.

4.4.1 Energy Efficiency - Residential

The applicant has submitted a BASIX Certificate for the proposed development. The commitments made result in reductions in energy and water consumption, and will achieve the efficiency target set under SEPP BASIX.

4.4.2 Solar Access - Residential Flat Buildings and Shop Top Housing

The objectives of this clause are as follows:

- A. To ensure that sunlight access is provided to private open space and habitable rooms within the development.
- B. To ensure the development does not unreasonably diminish sunlight to neighbouring properties and within the development site.

The proposal has been accompanied by shadow diagrams for mid-winter at June 22 and for the equinox at March 22nd including elevation diagrams showing overshadowing for the neighbouring residential flat building looking east and south as well as birds eye view diagrams. The diagrams show that at 9am mid-winter a shadow will be cast south-west onto part of 374 Rocky Point Road however no additional windows will receive overshadowing. At 12pm and 3pm the shadow will move to the southeast onto the side of 374 Rocky Point Road. At 12pm an additional six (6) windows will be overshadowed. At 3pm most of the windows up to the third (3) level will receive additional

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overshadowing. The shadow diagrams for March 22 show that at 9am and 12pm there will be no additional overshadowing to any habitable windows of the neighbouring building. At 3pm the shadow shifts east to overshadowing four (4) ground floor windows and three (3) windows on the south elevation.

The Rockdale Development Control Plan requires living rooms and private open space for at least 70% of apartments in a development and adjoining properties to receive a minimum of 3 hours direct sunlight between 9am and 3pm mid-winter. The elevation plans show that not all of the windows on the neighbouring residential flat building will receive at least 3 hours of direct sunlight during mid-winter. In this regard a merit assessment has been undertaken.

The layout of the residential flat building has been designed to maximise the setback between the proposed building and neighbouring residential flat building at 374 Rocky Point Road. The rear setback is between 6 metres and 12 metres. The neighbouring residential flat building has a side setback to the boundary of 3 metres. Due to the extent of the overshadowing design modifications including changes to the building envelope, setback distance and height would not alleviate all overshadowing without consequently creating a design which is impractical in terms of functionality of a residential flat building. The elevation shadow diagrams show that at the equinox the proposal will have minimal overshadowing impact on the neighbouring building.

Requiring compliance with the controls in the RDCP 2011 would be unreasonable as the proposed development complies with the objectives in RDCP 2011 in terms of minimising the extent of shadows that are cast to ensure the provision of sunlight access to private open space and habitable rooms within the development and where possible sunlight to the neighbouring properties.

4.4.3 Natural Lighting and Ventilation - Residential

The section plans show that all habitable areas are to have a minimum ceiling height of 2.7 metres. In order to achieve the minimum 2.7 metre ceiling height for habitable rooms consideration must be given to the space required between floors which is not ceiling space. A floor to floor separation distance of 3.1 metres is required to meet the minimum required ceiling height of 2.7 metres. The section plans show that there is to be a floor to floor ceiling height of 3.1 metres. Accordingly the proposal will be able to achieve the minimum ceiling height of 2.7 metres to achieve natural lighting and cross ventilation.

4.4.4 Glazing - General Controls

The proposed development provides appropriate sun protection/shading devices during summer for glazed areas facing north, west and east. The western and northern facade feature recessed balconies and precast concrete sunshades above glazed areas. The eastern elevation contains metal sun and privacy louvres across glazed areas. The southern facade features precast concrete sunshades over glazed areas.

The proposal provide a suitable level of sun protection for glazed area and is consistent with the control and objectives set out in this section.

4.4.5 Acoustic privacy

There will be minimal adverse impact on the acoustic privacy of adjoining and surrounding properties as consideration has been given to the location and design of the building and landscaping in relation to private recreation areas to minimise noise intrusion on the amenity of adjoining properties.

4.4.5 Visual and Acoustic Privacy - Building Separation

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The objectives of this clause is as follows:

A. To site and design buildings to ensure acoustic and visual privacy for occupants and neighbours.

The potential impacts on visual privacy to adjoining building was taken into consideration in the assessment of the proposal as follows:

374 Rocky Point Road, Sand Souci

374 Rocky Point Road is a two (2) and four (4) storey residential flat building which surrounds the proposed site in an L shape. The proposal has been accompanied by elevation plans showing the neighbouring property. The building features windows and balconies facing into the proposal. As shown on the eastern elevation plan the proposal contains windows to habitable rooms and a balcony facing into 374 Rocky Point Road. Windows are between fourteen (14) and nine (9) metres from the neighbouring property. The minimum recommended separation distance in the Apartment Design Guide (ADG) is twelve (12) metres between habitable windows. The elevation plan shows that there is to be metal sun and privacy louvers on windows on the eastern elevation maintaining privacy for windows with a separation distance of less than twelve (12) metres.

There is a side balcony on the forth floor facing into 374 Rocky Point Road. There is a nine (9) metre separation distance between the balcony and the forth (4) floor of the neighbouring residential flat building at 374 Rocky Point Road. There is a six (6) metre separation distance between the new proposal and the property boundary and a three (3) metre separation distance between the neighbouring building and the property boundary. Figure 3F.3 in the ADG requires a minimum separation distance of 6 metres between a new development and the property boundary for buildings up to four (4) storeys in height. The separation distance for an exiting building may be less that six (6) metres. Accordingly the separation distance for this balcony complies with the ADG. The balcony has been designed to prevent downward looking by incorporating a 1.2 metre wide planter garden around its perimeter.

A condition will be incorporated into the consent requiring privacy measures to be maintained for the life of the development. The assessment of the proposal has determined that the proposal has been designed to maintain visual privacy for occupants and to neighbours.

4.4.7 Wind Impact

The bulk and scale of the proposal is such that it is not anticipated that it will contribute to a wind tunnelling effect. The building is less than five (5) storeys and 16 metres in height and accordingly does not require a wind tunnel testing in accordance with Part 4 of the Development Control Plan. In addition there is nothing in the layout or orientation of the building which suggests the proposal will contribute to a wind tunnelling effect.

4.5.1 Social Equity - Housing Diversity and Choice

Part 4.5 of the RDCP 2011 contains objectives and controls that aim to ensure that apartments in mixed use development are flexible, maximise housing choice and provide equality of access. The proposal satisfies the relevant objectives and requirements. Compliance with the key controls are discussed below:

Provisions of 10%-30% 1 bed-room units, 50-75% two-bedroom units, and 10-20% three-bedroom units. The proposal includes 42% one-bedroom units (5), 42% two-bedroom units (5) and 16% three-bedroom units. The proposal provides a reasonable unit mix and is generally

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consistent with the numerical requirement.

Control 4 of section 4.5.1 of The Rockdale Development Control Plan 2011 requires that for residential flat buildings with between 10 - 30 dwellings contain at least 2 adaptable dwellings. The proposal incorporates two (2) adaptable units (G.3, 3.3) out of a total of twelve (12). The proposal is consistent with control 4.

The proposal satisfies the requirements of Part 4.5 of the RDCP 2011.

4.5.2 Social Equity - Equitable Access

None of the apartments have barriers to entry. The proposal is compliant with control 1 of section 4.5.2.

4.6 Parking Rates Residential Flat Buildings

All parking is to be located within the underground car park. There area a total of seventeen (17) car parking spaces as well as a motorcycle bay and bicycle storage area. There are two accessible car parks.

The required parking rates area as follows:

Dwelling size	Required	Provided	Compliance
A total of ten	1 space per	10	Yes
(10) one and two	unit = 10		
bedroom	spaces		
apartments			
Two (2) Three	2 spaces per	4	Yes
bedroom apartments	unit = 4 spaces		
Visitor Parking	1 space / 5	3	Yes
	dwellings		
Car wash bay / van space for loading and unloading (can be shared with visitor spaces)	1	1	Yes
Total	17	17	Yes

4.6 Car Park Location and Design

Access to parking is provided by a single lane driveway leading from Park Road into the underground car-park. Access to the basement is provided via lift and stairwell. It is proposed that a condition of consent require a traffic management system to be designed for the basement ramp to provide for priory one-way access on the 3.6m wide ramp that provides for access in both directions. The system is to be able to detect the location of vehicles and designate priority to vehicles entering the basement form Park Road using a traffic light system. The proposed system is to be submitted and approved by Council prior to the issue of the Construction Certificate and included in the proposal. Councils Development Engineer has assessed the proposed parking arrangement and provided support.

Provided the above condition is adheard to the proposal is satisfactory in relation to the provisions of

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this clause

4.6 Vehicles Enter and Exit in a Forward Direction

The underground car park provided adequate manoeuvring areas to allow vehicles to enter and exit in a forward direction. Council's development engineer has assessed the proposal and has found that the proposal includes adequate manoeuvring areas for vehicles to enter and exit the site. The proposal is consistent with the requirements of this clause.

4.6 Basement Parking - General

Access to the underground car-park is provided by a single driveway from Queen Street. Access to the basement car park is provided via a lift and stairwell. No part of the underground car park protrudes above the ground level. The proposal is satisfactory in relation to the provisions of this clause.

4.6 Driveway Widths

The proposed driveway width complies with Council's Technical Specifications and hence satisfies the provisions of this Clause.

4.6 Traffic - Classified Roads

Vehicle access to the facility is via Park Road which is a local road and not a classified road. As the proposal is located directly adjacent to Rocky Point Road which is a classified road the proposal was referred to the Roads and Maritime Services for comment. The Roads and Maritime Services provided support for the proposal subject to conditions.

4.6 Basement Parking - Residential Flat Buildings

All vehicle parking is provided within an underground car park with access off Park Road.

4.6 Access to Parking

There are three (3) visitor parking spots located within the basement level. A condition of consent will require intercom facilities to be installed into entry/exit points to enable residents to communicate and identify with people prior to admitting them to the development. Parking spaces for people with disabilities are located close to lifts and access stairs. The proposal is satisfactory in regards to the provisions of this clause.

4.6 Design of Loading Facilities

The proposal incorporate visitor parking spaces within the basement which can be utilised for the loading and unloading of goods. The bay is isolated from pedestrian and vehicular movements. The proposal is satisfactory in regards to the controls in this clause.

4.6 Car Wash Facilities

A condition of consent will require one of the visitor parking bays to act as a dual car wash and service bay. A tap will be required as well as a fixed sign saying 'Visitor Car Space and Car Wash Bay'. The runoff shall be be directed and treated as per Rockdale Technical Specification Storm water Management. Provided the above condition is adhered to the proposal is satisfactory in regards to the controls in this clause.

4.6 Pedestrian Access and Sustainable Transport

There is a pedestrian access to the development from Rocky Point Road. All vehicle access is separated from pedestrian access. Access to basement vehicle parking is provided via a lift and stairwell from the common circulation areas from the ground to rooftop level. The basement provides a

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secure designated area for bicycle parking.

4.7 Air Conditioning and Communication Structures

The BASIX certificate shows that each unit is to have air conditioning however the plans do not depict the location of proposed residential air conditioning units on site. Accordingly, a condition is imposed on the draft Notice of Determination requiring air conditioning units to be obscured from public view should they be provided. Subject to conditions, the development is acceptable with regards to this Clause

4.7 Waste Storage and Recycling Facilities

The proposal has a designated waste storage room located in the basement. Council's Waste Management Officer has assessed the proposal against Council's Technical Specification - Waste Minimisation and Management and has provided support.

4.7 Service Lines/Cables

Ausgrid were notified of the proposal and have provided support subject to conditions. The conditions have been incorporated into the notice of determination.

4.7 Laundry Facilities and Drying Areas

Each unit has a designated laundry area with a space for a washing machine and sink.

4.7 Hot Water Systems

The BASIX certificate states that each unit will have an instantaneous hot water however no details are shown on the plans. A condition is included on the consent which requires hot water systems on balconies to dwellings to be encased in a recessed box with the lid/cover designed to blend with the building. All associated pipe work is to be concealed. Subject to conditions, the proposed development is acceptable with regards to this Clause.

5.2 RFB - Site Coverage

The building footprint has been calculated be 301 square metres over a site area of 884.5 square metres or 34% of the site. The maximum permitted building footprint is 35% which the proposal complies with.

5.2 RFB Front Setback

Street setbacks are required 'to be consistent with the prevailing setback along the street within the range of 3-9m. The front setback for the site is towards Rocky Point Road. The site is located where street setbacks transition from lower setbacks on the northern side of Rocky Point Road which is a commercial area. To the south of the is a lower density residential dwellings which have a higher setback. The building to the left side opposite of Park Road is 362 Rocky Point Road. This building is built to the street and has an has no setback. The adjoining residential flat building on the right side is 374 Rocky Point Road which has a setback of 11 metres. The next dwellings at 376 and 378 Rocky Point Road have a setbacks to Rocky Point Road of approximately 4 metres. The proposal has a setback to Rocky Point Road of 3 metres. The proposal provides an appropriate transition between the setbacks for the buildings to the north of the site along Rocky Point Road and buildings in the south. The setback provides and adequate area for landscaping and open space towards Rocky Point Road and is constant with the street as required by part 5.2 of the Development Control Plan.

5.2 RFB - Side Setbacks

The proposal has a side setback to the southern boundary of 7.38 metres. The minimum side setback

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is 4.5 metres for all level for building with more than three storeys. The side setback complies

5.2 RFB - Rear Setbacks

The rear boundary is irregular in shape being an 'L' shape. A six (6) metre setback from the building to the boundary is maintained. The Development Control Plan requires a 12 metre rear setback of 15% of the length of the site, whichever is the greater. The depth of the allotment at its wider part is 23.4 metres. 15 percent of this is 3.5 metres.

The proposal does not strictly comply with the minimum required rear setback of 12 metres as specified by the DCP and in this regard a merit assessment has been undertaken. The layout on the allotment is unique in that it is a corner allotment that is rectangular in shape and has a longer allotment boundary along its primary frontage to Rocky Point Road (44.44 metres) than its side boundary (24.545 metres). A 12 metre setback would account for almost half of the allotment width and would result in a development layout which is incongruous. Given the constraints of the site the proposed rear setback in acceptable.

5.2 RFB Secondary Street/Laneway Setback

The proposal has a Secondary Street setback to Park Road. The distance is 6.1 metres. The minimum required secondary street setback is 3 meters. The secondary street setback is compliant.

5.2 RFB - Building Design

With regards to the controls in this section the following comments are made:

6. Façade design must respond to environmental conditions such as orientation, noise, breezes, privacy and views, through the use of appropriate sun shading devices, noise barriers, privacy screens, and the careful location of balconies, terraces and loggias.

The facade has been designed with regards to environmental conditions. Open balconies are featured on the facade towards Rocky Point Road and Park Road. All windows on the facade feature precast concrete sunshades. The component of the building facing into 374 Rocky Point Road has been designed with due regards to the privacy of the building. All windows on this elevation feature sun and privacy louvres.

- 7. Strengthen the relationship of the building with the street through the use of entry lobbies, entry porches, loggias, balconies, bay windows.
- The proposal has an entry facing Rocky Point Road. The entrance features a sun shade structure and seating.
- Solid balustrading should be included in the facade design to provide screening of clothes line and other paraphernalia.

All balconies have solid balustrades.

- 9. The design should consider expressing a hierarchy of floor levels by defining a base, middle, and top to the building, including podium and penthouse expression.
- The design does not express a hierarchy of floor levels but does include varying window height and lengths to the facade to avoid a monotonous appearance. The facade is also broken up horizontally by a having a core recessing in to the building essential breaking up the building into two components. This improves the presentation to Rocky Point Road.
- 10. Large expanses of blank walls are to be avoided through the use of architectural design features,

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modelling and fenestration.

The proposal does not include any areas of blank walls.

11. The building line of a street wall building should generally be parallel with the street boundary alignment.

The building and any walls associated with the building are generally parallel with the street boundary.

12. Private open space elements such as balconies should be predominantly north, east and west facing and should be designed to ensure visual and acoustic privacy.

Balconies are located on the Rocky Point Road and Park Road frontage facing west and north. No balconies face into adjoining dwellings.

13. Express important corners by giving visual prominence to parts of the façade through a change in building articulation, material, colour, roof expression or increased height.

The proposal has a corner between Rocky Point Road and Park Road. The presentation of this corner is acceptable in the context of the overall building design.

- 14. Existing residential flat buildings with no existing balcony enclosures are not permitted to enclose any balcony. Applications for balcony enclosures may only be considered when the enclosures are: a. integrated with a design for the entire building; and
- b. improve internal amenity through environmental control.

No balconies are to be enclosed. This is a new building.

- 15. All external plumbing must be recessed or concealed and all internal plumbing must be ducted or concealed. Copper pipes must be exclusively used between the meter and service points.
 A condition of consent will require all plumbing to be contained within within the brickwork of the building. Details demonstrating compliance with this requirement shall be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.
- 16. All proposed staircases to the upper levels of buildings must be internal. Amended plans have been received which have internal stairs to all staircases to the upper levels.
- 17. Façade fixtures such as sun shading devices and blade walls should not be the only means of façade modelling, and must instead be integrated with the overall facade composition to add another layer of detail and interest.

The facade contains varied features and is supported by the design review panel.

18. The selection and mix of building materials must complement the overall composition and emphasise the scale, proportion and rhythm of the façade. Heavy materials such as brick, stone and concrete can provide a solid building base or express key elements, whilst lighter materials such as glazing, cladding and lightly coloured rendered surfaces reduce perceived bulk and add relief to the

The composition of the facade has been considered by the design review panel and has been found to be acceptable.

19. The floor level of the upper most storey must be at least 3.5m below the maximum permitted height to achieve a variety of roof forms.

The floor level of all upper most storeys is lower than the maximum permissible building height by 3.5 metres throughout the building.

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20. Use the roof level for communal purposes or articulate the upper storeys, with differentiated roof forms, maisonettes or mezzanine penthouses and the like

The roof-level is utilised for communal open space.

21. Plant rooms, lift overruns and mechanical ventilation rooms must not be located on the roof of a building where they can be visible from a public place. Such services must be integrated into the design of the building, or alternatively located in the basement of the building.

A waste room is located in the basement and a service room is located on the rooftop level.

22. The profile and silhouette of parapets, eaves and roof top elements must be considered in roof design.

The profile of the roof is appropriate.

23. The roof design must be sympathetic to the existing streetscape, and have regard to existing parapet and roof lines of adjoining properties that are of a similar building height.

The adjoining building at 374 Rocky Point Road has a forth (4) floor at approximately the same height as the proposed building. The roof line is similar in height to the adjoining flat building. The roof line has due regards to the roof lines of adjoining properties.

5.2 RFB - Building Entry

The following comments are made with regards to the controls under 5.2 Building Entry:

- 24. The entry is to be designed so that it is a clearly identifiable element of the building in the street. The building entrance along Rocky Point Road has been made clearly identifiable by creating an opening which differs from the surroundings and is highlighted by the building articulation.
- 25. Utilise multiple entries main entry plus private ground floor apartment entries to activate the street edge. At least 50% of ground floor dwellings are to have individual gates and direct access off the street.

Ground floor units adjacent to the street have direct access to the street from the private courtyards.

- 26. Provide as direct a physical and visual connection as possible between the street and the entry. Physical entry to the building is directly from the street.
- 27. At least one main entry with convenient, barrier-free access must be provided in all new development.

The main entry is barrier free.

- 28. Provide separate entries from the street for:
- · pedestrians and cars; and
- different users, for example, for residential and commercial users in a mixed use development.
 Pedestrian and vehicle entrances are separated.
- 29. Design entries and associated circulation space of an adequate size to allow movement of furniture between public and private spaces.

The lobby has a width of 2 metres. All circulation areas are of a suitable width for the circulation of furniture.

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30. Pedestrian entries should be located on primary frontages. The pedestrian entrance is located on the primary frontage.

5.2 RFB - Lift Size and Access

The proposal has been assessed against the following controls.

31. Lifts are to be provided in all residential flat buildings. Multiple stairlift cores should be provided to encourage multiple street entries and ease of access to apartments. Where units are arranged off a double-loaded corridor, the number of units accessible from a single core/corridor should be limited to 8.

All apartments have access to the lift core which is central to the building.

32. Lift cars are to have minimal internal dimensions of 2.1m x 1.5m, capable of carrying stretchers, with lift door openings wide enough to enable bulky goods (white goods, furniture etc) to be easily transported.

A condition will be incorporated into the consent requiring the lift car to be a minimum width of 2.1 metres by 1.5 metres.

33. Lifts are to be accessible from all levels of the building, including all basement levels. Level access to the lift from all basement levels must be provided.

The lift is available to all levels of the building including basement.

- 34. Each dwelling on a level above the sixth storey is to have access to two lifts. The proposal is limited to four (4) storeys in height plus rooftop terrace.
- 35. All common corridors are to have a minimum width of 2 metres to enable bulky goods (white goods, furniture etc) to be easily transported through the building.

The common corridors have a width of 1.8 and 1.85 metres. The corridors do no strictly comply with numerical requirements, however they are considered to be of sufficient width to allow bulky goods and furniture to be moved around.

36. All common corridors are to be provided with natural light and ventilation where feasible. The common corridors for the building is located within a central core of the building which has glazing along both elevations. It is anticipated that there will be sufficient light and ventilation to the common corridors.

S4.15(1)(a)(iv) - Provisions of regulations

All relevant provisions of the Regulations have been taken into account in the assessment of this proposal.

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

Potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls. The impacts that have not already been addressed are as follows:

Natural Hazards

The property is affected by the provision of surface flows however, excavation for the proposed dwelling is not deep enough to cause any adverse impact on the direction of the surface flows.

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There are no specific issues relating to the BCA in the proposed design.

Site and safety measures to be implemented in accordance with conditions of consent and Workcover Authority guidelines/requirements.

S4.15(1)(c) - Suitability of the site

The relevant matters pertaining to the suitability of the site for the proposed development have been considered in the assessment of the proposal. Additional conditions of consent are proposed to further minimise any impacts on neighbouring properties. There are no known major physical constraints, environmental impacts, natural hazards or exceptional circumstances that would hinder the suitability of the site for the proposed development.

S4.15(1)(d) - Public submissions

The development has been notified in accordance with the provisions of Rockdale DCP 2011. Council did not receive any submissions on this proposal.

S4.15(1)(e) - Public interest

The proposal has been assessed against the relevant planning policies applying to the site having regard to the objectives of the controls. As demonstrated in the assessment of the development application, the proposal will allow the development of the site in accordance with its environmental capacity. The proposed building is a high quality building that will add architectural value to the existing streetscape. Furthermore, the proposal does not create unreasonable impacts on surrounding properties. As such it is considered that the development application is in the public interest.

S7.11 Contribution towards provision or improvement of amenities or services

A Section 7.11 Contribution Payment of \$64,417.35 is payable in accordance with Council's Policy and accordingly, imposed as a condition on the draft Notice of Determination.

Civil Aviation Act, 1988

The site is within an area that is subject to the Civil Aviation (Building Controls) Regulations 1988 made under the Civil Aviation Act, 1988.

Civil Aviation (Building Control) Regulations 1988

The Regulations require a separate approval from the Civil Aviation Safety Authority if a building or structure exceeds a prescribed height limit.

Section 6 Prohibition of the construction of buildings of more than 150 feet in height in certain areas

The proposed development is affected by the 45.72 m Building Height Civil Aviation Regulations, however the proposed building height at 14.6m will have minimal impact upon the height requirement in the regulations.

Schedule 1 - Draft Conditions of consent

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General Conditions

The following conditions restrict the work to the detail provided in the Development Application and are to ensure that the development is complete.

- The term of this consent is limited to a period of five (5) years from the date of the original approval. The consent will lapse if the development does not commence within this time.
- The development must be implemented substantially in accordance with the plans listed below, the application form and on any supporting information received with the application, except as may be amended in red on the attached plans and by the following conditions.

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- All new building work must be carried out in accordance with the provisions of the Building Code of Australia (BCA).
- A Construction Certificate must be obtained from Council or an Accredited Certifier prior to any building work commencing.
- The development must be implemented and all BASIX commitments thereafter maintained in accordance with BASIX Certificate Number (824597M_02) other than superseded by any further amended consent and BASIX certificate.
 Note: Clause 145(1)(a1) of the Environmental Planning & Assessment Regulation 2000 provides: A certifying authority must not issue a construction certificate for

building work unless it is satisfied of the following matters:

 (a1) that the plans and specifications for the building include such matters as each relevant BASIX certificate requires.

Note: Clause 154B(2) of the Environmental Planning & Assessment Regulation 2000 provides: "A certifying authority must not issue a final occupation certificate for a BASIX affected building to which this clause applies unless it is satisfied that each of the commitments whose fulfilment it is required to monitor has been fulfilled." Note: For further information please see http://www.basix.nsw.gov.au.

- This approval is not to be construed as permission to erect any structure on or near a boundary contrary to the provisions of the Dividing Fences Act.
- Parking spaces shall be allocated to residential apartments / non-residential units in the development in the following manner and this shall be reflected in any subsequent strata subdivision of the development:

Allocated Spaces

Studio apartments, 1 bedroom apartments and 2 bedroom apartments 1 space per apartment

3 bedroom apartments and 3+ bedroom apartments 2 spaces per apartment

Non-Allocated Spaces

Residential Visitor Spaces 1 space per 5 apartments

Parking calculations that are not whole numbers must be rounded up to the nearest whole number.

All residential visitor spaces, car wash bays and loading bays shall be labelled as common property on the final strata plan for the site.

Note: This parking allocation condition applies to any Strata Certificate issued with respect to a Consent issued in accordance with Section 4.18(1)(A) of the *Environmental Planning and Assessment Act 1979* or a Complying Development Certificate issued in accordance with Part 6 of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.*

 Stormwater works area to be undertaken in accordance with the Stormwater Management Report prepared by IGS Integrated Group Services titled '368 Rocky Point Road - Stormwater Management Report' dated 28 July 2017.

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Development specific conditions

The following conditions are specific to the Development Application proposal.

- The use of the premises, building services, equipment, machinery and, ancillary fittings shall not give rise to an "offensive noise" as defined under the provisions of the Protection of the Environment Operations Act, 1997.
- The use of mechanical plant including air conditioners, fans, compressors, condensers, freezers, swimming pool or spa pumps (whether commercial or domestic) shall not cause sound pressure levels in excess of the criteria given in the NSW Industrial Noise Policy – 2000.
- 11. Residential air conditioners shall not cause 'offensive noise' as defined by the Protection of the Environment Operations Act 1997 or contravene provisions of the Protection of the Environment (Noise Control) Regulation 2008 where emitted noise from a residential air conditioner can be heard within a habitable room in any other residential premises at night.
- 12. Temporary dewatering of the site to enable the construction of the subsurface structure shall not be carried out unless a permit has been issued pursuant to the Water Management Act 2000, and, in the case where water is to be pumped into the public road, a permit has been issued pursuant to the Roads Act 1993.
- 13. Bicycle parking facilities shall be designed in accordance with AS2890.3:1993.
- The off-street parking areas associated with the subject development shall be designed strictly in accordance with AS2890.1 and AS2890.6.
- Internal height clearance shall be designed throughout the car park and access driveway in accordance with AS2890.1 and AS2890.6.
- 16. All existing and proposed lights shall comply with the Australian Standard AS4282 1997 "Control of the Obtrusive Effects of Outdoor Lighting". In this regard, the lighting of the premises shall be directed so as not to cause nuisance to the owners or occupiers of adjacent/adjoining premises or to motorists on adjoining or nearby roads.
- 17. The development shall be insulated to achieve an Acoustical Star Rating of 5 in accordance with the standards prescribed by the Association of Australian Acoustical Consultants (AAAC). A report prepared by a consultant accredited by the AAAC demonstrating that the proposal meets the requirements is to be prepared and submitted to the principal certifying authority prior to issue of the Construction Certificate.
- 18. The development shall have an impact isolation between floors which achieves an Acoustical Star Rating of 5 in accordance with the standards prescribed by the Association of Australian Acoustical Consultants (AAAC). A report prepared by a consultant accredited by the AAAC demonstrating that the proposal meets the requirements is to be prepared and submitted to the principal certifying authority prior to issue of the Construction Certificate.
- (a) In order to ensure the design quality I excellence of the development is retained:
 - A registered architect is to have direct involvement in the design documentation, contract documentation and construction stages of the project;
 - The design architect is to have full access to the site and is to be authorised by the applicant to respond directly to the consent authority

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- where information or clarification is required in the resolution of design issues throughout the life of the project;
- Evidence of the design architect's commission is to be provided to Bayside Council prior to issue of the Construction Certificate.
- (c) The design architect of the project is not to be changed without prior notice and approval of Bayside Council.
- Stormwater and drainage systems are not to be located in, or under those areas shown as landscaped beds, or where existing or proposed trees are located.
- Podium landscaping and paved areas shall be drained into the stormwater drainage system. All waterproofing for planters on slab shall be installed and certified by a licensed waterproofing contractor.
- All pavements shall comply with AS/NZ 4586:1999 standards Class W (low) for slip resistance on both private and Council property.
- The approved completed landscape works shall be maintained for a period not less than 12 months.

On completion of the maintenance period, a Landscape Architect shall provide a report to the certifying authority (with a copy provided to Council if Council is not the principal certifying authority) stating the landscape maintenance has been carried out in accordance with approved landscape plans and designated specifications before release of the nominated landscape bond.

- 24. Prior to Issue of Construction Certificate the landscape plan approved under condition 2 are to be amended to the satisfaction of the Principal Certifier addressing the following issues:
 - (1) All plant species that are not groundcovers, shrubs and trees shall be shown on plans as a planting plan, in the right location and scale.
 - (2) Private terraces of G2 and G3 shall address privacy issues. Screen planting shall be provided in deep soil (G3) or in built in planter boxes over slab (in the case of Northern area of G2).
 - (3) To ensure growth of tree in shade area replace one Banksia integrifolia with one (1) Tristaniopsis laurina in south-east corner.
 - (4) Planting Type 2, screen planting shall include some trees like, Elaeocarpus reticulatus and Waterhousia floribunda, to be positioned in strategic location to ensure screening of living areas of upper levels of proposed development.
 - (5) Planter bed along western boundary (Rocky Point Road) shall provide a larger planting to ensure a strong level of screening and shade. Planting shall include screen planting and some trees in order to provide privacy to ground units, shade to ground and upper floors, and general amenity.
 - (6) Include one (1) Corymbia eximia (Yellow Bloodwood) in south- western area adjacent to Rocky Point Road, or similar tree to reach a minimum of ten meters height to provide amenity and mitigate the bulk of built form proposed.
 - (7) Terrace Common Open Space. Southern roof terrace shall include a planter box minimum 700mm wide to provide screen planting. Roof terrace planting shall include trees in built in planter boxes, or climbers with pergola in terrace

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- area, to provide a share area of use to the residents in BBQ area.
- (8) Specifications of planter bed depth on top of OSD shall be indicated in landscape plan. Depth shall be able to sustain all species proposed in plant mix 3.
- (9) All landscape areas, including planters on slab shall be automatic irrigated and linked to the stormwater drainage system as a WSUD principle.
- (10) Planter boxes constructed over a concrete slab shall be built in accordance with the Apartment Design Guide.

Ensure the soil depth can sustain the proposed planting:

Trees over 8 meters

Minimum soil volume 150 cubic metres

Minimum soil depth 1.3 metre

Medium trees (8 metre canopy diameter at maturity)

Minimum soil volume 35 cubic metres

Minimum soil depth 1 metre

Small trees (4 metre canopy diameter at maturity)

Minimum soil volume 9 cubic metres

Minimum soil depth 800mm

Shrubs

Minimum soil depths 500-600mm

Groundcover

Minimum soil depths 300-450mm

Any subsurface drainage requirements are in addition to the minimum soil depths quoted above

- (11) Frontage works application shall be submitted to council prior issue of Construction Certificate. Frontage works consists of Civil and Landscape works. Landscape works shall include planting along Park Road, (LGA managed road) with two (2) Lophostemon confertus, (Brush Box) along Park Road as per Rockdale Street Tree Master Plan. Planting along Rocky Point Road, (State Road, RMS managed road) verge strip shall be planted with five (5) Magnolia grandiflora, (Magnolia) as per Rockdale Street Tree Master Plan
- Privacy measures are to be maintained for the life of the development and not removed without prior Council consent including the following:

 -Privacy louvers on the eastern elevation.
 -Planter garden bed for unit 3.3.
- 26. Internal lift dimensions are to be a minimum size of 2.1m x 1.5m.
- 27. Deep soil along the eastern elevation is to continue along the existing ground height.
- Intercom facilities shall be installed into entry/exit points to enable residents to communicate and identify with people prior to admitting them to the development.
 This includes access to the basement visitor car-parks.
- Ceiling heights for all habitable areas shall be a minimum of 2.7 metres as measured vertically from finished floor level to the underside of the ceiling.

Ceiling heights for all non-habitable areas shall be a minimum of 2.4 m as measured vertically from finished floor level to the underside of the ceiling.

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Prior to issue of the construction certificate

The following conditions must be completed prior to the issue of the Construction Certificate

- 30. The following fees shall be paid to Council prior to the issue of a Construction Certificate. If payment is made after the end of the financial year, the amount shall be adjusted in accordance with Council's adopted fees and charges.
 - i. A Footpath Reserve Restoration Deposit of \$36,184.00. This is to cover repair of any damages, or other works to be done by Council. This includes construction, removal, or repair as required to: kerb and guttering, existing or new driveways; paved areas and concrete footpaths. The deposit may be lodged with Council in the form of a Bank Guarantee (Any proposed Bank Guarantee must not have an expiry date). The deposit will not be returned by Council until works are completed and all damage is restored and all specified works are completed by Council.
 - An environmental enforcement fee of 0.25% of the cost of the works.
 - iii. A Soil and Water Management Sign of \$18.00.
- For work costing \$25,000 or more, a Long Service Leave Levy shall be paid. For further information please contact the Long Service Payments Corporation on their Helpline 13 1441.
- 32. An application for Driveway Works (Public Domain Construction Vehicle Entrance/Driveway Application) / Frontage Works (Public Domain Frontage Works Construction Application) shall be made to Council's customer Service Centre prior to issue of the Construction Certificate. All boundary frontage works, egress paths, driveways and fences shall comply with the approval. A fee is payable to Council. If payment is made after the end of the financial year, the amount shall be adjusted in accordance with Council's adopted fees and charges.
- 33. A Section 94 contribution of \$64,417.35 shall be paid to Council. Such contributions are only used towards the provision or improvement of the amenities and services identified below. The amount to be paid is adjusted at the time of payment, in accordance with the contribution rates contained in Council's current Adopted Fees and Charges. The contribution is to be paid prior to the issue of the construction certificate for works above the floor level of the ground floor. (Payment of the contribution is not required prior to any separate construction certificates issued only for demolition, site preparation works and the construction of basement levels). The contribution is calculated from Council's adopted Section 94 contributions plan in the following manner:

Child Care Services \$353.78

Community Services \$378.99

Library Services \$5121.65

Sans Souci Regional Open Space Fund \$9489.64

Sans Souci Local Open Space Fund \$15,009.36

Sans Souci Local Open Space Fund \$9031.05

Sans Souci Local TC & Streetscape Fund \$1,339.94

Sans Souci City Wide TC & Streetscape Fund \$1686.87

Sans Souci Pollution Control Management \$8682.00

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Sans Souci Administration & Management \$386.99 Sans Souci Local Infrastructure and Facilities \$12,937.08

Copies of Council's Section 94 Contribution Plans may be inspected at Council's Customer Service Centre, Administration Building, 444-446 Princes Highway, Rockdale.

34. Prior to the issue of the Construction Certificate, the approved plans must be submitted to Sydney Water Tap in™ online service to determine whether the development will affect any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met.

Sydney Water's Tap in[™] online service is available at: https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydneywater-tap-in/index.htm

- 35. The subsurface structure shall be designed with a waterproof retention system (ie tanking and waterproofing) with adequate provision for future fluctuation of the water table if the subsurface structure is below the ground water table. The subsurface structure is required to be designed with consideration of uplift due to water pressure and "flotation" (buoyancy) effects. Subsoil drainage around the subsurface structure must allow free movement of groundwater around the structure, but must not be connected to the internal drainage system. The design of subsurface structure, tanking and waterproofing, and subsoil drainage shall be undertaken by a suitably experienced Chartered Professional Engineer(s). Design details and construction specifications shall be included in the documentation accompanying the Construction Certificate.
- 36. a stormwater pit is be constructed over Council Stormwater pipe to facilitate the property connection. The pit can be located within the driveway layback with a butterfly grate to Council specifications.
- 37. Prior to the issue of the Construction Certificate, the design and construction of the off-street car & bicycle parking facilities shall comply with Australian Standard AS 2890 parking series and shall certified accordingly by a suitably qualified engineer. In addition to that the following shall be addressed
 - (a) A loading and unloading facility is to be provided via a combined visitor and loading and unloading parking space. The Loading and unloading within the site shall be designed and be restricted to a B99 vehicles not exceeding.
 - (b) Car Wash Bay The required car wash bay shall be a minimum 3.5m wide and shall be signposted and appropriately line- marked to state that this space shall be used as a car wash bay.
 - (c) Parking spaces must not be enclosed without further approval of Council. The enclosure of car spaces is not permitted unless the enclosure complies with the design requirements of AS2890.1.2004.
 - (d) The longitudinal profile of the access and any ramps within the parking facilities must comply with the Ground Clearance and headroom requirements of the Standard.
 - (e) The car parking facilities must be appropriately line marked and signposted in accordance with the requirements of Section 4 of AS/NZS2890.1-2004.

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- 38. A visitor car space shall also operate as a car wash bay. A tap shall be provided. A sign shall be fixed saying 'Visitor Car Space and Car Wash Bay'. The runoff shall be directed and treated as per Rockdale Technical Specification Stormwater Management. Details shall be provided with the plans accompanying the Construction Certificate.
- 39. All surface runoff shall be directed through a propriety oil and sediment filtration system prior to discharge. Details of the pit type, location, performance and manufacturer's maintenance and cleaning requirements shall be submitted and approved prior to the issue of the construction certificate.
 - The owners/occupiers are to undertake all future maintenance and cleaning to the manufacturer's requirements.
- 40. Prior to the issue of the Construction Certificate, detailed drainage design plans for the management of stormwater are to be submitted to Principal Certifying Authority for assessment and approval. Design certification, in the form specified in Rockdale Technical Specification Stormwater Management, and drainage design calculations are to be submitted with the plans. Council's Rockdale Technical Specification Stormwater Management sets out the minimum documentation requirements for detailed design plans. Stormwater management requirements for the development site, including the final discharge/end connection point, must comply with Rockdale Technical Specification Stormwater Management.
- 41. The recommendations contained within acoustic report titled '368 Rocky Point Road Traffic Noise Intrusion' prepared by Wilkinson Murray dated May 2017 are to be including on the construction plans and approved by the principal certifying authority.
- 42. A traffic management system is to be designed for the basement ramp to provide for priory one-way access on the 3.6m wide ramp that provides for access in both directions. The system is to be able to detect the location of vehicles and designate priority to vehicles entering the basement form Park Road using a traffic light system. The proposed system is to be submitted and approved by Council prior to the issue of the Construction Certificate and included in the proposal. The system is to be maintained for the life of the development.

Prior to commencement of works

The following conditions must be completed prior to the commencement of works.

- 43. A dilapidation survey shall be undertaken of all properties and/or Council infrastructure, including but not limited to all footpaths, kerb and gutter, stormwater inlet pits, and road carriageway pavements, in the vicinity which could be potentially affected by the construction of this development. Any damage caused to other properties during construction shall be rectified. A copy of the dilapidation survey and an insurance policy that covers the cost of any rectification works shall be submitted to the Accredited Certifier (AC) or Council prior to Commencement of Works. The insurance cover shall be a minimum of \$10 million.
- 44. A Soil and Water Management Plan shall be prepared. The Plan must include details of the proposed erosion and sediment controls to be installed on the building site. A copy of the Soil and Water Management Plan must be kept on-site at all times and made available on request.

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

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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.

Council's warning sign for soil and water management must be displayed on the most prominent point on the building site, visible to both the street and site workers. The sign shall be erected prior to commencement of works and shall be displayed throughout construction.

45. A Construction Management Plan (CMP) shall be prepared in accordance with the requirements of all relevant regulatory approval bodies. Access to the site for construction purposes via rocky point Road is not permitted. Prior to the commencement of works the Certifying Authority shall be satisfied that the Construction Management Plan has obtained all relevant regulatory approvals. The Construction Management Plan shall be implemented during demolition, excavation and construction.

Prior to the issue of the relevant Construction Certificate, a Construction Traffic Management Plan (TMP) prepared by a suitably qualified person shall be submitted to and approved by the Certifying Authority. The Plan shall address, but not be limited to, the following matters:

- (a) ingress and egress of vehicles to the site;
- (b) loading and unloading, including construction zones;
- (c) predicted traffic volumes, types and routes; and
- (d) pedestrian and traffic management methods.
- Copies of the CMP and TMP shall be submitted to Council.
- 46. Vibration monitoring equipment must be installed and maintained, under the supervision of a professional engineer with expertise and experience in geotechnical engineering, between any potential source of vibration and any building identified by the professional engineer as being potentially at risk of movement or damage from settlement and/or vibration during the excavation and during the removal of any excavated material from the land being developed.

If vibration monitoring equipment detects any vibration at the level of the footings of any adjacent building exceeding the peak particle velocity adopted by the professional engineer as the maximum acceptable peak particle velocity an audible alarm must activate such that the principal contractor and any sub-contractor are easily alerted to the event.

Where any such alarm triggers all excavation works must cease immediately. Prior to the vibration monitoring equipment being reset by the professional engineer and any further work recommencing the event must be recorded and the cause of the event identified and documented by the professional engineer.

Where the event requires, in the opinion of the professional engineer, any change in work practices to ensure that vibration at the level of the footings of any adjacent building does not exceed the peak particle velocity adopted by the professional

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engineer as the maximum acceptable peak particle velocity these changes in work practices must be documented and a written direction given by the professional engineer to the principal contractor and any sub-contractor clearly setting out required work practice.

The principal contractor and any sub-contractor must comply with all work directions, verbal or written, given by the professional engineer.

A copy of any written direction required by this condition must be provided to the Principal Certifying Authority within 24 hours of any event.

Where there is any movement in foundations such that damaged is occasioned to any adjoining building or such that there is any removal of support to supported land the professional engineer, principal contractor and any sub-contractor responsible for such work must immediately cease all work, inform the owner of that supported land and take immediate action under the direction of the professional engineer to prevent any further damage and restore support to the supported land.

Note: Professional engineer has the same mean as in Clause A1.1 of the BCA.

Note: Building has the same meaning as in section 4 of the Act i.e. "building includes part of a building and any structure or part of a structure".

Note: Supported land has the same meaning as in section 88K of the Conveyancing Act 1919

- 47. A sign must be erected at the front boundary of the property clearly indicating the Development Approval Number, description of work, builder's name, licence number and house number before commencement of work. If owner/builder, the Owner/Builder Permit Number must be displayed.
- 48. Where it is necessary to import landfill material onto the site to fill the land to levels shown on the plans forming part of the consent, a certificate, prepared by a suitably qualified and experienced Contaminated Land Consultant, shall be submitted to Council being the Regulatory Authority prior to the commencement of works, certifying that the imported fill is suitable for the land use.
- The site shall be secured by a 1800 mm (minimum) high temporary fence for the duration of the work. Gates shall be provided at the opening points.
- 50. Toilet facilities must be available or provided at the work site before works begin and must be maintained until the works are completed at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site.

During demolition / excavation / construction

The following conditions must be complied with during demolition, excavation and or construction.

- A copy of the Construction Certificate and the approved plans and specifications
 must be kept on the site at all times and be available to Council officers upon
 request
- Hours of construction shall be confined to between 7 am and 6.30 pm Mondays to Fridays, inclusive, and between 8 am and 3.30 pm Saturdays with no work being carried out on Sundays and all public holidays.
- 53. Upon inspection of each stage of construction, the Principal Certifying Authority (or other suitably qualified person on behalf of the Principal Certifying Authority) is also required to ensure that adequate provisions are made for the following measures (as

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applicable), to ensure compliance with the terms of Council's approval:

- Sediment control measures
- Provision of perimeter fences or hoardings for public safety and restricted access to building sites.
- Maintenance of the public place free from unauthorised materials, waste containers or other obstructions.
- 54. A Registered Surveyor's check survey certificate or compliance certificate shall be forwarded to the certifying authority detailing compliance with Council's approval at the following stage/s of construction:
 - After excavation work for the footings, but prior to pouring of concrete, showing the area of the land, building and boundary setbacks.
 - Prior to construction of each floor level showing the area of the land, building and boundary setbacks and verifying that the building is being constructed at the approved level.
 - Prior to fixing of roof cladding verifying the eave, gutter setback is not less than that approved and that the building has been constructed at the approved levels.
 - iv. On completion of the building showing the area of the land, the position of the building and boundary setbacks and verifying that the building has been constructed at the approved levels.
 - v. On completion of the drainage works (comprising the drainage pipeline, pits, overland flow paths, on-site detention or retention system, and other relevant works) verifying that the drainage has been constructed to the approved levels, accompanied by a plan showing sizes and reduced levels of the elements that comprise the works.
- 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.
- All contractors shall comply with the following during all stages of demolition and construction:
 - A Waste Container on Public Road Reserve Permit must be obtained prior to the placement of any waste container or skip bin in the road reserve (i.e. road or footpath or nature strip). Where a waste container or skip bin is placed in the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
 - A Road Opening Permit must be obtained prior to any excavation in the road reserve (i.e. road or footpath or nature strip). Where excavation is carried out on the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
 - A Hoarding Permit must be obtained prior to the erection of any hoarding

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- (Class A or Class B) in the road reserve (i.e. road or footpath or nature strip). Where a hoarding is erected in the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
- A Crane Permit must be obtained from Council prior to the operation of any
 activity involving the swinging or hoisting of goods across or over any part of a
 public road by means of a lift, hoist or tackle projecting over the footway.
 Permits can be obtained from Council's Customer Service Centre.
- A current Permit to Dewater or Pump Out a site must be obtained prior to the discharge of pumped water into the road reserve, which includes Council stormwater pits and the kerb and gutter. Permits can be obtained from Council's Customer Service Centre.
- 57. If groundwater is encountered during construction of the pool the pumped discharge from temporary dewatering shall be reinjected by either of the following methods:
 - Discharge to the approved absorption system for the development site, or
 - Discharge to a temporary absorption system designed and certified by a qualified Engineer. The absorption system must comply with Rockdale Technical Specification Stormwater Management and be designed for rainfall over the excavated area and the expected pump rate for the dewatering operation.
- 58. The following conditions are necessary to ensure minimal impacts during construction:
 - i. Building, demolition and construction works not to cause stormwater pollution and being carried out in accordance with Section 2.8 of Council's Stormwater Pollution Control Code 1993. Pollutants such as concrete slurry, clay and soil shall not be washed from vehicles onto roadways, footways or into the stormwater system. Drains, gutters, roadways and access ways shall be maintained free of sediment. Where required, gutters and roadways shall be swept regularly to maintain them free from sediment.
 - Stormwater from roof areas shall be linked via a temporary downpipe to an approved stormwater disposal system immediately after completion of the roof area.
 - All disturbed areas shall be stabilised against erosion within 14 days of completion, and prior to removal of sediment controls.
 - Building and demolition operations such as brickcutting, washing tools or paint brushes, and mixing mortar shall not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.
 - v. Stockpiles are not permitted to be stored on Council property (including nature strip) unless prior approval has been granted. In addition stockpiles of topsoil, sand, aggregate, soil or other material shall be stored clear of any drainage line or easement, natural watercourse, kerb or road surface.
 - Wind blown dust from stockpile and construction activities shall be minimised by one or more of the following methods:
 - a) spraying water in dry windy weather
 - b) cover stockpiles
 - c) fabric fences

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vii. Access to the site shall be restricted to no more than two 3m driveways. Council's footpath shall be protected at all times. Within the site, provision of a minimum of 100mm coarse crushed rock is to be provided for a minimum length of 2 metres to remove mud from the tyres of construction vehicles.

An all weather drive system or a vehicle wheel wash, cattle grid, wheel shaker or other appropriate device, shall be installed prior to commencement of any site works or activities, to prevent mud and dirt leaving the site and being deposited on the street. Vehicular access is to be controlled so as to prevent tracking of sediment onto adjoining roadways, particularly during wet weather or when the site is muddy. Where any sediment is deposited on roadways it is to be removed by means other than washing and disposed of appropriately.

In addition builders / demolishers are required to erect a 1.5m high fence along the whole of the street alignment other than at the two openings. Such protection work, including fences, is to be constructed, positioned and maintained in a safe condition to the satisfaction of the Principal Certifying Authority, prior to the demolition of the existing structures and commencement of building operations.

- viii. Any noise generated during construction of the development shall not exceed limits specified in any relevant noise management policy prepared pursuant to the Protection of the Environment Operations Act, 1997 or exceed approved noise limits for the site.
- 59. All existing trees located within the site may be removed.
- The management of potential and actual acid sulfate soils shall be conducted in accordance with all recommendations within the Acid Sulfate Soils Management Plan by Senversa dated 10 July 2017.
- 61. 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.
- 62. Any material containing asbestos found on site during the demolition or excavation process shall be removed and disposed of in accordance with:

 a) SafeWork 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 Operations (Waste) Regulation 2014.
 - d) NSW Environment Protection Authority Waste Classification Guidelines 2014.

Prior to issue of occupation certificate or commencement of use

The following conditions must be complied with prior to issue of the Occupation Certificate or Commencement of Use.

- An Occupation Certificate shall be obtained in relation to the approved works prior to any use or occupation of the building.
- 64. Where Council's park/reserve is damaged as a result of building work or vehicular building traffic, this area shall be restored by Council at the applicant's expense.

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Repairs shall be completed prior to the issue of the Occupation Certificate.

- 65. A by-law shall be registered and maintained for the life of the development, which requires that:
 - (a) balconies are not to be used as clothes drying areas, storage of household goods and air-conditioning units that would be visible from the public domain;
 - (b) an owner of a lot must ensure that all floor space within the lot complies with the acoustic conditions for floors specified in this consent;
 - (c) Not withstanding subclause (b), in the event that a floor covering in the lot is removed, the newly installed floor covering shall have a weighted standardized impact

sound pressure level not greater than L'nT,w 45 measured in accordance with AS ISO 140.7 and AS ISO 717.2, A test report from a qualified acoustic engineer employed by a firm eligible to membership of the Association of Australian Acoustical Consultants shall be submitted to the Owners Corporation within 14 days of the installation of the new floor covering demonstrating compliance with that standard. In the event that the standard is not complied with, the floor covering shall be removed and replaced with a floor covering that conforms to that standard in accordance with any directions given by the Owners Corporation.

Proof of registration of the By Law shall be submitted to Council prior to the issue of the Occupation Certificate.

- 66. All landscape works are to be carried out in accordance with the approved landscape plans prior to the issue of an Occupation Certificate for the approved development. The landscaping is to be maintained to the approved standard at all times.
- 67. All works within the road reserve, which are subject to approval pursuant to Section 138 of the Roads Act 1993, shall be completed and accepted by council.
- 68. The width of the double driveway at the boundary shall be a maximum of 6 metres
- All off-street car spaces shall be provided in accordance with the submitted plan and shall be sealed and line marked to The Relevant Australian Standards.
- 70. 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.
- 71. Testing and evaluation of the wall insulation system is to be carried out at post construction stage by a suitably qualified acoustical engineer to show an Acoustical Star Rating of 5 has been achieved in accordance with the standards prescribed by the Association of Australian Acoustical Consultants (AAAC) in accordance with the report submitted to the Principal Certifying Authority. If Council is not the PCA, a copy shall be submitted to Council concurrently.
- 72. Testing and evaluation of the floor system is to be carried out at post construction stage by a suitably qualified acoustical engineer to show that an Acoustical Star Rating of 5 in accordance with the standards prescribed by the Association of Australian Acoustical Consultants (AAAC) and in accordance with the report submitted to the Principal Certifying Authority. If Council is not the PCA, a copy shall be submitted to Council concurrently.
- 73. The noise reduction measures specified in the noise report prepared by Wilkinson Murray dated May 2017 titled '368 Rocky Point Road Traffic Noise Intrusion' shall be validated by a Certificate of Compliance prepared by the acoustic consultant and submitted to the Principal Certifying Authority (PCA) prior to the issue of an

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- Occupation Certificate. If Council is not the PCA, a copy shall be submitted to Council concurrently.
- 74. A Landscape Architect shall provide a report to the certifying authority (with a copy provided to Council, if Council is not the principal certifying authority) stating that the landscape works have been carried out in accordance with the approved plans and documentation.
- 75. Where applicable prior to occupation, a chartered professional engineer shall certify that the tanking and waterproofing has been constructed in accordance with the approved design and specification. A copy shall be provided to Council if council is not the Principal Certifying Authority.
- 76. Prior to occupation a Chartered Professional Engineer shall certify that the stormwater system has been constructed in accordance with the approved plans and as required by Rockdale Technical Specification Stormwater Management. The certificate shall be in the form specified in Rockdale Technical Specification Stormwater Management and include an evaluation of the completed drainage works. A works-as-executed drainage plan shall be prepared by a registered surveyor based on a survey of the completed works. A copy of the certificate and works-as-executed plan(s) shall be supplied to the Principal Certifying Authority. A copy shall be provided to Council if Council is not the Principal Certifying Authority.

Prior to issue of subdivision certificate

The following conditions must be complied with prior to the issue of the Subdivision Certificate or the Strata Certificate.

 A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Coordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

The Section 73 Certificate must be submitted to the Principal Certifying Authority prior to release of the Subdivision/Strata Certificate.

- 78. All visitor car parking spaces are to be clearly shown as common property on the Subdivision/Strata Certificate for the strata subdivision.
- 79. A positive covenant shall be provided over the on-site detention system. A Section 88B Instrument and four copies shall be lodged with the Subdivision/Strata Certificate.
- 80. Where the installation of electricity conduits is required in the footway, the builder shall install the conduits within the footway across the frontage/s of the development site, to Energy Australia's specifications. Energy Australia will supply the conduits at no charge. A Road Opening Permit must be obtained from Council prior to the installation of the conduits. The builder is responsible for compaction of the trench and restoration of the footway in accordance with Council direction. A Compliance

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- Certificate from Energy Australia shall be obtained prior to the issue of the Subdivision Certificate.
- The Granting of service easement shall be undertaken to the satisfaction of the principal Certifier.
- The rooftop terrace area is to be clearly shown as common property on the Subdivision/Strata Certificate for the strata subdivision.

Integrated development/external authorities

The following conditions have been imposed in accordance with Section 91A of the Environmental Planning and Assessment Act, 1979.

83. The following conditions are required by the Roads and Maritime Services:

Roads and Maritime Services Conditions

- 1. A Construction Traffic Management detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control should be submitted to Council prior to the issue of a Construction Certificate.
- 2. The developer is to submit design drawings and documents relating to the excavation of the site and support structures to Roads and Maritime for assessment, in accordance with Technical Direction GTD2012/001. The developer is to submit all documentation at least six (6) weeks prior to commencement of construction and is to meet the full cost of the assessment by Roads and Maritime. Details should be submitted to Suppiah Thillai: suppiah.thillai@rms.nsw.gov.au If it is necessary to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owner/s of the roadway is/are given at least seven (7) days notice of the intention to excavate below the base of the footings. The notice is to include complete details of the work.
- 3. Should the post development storm water discharge from the subject site into the Roads and Maritime system exceed the pre-development discharge, detailed design plans and hydraulic calculations of any changes are to be submitted to Roads and Maritime for approval, prior to the commencement of works on site. Details should be submitted to Suppiah Thillai: suppiah.thillai@rms.nsw.gov.au A plan checking fee will be payable and a performance bond may be required before Roads and Maritime approval is issued. With regard to the Civil Works requirement please contact the Roads and Maritime Project Engineer, External Works Ph: 8849 2114 or Fax: 8849 2766.
- 4. Roads and Maritime raises no objection to the development proposal on property grounds provided all buildings and structures, together with improvements integral to the future use of the site are wholly within the freehold property (unlimited in height or depth), along the Rocky Point Road boundary. However, proponent should be advised that the subject property is within the broad area currently under investigation for the proposed F6 Extension (F6E) Corridor. Further information about the corridor, please contact the F6 Team on 1800 789 297 or F6Extension@rms.nsw.gov.au, or by visiting http://www.rms.nsw.gov.au/projects/sydney-south/f6/index.html
- 5. Rocky Point Road is identified in the NSW Governments 2013 Sydney Clearways Strategy for a possible future clearway. Full time No Stopping restrictions are to be implemented along the full Rocky Point Road frontage of the development site. This restriction should be implemented prior to the commencement of any demolition

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works relating to the proposed development. Prior to the installation of the parking restrictions the applicant is to contact Roads and Maritime CBD & East Network and Safety Unit on phone: (02) 8849 2367, or by email

development.sydney@rms.nsw.gov.au for a works instruction. Roads and Maritime may, in the future, supplement the No Stopping restriction with Clearways.

Parking for all vehicles associated with the proposed development should be fully contained within the development site and must not encroach onto any state road Council should be satisfied that the parking provision for the proposed development

is adequate to cater for all current and future demand.
All service vehicles (including garbage collection, building maintenance vehicles and removalists), must service this property from within the development or from the local road network

- 6. All demolition and construction vehicles are to be contained wholly within the site (or on Park Road) and vehicles must enter the site before stopping. A construction zone will not be permitted on Rocky Point Road.
- 7. A Road Occupancy Licence should be obtained from Transport Management Centre for any works that may impact on traffic flows on Rocky Point Road during construction activities
- 8. All works/signposting associated with the subject development (including public utility adjustment/relocation works) shall be at no cost to Roads and Maritime.
- The following conditions area required by Ausgrid:

Ausgrid Conditions

Supply of Electricity It is recommended for the nominated electrical consultant/contractor to provide a preliminary enquiry to Ausgrid to obtain advice for the connection of the proposed development to the adjacent electricity network infrastructure. As assessment will be carried out based on the enquiry which may include whether or not:

- The existing network can support the expected electrical load of the development. - A substation may be required on-site, either a pad mount kiosk or chamber style
- Site condition or other issues that may impact on the method of supply.

The need for additional electricity conduits in the footway adjacent to the development will be assessed and documented in Ausgrids Design Information, used to prepare the connection project design.

Proximity to Existing Network Assets

There are existing overhead electricity network assets in Rocky Point Road. Safework NSW Document - Work Near Overhead Powelines: Code of Practice, outlines the minimum safety separation requirements between these mains/poles to structures within the development throughout the construction process. It is a statutory requirement that these distances be maintained throughout construction. Special consideration should be given to the positioning and operating of cranes and the location of any scaffolding.

The "as constructed" minimum clearances to the mains should also be considered. These distances are outlined in the Ausgrid Network Standard, NS220 Overhead

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Design Manual. This document can be sourced from Ausgrid's website, www.ausgrid.com.au.

Should the existing overhead mains require relocating due to the minimum safety clearances being compromise in either of the above scenarios, this relocation work is generally at the developers cost. It is also the responsibility of the developer to ensure that the existing overhead mains have sufficient clearances from all types of vehicles that are expected to be entering and leaving the site.

Underground Cables

There area existing underground electricity network assets in Park Rd. Special care should also be taken to ensure that driveways and any other construction activities within the footpath area do not interfere with the existing cables in the footpath. Ausgrid cannot guarantee the depth of cables due to possible changes in ground levels from previous activities after the cables were installed. Hence it is recommended that the developer locate and record the depth of all known underground services prior to any excavation in the area.

Should ground anchors be required in the vicinity of the underground cables, the anchors must not be installed with in 300mm of any cable, and the anchors must not pass over the top of any cable.

Safework Australia - Excavation Code of Practice, and Ausgrid's Network Standard NS156 outlines the minimum requirements for working around Ausgrid's underground cables.

Roads Act

Construction related activities must not take place on the roadway without Council
approval.

Short-term activities (including operating plant, materials delivery) that reduce parking spaces, affect access to a particular route or prevent or restrict the passage of vehicles along the road must not occur without a valid Temporary Roadside Closure Permit.

Activities involving occupation of the parking lane for durations longer than allowed under a Temporary Roadside Closure Permit require a Construction Zone Permit and must not occur prior to the erection of Works Zone signs by Council's Traffic and Road Safety Section.

Permit application forms should be lodged at Council's Customer Service Centre allowing sufficient time for evaluation. An information package is available on request.

- 86. Where applicable, the following works will be required to be undertaken in the road reserve at the applicant's expense:
 - \cdot construction of a concrete footpath along the frontage of Park Road and Rocky point Road;
 - Reinstatement of a grass verge between property line and the new footpath
 - construction of a new fully constructed concrete vehicular entrance;

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- · removal of the existing concrete vehicular entrance/s, and/or kerb laybacks which will no longer be required;
- Construction of kerb and gutter in Park Road
- Construction of Kerb in Rocky Point Road.
- · Reconstruction of Kerb Pram Ramp at the intersection of Park Road and Rocky Point Road
- 87. All footpath, or road and drainage modification and/or improvement works to be undertaken in the road reserve shall be undertaken by Council, or by a Private Licensed Contractor subject to the submission and approval of a Private Contractor Permit, together with payment of all inspection fees. An estimate of the cost to have these works constructed by Council may be obtained by contacting Council. The cost of conducting these works will be deducted from the Footpath Reserve Restoration Deposit, or if this is insufficient the balance of the cost will be due for payment to Council upon completion of the work.
- This Roads Act approval does not eradicate the need for the Contractor to obtain a Road Opening Permit prior to undertaking excavation in the road or footpath.
- 89. Any driveway works to be undertaken in the footpath reserve by a private contractor requires an "Application for Consideration by a Private Contractor" to be submitted to Council together with payment of the application fee. Works within the footpath reserve must not start until the application has been approved by Council.
- 90. Following completion of concrete works in the footpath reserve area, the balance of the area between the fence and the kerb over the full frontage of the proposed development shall be turfed with either buffalo or couch (not kikuyu).

Development consent advice

- You are advised to consult with your utility providers (i.e. Energy Aust, Telstra etc) in order to fully understand their requirements before commencement of any work.
- b. Dial Before You Dig

Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets, please contact Dial before You Dig at www.1100.com.au or telephone on 1100 before excavating or erecting structures (This is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contacting the Dial before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial before You Dig service in advance of any construction or planning activities.

- c. Demolition and construction shall minimise the emission of excessive noise and prevent "offensive noise" as defined in the Protection of the Environment Operations Act 1997. Noise reduction measures shall include, but are not limited to the following strategies:
 - choosing quiet equipment
 - choosing alternatives to noisy activities
 - · relocating noise sources away from affected neighbours
 - educating staff and contractors about quiet work practices

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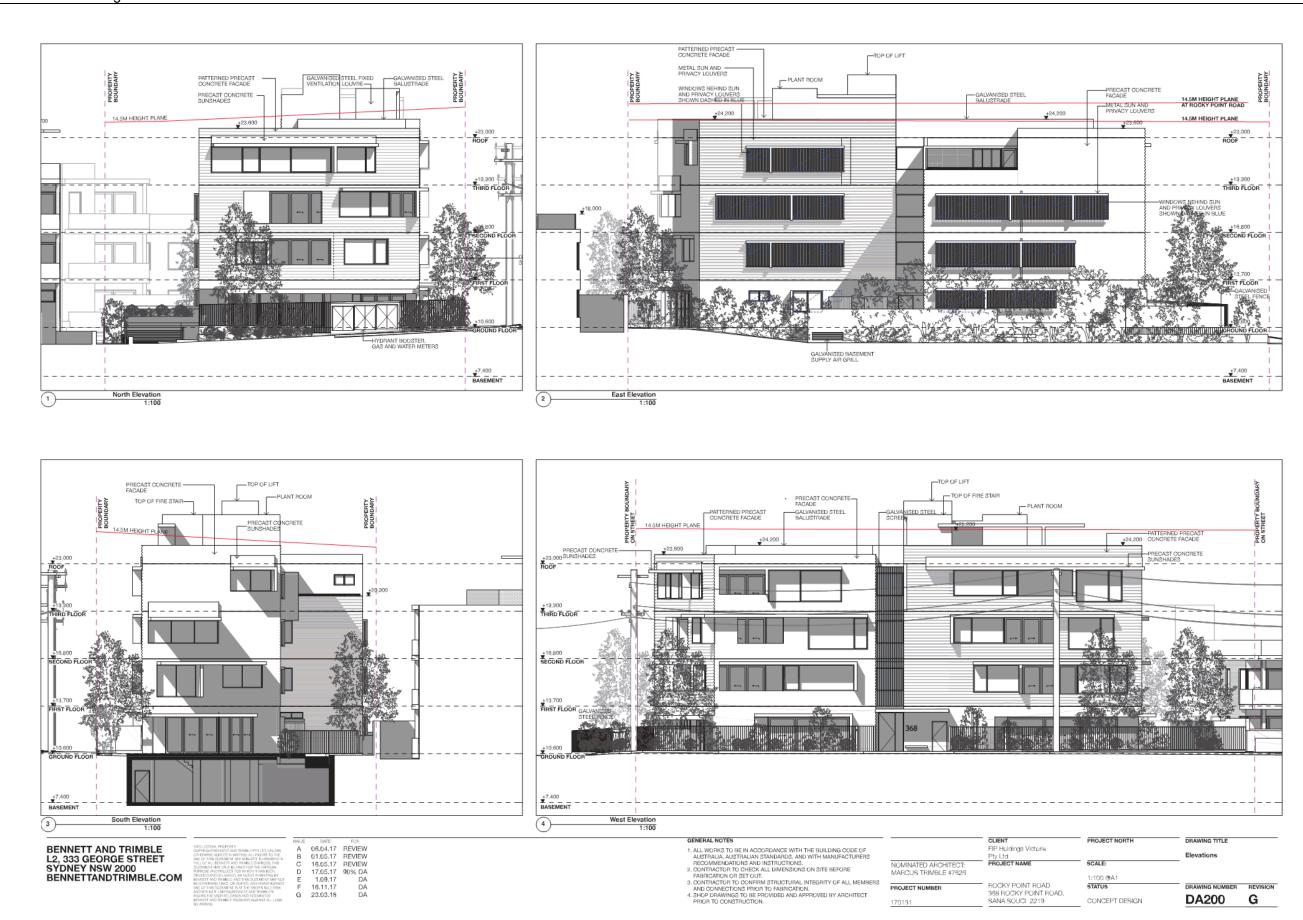
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- informing neighbours of potentially noise activities in advance
- equipment, such as de-watering pumps, that are needed to operate on any evening or night between the hours of 8 p.m. and 7 a.m. or on any Sunday or Public Holiday, shall not cause a noise nuisance to neighbours of adjoining or nearby residences. Where the emitted noise exceeds 5 dB(A) [LAeq(15m)] above the background sound level [LA90] at the most affected point on the nearest residential boundary at any time previously stated, the equipment shall be acoustically insulated, isolated or otherwise enclosed so as to achieve the sound level objective.
- d. All site works shall comply with the occupational health and safety requirements of the NSW WorkCover Authority.

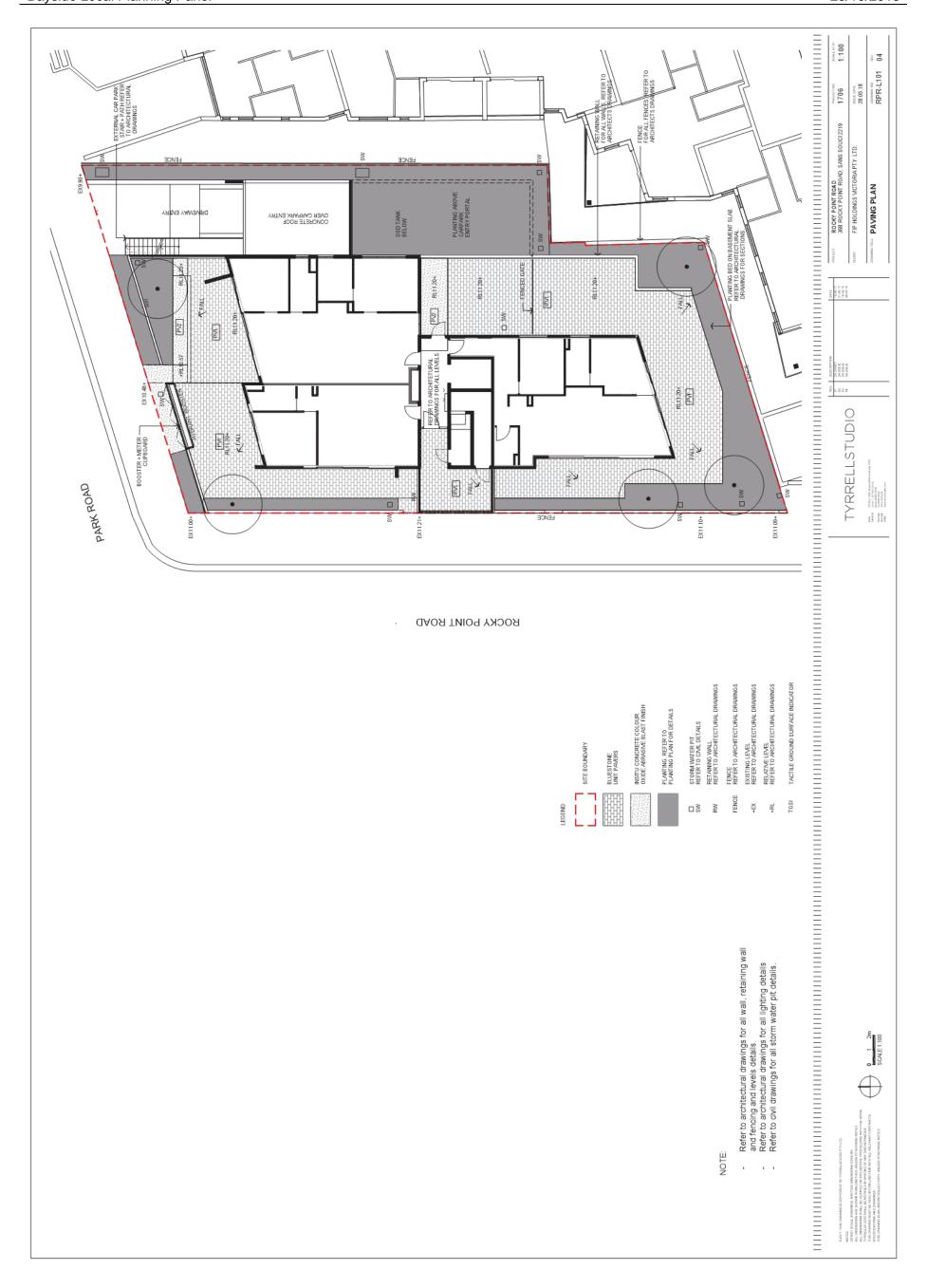
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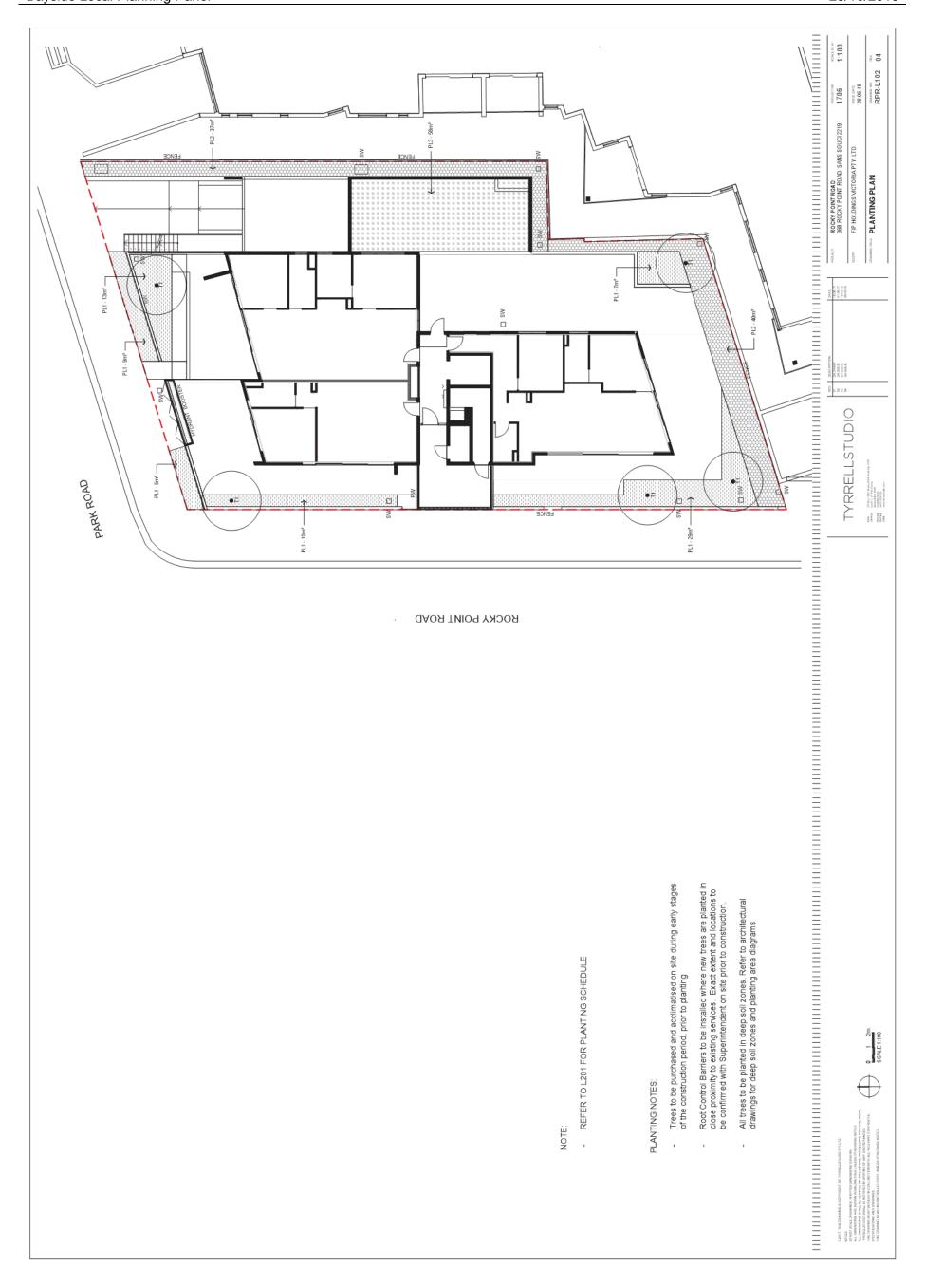
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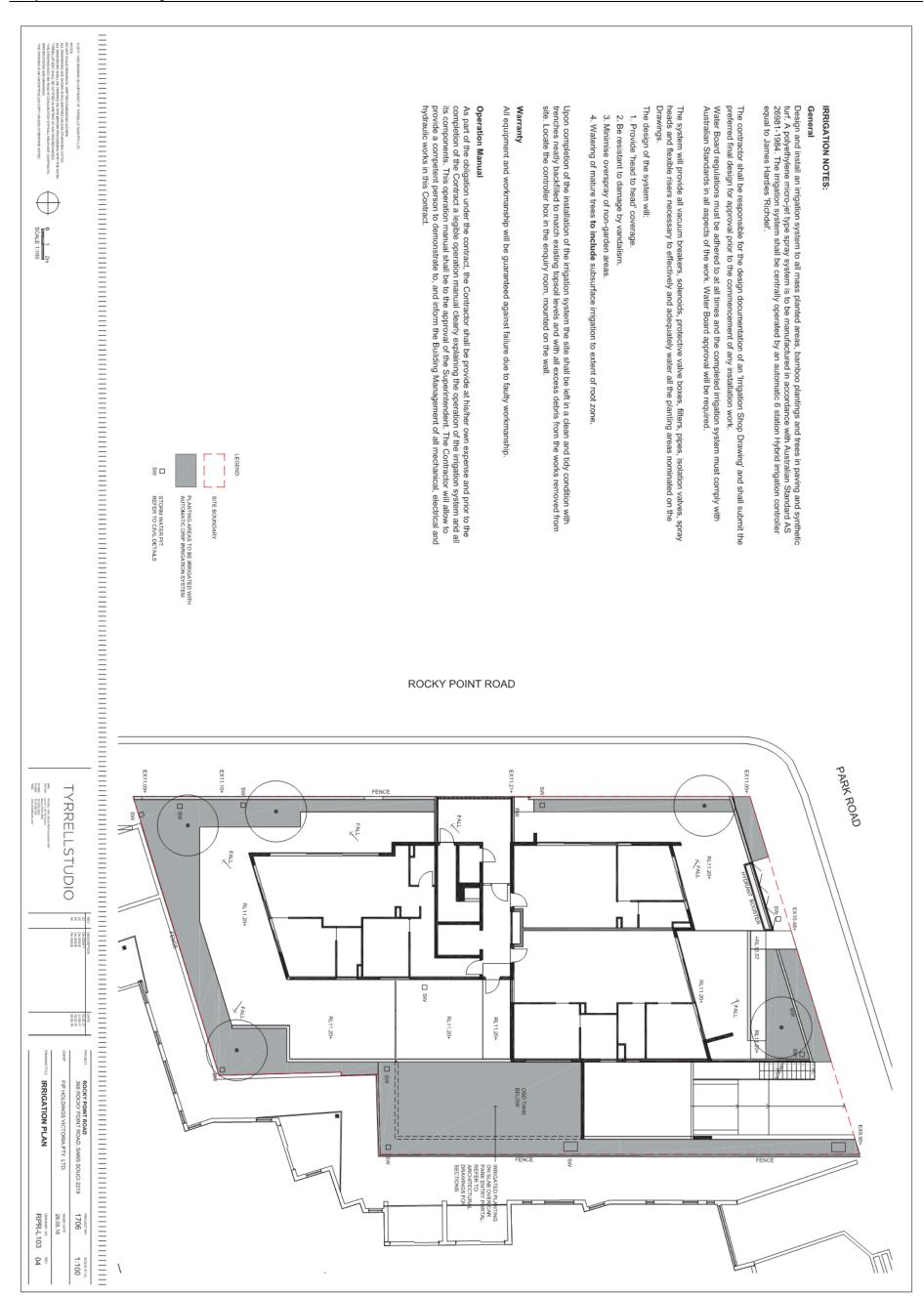
Bayside Local Planning Panel 23/10/2018

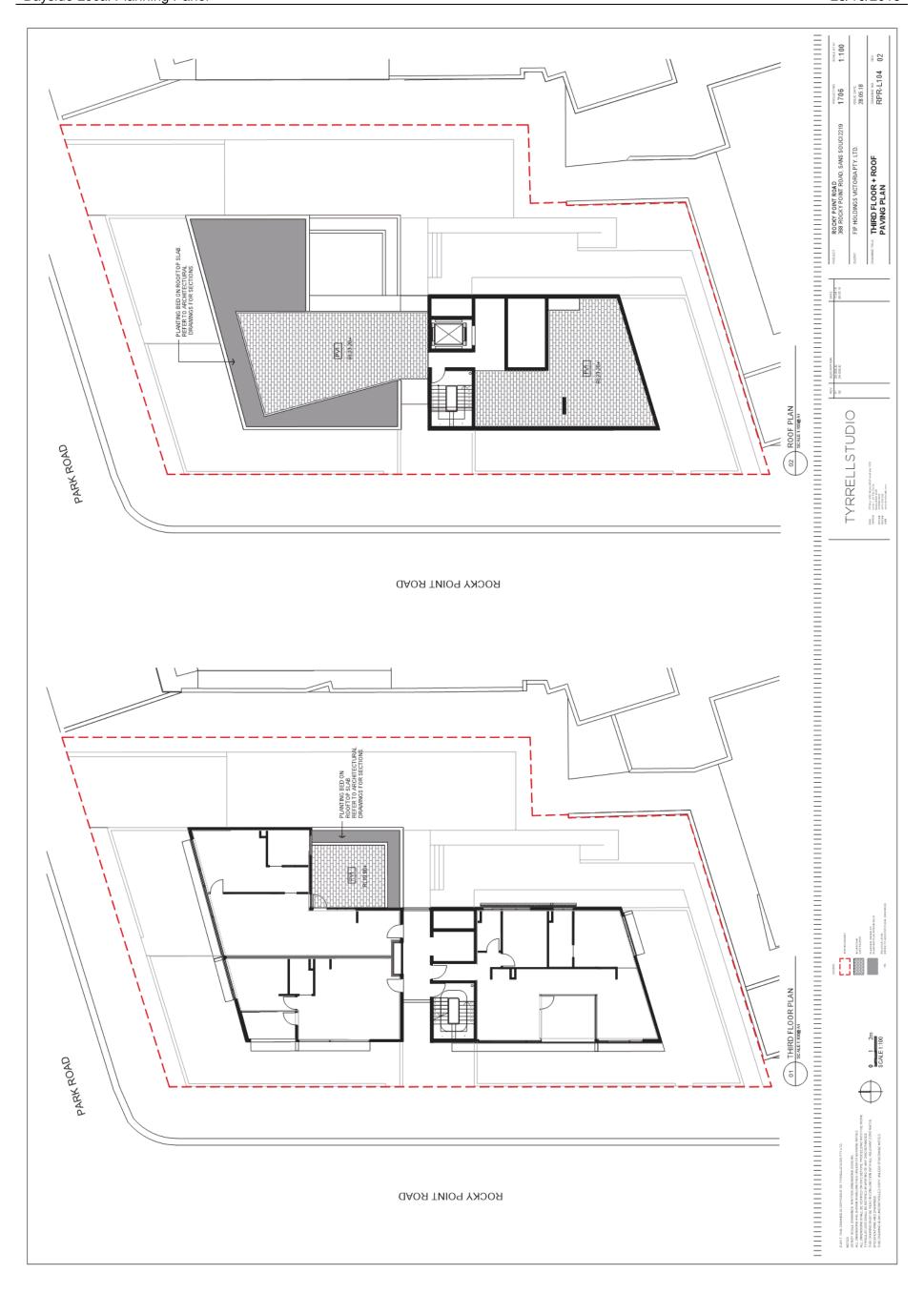


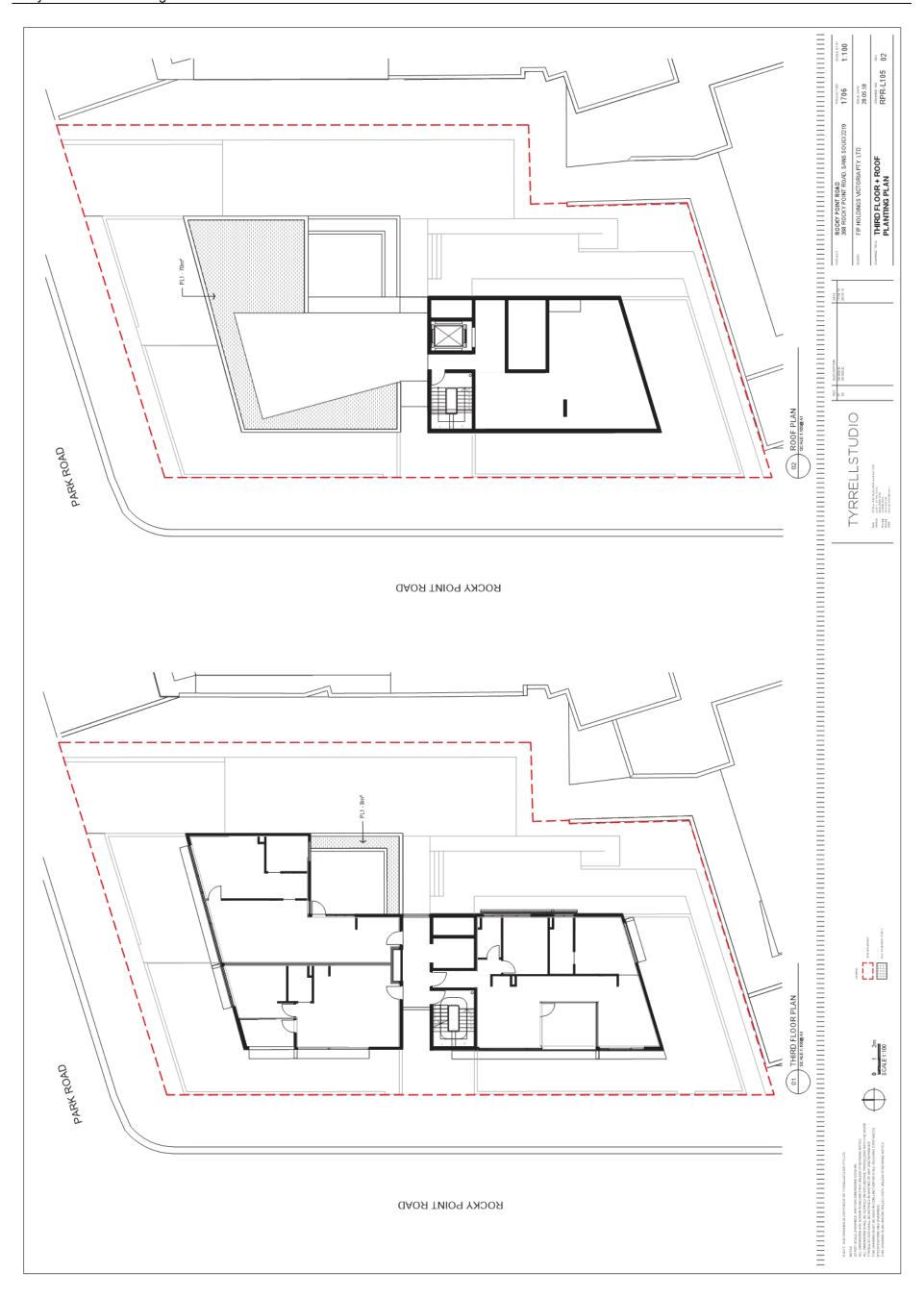
		NOTE Refer to architectural drawings for lighting plans, all wall, retaining wall and fencing details and for all sections.
DA ISSUE LANDSCAPE DRAWINGS 368 ROCKY POINT ROAD, SAN SOUCI, NSW 2219	DRAWING LIST NUMBER TITLE SCALE LU01 PRAWING LIST LU01 PRAWING PLAN LU02 REMAING PLAN LU03 RETAILS LOOK FROM FRIGATION PLAN LU04 HIRD FLOOK FROM FRIGATION PLAN LU05 PLANING PLAN LU06 THE PLOOK FROM FRIGATION PLAN LU06 PLANING HATTERAL IMAGES LOOK PLANING HATTERAL IMAGES LOOK PLANING HATTERAL IMAGES LOOK PLANING HATTERAL IMAGES LOOK PRAWING HATTERAL IMAGES LOOK PRAWING LIST REFER TO RECTRICAL DRAWING LIST REFER TO RECTRICAL DRAWING LIST REFER TO ELECTRICAL DRAWING LIST REFER TO ELECTRICAL DRAWING LIST REFER TO ELECTRICAL DRAWING LIST	Refer to architectural drawings for lighting plans, all wall, retaining wall and fending details and for all sections. **Part of the section

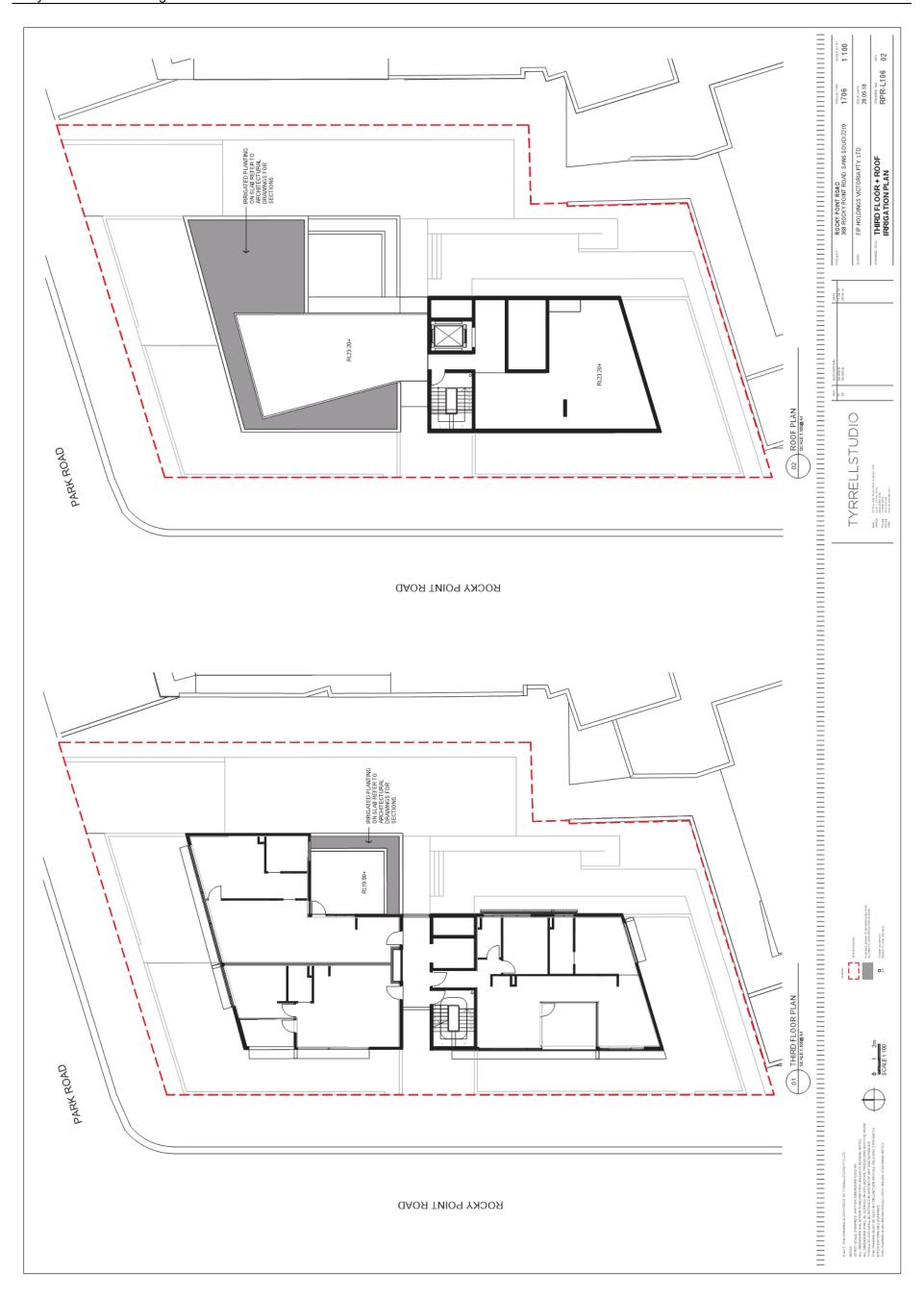


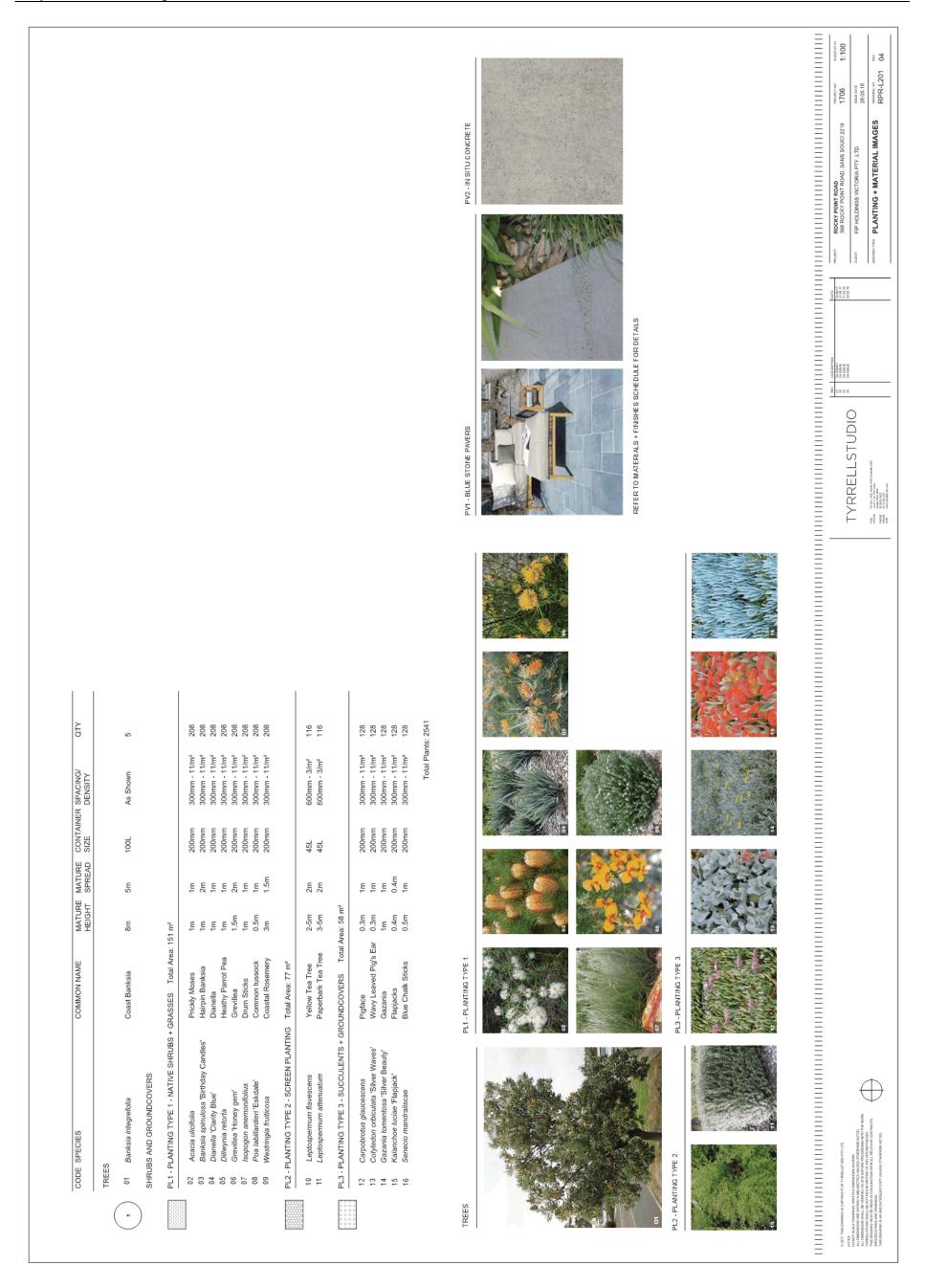


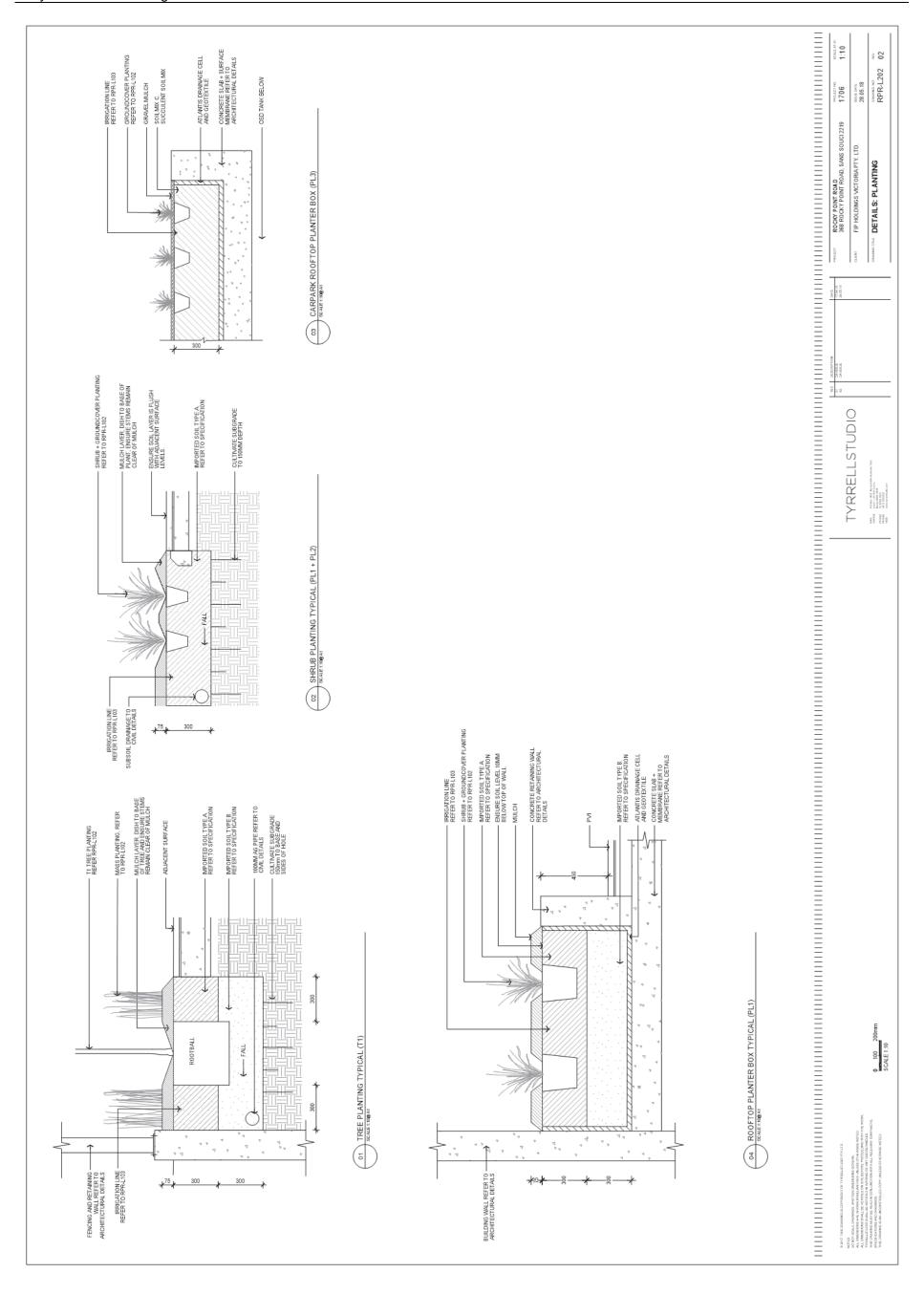




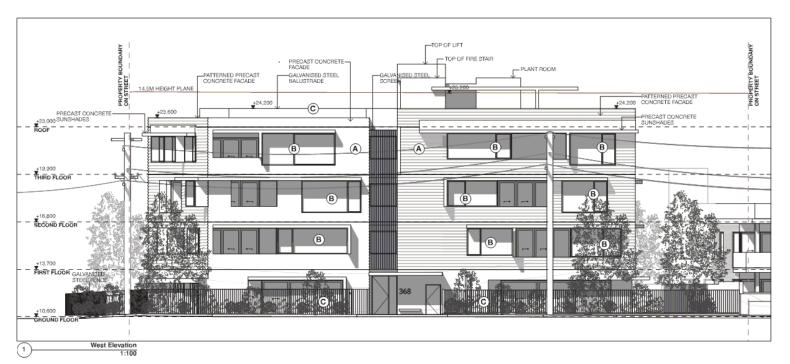




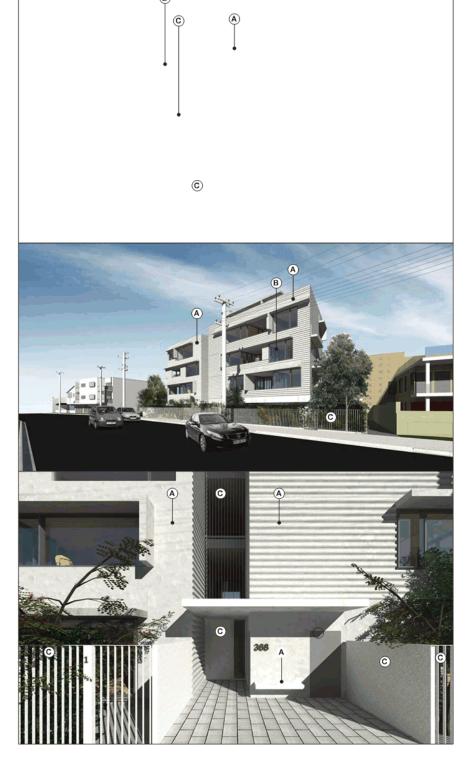








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GENERAL NOTES

GENERAL NOTES

1. ALL WORKS TO BE IN ACCORDANCE WITH THE BUILDING CODE OF AUSTRALIA, AUSTRALIAN STANDARDS, AND WITH MANUFACTURERS RECOMMENDATIONS AND INSTRUCTIONS.

2. CONTRACTOR TO CHECK ALL DIMENSIONS ON SITE BEFORE FABRICATION OR SET OUT.

3. CONTRACTOR TO CONFIRM STRUCTURAL INTEGRITY OF ALL MEMBERS AND CONNECTIONS PRIOR TO FABRICATION.

4. SHOP DRAWINGS TO BE PROVIDED AND APPROVED BY ARCHITECT PRIOR TO CONSTRUCTION.

PROJECT NORTH FIP Holdings Victoria Pty Ltd PROJECT NAME SCALE:

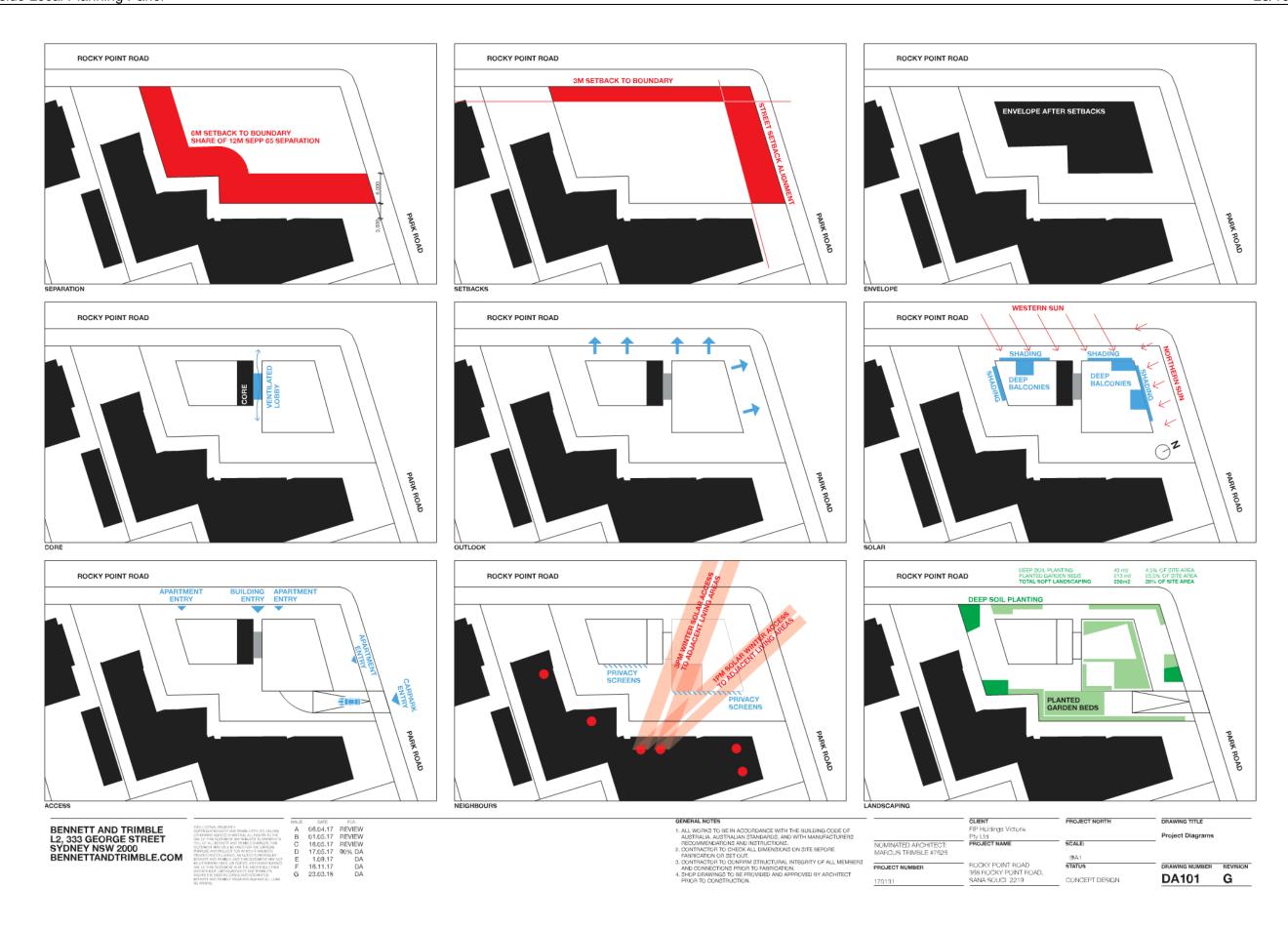
ROCKY POINT ROAD 368 ROCKY POINT ROAD, SANA SOUCI 2219

STATUS CONCEPT DESIGN DRAWING TITLE Materials and Finishes DRAWING NUMBER REVISION DA500 G

Item 6.7 – Attachment 5

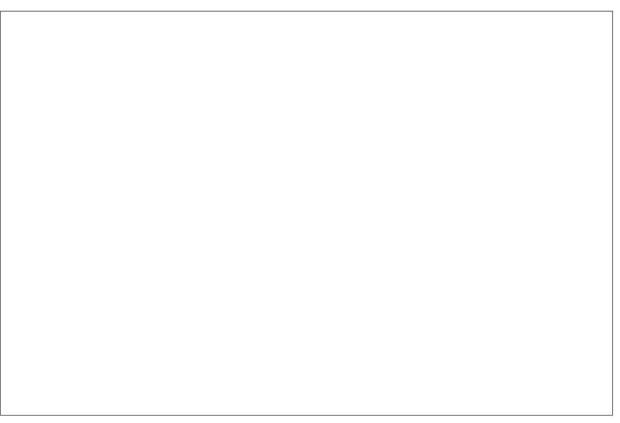
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Bayside Local Planning Panel 23/10/2018









06.04.17 REVIEW
01.05.17 REVIEW
16.05.17 REVIEW
17.05.17 PEVIEW
17.05.17 POW DA
1.09.17 DA
23.03.18 DA



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GENERAL NOTES

1. ALL WORKS TO BE IN ACCORDANCE WITH THE BUILDING CODE OF AUSTRALIA, AUSTRALIAN STANDARDS, AND WITH MANUFACTURERS RECOMMENDATIONS AND INSTRUCTIONS.

2. CONTRACTOR TO CHOCK ALL DIMENSIONS ON SITE BEFORE FASRICATION OR SET OUT.

3. CONTRACTOR TO CONFIRM STRUCTURAL INTEGRITY OF ALL MEMBERS AND CONNECTIONS PRIOR TO FASRICATION.

4. SHOP DEAWINGS TO BE PROVIDED AND APPROVED BY ARCHITECT PRIOR TO CONSTRUCTION.

FIP Holdings Victoria
Pty Ltd
PROJECT NAME ROCKY POINT ROAD 368 ROCKY POINT ROAD, SANA SOUCI 2219

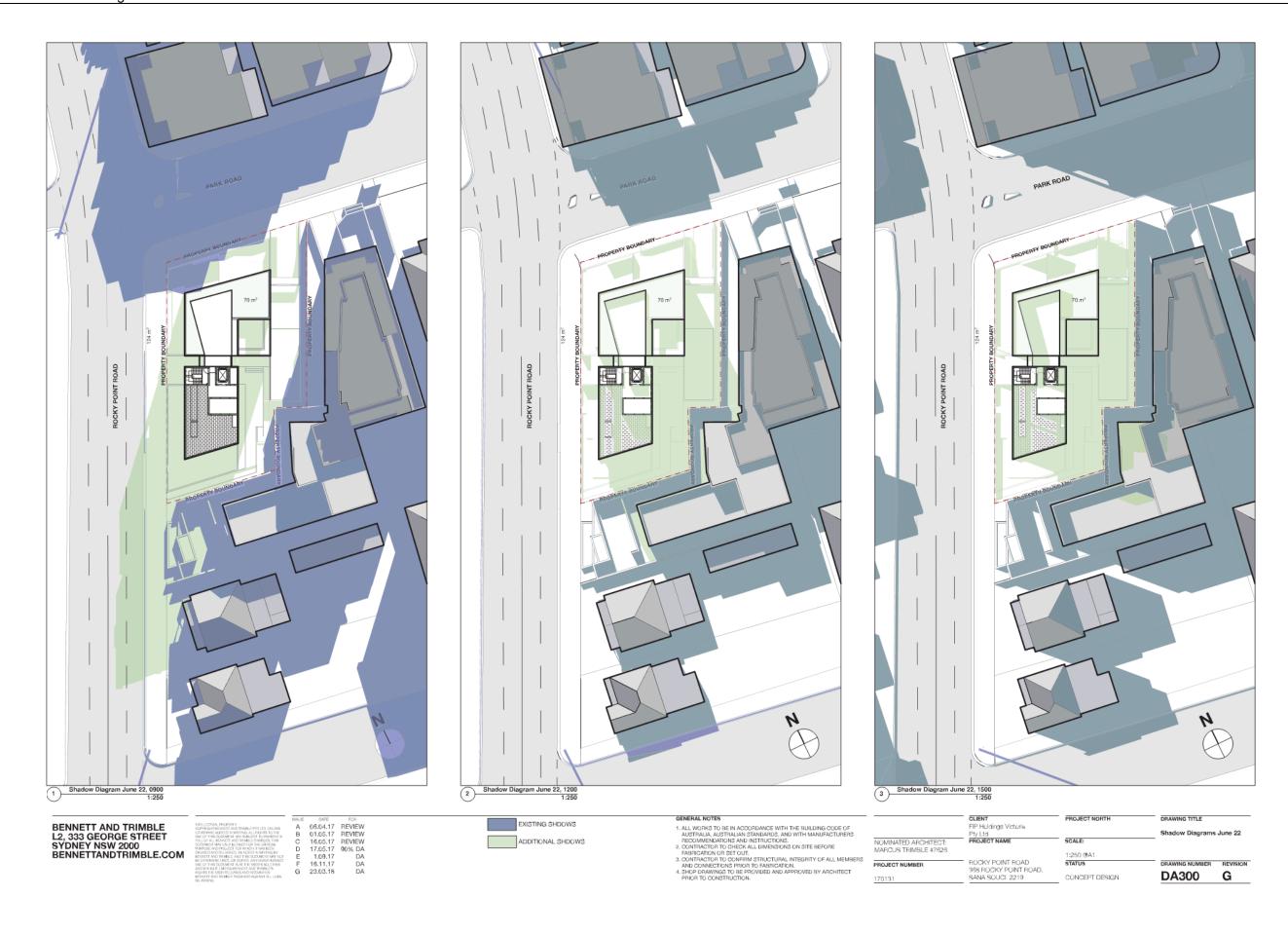
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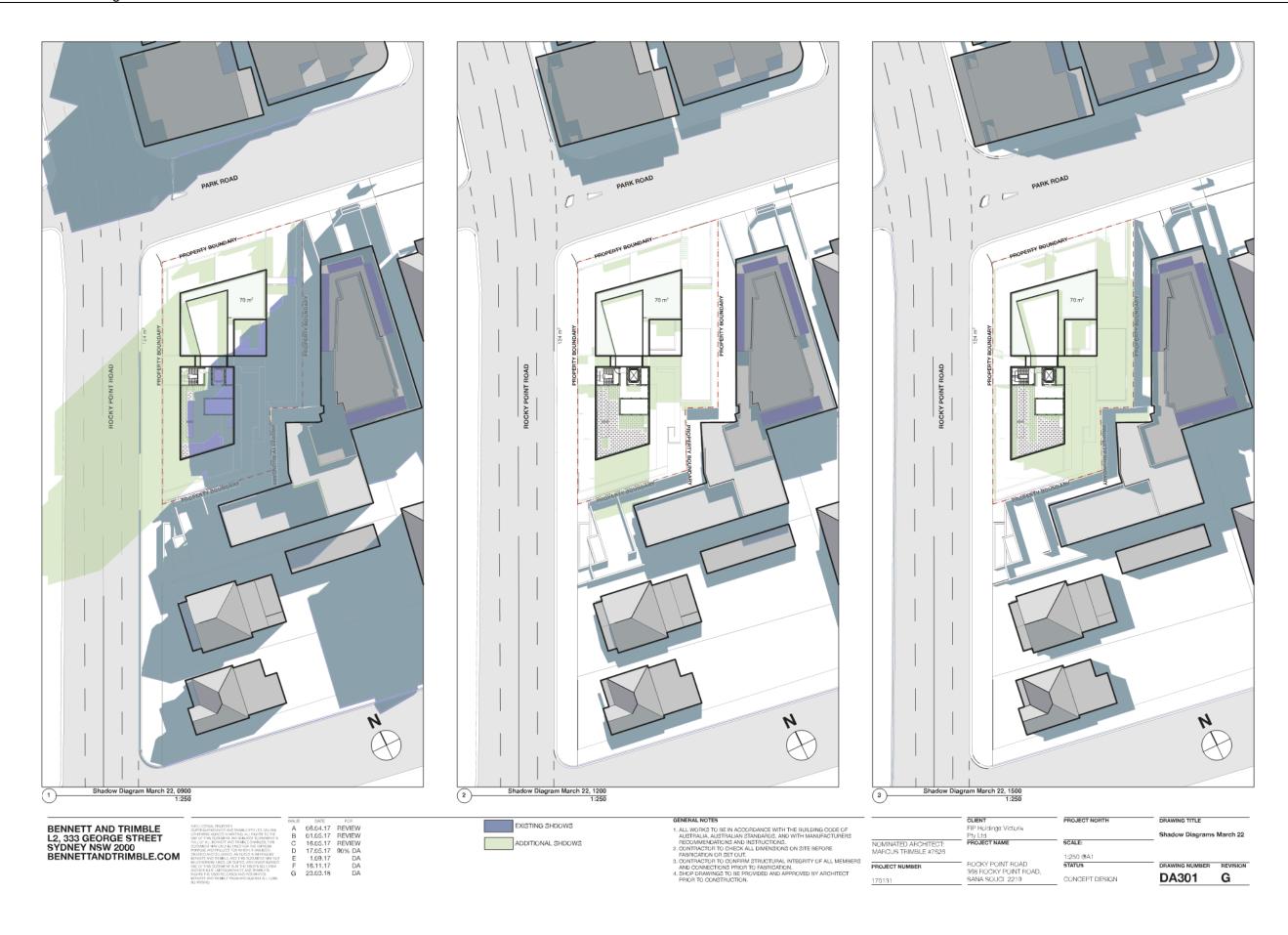
PROJECT NORTH

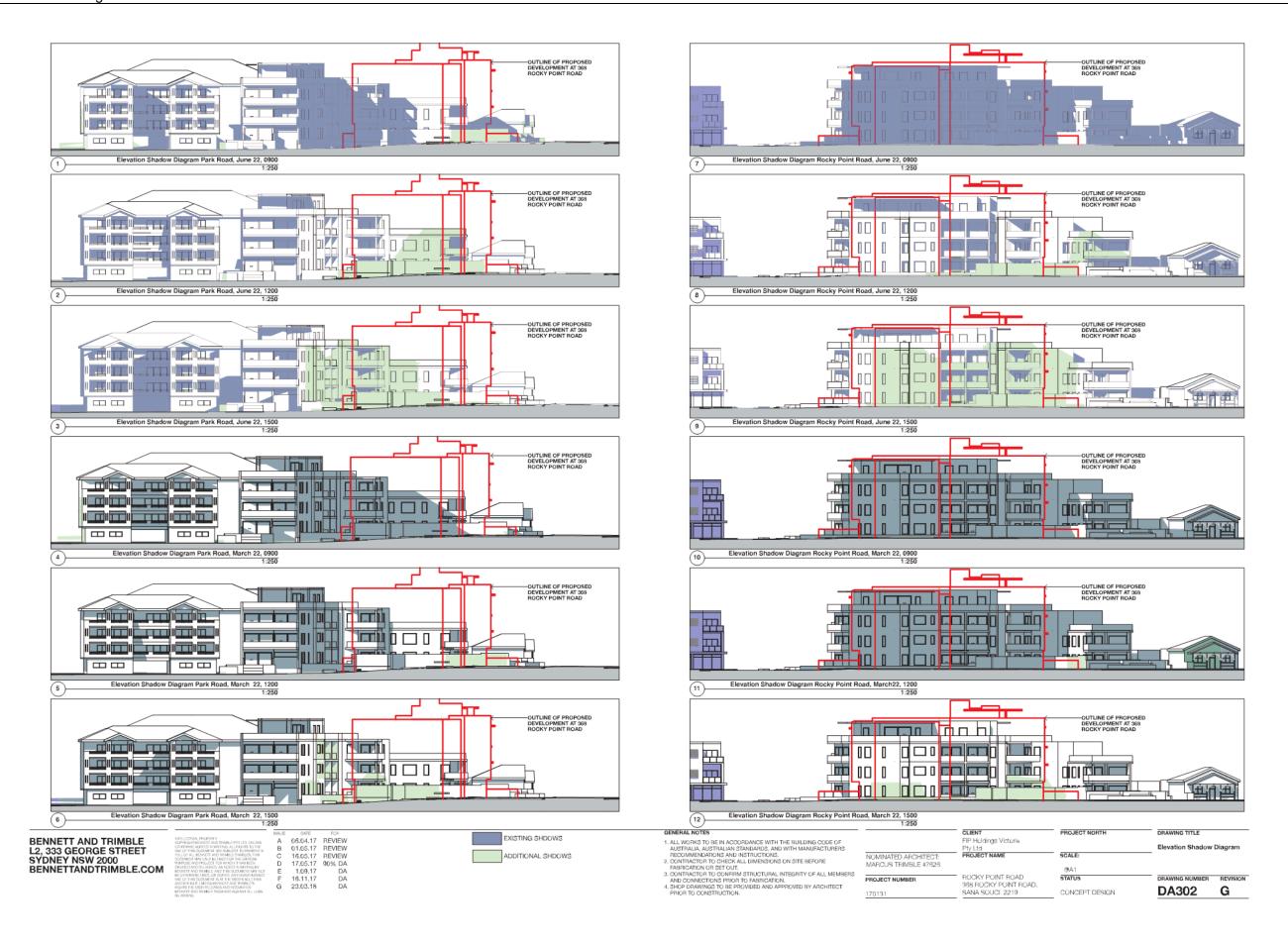
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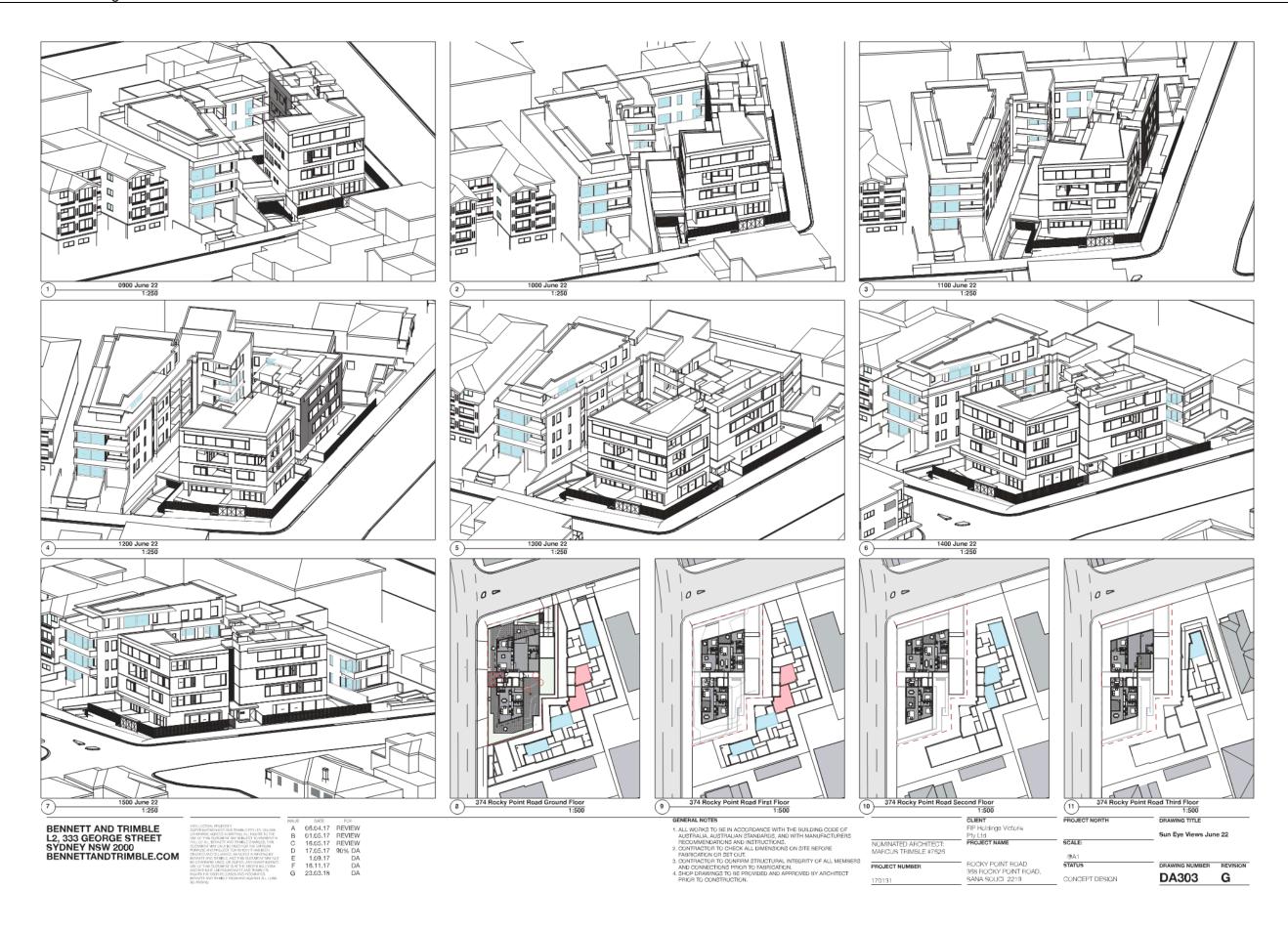
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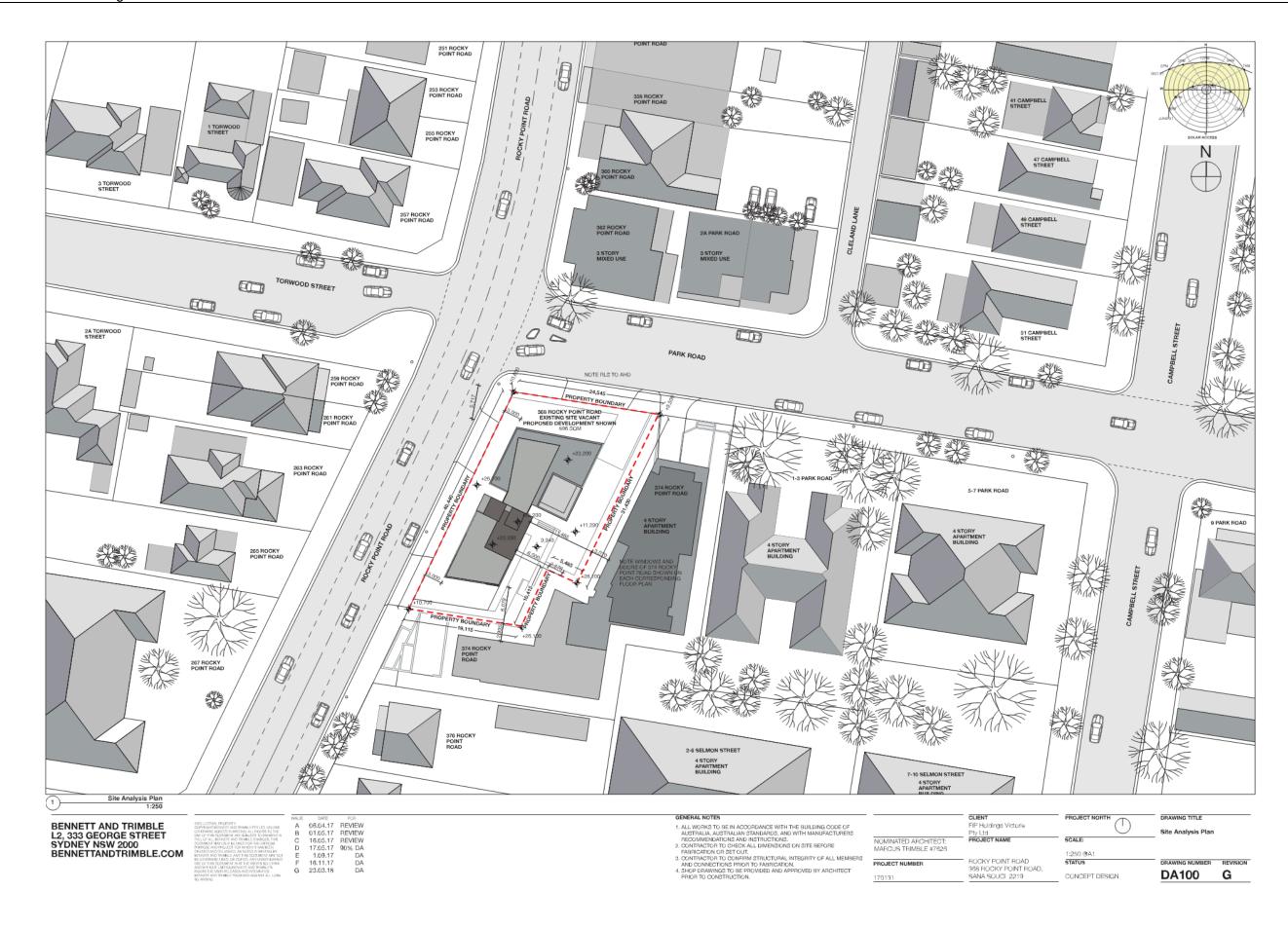
Bayside Local Planning Panel 23/10/2018













STATEMENT OF ENVIRONMENTAL EFFECTS

Construction of a four storey residential flat building over basement parking

368 Rocky Point Road Sans Souci

Prepared for: FIP Holdings Victoria Pty Ltd

REF: 0078/17

DATE: 11 September 2017







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1. Introduction

This Statement of Environmental Effects has been prepared for the applicant of the proposed development. The report is to accompany a development application to Bayside Council seeking consent for the construction of a residential flat building at No. 368 Rocky Point Road, Sans Souci.

More specifically, the proposed development involves the construction of a four storey residential flat building comprising 5×1 bedroom, 5×2 bedroom and 2×3 bedroom apartments (12 in total). Of the 12 apartments, two have been provided as adaptable dwellings. The proposal will provide a contemporary residential flat building which is consistent with the intended future form of development in the area.

The proposal complies with the Apartment Design Guide controls, the Rockdale LEP 2011 FSR standard and the relevant Rockdale DCP 2012 controls for residential flat buildings. A minor non-compliance with the height of buildings development standard of the rooftop plant room and stair access only is sought, and a Clause 4.6 variation request is provided at Annexure C of this report. A request for a minor variation to the FSR standard in accordance with Clause 4.6 is included in Annexure D.

The purpose of this Statement is to address the planning issues associated with the development proposal and specifically to assess the likely impact of the development on the environment in accordance with the requirements of S.79C of the Environmental Planning & Assessment (EP&A) Act, 1979.

This Statement is divided into five sections. The remaining sections include a locality and site analysis; a description of the proposal; an environmental planning assessment; and a conclusion.

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2. Site Analysis and Context

2.1 THE SITE

The subject site is located on the corner of Rocky Point Road and Park Road and is known as No. 368 Rocky Point Road. It comprises one allotment legally described as Lot X in DP 162302. A site locality plan is provided at Figure 1 and the site is edged red.



Figure 1 Aerial photograph of site and surrounds

The subject site is an irregularly shaped property with a frontage to Rocky Point Road of 40.44m, a secondary frontage to Park Road of 24.54m, combined eastern boundary length of 41.8m and combined southern boundary length of 24.6m, giving a total site area of 896m². The site is relatively flat with a slight fall to the north-eastern corner.

The site is currently vacant. It was previously occupied by a service station and has been remediated for residential use.

2.2 CONNECTIVITY AND ACCESS TO PUBLIC TRANSPORT

The site is located approximately 2.5km south-east of Carlton railway station which provides is part of the Sydney Metro network. The site is located in close proximity to bus stops with high frequency services operating along Rocky Point Road.

2.3 SURROUNDING DEVELOPMENT

The site is located in an area characterised by three and four storey residential flat buildings to the east and south on Park Road and Rocky Point Road, and three storey mixed use developments to the north along Rocky Point Road.

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Figure 2 shows the adjoining development to the east and south, which is known as No. 374 Rocky Point Road, and wraps around the subject site. It contains a part three/part four storey residential flat building, approved on 4 May 2011 with Development Consent DA-2011/179.



Figure 2 No. 374 Rocky Point Road as viewed from Park Road across the subject site

The four storey portion of the development at No. 374 Rocky Point Road addresses Park Road (Figure 3) and the height of the building reduces to two storeys with a roof terrace for the part of the building fronting Rocky Point Road (Figures 4 and 5).



Figure 3 Adjoining development at No. 374 Rocky Point Road

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Figure 4 View of the site and adjoining development from Rocky Point Road



Figure 5 View across the site from Park Road

The development to the north on the opposite corner of Park Road and Rocky Point Road consists of three storey mixed use development (Figure 6).

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Figure 6 Development to the north opposite the site in Park Road

The Ramsgate local centre is located less than one kilometre to the east of the site and Kogarah CDB is 5 kilometres to the north of the site. Both centres have a variety of community, recreational and commercial services. Various recreational playing fields and playgrounds are located in close proximity to the site. Sans Souci primary school is within walking distance.

The proposal is representative of the desired future character of the area as the zoning, height and FSR controls now envisage the area to be a high density residential environment given its proximity to the Kogarah CBD and transport services.

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3. Description of the proposal

3.1 PROPOSED RESIDENTIAL FLAT BUILDING

It is proposed to construct a four storey residential flat building over basement parking. The proposal comprises 5×1 bedroom, 5×2 bedroom and 2×3 bedroom apartments, providing a total of 12 apartments. Of the 12 apartments, two have been provided as adaptable dwellings with associated adaptable parking spaces. The proposal is well described on the submitted plans prepared by *Bennett and Trimble Architects* and is detailed as follows.

Basement Level

The basement contains 17 parking spaces, residential storage cages, a bin store room, bicycle and motorbike parking and a lift to the upper levels. The basement is accessed via a driveway that is located at the north-eastern corner of the site from Park Road. As detailed in the accompanying Traffic Report, vehicular access, geometry and parking space dimensions have been designed to comply with AS2890.1.

Ground Floor

The ground floor has been designed to provide two legible pedestrian access points from Rocky Point Road, each to a lobby and secure entrance. The central entry point provides access to the three units at ground floor and the units above via lift access. The second pedestrian entry point is located at the south-western corner of the site and provides accessible access along the southern boundary to the ground floor units and the upper level units via the lift.

Landscaping is provided at the site frontages and south-eastern part of the site which assists with defining private and public spaces and softening the appearance of the building. Three dwellings are located at the ground floor level consisting of 1 x 1 bedroom and 2 x 2 bedroom dwellings, with one of the 2 bedroom units being adaptable. Each dwelling contains a courtvard area that extends off the main internal living space.

Landscape treatments assist with separating common and private open space areas of the proposed units and existing adjoining units.

Levels 1 and 2

Levels 1 and 2 are similar in configuration. Each floor contains 1 x 1 bedroom, 1 x 2 bedroom and 1 x 3 bedroom apartments per level. The apartments contain functional internal living areas with private open space in the form of balconies that face the northern or western boundaries overlooking Park Road and Rocky Point Road respectively. Each apartment is dual aspect to provide high levels of solar access and natural ventilation.

Level 3

Level 3 contains 2 x 1 bedroom and 1 x 2 bedroom apartments. Each dwelling is dual aspect and contains generous internal proportions that assist with functional and high amenity living. Private open space areas in the form of balconies are provided to each apartment, with two of the units having direct access to additional private open space on the roofton terrace above

Architectural detailing and articulation is provided to the facades which, when coupled with the proposed landscaping, ensures the proposal integrates into the desired future character of the area for high density residential living.

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3.2 LANDSCAPING

Details of the proposed landscaping are shown on the Landscape Plan which accompanies the development application. The Landscape Plan concentrates deep soil planting along the boundaries to soften the interface between the proposed building and the adjoining dwellings.

Landscaping at the site frontages clearly defines the interface between the public and private domain with deciduous plantings to provide seasonal variation and interest.

Whilst the density of development on the site will increase, so too will the range of tree species within suitable locations at ground level that will ensure the long term improvement of the landscaped quality of the site.

3.3 WASTE MANAGEMENT

The proposal incorporates a bin storage area at the basement level that will accommodate the required number of bins. The building manager will transfer bins to the street kerb fronting the site for collection.

A detailed Waste Management Plan has been submitted with the application detailing the nature and volumes of waste as a result of the demolition and construction phases as well as the intended disposal and recycling of those materials.

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4. Environmental Planning Assessment

4.1 PREAMBLE

This section of the Statement provides a planning assessment of the proposed development covering all relevant heads of consideration under Section 79C of the EP&A Act, 1979.

4.2 STATUTORY AND POLICY COMPLIANCE

The relevant matters for consideration under Section 79C(1)(a) of the EP&A Act, 1979, are identified in the following Table:

Table 1 Section 79C Matters for Consideration						
EP & A Act, 1979.	Matters for Consideration	OK	See Comments	N/A		
S.79C(1)(a)(i)	SEPP No. 55 – Remediation of Land	✓	✓			
и	SEPP No. 65 – Design Quality of Residential Apartment Buildings (Amendment No. 3)	✓	✓			
"	SEPP (BASIX) 2004	✓	✓			
и	Rockdale LEP 2011	✓	✓			
S.79C(1)(a)(iii)	Rockdale DCP 2011	✓	✓			
S.79C(1)(a)(iv)	Any other prescribed matter: • AS 2601-1991: Demolition of structures.	-	-	✓		

The matters identified in the above Table as requiring specific comment are discussed below. The primary statutory documents that relate to the subject site and the proposed development are SEPP No. 65 and Rockdale Local Environmental Plan 2011 (RLEP 2011).

The primary non-statutory document relating to the subject site and proposed development are Rockdale Development Control Plan (DCP) 2011 and the Apartment Design Guide. The relevant provisions of these documents and other relevant planning controls are summarised below and the proposal's compliance with them assessed.

4.2.1 SEPP No.55 – Remediation of Land

This State Environmental Planning Policy (SEPP) was gazetted on 28 August 1989 and applies to the whole State. It introduces planning controls for the remediation of contaminated land and requires an investigation to be made if land contamination is suspected.

The site was previously occupied by a service station. Remediation and validation of the site was conducted in 2014. Easterly Point Environmental conducted a non-statutory contaminated land audit under the *Contaminated Land Management Act 1997*, and prepared a Section A Site Audit Statement and Site Audit Report stating the site is suitable for residential use. The requirements of SEPP No. 55 are therefore satisfied.

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4.2.2 SEPP No. 65 – Design Quality of Residential Flat Buildings

Schedule 1 of the Policy sets out the 9 'Design Quality Principles' and Clause 28(2) requires that the consent authority, in determining a development application to take into consideration:

- · The advice (if any) of a relevant design review panel;
- The design quality of the residential flat development when evaluated in accordance with the design quality principles; and The Apartment Design Guide.
- A Design Verification has been submitted with the application detailing compliance with the design quality principles and in satisfaction of Clause 50 of the EP&A Act.

Clause 6A of the SEPP states that development control plans cannot be inconsistent with the Apartment Design Guide in relation to:

- (a) visual privacy,
 - (b) solar and daylight access,
 - (c) common circulation and spaces,
 - (d) apartment size and layout,
 - (e) ceiling heights,
 - (f) private open space and balconies,
 - (g) natural ventilation,
 - (h) storage."

In addition, Clause 30(1) of the SEPP states that a development application cannot be refused if it complies with the prescribed criteria of the Apartment Design Guide in relation to ceiling heights, parking and internal apartment sizes. The proposal achieves compliance with the relevant requirements for ceiling height, apartment size and on-site parking.

A compliance table is provided at Annexure A detailing compliance with the applicable Design Criteria contained within the Apartment Design Guide. The compliance table identifies that the proposal is consistent with most ADG design criteria with the exception of communal open space and deep soil zone. The reasons justifying non-compliance with these guidelines are detailed in Annexure A. The variations will have no detrimental impacts to the amenity of neighbours, the streetscape or the amenity and utility of spaces for future residents.

4.2.3 SEPP Building Sustainability Index: BASIX 2004

SEPP (Building Sustainability Index: BASIX) 2004 commenced on 1 July 2004 and applies to the proposed development. In accordance with the provisions of the SEPP, a BASIX Certificate is submitted with the application and confirms that the proposal (once operational) will comply with the water, thermal comfort and energy efficiency requirements of the policy.

4.2.4 Rockdale Local Environmental Plan 2011

Rockdale Local Environmental Plan 2011 (RLEP 2011) applies to the subject site. Under the LEP, the subject site is within Zone R4 – High Density Residential and, amongst other things, residential flat buildings are identified as permissible with consent in the zone.





Provided at Annexure B is a compliance table which identifies the relevant objectives and development standards that apply to the proposal and undertakes an assessment of the proposed development against those relevant provisions.

As indicated, the proposal complies with all relevant objectives and development standards, with the exception of building height. A Clause 4.6 variation request is provided at Annexure C in relation to the lift overrun breaching the height control. The proposal also exceeds the FSR control to RLEP 2011 to a minor degree and a request for this variation is included in Annexure D.

4.2.5 Rockdale Development Control Plan 2011

Rockdale Development Control Plan (DCP) applies to the subject site. The provisions of the DCP that apply to the proposal are contained in Annexure E along with an assessment of the performance of the proposal with those controls.

Section 79C(3A) to the EP&A Act, 1979 provides instruction in the assessment of development applications which seek variation to the standards in a development control plan and states as follows:

"(3A) Development control plans

If a development control plan contains provisions that relate to the development that is the subject of a development application, the consent authority:

- (a) if those provisions set standards with respect to an aspect of the development and the development application complies with those standards—is not to require more onerous standards with respect to that aspect of the development, and
- (b) If those provisions set standards with respect to an aspect of the development and the development application does not comply with those standards—is to be flexible in applying those provisions and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development, and
- (c) may consider those provisions only in connection with the assessment of that development application."

As detailed at Annexure E, the proposed development has been designed to comply with the relevant controls. A variation is sought to the landscaped area and dwelling mix controls. These have been identified and justified in the table in Annexure E.

4.3 IMPACTS ON NATURAL & BUILT ENVIRONMENT

4.3.1 Topography & Scenic Impacts

The subject site requires excavation to accommodate the proposed basement level. The development has been designed to ensure that the basement is concealed below ground level while allowing the site's perimeter to contain deep soil landscaping.

The proposal results in a height and density of development that is consistent with the emerging and desired future character of the area and is consistent with reasonable public expectations and Council's strategic planning intention for the locality.

As such, the proposal will not generate any adverse topographical or scenic impacts.

4.3.2 Micro-climate Impacts

The proposed development will have no significant impact on the micro-climate of the locality.

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4.3.3 Water & Air Quality Impacts

The proposed development will have no significant impact on air or water quality in the locality. Standard conditions of consent relating to construction management will ensure that no silt laden water enters the stormwater system.

The completed project will be connected to Council's stormwater drainage system and will incorporate on-site stormwater detention in accordance with the submitted stormwater drainage plans.

The proposed development will be connected to the sewer and is not likely to generate any unusual liquid waste, odour or fumes. It is therefore unlikely to have any adverse impact in terms of air or water quality.

4.3.4 Flora & Fauna Impacts

The site is currently vacant and cleared, having previously been occupied by a service station. A Landscape Plan is submitted with the application and details to the range of suitable trees, shrubs and ground covers that are both suited to the site and the locality.

Whilst the density of development will increase in accordance with the applicable planning controls, the landscaping will be suitably augmented in a rational configuration that will ensure its long term retention. Deep soil planting can be achieved in 'pockets' along all site boundaries and landscaping of the podium surface is proposed surrounding the building. The proposal will therefore have a positive impact in terms of contribution to local biodiversity and landscape quality of the area.

4.3.5 External Appearance & Design

The proposed development provides clearly defined pedestrian and vehicular access points that extend from Rocky Point Road and Park Road respectively. At ground level, the proposal will incorporate hard and soft landscaping elements that are appropriate to the scale and form of development. The basement level is concealed predominantly below ground level, with landscaping along each street frontage utilised to soften the interface between the proposed building and the street.

The design of the building ensures functional internal layouts for each dwelling with building orientation and window openings being determined by sensitivity of the adjoining properties and optimising solar access and natural ventilation. The proposal will facilitate passive surveillance of both streets.

The building adopts a contemporary appearance with the street front façades containing interesting and articulated presentation through the use of balcony design and architectural elements.

The massing achieves compliance with the setbacks and ADG separation controls. The building is consistent with the street setbacks of the adjoining developments as per the DCP and 6m side setbacks as per the ADG, resulting in a building which reinforces the streetscape and high density residential character of the area.

Materials used are detailed on the material schedule submitted with this application and have been selected for high durability and compatibility with the contemporary design. The orientation of apartments and common circulation space is responsive to the context of the site and results in a suitable form that is reasonably anticipated under the applicable planning controls.

4.3.5.1 Solar Access

Shadow diagrams and sun-eye view diagrams of the proposal have been prepared and are submitted with the development application in accordance with Council's submission requirements.





In terms of solar access, the proposal complies with the solar access requirements of the Apartment Design Guide as it achieves a minimum 2 hours of solar access to all living room windows and private open space areas for between 9,00am and 3,00pm during mid winter.

Chapter 4.4.2 of Rockdale DCP 2011 contains controls for solar access and states in relation to residential flat buildings:

b. Living rooms and private open spaces for at least 70% of apartments in a development and adjoining properties should receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid winter."

All proposed units comply with the ADG requirement of receiving a minimum of 2 hours solar access to living rooms and private open space areas during midwinter. In relation to the adjoining properties it is important to note the neighbouring residential flat building was approved under DA-2011/179 prior to the ADG requirements for separation and prior to the current DCP setback requirements. Therefore the neighbouring residential flat building was approved with a setback of 3m from the common boundary.

In light of the footprint of the adjoining development, the design of the proposal achieves a minimum of 2hrs of direct sunlight to 70% of the neighbouring apartments in line with the ADG. 10 out of 14 apartments (71%) in the adjoining building will receive 2hrs of sunlight, further, 8 out of 14 apartments (57%) will receive 3 hours of direct sunlight.

At 9.00am during mid-winter, the proposal casts shadow over some north-facing windows of the adjoining units fronting Rocky Point Road and there is no impact on the units fronting Park Road. At 12.00 noon during midwinter, shadow cast by the proposal is limited to the north-facing windows of the southern adjoining units, and a portion of the west-facing windows of the adjoining units to the east. At 3.00pm shadow impacts affect the western façade of the neighbouring building with the exception of the uppermost storey. For the majority of the year, the additional shadows are minimal.

The building provides 6m setbacks to the southern and eastern site boundaries consistent with the requirements of the ADG and responds well to the site context and adjoining pattern of development to minimise the shadow impacts as far as practicable without unreasonably compromising the development potential of the site. This overshadowing of the adjoining dwellings to the east and south of the site would reasonably be expected as part of redeveloping the subject site in a manner envisaged by the planning controls.

4.3.5.2 Views

There are no significant views of waterways or iconic buildings afforded from the site or from buildings in the immediate vicinity of the site. The proposal is of a scale and form reasonably expected at the site and will not result in any significant or unreasonable view loss impacts.

4.3.5.3 Aural & Visual Privacy

The proposed development has been designed to minimise as far as practicable the likelihood of any adverse overlooking or invasion of aural privacy of neighbouring properties. This has been achieved by responsive orientation and layout of the apartments and private open spaces as well as the use of architectural treatments that minimise direct lines of sight to the adjoining residential properties.

Specifically, the design philosophy of the proposal seeks to orient the indoor and outdoor living areas of new apartments to both street frontages to assist with passive surveillance and to maintain privacy of internally adjoining dwellings.

In terms of maintaining the privacy of the adjoining properties, the proposal complies with the setback and separation requirements of the ADG at all levels. As such, the proposal is considered acceptable in terms of aural and visual privacy impacts on adjoining development and the amenity of future residents.





4.4 ECONOMIC & SOCIAL IMPACTS

The proposed development will result in an increase in the available housing stock in the locality by the provision of a high quality residential development. The subject site enjoys good access to commercial services, community facilities and public transport routes. The proposed development will utilise existing infrastructure including electricity, sewer, water and telecommunication services.

The proposal incorporates a suitable mix of 1, 2 and 3 bedroom apartments all of which are tailored for modern living and contribute to the existing housing stock within the locality.

Undertaking the demolition and construction works will have some short-term positive economic impacts through employment generation, both direct employment and multiplier effects. Accordingly, it is considered that the proposed development is likely to have only positive social and economic impacts in the locality.

4.5 THE SUITABILITY OF THE SITE

4.5.1 Access to Services

The site is located within an established area with good access to services and public transport. As the site is within an established urban area, electricity, sewer, telephone, and water services are readily available to the subject site.

4.5.2 Parking and Access

The on-site parking provided complies with the requirements of the Rockdale DCP 2011. The design and layout of on-site parking and vehicle access/egress is compliant with AS2890.1

4.5.3 Hazards

The site is not in an area recognised by Council as being subject to landslip, flooding, bushfire or any other particular hazards. The proposed development is not likely to increase the likelihood of such hazards occurring and is considered appropriate in this instance.

4.6 THE PUBLIC INTEREST

The proposed development has been designed to relate to the size, shape and context of the site and has been designed in accordance with the desired future character for development in the area as defined by current planning controls.

The minor numeric variations to development standards for building height and FSR do not prevent the achievement of the objectives related to these controls ad therefore do not undermine the intent and purpose of planning controls adopted in the public interest.

The proposal will provide high quality residential accommodation and has been designed to minimise as far as practicable any adverse effects on existing and future neighbouring properties. The proposal is consistent with the applicable LEP, DCP and Apartment Design Guide provisions except where identified and justified in this Statement. Accordingly, the proposed development is considered to be in the public interest.





5. Conclusion

The proposed development has been assessed in light of Section 79C of the Environmental Planning & Assessment Act, 1979, State Environmental Planning Policies and Council's planning instruments.

The proposal is permissible with Council's consent within the zone and meets the relevant requirements of the Rockdale LEP 2011, with the exception of the minor rooftop elements breaching the height control and a minor variation to the FSR control. These variations have been identified and justified in this Statement. The proposal is consistent with the Design Criteria of the Apartment Design Guide and complies with the applicable built form provisions of Council's DCP with the exception of the requirements for communal open space. It has been demonstrated that most apartments are to be provided with private open space areas that significantly exceed the relevant requirements and the lack of communal open space will not compromise the amenity of future residents.

The siting, design and external appearance of the proposal is considered to be appropriate and consistent with the desired future character of the locality and the setting of this isolated corner site. The proposal is not likely to result in any unreasonable loss of privacy to any adjoining or nearby residents and will offer high levels of amenity for the future occupants.

The completed development will have no unreasonable impact on solar access to adjoining residential properties, nor will the proposal change the topography, micro-climate, air or water quality of the locality.

Undertaking the construction works will have some short-term positive economic impacts through employment generation, both direct employment and multiplier effects.

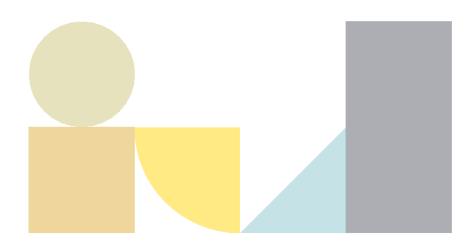
Accordingly, in the circumstances of the case, the proposal is considered to be in the public interest and worthy of Council's support.

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ANNEXURE A

SEPP 65 Apartment Design Guide – Compliance Table



SEPP 65 APARTMENT DESIGN GUIDE (DESIGN CRITERIA) COMPLIANCE TABLE						
Clause / Control	Requirement			Proposal	Complies?	
Communal and Public Open Space		mmunal open space has a minimum area equal to % of the site (site area of 896m ² requires 224m ² of ss)		The proposal does not provide communal open space. The ground floor units and two of the top floor units are provided with generous courtyards or rooftop private open space areas which exceed the ADG guidelines. In addition, the site is located within walking distance to Bona Park and other local parks and sporting fields. The amenity of the proposed apartments will not be compromised by the non-provision of communal open space.	On merit	
	sunlight to the popen space for	achieve a minimum principal usable part a minimum of 2 hou I June (mid-winter)	of the communal	N/A – refer above	N/A	
Deep Soil Zones	Soil Zones Deep soil zones are to meet the following managements:		following minimum	107m² deep soil provided in On total (11.9%)	On merit	
	Site Area	Minimum Dimension	Deep Soil Zone (% of site area)	15m² provided with a minimum dimension of 3m. The amount of deep soil		
	650m ² to 1,500m ²	3m	7%	provided is a result of the efficiency of the basement design and car parking requirements. Despite some		
				deep soil areas not meeting the minimum dimension required, deep soils is provided to all site boundaries to allow for canopy tree planting, and additional areas of podium landscaping are provided at the ground level.		
Visual Privacy	Separation bety	ween windows and b	palconies is provided	6m to eastern and southern	Yes	

SEPP 65 APARTMENT DESIGN GUIDE (DESIGN CRITERIA) COMPLIANCE TABLE					
	Building Height	Habitable Rooms and Balconies	Non- habitable rooms		
	Up to 12m (4 storeys)	6m	3m		
Bicycle and Car Parking	For development in the following locations: on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area; or on land zoned, and sites within 400 metres of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre the minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.		NA – DCP rates apply	See Annexure E	
Solar Access and Daylight	Living rooms and priva of apartments in a build direct sunlight between the Sydney Metropolita Wollongong local gover	ng receive a minim 9 am and 3 pm at n Area and in the N	num of 2 hours t mid-winter in	All units receive in excess of 2 hours of sunlight to living room windows and private open space areas during mid-winter as outlined on the plans.	Yes
Natural Ventilation	At least 60% of ap ventilated in the first Apartments at ten store cross ventilated only if a these levels allows ac cannot be fully enclose	nine storeys of eys or greater are any enclosure of the lequate natural vi-	the building. deemed to be e balconies at	All units are naturally cross ventilated.	Yes
	Overall depth of a apartment does not ex to glass line			There are no units proposed which have a depth greater than 12 metres.	Yes

SEPP 65 APARTMENT DESIGN GUIDE (DESIGN CRITERIA) COMPLIANCE TABLE					
Ceiling Height	Measured from finished floor level to finished ceiling level, minimum ceiling heights are: Habitable Rooms – 2.7m Non-habitable rooms – 2.4m 2 storey apartments - 2.7m for main living area and 2.4m for second floor where its area does not exceeds 50% of the apartment area Attic Spaces - 1.8m at the edge of the room with a 30 degree minimum ceiling slope. If located in a mixed use area - 3.3m for ground and first floor to promote future flexibility. These minimums do not preclude higher ceilings if desired.	All habitable rooms have 2.7m ceiling heights. Non-habitable rooms contain ceiling heights that are at least 2.4m	Yes		
Apartment Layout	Apartments are required to have the following minimum internal areas: Studio - 35m ²	NA			
	1 Bedroom - 50m ² 2 Bedroom - 70m ² 3 Bedroom - 90m ² The minimum internal areas include only one bathroom.	All 1 bedroom apartments are at least 50m ² All 2 bedroom apartments are at least 70m ² All 3 bedroom apartments are 95m ²	Yes		
	Additional bathrooms increase the minimum internal area by 5m2 each A fourth bedroom and further additional bedrooms	The units that have two bathrooms provide the additional 5m ² .	Yes		
	increase the minimum internal area by 12m2 each. Every habitable room must have a window in an external	N/A	NA		
	wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms	All windows meet the requirements of the BCA.	Yes		
	Master bedrooms have a minimum area of 10m2 and other bedrooms 9m2 (excluding wardrobe space)	All master bedrooms comply with these requirements, refer to the plans for compliance.	Yes		
	Bedrooms have a minimum dimension of 3m (excluding wardrobe space) Living rooms or combined living/dining rooms have a	All bedrooms of proposed units comply with these requirements, refer to the plans for compliance.	Yes		
	minimum width of: 3.6m for studio and 1 bedroom apartments 4m for 2 and 3 bedroom apartments	All living areas of proposed units comply with these requirements, refer to the plans for compliance.	Yes		

SEPP 65 APARTMENT DESIGN GUIDE (DESIGN CRITERIA) COMPLIANCE TABLE					
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	All units have a minimum width of 4 metres, refer to the plans for compliance.	Yes		
Environmental	Habitable room depths are limited to a maximum of 2.5 x the ceiling height	Refer to plans for compliance.	Yes		
Performance	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	Complies.	Yes		
Open Space	All apartments are required to have primary balconies as follows:				
	Studio - 4m ² 1 Bedroom - 8m ² (Minimum depth of 2m) 2 Bedroom - 10m ² (Minimum depth of 2m) 3 Bedroom - 12m ² (Minimum depth of 2.4m)	All 1 bedroom balconies exceed 2m in depth and are 8m² – 47m² All 2 bedroom balconies	Yes		
		exceed 2m in depth and are 10m² – 81m² All 3 bedroom balconies exceed 2.4m in depth and are 12m²	Yes		
	The minimum balcony depth to be counted as contributing to the balcony area is 1m.	Noted.	-		
	For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m ² and a minimum depth of 3m.	The ground floor units have a courtyard between 53m² and 93m² with a minimum depth of 3m.	Yes		
Common Circulation	The maximum number of apartments off a circulation core on a single level is 8.	Maximum of 3 dwellings off a single circulation space.	Yes		
Space	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	N/A			
Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: Studio - 4m² 1 Bedroom - 6m² 2 Bedroom - 8m² 3 Bedroom - 10m² At least 50% of the required storage is to be located	Required storage is provided within the basement and within each dwelling as indicated on the submitted plans.	Yes		



ANNEXURE B

Rockdale LEP 2011 – Compliance Table



ROCKDALE LEP 2011 COMPLIANCE TABLE						
Clause / Control	Requirement	Proposal	Complies?			
4.2 Zone Objectives & Land Use Table	R4 – High Density Residential Zone Objectives To provide for the housing needs of the community within a high density residential environment. To provide a variety of housing types within a high density residential environment. To enable other land uses that provide facilities or services to meet the day to day needs of residents. Residential flat buildings are permissible with consent from Council.	The proposed development is entirely consistent with the relevant zone objectives in that the residential flat building will provide a range of suitable dwelling types that meet the housing needs of the community within a high density residential environment. The number of adaptable dwellings proposed provides suitable housing for the elderly and people with a disability and the building clearly promotes a high quality urban outcome with minimal environmental impacts. The proposal is best described as a residential flat building and is permissible with consent from Council.	Yes			
4.3(2) Height of buildings	The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map – 14.5 metres.	The maximum height of the building is 14.8m.	On merit Refer to 4.6 Variation in Annexure C			
4.4(2) Floor space ratio	The FSR of a building on any land is not to exceed the maximum FSR shown for the land on the Floor Space Ratio Map – 1:1	1.09:1	On merit Refer to 4.6 Variation in Annexure D			
6.1 Acid sulfate soils	Class 5 - Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.	The excavation for the basement level produces a level at RL 7.4 which is above 5m AHD, however is within 500m of Class 1, 2, 3 or 4 land. An Acid Sulfate Soils Management Plan has been submitted with the application under separate cover.	Yes			

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Statement of environmental effe

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ROCKDALE LEP 2011 COMPLIANCE TABLE						
6.7 Stormwater	(3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development: (a) is designed to maximise the use of water permeable surfaces on the site having regard to the soil characteristics affecting on-site infiltration of water, and (b) will include, where practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and (c) will avoid, or if a disturbance or impact cannot be avoided, will minimise and mitigate, any disturbance or impact of stormwater runoff on: (i) properties adjoining the land on which the development is proposed to be carried out, and (ii) native bushland, and (iii) receiving waters.	Stormwater plans have been submitted with the application.	Yes			

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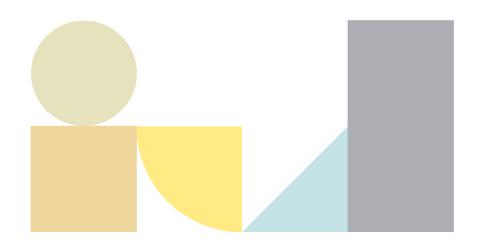
Statement of environmental effect

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ANNEXURE C

Clause 4.6 Variation - Building Height





Clause 4.6 variation statement – maximum height (clause 4.3)

1. Height of buildings control

Clause 4.3 (2) of Rockdale Local Environmental Plan 201 (RLEP 2011) relates to maximum permitted building height for a site and refers to the *Height of Buildings Map*. The relevant map identifies the subject site as having a maximum height of 14.5m. Building height is defined as:

- " building height (or height of building) means:
- (a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or
- (b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.."

The maximum height control is a "development standard" to which exceptions can be granted pursuant to clause 4.6 of the LEP.

2. Proposed variation to height of building development standard

The development application proposes the construction of a residential flat building. The building is four storeys with private roof top terraces and is compliant with the 14.5m height control. The fire stair access to the rooftop plant and the rooftop plant room have a maximum height of 14.8m. The stair access and plant room exceed the maximum building height limit by a maximum 0.3m which is a variation to the control equivalent to 2%. The height is breach is identified in Figure 5.

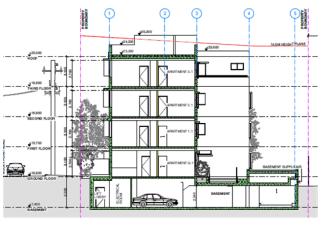


Figure 7 Section showing height non-compliance

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Clause 4.6 to RLEP 2011

The objectives and provisions of clause 4.6 to RLEP 2011 are as follows:

"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
- (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 Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the Secretary must consider.
 - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - (b) the public benefit of maintaining the development standard, and
 - (c) any other matters required to be taken into consideration by the Secretary before granting concurrence
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:





- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3)
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:
 - (a) a development standard for complying development,
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which <u>State Environmental Planning Policy</u> (<u>Building Sustainability Index: BASIX</u>) 2004 applies or for the land on which such a building is situated,
 - (c) clause 5.4.
 - (ca) clause 4.3 (2A), 4.4 (2A), (2B), (2C) or (2D), unless it is for a demonstrable public benefit, such as the provision of pedestrian links,
 - (cb) clause 4.3A."

The development standards in clause 4.3 are not "expressly excluded" from the operation of clause 4.6.

Objective 1(a) of clause 4.6 is satisfied by the discretion granted to a consent authority by virtue of subclause 4.6(2) and the limitations to that discretion contained in subclauses (3) to (8). This request addresses the requirements of subclauses 4.6(3) and 4.6(4) in order to demonstrate to the consent authority that the exception sought is consistent with the exercise of "an appropriate degree of flexibility" in applying the development standard, and is therefore consistent with objective 1(a). In this regard, the extent of the discretion afforded by subclause 4.6(2) is not numerically limited, in contrast with the development standards referred to in subclause 4.6(6).

Objective 1(b) of clause 4.6 is addressed later in this request.

The objectives of clause 4.3 height of buildings are as follows:

- " (a) to establish the maximum limit within which buildings can be designed and floor space can be achieved,
 - (b) to permit building heights that encourage high quality urban form,
 - (c) to provide building heights that maintain satisfactory sky exposure and daylight to buildings, key areas and the public domain,
 - (d) to nominate heights that will provide an appropriate transition in built form and land use intensity."

As previously noted, the *Height of Buildings Map* nominates a maximum building height of 14.5m for the site. It is hereby requested that an exception to this development standard be granted pursuant to clause 4.6 so as to permit a maximum building height of 14.8m to the fire stair access to the rooftop plant and the rooftop plant room as described in Section 2.

In order to address the requirements of subclause 4.6(4)(a)(ii), the objectives of clause 4.3 are addressed in turn below.

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Objective (a): "to establish the maximum limit within which buildings can be designed and floor space can be achieved"

The height has been established at 14.5m for the site. The fire stair access to the rooftop plant and the rooftop plant room is recessed from the perimeter of the building and will not be readily visible from the adjoining streets. It does not contribute to the bulk and scale of the building overall, being a minor but essential structure to the overall design and function of the building. The stair and plant room do not contribute to the FSR of the development.

For these reasons the proposed building height meets Objective (a).

Objective (b): "to permit building heights that encourage high quality urban form"

A building height control of 14.5m allows for a four storey residential flat building compliant with the floor-to-ceiling height controls of the ADG. The proposal is four storeys and compliant with the relevant floor-to-ceiling height requirements.

The design of the building ensures functional internal layouts and adopts a contemporary appearance with the street front façades containing interesting and articulated presentation through the use of balcony design and architectural elements. The massing has been determined by setbacks and ADG controls. The building is consistent with the street setbacks of the adjoining developments as per the DCP and 6m side setbacks as per the ADG, resulting in a building which reinforces the streetscape and domestic character of the area.

The built form of the building is of a high quality urban from and the minor non-compliance for the fire stair access and the rooftop plant do not detract from achieving Objective (b).

Objective (c): "to provide building heights that maintain satisfactory sky exposure and daylight to buildings, key areas and the public domain"

The proposed variation to the building height control for the fire stair access and the rooftop plant room will not have adverse impacts on adjoining areas. The non-compliant sections of the building do not contribute to the shadow cast onto adjoining properties or the public domain as it is centrally located to the building footprint.

Objective (d): "to nominate heights that will provide an appropriate transition in built form and land use intensity."

The height of buildings map for the site is provided at Figure 8, with the site edged in red. As can be seen from the map excerpt, the land to the east and south also has a height limit of 14.5m, and the land to the north along Rocky Point Road has a height limit of 16m. The minor non-compliance of the fire stair access and the rooftop plant does not offend the objective of achieving a transition in height and land use intensity.





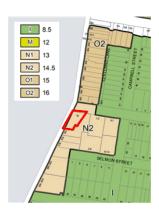


Figure 8 Height of buildings map

The proposed development is therefore consistent with the objectives for maximum height despite the minor numeric non-compliances.

Clause 4.6(4) also requires consideration of the relevant zone objectives. The objectives of Zone R4 High Density Residential are as follows:

- To provide for the housing needs of the community within a high density residential environment.
 - · To provide a variety of housing types within a high density residential environment.
 - To enable other land uses that provide facilities or services to meet the day to day needs of residents."

The proposed development is demonstrably consistent with the relevant zone objectives in that it provides a mix of 1, 2 and 3 bedroom apartments within a high quality development envisaged by the controls for the R4 High Density Residential zone.

For these reasons the development proposal meets the objectives for development in Zone R4.

4. Sufficient environmental planning grounds

Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard, the assessment of this numerical non-compliance is guided by the recent decision of the NSW *LEC Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90* whereby Justice Pain ratified the decision of commissioner Pearson.

The non-compliance will have no adverse impacts on adjoining properties with regard to visual impacts or overshadowing, and to require strict compliance would mean removing parts of the building without resulting in a real planning benefit to neighbourhood character or amenity.

To insist on strict compliance would thwart and preclude the redevelopment of the land to a reasonable standard, and not allow the site to reach its full development potential.

The proposed height encroachment will enable the orderly and economic redevelopment of the subject site in accordance with the intentions of the Environmental Planning and Assessment Act, 1979. There is no planning purpose to be served by limiting the height strictly to the maximum height allowable given the absence of amenity related





impacts. There will be no additional shadow, no obstruction of views and no opportunities for overlooking resulting from the small sections of the building exceeding the height control.

In short, we consider that there are sufficient environmental planning grounds to justify the applicant's proposed variation to the height standard.

On "planning grounds" and in order to satisfy that the proposal meets objective 1(b) of clause 4.6 in that allowing flexibility in the particular circumstances of this development will achieve "a better outcome for and from development", the non-compliance relates to the fire stair access and the rooftop plant room only. The remainder of the building is below the maximum height control.

Strict compliance would be counterproductive in terms of amenity and accessibility for future residents, streetscape and impacts to neighbouring properties.

The merits of the proposal on "environmental planning grounds" need to be balanced with the burden that strict compliance places on the site and whether strict compliance will result in a better or neutral outcome. The development has been designed to provide a high quality urban outcome, with the majority of the building complying with the 14.5m height limit, so as to not impact on the privacy and amenity of neighbouring properties. Insisting on strict compliance in this instance would result in a deletion of the fire stair and relocation of the plant room to the basement with potential loss of off street parking.

To require strict compliance would therefore result in an unreasonable burden on the development with no demonstrable built form or amenity benefits. As such the proposal results in a high quality residential development which is suited to the site and its context.

5. Insistence on compliance is unreasonable and unnecessary

In regards to Clause 4.6(3)(a), in Wehbe V Pittwater Council (2007) NSW LEC 827 Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. It states, inter alia:

"An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard."

The judgement goes on to state that:

"The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served)."

Preston CJ in the judgement then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1 for the purposes of this Clause 4.6 variation [our underline]):

- The objectives of the standard are achieved notwithstanding non-compliance with the standard;
- The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
- The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;





- 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 that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

Having regard to all of the above, it is our opinion that compliance with the height of buildings development standard is unnecessary in the circumstances of this case as the development meets the objectives of that standard and the zone. Therefore, insistence upon strict compliance with that standard would be unreasonable. On this basis, the requirements of clause 4.6(3) are satisfied and Council has the power to grant variation to the height of buildings development standard as proposed.

Insistence upon strict compliance with that standard would be unreasonable. On this basis, the requirements of clause 4.6(3) are satisfied.



ANNEXURE D

Clause 4.6 Variation – FSR

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Clause 4.6 variation statement – maximum FSR (clause 4.4)

Floor space ratio control

Clause 4.4 (2) of Rockdale Local Environmental Plan 201 (RLEP 2011) relates to maximum permitted FSR for a site and refers to the *Floor Space Ratio Map*. The relevant map identifies the subject site as having a maximum FSR of 1:1. Gross floor area is defined as:

- " gross floor area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes:
 - (a) the area of a mezzanine, and
 - (b) habitable rooms in a basement or an attic, and
 - (c) any shop, auditorium, cinema, and the like, in a basement or attic,

but excludes

- (d) any area for common vertical circulation, such as lifts and stairs, and
- (e) any basement.
- (i) storage, and
- (ii) vehicular access, loading areas, garbage and services, and
- (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
- (g) car parking to meet any requirements of the consent authority (including access to that car parking), and
- (h) any space used for the loading or unloading of goods (including access to it), and
- (i) terraces and balconies with outer walls less than 1.4 metres high, and
- (j) voids above a floor at the level of a storey or storey above."

The maximum FSR control is a "development standard" to which exceptions can be granted pursuant to clause 4.6 of the LEP.

Proposed variation to FSR development standard

The development application proposes the construction of a residential flat building. The building is four storeys with private roof top terraces and is proposes an FSR of 1.09:1. The non-compliance is 80.64m² which is a variation to the control equivalent to 9%.

3. Clause 4.6 to RLEP 2011

The objectives and provisions of clause 4.6 to RLEP 2011 are as follows:

"4.6 Exceptions to development standards

(1) The objectives of this clause are as follows:

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- (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 Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the Secretary must consider.
 - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - (b) the public benefit of maintaining the development standard, and
 - (c) any other matters required to be taken into consideration by the Secretary before granting concurrence
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:
 - (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

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- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:
 - (a) a development standard for complying development,
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which <u>State Environmental Planning Policy</u> (<u>Building Sustainability Index: BASIX) 2004</u> applies or for the land on which such a building is situated,
 - (c) clause 5.4,
 - (ca) clause 4.3 (2A), 4.4 (2A), (2B), (2C) or (2D), unless it is for a demonstrable public benefit, such as the provision of pedestrian links,
 - (cb) clause 4.3A."

The development standards in clause 4.4 are not "expressly excluded" from the operation of clause 4.6.

Objective 1(a) of clause 4.6 is satisfied by the discretion granted to a consent authority by virtue of subclause 4.6(2) and the limitations to that discretion contained in subclauses (3) to (8). This request addresses the requirements of subclauses 4.6(3) and 4.6(4) in order to demonstrate to the consent authority that the exception sought is consistent with the exercise of "an appropriate degree of flexibility" in applying the development standard, and is therefore consistent with objective 1(a). In this regard, the extent of the discretion afforded by subclause 4.6(2) is not numerically limited, in contrast with the development standards referred to in subclause 4.6(6).

Objective 1(b) of clause 4.6 is addressed later in this request.

The objectives of clause 4.4 are as follows:

- " (a) to establish the maximum development density and intensity of land use, accounting for the availability of infrastructure and generation of vehicular and pedestrian traffic, in order to achieve the desired future character of Rockdale,
 - (b) to minimise adverse environmental effects on the use or enjoyment of adjoining properties,
 - (c) to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing or likely to undergo a substantial transformation."

As previously noted, the *Floor Space Ratio Map* nominates a maximum FSR of 1:1 for the site. It is hereby requested that an exception to this development standard be granted pursuant to clause 4.6 so as to permit a maximum FSR of 1.09:1.

In order to address the requirements of subclause 4.6(4)(a)(ii), the objectives of clause 4.4 are addressed in turn below.

Objective (a): "to establish the maximum development density and intensity of land use, accounting for the availability of infrastructure and generation of vehicular and pedestrian traffic, in order to achieve the desired future character of Rockdale"

The maximum FSR has been established at 1:1 for the site. The proposed development provides for a mix of 1, 2 and 3 bedroom units, complies with the required parking provisions of the DCP and meets the objectives of the R4 High

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Density Residential zone objectives. The proposed development is in line with the type of development envisaged for the site, and as described against Objective (c) below, provides for a suitable transition in the intensity of development between the site and higher density development permitted to the north along Rocky Point Road. The degree to which the proposal exceeds the maximum FSR is equivalent to a two-bedroom apartment and adequate on-site parking, vehicle and pedestrian movement pathways and utility services are proposed to account for the number of proposed apartments

For these reasons the proposed FSR meets Objective (a).

Objective (b): "to minimise adverse environmental effects on the use or enjoyment of adjoining properties"

The design of the building ensures functional internal layouts and the massing has been determined by the side setbacks of the DCP and ADG separation controls. The three dimensional building envelope is compliant with setback and height controls with the minor exception of rooftop structures which do not contribute to floor space or building bulk. The proposed building form and layout of apartments will not have any adverse impact on adjoining properties, does not contribute to additional overshadowing beyond a compliant scheme and provides compliant separation between buildings to ensure the amenity of neighbours is not adversely affected.

The built form of the building is of a high quality and positively relates to protecting the amenity of the neighbouring residential apartments despite the non-compliance and meets Objective (b).

Objective (c): "to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing or likely to undergo a substantial transformation"

As described in the Clause 4.6 variation for the height non-compliance, the FSR map (Figure 9), indicates the land to the east and south also has an FSR maximum of 1:1, and the land to the north along Rocky Point Road has an FSR maximum of 2:1. The minor non-compliance of the FSR does not offend the objective of maintain visual relationships between areas, as most of the land surrounding the site has already been developed, with the subject being the last to redeveloped in the immediate locality.

The proposal matches the built form, bulk and scale of surrounding residential flat buildings and the proposed non-compliance with FSR will not be perceptible in the streetscape and character of the locality.



Figure 9 Height of buildings map

The proposed development is therefore consistent with the objectives for maximum FSR despite the minor numeric non-compliance.

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- To provide for the housing needs of the community within a high density residential environment.
 - · To provide a variety of housing types within a high density residential environment.
 - To enable other land uses that provide facilities or services to meet the day to day needs of residents."

The proposed development is demonstrably consistent with the relevant zone objectives in that it provides a mix of 1, 2 and 3 bedroom apartments within a high quality development envisaged by the controls for the R4 High Density Residential zone.

For these reasons the development proposal meets the objectives for development in Zone R4.

4. Sufficient environmental planning grounds

Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard, the assessment of this numerical non-compliance is guided by the recent decision of the NSW *LEC Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90* whereby Justice Pain ratified the decision of Commissioner Pearson.

The non-compliance will have no adverse impacts on adjoining properties with regard to visual, aural and privacy impacts or overshadowing, and to require strict compliance would mean removing parts of the building without resulting in a real planning benefit to neighbourhood character or amenity.

To insist on strict compliance would thwart and preclude the redevelopment of the land to a reasonable standard, and not allow reasonable development potential.

The proposed FSR non-compliance will enable the orderly and economic redevelopment of the subject site in accordance with the intentions of the Environmental Planning and Assessment Act, 1979. There is no planning purpose to be served by limiting the FSR strictly to the maximum allowable given the floor space has been distributed within a compliant building envelope and in the absence of amenity related impacts.

In short, we consider that there are sufficient environmental planning grounds to justify the applicant's proposed variation to the FSR standard.

On "planning grounds" and in order to satisfy that the proposal meets objective 1(b) of clause 4.6 in that allowing flexibility in the particular circumstances of this development will achieve "a better outcome for and from development", the non-compliance is minor and will not be noticeable from the street or surrounding properties.

Strict compliance would be counterproductive in terms of amenity for future residents. The merits of the proposal on "environmental planning grounds" need to be balanced with the burden that strict compliance places on the site and whether strict compliance will result in a better or neutral outcome. The development has been designed to provide a high quality urban outcome, with 1, 2 and 3 bedroom units designed so as to not impact on the privacy and amenity of neighbouring properties. The three dimensional building envelope complies with height and setback requirements with the minor exception of small rooftop elements which do not add to FSR. Insisting on strict compliance in this instance would result in the reduction in size of some units, thus reducing the internal amenity for future residents and/or the variety of apartment sizes.

To require strict compliance would therefore result in an unreasonable burden on the development with no demonstrable built form or amenity benefits. As such the proposal results in a high quality residential development which is suited to the site and its context





5. Insistence on compliance is unreasonable and unnecessary

In regards to Clause 4.6(3)(a), in Wehbe V Pittwater Council (2007) NSW LEC 827 Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. It states, inter alia:

"An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard."

The judgement goes on to state that:

"The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served)."

Preston CJ in the judgement then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1 for the purposes of this Clause 4.6 variation [our underline]):

- 1. The objectives of the standard are achieved notwithstanding non-compliance with the standard:
- The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
- The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable:
- 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 that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

Having regard to all of the above, it is our opinion that compliance with the FSR development standard is unnecessary in the circumstances of this case as the development meets the objectives of that standard and the zone. Therefore, insistence upon strict compliance with that standard would be unreasonable. On this basis, the requirements of clause 4.6(3) are satisfied and Council has the power to grant variation to the FSR development standard as proposed.

Insistence upon strict compliance with that standard would be unreasonable. On this basis, the requirements of clause 4.6(3) are satisfied.



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ANNEXURE E

Rockdale DCP 2011 – Compliance Table

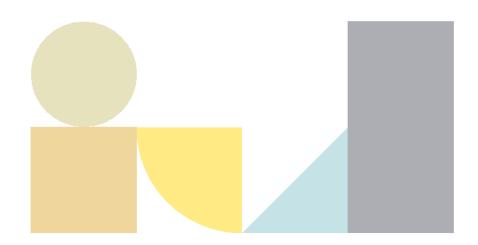




Table 2 Rockdale D	CP 2011 Compliance Table		
Clause / Control	Requirement	Proposal	Complies?
PART 4 General Princ	iples for Development		
4.1 Site Planning			
4.1.5 Contaminated Land	Development on land that is or has previously been used for a purpose which is likely to have contaminated the site is to follow the procedures and guidelines contained in SEPP No. 55 – Remediation of Land.	The site was previously occupied by a service station. Remediation and validation of the site was conducted in 2014. Easterly Point Environmental conducted a non-statutory contaminated land audit under the Contaminated Land Management Act 1997, and prepared a Section A Site Audit Statement and Site Audit Report stating the site is suitable for residential use.	Yes
4.1.9 Lot size and Site Consolidation	Residential Flat Buildings: A minimum frontage width of 24m is required. Avoidance of Isolated Sites: Developers must satisfy Council that adjoining parcels not included in their development site are capable of being economically developed.	The site has a frontage to Rocky Point Road of 40.44m and a frontage to Park Road of 24.5m. Development of the site will not isolate adjoining sites.	Yes Yes
4.2 Streetscape and S	ite Context		
Site Context	Development is to respond and sensitively relate to the broader urban context including topography, block patterns and subdivision, street alignments, landscape, views and the patterns of development within the area.	The proposal responds to its corner location and provides a high quality building appearance from Rocky Point Road and Park Road. The proposed siting of the building is appropriate for the orientation and shape of the site and the pattern of adjoining development.	Yes
Streetscape Character	The building design and use of materials, roof pitch and architectural features and styles must have regard to those of surrounding buildings to ensure a cohesive streetscape.	The proposal has a similar high-density scale and style to surrounding infill redevelopments.	Yes
	Building setbacks from the street boundary are to be consistent with prevailing setbacks of adjoining and nearby buildings	The proposed boundary setbacks to Park Road and Rocky Point Road are consistent with the adjoining development.	Yes

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.r. 0076/17



Table 2 Rockdale D	CP 2011 Compliance Table		
Pedestrian Environment	Residential buildings adjacent to the street must address the street by having a front door and/or living room or kitchen window addressing the street. The frontage of buildings and their entries are to be readily apparent from the street. Buildings are designed to overlook streets and other public areas to provide casual surveillance.	Units have been designed with a primary orientation to the street frontages, providing a suitable streetscape address and passive surveillance.	Yes
	Vehicle entries are discrete and minimise conflicts with pedestrians. Where possible, development is to take advantage of opportunities to provide driveway access from rear laneways.	The proposal provides vehicular access/egress from Park Road which is a lower order street than Rocky Point Road.	Yes
4.3 Landscape Planni	ng and design		
4.3.1 Open Space and Landscape Design	Landscaped areas, as defined by the LEP, for residential flat buildings are to total 15% of the site area.	The soft landscaped area (deep soil) on the site accounts for approximately 110m², equating to approximately 12% of the site area. Additional planted areas are provided over the basement roof at the ground level which provides an additional 80m², bringing the total landscaped area on the site to 21%.	On merit
	Landscaped areas should adjoin the landscaped area of neighbouring properties so as to provide for a contiguous corridor of landscape and vegetation.	Landscaped areas are provided to all setbacks of the site, generally adjoining the landscaped setbacks of the development to the east and south.	Yes
	Where a basement car park protrudes above ground level and is not wrapped in residential or retail uses, the walls are to be screened with appropriate treatments, such as planting	The basement protrudes above ground level at the eastern and northern elevations and landscape screening will be provided to screen the external walls.	Yes
	With the exception of development applications for single dwellings, street trees are to be provided in accordance with Council's Masterplan	Council may wish to impose a condition of consent.	Yes

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4.3.2	Private open space is to be clearly defined for private use through planting, fencing or landscape features	The development uses a variety of these features to delineate private open space at the ground level.	Yes
Private Open Space	Development should take advantage of opportunities to provide north- facing private open space to achieve comfortable year-round.	All units are oriented to the north or west to the street frontages. Compliance is achieved with the solar access requirements of the ADG.	Yes
	Private open space must take account of the visual and acoustic privacy of its occupants and neighbours. Development must ensure that the usability of private open space of adjoining buildings is not reduced through overlooking and overshadowing.	As above, private open space has been oriented away from properties to the east and south. Overshadowing of the proposal is discussed further at Section 4.3.6 of this Statement	Yes
	The primary private open space of each unit must directly connect to the living area. Balcony design is to: a. maximise habitability; b. provide privacy, e.g. the use of adjustable screens; and c. provide for a variety of uses, including clothes drying in open air.	Open plan living with glass sliding doors to balcony or terrace spaces are provided for all units. Each dwelling has a balcony that is compliant with the minimum dimensions and area requirements. All balconies are separated with dividing common walls between apartments. Each balcony is of a suitable size to enable drying areas in addition to private open space areas.	Yes
4.3.3 Communal Open Space	A primary communal open space area of adequate dimensions must be provided for use by all residents, for a residential flat building which has 12 or more dwellings.	This provision is overridden by the ADG – refer to comments in the ADG compliance table in Annexure A.	See Annexure
4.4 Sustainable build	ing design		
4.4.1 Energy Efficiency	A BASIX certificate is to be submitted with the development application for residential development.	A BASIX Certificate has been submitted in support of the application.	Yes
Energy Efficiency	A report on energy and water efficiency is to be submitted with the development application for any building works with a construction cost of \$1,000,000 or more.		



4.4.2 Solar Access	Living rooms and private open spaces for at least 70% of apartments in a development and adjoining properties should receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid winter.	Shadow diagrams (9am, 12, 3pm) at mid winter are provided and indicate that all proposed apartments will meet the solar access requirements of the Apartment Design Guide.	Yes
		Refer to the ADG compliance table at Annexure A. Shadowing impacts have been addressed in Section 4.3.6.	
4.4.5 Visual and Acoustic Privacy	The windows of a habitable room with a direct sightline to the windows of a habitable room of an adjacent dwelling and located within 9m: a. are sufficiently off-set to preclude views into the windows of the adjacent building; or b. have sill heights of 1.7m above floor level; or c. have fixed obscure glazing in any part of the window below 1.7m above floor level.	Visual privacy requirements are contained in the Apartment Design Guide which is addressed at Annexure A. The proposed building complies with the required 6m setback to the eastern and southern boundaries.	Yes
	Balconies, terraces, rooftop recreation areas and the like should be located to minimise overlooking of an adjoining property's open space or windows. Techniques such as recessing, screens or landscaping may be used to prevent direct views into habitable rooms or private open space of adjacent dwellings.	As above. Blade walls, dwelling orientation and planter boxes have been provided where necessary to ensure visual privacy.	Yes
	The use of the roof top area for recreational purposes is permissible subject to a. internal stair access and the usable area of roof being set back at least 1500mm from the edge of the building.	The private roof terraces are accessed by spiral staircases. The staircase for each unit is located towards the street frontages and away from adjoining properties.	Yes
	The location of driveways, open space and recreation areas and ancillary facilities external to the dwelling must be carefully planned to ensure minimal noise impact on adjoining residential properties.	The proposal will maintain adequate noise impacts for satisfactory amenity as examined by the acoustic report prepared by Acoustic and Air.	Yes
		Refer to the Acoustic Report submitted separately.	



Table 2 Rockdale D	OCP 2011 Compliance Table		
	Bedrooms of one dwelling should not share walls with living rooms or garages of adjacent dwellings. Bedrooms of one dwelling may share walls with living rooms of adjacent dwellings provided appropriate acoustic measures are documented. Where party walls are provided they must be carried to the underside of the roof.	Noise attenuation will comply with all BCA requirements. Refer to submitted Acoustic Report.	Yes
	An Acoustic Report is to be submitted at Development Application stage & post construction stage to ensure that the above standards have been achieved.		163
4.4.6 Noise Impact	Where development must comply with the Australian Standard 2021 – 2000 Acoustic – Aircraft Noise, in relation to interior noise levels, the applicant is to provide an Acoustic report prepared by a suitably qualified Noise Consultant to advise on appropriate measures to be incorporated into the design of the building so it will meet this standard.	See submitted Acoustic Report for full details of recommendations. Subject to compliance with the recommendations of the report, it is concluded that the proposal is acceptable in terms of the extent of noise impacts on each dwelling.	Yes
	Details of any mitigation measures must be included with the Development Application submission. The mitigation measure must be consistent with the BASIX certificate.	The mitigation measures are consistent with the BASIX certificate.	Yes
	External walls facing potential sources of noise are to be constructed of materials with good sound insulating quality and have no large openings that would transmit noise.	Refer to the submitted Acoustic Report.	Yes
	The building plan, walls, windows, doors and roof are to be designed to reduce intrusive noise levels from potential sources of noise.	The exposure of noise sensitive areas have been limited and will be constructed in accordance with the submitted Acoustic Report.	Yes
	Balconies and other external building elements are to be located, designed and treated to minimise noise infiltration.	As above.	Yes
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	Where new windows face potential sources of noise, they are required to be fitted with noise attenuating glass to minimise the impact of background noise from non-compatible development.	Refer to the recommendations of the Acoustic Report for details of attenuation measures.	Yes
	Design landscaping of communal and private open space to create a buffer between new residential development and adjacent potential sources of noise.	Landscaping is proposed along all site boundaries.	Yes
4.5 Social equity			
4.5.1	Residential flat buildings are to comply with the following dwelling mix:		
Housing Diversity and Choice	3 Bedroom: 10% - 20% 2 Bedroom: 50% - 75% 1 Bedroom/studio: 10% - 30%	16.6% of the proposed units are 3 bedroom dwellings. 41.7% of the proposed units are 2 bedroom dwellings. 41.7% of the proposed units are 1 bedroom dwellings.	Yes On merit On merit
	For multi-dwelling housing, residential flat buildings and shoptop housing, adaptable housing complying with AS 4299 is to be provided at a rate of 10% for developments exceeding 30 dwellings.	Whilst the number of 1 and 2 bedroom units is slightly less than the required mix the proposed mix of apartment sizes is considered appropriate and the non-compliance minor. The proposal provides 2 (16%) adaptable dwellings that comply with AS 4299.	Yes
	For residential flat buildings and shoptop housing, development is to provide barrier free access to at least 20% of dwellings.	All dwellings have barrier free access.	Yes
4.5.2 Equitable Access	The siting, design and construction of premises available to the public are to ensure an appropriate level of accessibility, so that all people can enter and use the premises. Access is to meet the requirements of the Disability Discrimination Act, the relevant Australian standards and the Building Code of Australia.	See Access Report submitted with the application for compliance with this provision.	Yes
4.6 Car parking, acce	ss and movement		



Parking Rates		Vehicle	Bicycle	Motorbike	14 residential spaces provided 3 visitor spaces provided	Yes Yes
		 1 space/studio, 1 and 2 bedrooms apartments 			2 bicycle and 1 motorbike space provided	Yes
	Multi Dwelling Housing/ Residential Flat Buildings/ Shoptop Housing	2 spaces/3 bedrooms apartments or more	1 space/10 dwellings	1 space/15 dwellings		
	Shoptop Housing	 Visitor parking: 1 space/5 dwellings 				
	5 x 1B = 5 spaces					
	5 x 2B = 5 spaces					
	2 x 3B = 2 spaces					
	12/5 = 2.4 visitor spaces					
	Total required = 14.4 space	es				
	2 bicycle spaces and 1 mo	otorbike space required.				
er nark Logation	Vehicle access points and	parking areas are to be:				
Car park Location and Design	a. easily accessible and re	0			The parking entry is clearly identifiable to motorists. Cars will enter	Yes
na besign	b. located to minimise tra	affic hazards and the po	tential for	vehicles to	the building and queuing is not expected. Refer to the submitted	
	queue on public roads				Traffic Report.	Yes
	d. located to minimise the				There will be no loss to on-street parking.	100
	the number of access p	points. Multiple drivewa	y crossin	gs are not		
	permitted.	andliet with medestrians in	artioularlu	in Innationa	No conflicts competed with direct nedectrion access to the evicting	
	e. designed to minimise co with heavy pedestrian traff			in locations	No conflicts expected with direct pedestrian access to the existing footpath network.	Yes
	with neavy pedestrian train	iic such as shopping cent	165.		lootpatii network.	
	Car parking and service/d	elivery areas are to be lo	cated so t	that they do	Parking areas do not dominate the public domain. Basement parking	Yes
	not visually dominate either	er the development or the	public do	main.	is provided which is accessed from Park Road.	
	Car parking areas must be	e well lit, well laid out and	d facilitate	convenient	The basement will be well lit, provide ease of manoeuvrability and	Yes
	manoeuvring into and out	of spaces and should have	e a legible	e circulation	will feature adequate signage.	
	pattern with adequate sign	nage.				
	Basement car parking is to	o be:				Yes



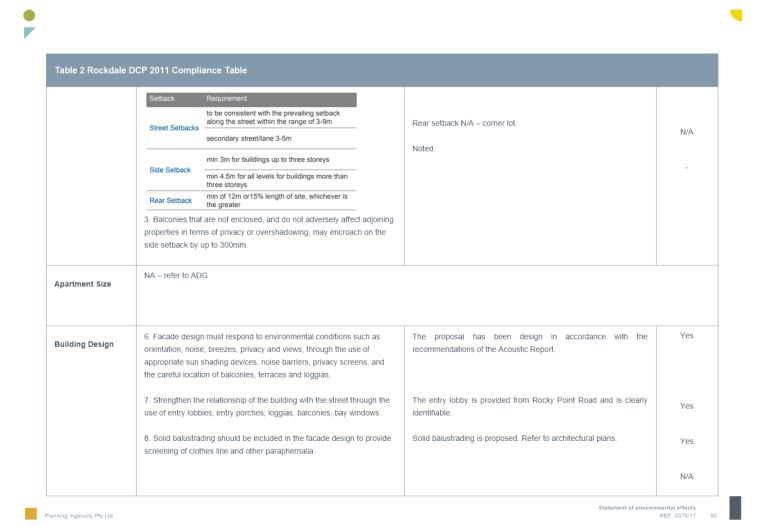
Table 2 Rockdale D	CP 2011 Compliance Table		
	a. adequately ventilated, preferably through natural ventilation; c. located fully below natural ground level; d. designed for safe and convenient pedestrian movement and to include separate pedestrian access points to the building; and	Mechanical ventilation to be provided to the basement level as natural ventilation is not available. Located within the building footprint and below natural ground level. The basement enables safe and convenient pedestrian access.	Yes
	All visitor car parking must be clearly marked, and must not be behind a security shutter unless an intercom system is provided for access.	Visitor parking to be marked.	Yes
	Parking spaces for people with a disability are to be provided in close proximity to lifts or access points.	Adaptable parking is located in the most convenient location to access the lifts.	Yes
	Garage doors must be treated as an integrated element of the building design. Where building uses will require the provision of loading facilities they	Basement entry is integrated into the building design.	Yes
	are to be designed in such a way as to permit all loading and unloading to take place wholly within the site and prevent conflict with pedestrian and vehicular movement within or surrounding the site.		
Car Wash Facilities	For buildings with 5 dwellings or more, at least one visitor car parking space is to be equipped with car wash facilities which has a cold water tap and is connected to the sewer system	One of the visitor parking spaces within the basement can be used as a car wash bay.	Yes
Pedestrian Access and Sustainable	Pedestrian access within a development must be legible and separated from vehicular access wherever possible.	Separate access provided from Rocky Point Road.	Yes
Transport	Provide safe and convenient pedestrian access from car parking and other public areas, with well co-ordinated signage, lighting, security, direct paths of travel with stairs and disabled access ramps.	Provided.	Yes
			Yes
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	Provide legible bicycle access between the cycle network and bicycle parking areas, which does not create conflict with pedestrian traffic. All bicycle parking is to be secure and where provided within the public domain must be designed to minimise obstruction of pedestrian movement.	The bicycle access and secure parking is located within the secured basement.	
4.7 Site facilities			
Air Conditioning & Communication	A master TV antenna or satellite dish is to be provided. Individual antennas or dishes may not be placed on balconies or verandahs.	Council may impose suitable conditions.	Yes
Waste Storage and Recycling Facilities	Development must comply with Council's Technical Specification – Waste Minimisation and Management regarding construction waste and on going management of waste facilities.	See Waste Management Plan for full details of compliance with these provisions.	Yes
	Waste must be minimised through source separation of waste, reuse and recycling by ensuring appropriate storage and collection facilities. Waste storage areas/facilities must be appropriately located so that they are easily accessed by tenants and do not have negative impacts on the streetscape or the residential amenity of occupants and neighbours with regards to smell, visual appearance or noise disturbance.	The bin store room is located within the basement, which provides storage of sufficient garbage and recycling bins, available to all tenants by the lift.	Yes
	Development must incorporate convenient access for waste collection. For mixed uses, storage facilities should be designed to cater for different needs of multiple tenants as well as future changes in uses.	The garbage room will be access by the building maintenance staff and will be mechanically ventilated. Not applicable.	Yes
Service Lines/Cables	Substation facilities must meet Energy Australia's requirements and if able to be viewed from the street, must be screened by landscaping to 1.5m.	The substation will be suitably located in accordance with applicable requirements.	Yes



Laundry Facilities	Laundry facilities are to be incorporated into each dwelling unit.	Laundry facilities provided in each unit.	Y
and Drying Areas	Drying areas are not to be located forward of the building line or within the setback to any street frontage and should be screened from public view.	Drying areas are to be located within the private open space of each dwelling and screened within hooded balconies.	Y
	Design should allow residents to hang clothes to dry in an open, and preferably sunny, part of the site.	Residents can hang clothes within their balcony behind the solid form sections of the balustrades.	Y
Letterboxes	Letterbox points are to be integrated with building design and are preferably to be located in a covered area. Letterboxes are to be centrally located either/or close to the major street entry and lockable.	Letterboxes are located in the ground floor lobby fronting Rocky Point Road.	Y
Hot Water Systems	All hot water systems/units located on the balcony of a dwelling must be encased in a recessed box. All associated pipe work is to be concealed.	Can be conditioned.	Y
Part 5 Building Types			
5.2 Residential Flat B	uildings		
Site Coverage	Building footprints for residential flat buildings are limited to 35% of the site area. The building footprint fits within the front, side and rear setback requirements and responds to site features, privacy, solar access and outdoor space design principles. Exceptions to this requirement may be considered in flood prone areas where podium development is warranted.	The building footprint results in 33% site coverage.	Y
Development Setbacks	The building footprint of residential flat buildings is established in accordance with the following building setbacks:		
		The street setbacks are consistent with adjoining buildings: 3m to Rocky Point Road and 5 m to Park Road.	Y
		6m setback to eastern and southern boundaries.	Y





The design should consider expressing a hierarchy of floor levels by defining a base, middle, and top to the building, including podium and	The facades include appropriate architectural treatments for vertical and horizontal features appropriate to the scale of the building. There	
penthouse expression.	is no need to create a hierarchy of base, middle and top.	Yes
Large expanses of blank walls are to be avoided through the use of architectural design features, modelling and fenestration.	Blank walls have been avoided.	N/A
The building line of a street wall building should generally be parallel with the street boundary alignment.	Building is parallel to each street boundary but does not create a street wall.	Yes
Private open space elements such as balconies should be predominantly north, east and west facing and should be designed to ensure visual and acoustic privacy.	Balconies have been oriented to Park Road and Rocky Point Road to ensure appropriate visual and acoustic privacy.	
Express important corners by giving visual prominence to parts of the façade through a change in building articulation, material, colour, roof expression or increased height.	The building appropriately addresses the corner of Park Road and Rocky Point Road through fenestration and material selections.	Yes
14. Existing residential flat buildings with no existing balcony enclosures are not permitted to enclose any balcony. Applications for balcony enclosures may only be considered when the enclosures are: a. integrated with a design for the entire building; and b. improve internal amenity through environmental control.	NA	TV/4
15. All external plumbing must be recessed or concealed and all internal plumbing must be ducted or concealed. Copper pipes must be exclusively used between the meter and service points.	Complies.	Yes
16. All proposed staircases to the upper levels of buildings must be internal.	Complies.	Yes



17. Façade fixtures such as sun shading devices and blade walls should not be the only means of façade modelling, and must instead be integrated with the overall facade composition to add another layer of detail and interest.	The proposal incorporates a number of design elements to achieve a contemporary façade presentation.	Ye
18. The selection and mix of building materials must complement the overall composition and emphasise the scale, proportion and rhythm of the façade. Heavy materials such as brick, stone and concrete can provide a solid building base or express key elements, whilst lighter materials such as glazing, cladding and lightly coloured rendered surfaces reduce perceived bulk and add relief to the façade.	Building style and materials selected are consistent with newer development in the locality.	Ye
19. The floor level of the upper most storey must be at least 3.5m below the maximum permitted height to achieve a variety of roof forms. maximum permitted height Parapeted roof line min 3.5m maximum permitted height Raked roof line min 3.5m	The floor level of the fourth storey is 4.5m below the 14.5m height limit.	Ye
20. Use the roof level for communal purposes or articulate the upper storeys, with differentiated roof forms, maisonettes or mezzanine penthouses and the like	The roof level is proposed for use as private open space terraces for two of the fourth storey units.	Ye
21. Plant rooms, lift overruns and mechanical ventilation rooms must not be located on the roof of a building where they can be visible from a public place. Such services must be integrated into the design of the building, or alternatively located in the basement of the building.	Lift overrun and plant will not be visible from the ground or street level as they are located centrally to the building.	Ye
22. The profile and silhouette of parapets, eaves and roof top elements must be considered in roof design.	Roof profile reflects contemporary architectural design and incorporates elements found throughout the Rockdale area.	
23. The roof design must be sympathetic to the existing streetscape, and have regard to existing parapet and roof lines of adjoining properties that are of a similar building height.	Flat roof proposed which is consistent with the surrounding built form, existing and proposed with regard to style.	Ye



Table 2 Rockdale DCP 2011 Compliance Table				
Building Entry	24. The entry is to be designed so that it is a clearly identifiable element of the building in the street.	Clearly identifiable entry points are provided from Rocky Point Road.	Yes	
	25. Utilise multiple entries – main entry plus private ground floor apartment entries to activate the street edge. At least 50% of ground floor dwellings are to have individual gates and direct access off the street.	Direct line of sight from the residential lobby to the street frontage.	Yes	
	26. Provide as direct a physical and visual connection as possible between the street and the entry.	Barrier free access proposed from Rocky Point Road.	Yes	
	27. At least one main entry with convenient, barrier-free access must be provided in all new development.	Provided.	Yes	
	28. Provide separate entries from the street for: • pedestrians and cars; and • different users, for example, for residential and commercial users in a mixed use development.	Separate pedestrian and vehicular access provided. NA	Yes NA	
	29. Design entries and associated circulation space of an adequate size to allow movement of furniture between public and private spaces.	Adequate dimension provided.	Yes	
	30. Pedestrian entries should be located on primary frontages.	Pedestrian entry is from Rocky Point Road with accessible path of travel via ramps to lobby area.	Yes	
Lift Size and Access	31. Lifts are to be provided in all residential flat buildings. Multiple stairlift cores should be provided to encourage multiple street entries and ease of access to apartments. Where units are arranged off a double-loaded corridor, the number of units accessible from a single core/corridor should be limited to 8.	A lift is provided to provide access to three units per floor.	Yes	
		Complies.	Yes	
	Statement of annion months officers			

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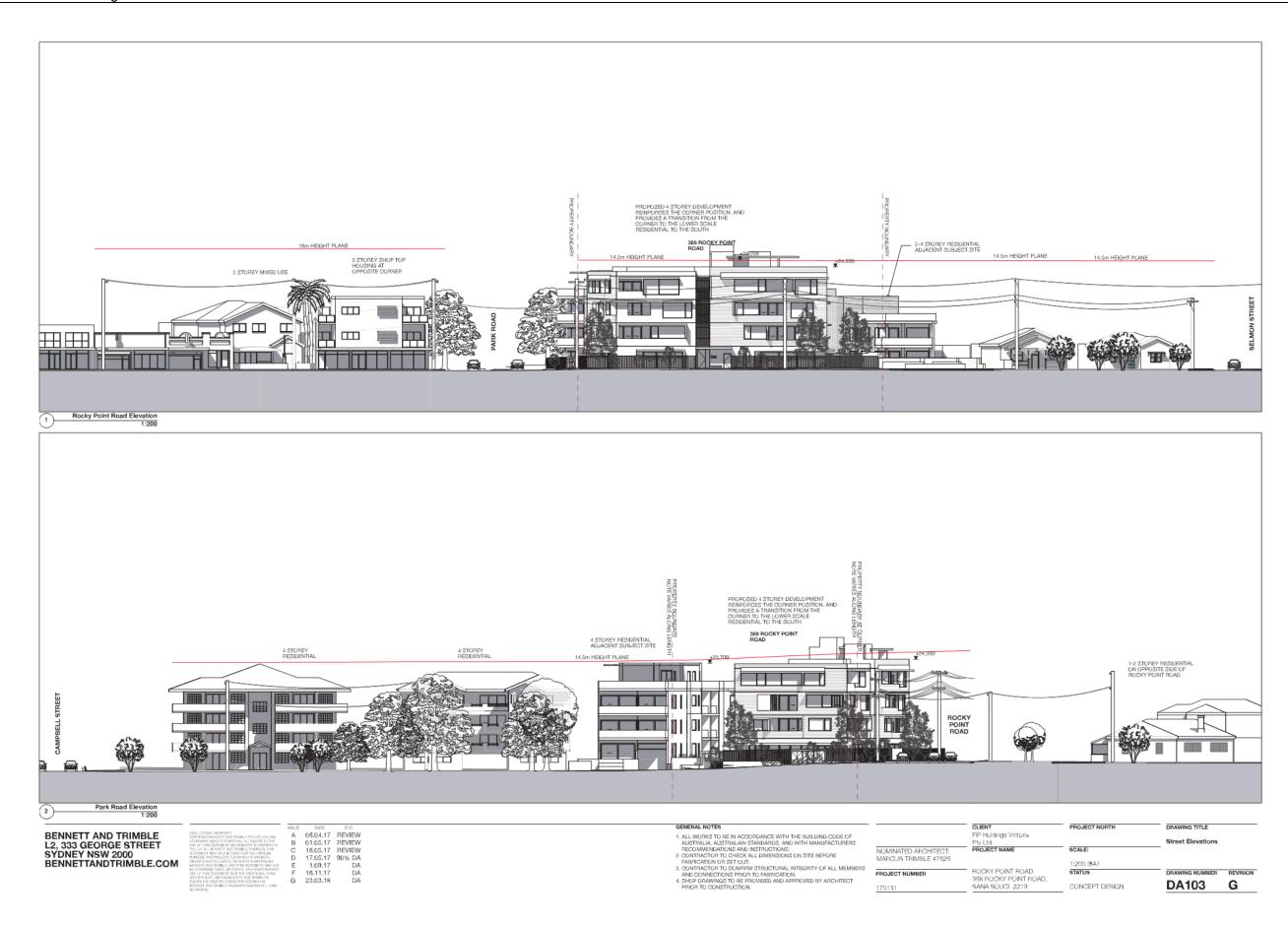
Statement of environmental effects
REF: 0078/17 53



Table 2 Rockdale DCP 2011 Compliance Table			
32. Lift cars are to have minimal internal dimensions of 2.1m x 1.5m, capable of carrying stretchers, with lift door openings wide enough to enable bulky goods (white goods, furniture etc) to be easily transported.	Complies.	Yes	
 33. Lifts are to be accessible from all levels of the building, including all basement levels. Level access to the lift from all basement levels must be provided. 34. Each dwelling on a level above the sixth storey is to have access to 	NA	NA	
two lifts. 35. All common corridors are to have a minimum width of 2 metres to	Complies	Yes	
enable bulky goods (white goods, furniture etc) to be easily transported through the building.	Complies	Yes	
36. All common corridors are to be provided with natural light and ventilation where feasible.			

Statement of environmental effects
Planning Ingenuity Pty Ltd
REF: 0078/17 54

Bayside Local Planning Panel 23/10/2018





CLAUSE 4.6 VARIATION STATEMENT

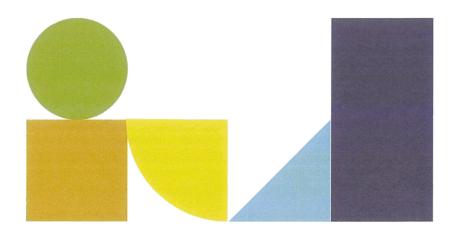
MAXIMUM FSR - CLAUSE 4.4 OF ROCKDALE LEP 2011

Demolition of existing structures and construction of a residential flat building over basement parking, and associated landscaping and drainage works

368 Rocky Point Road Sans Souci

REF: M170078

DATE: 20 September 2018





Clause 4.6 Variation Statement – Maximum FSR (Clause 4.4)

1. INTRODUCTION

This Variation Statement has been prepared in accordance with Clause 4.6 of Rockdale Local Environmental Planning Plan 2011 to accompany Development Application No. DA 2017/517. The application seeks consent for a 4 storey residential apartment building, comprising 12 units, and basement parking at No. 368 Rocky Point Road, Sans Souci ('the site').

2. PROPOSED VARIATION

Clause 4.4 (2) of Rockdale Local Environmental Plan 201 (RLEP 2011) relates to maximum permitted FSR for a site and refers to the *Floor Space Ratio Map*. The relevant map identifies the subject site as having a maximum FSR of 1:1. Gross floor area is defined as:

- gross floor area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes:
 - (a) the area of a mezzanine, and
 - (b) habitable rooms in a basement or an attic, and
 - (c) any shop, auditorium, cinema, and the like, in a basement or attic,

but excludes:

- (d) any area for common vertical circulation, such as lifts and stairs, and
- (e) any basement:
- (i) storage, and
- (ii) vehicular access, loading areas, garbage and services, and
- (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
- (g) car parking to meet any requirements of the consent authority (including access to that car parking), and
- (h) any space used for the loading or unloading of goods (including access to it), and
- (i) terraces and balconies with outer walls less than 1.4 metres high, and
- (j) voids above a floor at the level of a storey or storey above."

The development application proposes the construction of a residential flat building with a gross floor area of 969.43m². On a site of 896m², this represents a FSR of 1.08:1. The non-compliance is 73.43m² which is a variation to the control equivalent to 8.2%.

The maximum FSR control is a "development standard" to which exceptions can be granted pursuant to clause 4.6 of the LEP.

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Maximum FSR - Clause 4.4 of ROCKDALE LEP 2011F REF: M170078



3. OBJECTIVES AND PROVISIONS OF CLAUSE 4.6

The objectives and provisions of Clause 4.6 are as follows:

- (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 Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the Secretary must consider:
- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
- (b) the public benefit of maintaining the development standard, and
- (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:
- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard

Note

When this Plan was made it did not include Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU6 Transition, R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living.

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Maximum FSR - Clause 4.4 of ROCKDALE LEP 2011F REF: M170078



- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:
- (a) a development standard for complying development.
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
- (c) clause 5.4
- (ca) clause 4.3 (2A), 4.4 (2A), (2B), (2C) or (2D), unless it is for a demonstrable public benefit, such as the provision of pedestrian links,
- (cb) clause 4.3A.

It is noted that Clause 4.3 is not "expressly excluded" from the operation of Clause 4.6.

Objective 1(a) of Clause 4.6 is satisfied by the discretion granted to a consent authority by virtue of Subclause 4.6(2) and the limitations to that discretion contained in subclauses (3) to (8). This submission will address the requirements of Subclauses 4.6(3) & (4) in order to demonstrate to the consent authority that the exception sought is consistent with the exercise of "an appropriate degree of flexibility" in applying the development standard, and is therefore consistent with objective 1(a). In this regard, the extent of the discretion afforded by Subclause 4.6(2) is not numerically limited, in contrast with the development standards referred to in, Subclause 4.6(6).

 COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE (CLAUSE 4.6(3)(a))

In Wehbe V Pittwater Council (2007) NSW LEC 827 Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. This list is not exhaustive. It states, inter alia:

"An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard."

The judgement goes on to state that:

"The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served)."

Preston CJ in the judgement then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1 for the purposes of this Clause 4.6 variation [our underline]):

- 1. The objectives of the standard are achieved notwithstanding non-compliance with the standard
- The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;



Maximum FSR - Clause 4.4 of ROCKDALE LEP 2011F REF: M170078



- 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 that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

Compliance with the maximum FSR development standard is considered to be unreasonable and unnecessary as the objectives of that standard are achieved for the reasons set out in this statement. For the same reasons, the objection is considered to be well-founded as per the first method underlined above.

Notably, under Clause 4.6(4)(a)(ii) a consent authority must now be satisfied that the contravention of a development standard 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. Clause 4.6(4)(a)(ii) is addressed in Section 6 below.

5. SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS (CLAUSE 4.6(3)(b))

Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard, it is considered that there is an absence of any material impacts of the proposed non-compliance on the amenity of the environmental values of the locality, the amenity of future building occupants and on area character. Furthermore, the following planning grounds are submitted as planning grounds to justify contravening the maximum FSR:

- The non-compliance is minor and will have no adverse impacts on adjoining properties with regard to visual, aural
 and privacy impacts or overshadowing, and to require strict compliance would mean removing parts of the building
 without resulting in a real planning benefit to neighbourhood character or amenity.
- To insist on strict compliance would thwart and preclude the redevelopment of the land to a reasonable standard, and not allow reasonable development potential.
- The proposed FSR non-compliance will enable the orderly and economic redevelopment of the subject site in
 accordance with the intentions of the Environmental Planning and Assessment Act, 1979. There is no planning
 purpose to be served by limiting the FSR strictly to the maximum allowable given the floor space has been
 distributed in manner which results in an absence of amenity related impacts.
- The development has been designed to provide a high quality urban outcome, with 1, 2 and 3 bedroom units
 designed so as to not impact on the privacy and amenity of neighbouring properties. The three dimensional
 building envelope complies with height and setback requirements with the minor exception of small rooftop
 elements which do not add to FSR. Insisting on strict compliance in this instance would result in the reduction in
 size of some units, thus reducing the internal amenity for future residents and/or the variety of apartment sizes;
- Despite the minor non-compliance, the objectives of the building height clause have been achieved as demonstrated above.

It is noted that in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, Preston CJ clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:



Maximum FSR - Clause 4.4 of ROCKDALE LEP 2011F REF: M170078



- 86. The second way is in an error because it finds no basis in cl 4.6. Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development. This test is also inconsistent with objective (d) of the height development standard in cl 4.3(1) of minimising the impacts of new development on adjoining or nearby properties from disruption of views or visual intrusion. Compliance with the height development standard might be unreasonable or unnecessary if the non-compliant development achieves this objective of minimising view loss or visual intrusion. It is not necessary, contrary to what the Commissioner held, that the non-compliant development have no view loss or less view loss than a compliant development.
- 87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.
- 6. 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 (CLAUSE 4.6(4((a)(ii)))

Objectives of Development Standard

The objectives of Clause 4.4 are as follows:

- (a) to establish the maximum development density and intensity of land use, accounting for the availability of infrastructure and generation of vehicular and pedestrian traffic, in order to achieve the desired future character of Rockdale.
 - (b) to minimise adverse environmental effects on the use or enjoyment of adjoining properties,
 - (c) to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing or likely to undergo a substantial transformation."

In order to address the requirements of Subclause 4.6(4)(a)(ii), the objectives of Clause 4.3 are addressed in turn below.

Objective (a): "to establish the maximum development density and intensity of land use, accounting for the availability of infrastructure and generation of vehicular and pedestrian traffic, in order to achieve the desired future character of Rockdale"

The maximum FSR has been established at 1:1 for the site. The proposed development provides for a mix of 1, 2 and 3 bedroom units, complies with the required parking provisions of the DCP and meets the objectives of the R4 High Density Residential zone objectives. The proposed development is in line with the type of development envisaged for the site, and as described against Objective (c) below, provides for a suitable transition in the intensity of development between the site and higher density development permitted to the north along Rocky Point Road. The degree to which the proposal exceeds the maximum FSR is equivalent to a two-bedroom apartment and adequate on-site parking, vehicle and pedestrian movement pathways and utility services are proposed to account for the number of proposed apartments.



Maximum FSR - Clause 4.4 of ROCKDALE LEP 2011F REF: M170078



For these reasons the proposed FSR meets Objective (a).

Objective (b): "to minimise adverse environmental effects on the use or enjoyment of adjoining properties"

The design of the building ensures functional internal layouts and the massing has been determined by the side setbacks of the DCP and ADG separation controls. The three dimensional building envelope is compliant with setback and height controls with the minor exception of rooftop structures which do not contribute to floor space or building bulk. The proposed building form and layout of apartments will not have any adverse impact on adjoining properties, does not contribute to additional overshadowing beyond a compliant scheme and provides compliant separation between buildings to ensure the amenity of neighbours is not adversely affected.

The built form of the building is of a high quality and positively relates to protecting the amenity of the neighbouring residential apartments despite the non-compliance and meets Objective (b).

Objective (c): "to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing or likely to undergo a substantial transformation"

As described in the Clause 4.6 variation for the height non-compliance, the FSR map (Figure 9), indicates the land to the east and south also has an FSR maximum of 1:1, and the land to the north along Rocky Point Road has an FSR maximum of 2:1. The minor non-compliance of the FSR does not offend the objective of maintain visual relationships between areas, as most of the land surrounding the site has already been developed, with the subject being the last to redeveloped in the immediate locality.

The proposal matches the built form, bulk and scale of surrounding residential flat buildings and the proposed noncompliance with FSR will not be perceptible in the streetscape and character of the locality.



Figure 1 Height of buildings map

The proposed development is therefore consistent with the objectives for maximum FSR despite the minor numeric non-compliance.

Clause 4.6(4) also requires consideration of the relevant zone objectives. The objectives of Zone R4 High Density Residential are as follows:

- To provide for the housing needs of the community within a high density residential environment.
 - · To provide a variety of housing types within a high density residential environment.

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Maximum FSR - Clause 4.4 of ROCKDALE LEP 2011F REF: M170078



To enable other land uses that provide facilities or services to meet the day to day needs of residents.

The proposed development is demonstrably consistent with the relevant zone objectives in that it provides a mix of 1, 2 and 3 bedroom apartments within a high quality development envisaged by the controls for the R4 High Density Residential zone.

For these reasons the development proposal meets the objectives for development in Zone R4.

Objectives of the Zone

The objectives of Zone R4 are as follows:

- To provide for the housing needs of the community within a high density residential environment.
- To provide a variety of housing types within a high density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents."

Clause 4.6(4)(a)(ii) also requires that the consent authority be satisfied that the development is in the public interest because it is consistent with relevant zone objectives. The proposed development is consistent with the objectives of Zone R4 in that it will result in the development of 12 apartments in a residential flat building and will thus provide for the housing needs of the community in a high density residential environment. The development will provide for a range of dwelling sizes and accessible and adaptable accommodation types and will therefore align with the objective to provide a variety of housing types.

For these reasons the development proposal meets the objectives for development in Zone R4, despite non-compliance with the building height development standard.

7. THE CONCURRENCE OF THE SECRETARY HAS BEEN OBTAINED (CLAUSE 4.6(4)(b)

In accordance with circular PS08-003 prepared by the Department of Planning & Environment dated 9 May 2008, the concurrence of the Secretary is assumed to allow for the proposed LEP variation under Clause 4.6.

8. WHETHER CONTRAVENTION OF THE DEVELOPMENT STANDARD RAISES ANY MATTER OF SIGNIFICANCE FOR STATE OR REGIONAL ENVIRONMENTAL PLANNING (CLAUSE 4.6(5)(a))

Contravention of the maximum height development standard proposed by this application does not raise any matter of significance for State or regional environmental planning.

9. THE PUBLIC BENEFIT OF MAINTAINING THE DEVELOPMENT STANDARD (CLAUSE 4.6(5)(b))

As detailed in this submission there are no unreasonable impacts that will result from the proposed variation to the maximum FSR. As such there is no public benefit in maintaining strict compliance with the development standard.

10. CONCLUSION

Having regard to all of the above, it is our opinion that compliance with the maximum FSR development standard is unnecessary in the circumstances of this case as the development meets the objectives of that standard and the zone objectives.

Therefore, insistence upon strict compliance with that standard would be unreasonable. On this basis, the requirements of Clause 4.6(3) are satisfied and the variation supported.



Maximum FSR - Clause 4.4 of ROCKDALE LEP 2011F REF: M170078



CLAUSE 4.6 VARIATION STATEMENT

MAXIMUM BUILDING HEIGHT - CLAUSE 4.3 OF ROCKDALE LEP 2011

Demolition of existing structures and construction of a residential flat building over basement parking, and associated landscaping and drainage works

368 Rocky Point Road Sans Souci

REF: M170078

DATE: 7 September 2018





Clause 4.6 Variation Statement – Height of Buildings (Clause 4.3)

1. INTRODUCTION

This Variation Statement has been prepared in accordance with Clause 4.6 of Rockdale Local Environmental Planning Plan 2011 to accompany Development Application No. DA 2017/517. The application seeks consent for a 4 storey residential apartment building, comprising 12 units, and basement parking at No. 368 Rocky Point Road, Sans Souci ('the site').

2. PROPOSED VARIATION

Clause 4.3 of RLEP 2011 prescribes the maximum building height for the site and refers to the *Height of Buildings Map*. The relevant map [sheet HOB_005] indicates that the maximum building height permitted at the subject site is 14.5m. Building height is defined as:

"building height (or height of building) means:

(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or

(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

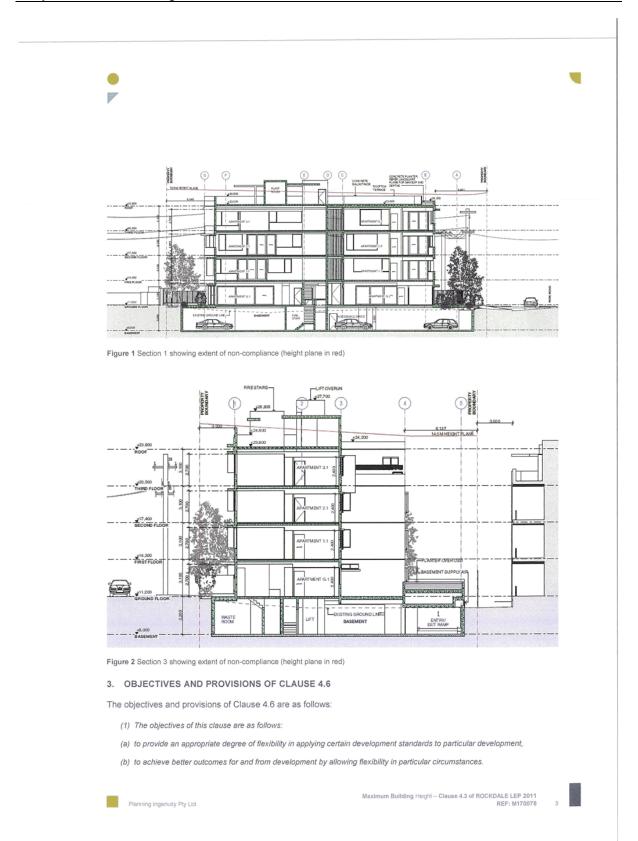
As indicated in the section included in Figure 1 and Figure 2 below, the maximum extent of non-compliance occurs at the centre of the proposed building at the lift overrun, and is 17.62m when measured to the top of the lift overrun. The fires stairs, plant room and roof pergolas adjoining the lifts are also non-compliant. The building otherwise easily complies with the height limit.

Overall, the building proposes a maximum numerical variation of 3.12m and a percentage variation of 22% when measured to the top of the lift. The only parts of the building which exceed the 14.5m height limit are the lift overrun, fire stairs, plant rooms and pergola over the roof level common open space. There is no residential habitable floor area within the part of the building affected by the non-compliance.

The maximum building height under Clause 4.3 is a "development standard" to which exceptions can be granted pursuant to Clause 4.6 of the LEP.



Maximum Building Height – Clause 4.3 of ROCKDALE LEP 2011 REF: M170078





- (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 Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the Secretary must consider:
- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
- (b) the public benefit of maintaining the development standard, and
- (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:
- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note

When this Plan was made it did not include Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU6 Transition, R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living.

- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:
- (a) a development standard for complying development,

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Maximum Building Height - Clause 4.3 of ROCKDALE LEP 2011 REF: M170078



(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,

(c) clause 5.4

(ca) clause 4.3 (2A), 4.4 (2A), (2B), (2C) or (2D), unless it is for a demonstrable public benefit, such as the provision of pedestrian links,

(cb) clause 4.3A

It is noted that Clause 4.3 is not "expressly excluded" from the operation of Clause 4.6.

Objective 1(a) of Clause 4.6 is satisfied by the discretion granted to a consent authority by virtue of Subclause 4.6(2) and the limitations to that discretion contained in subclauses (3) to (8). This submission will address the requirements of Subclauses 4.6(3) & (4) in order to demonstrate to the consent authority that the exception sought is consistent with the exercise of "an appropriate degree of flexibility" in applying the development standard, and is therefore consistent with objective 1(a). In this regard, the extent of the discretion afforded by Subclause 4.6(2) is not numerically limited, in contrast with the development standards referred to in, Subclause 4.6(6).

 COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE (CLAUSE 4.6(3)(a))

In Wehbe V Pittwater Council (2007) NSW LEC 827 Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. This list is not exhaustive. It states, inter alia:

"An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard."

The judgement goes on to state that:

"The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served)."

Preston CJ in the judgement then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1 for the purposes of this Clause 4.6 variation [our underline]):

- 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.
- 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 that

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Maximum Building Height - Clause 4.3 of ROCKDALE LEP 2011 REF: M170078



would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

Compliance with the maximum building height development standard is considered to be unreasonable and unnecessary as the objectives of that standard are achieved for the reasons set out in this statement. For the same reasons, the objection is considered to be well-founded as per the first method underlined above.

Notably, under Clause 4.6(4)(a)(ii) a consent authority must now be satisfied that the contravention of a development standard 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. Clause 4.6(4)(a)(ii) is addressed in Section 6 below.

5. SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS (CLAUSE 4.6(3)(b))

Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard, it is considered that there is an absence of any material impacts of the proposed non-compliance on the amenity of the environmental values of the locality, the amenity of future building occupants and on area character. Furthermore, the following planning grounds are submitted as planning grounds to justify contravening the maximum building height:

- The building height non-compliance is limited to the top portion of the lift overrun. The structures are primarily located at the centre of the building. This location and the minimal bulk of this structure will ensure it will not be highly visible from the public domain, and the impacts to adjoining properties will be negligible. Photomontages showing the building from the street frontages with and without the roof structures are provided at Annexure A and demonstrate that the portions of the building above the 14.5m height limit are not visual intrusive on the skyline nor do they add to the appearance of building bulk when viewed from the adjoining streets and public domain:
- Except for this minor area of non-compliance for the topmost portion of the lift shaft, the fire stairs, plant room, and roof top pergola, the building itself to the rooftop parapet is well below the height limit at 14.5m. The result of this is that the vast majority of the bulk of the building sits well below the height limit;
- The rooftop provides high quality communal open space. In order to provide equitable access to this space the
 lift overrun must necessarily breach the height control, in this instance by 3.12m. Therefore, this non-compliance
 provides substantial benefits to the development without impacting neighbouring sites;
- The additional shadowing that will be caused by the height non-compliance is negligible. The minor portion of shadows for the portion of the lift overrun over the height limit is insignificant and acceptable. The shadow diagrams provided at Annexure B, clearly show there is minimal additional overshadowing by the lift overrun, plant rooms and fire stairs.
- The breach will not result in any adverse impacts on neighbouring properties in relation to privacy as the portion
 of the building over the height limit will not enable overlooking;
- The roof top communal open provides a consolidated open space with good solar access for future residents as
 encouraged by the Apartment Design Guide (Part 3D) and is Council's preferred location for the communal open
 space:
- The proposed roof form creates variety in the skyline and urban environment (see Annexure A) and contributes
 to the aesthetic and environmental design and performance of the building;
- The non-compliant portions contain no residential or habitable floor area; and
- Despite the minor non-compliance, the objectives of the building height clause have been achieved as demonstrated above.



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It is noted that in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, Preston CJ clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

- 86. The second way is in an error because it finds no basis in cl 4.6. Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development. This test is also inconsistent with objective (d) of the height development standard in cl 4.3(1) of minimising the impacts of new development on adjoining or nearby properties from disruption of views or visual intrusion. Compliance with the height development standard might be unreasonable or unnecessary if the non-compliant development achieves this objective of minimising view loss or visual intrusion. It is not necessary, contrary to what the Commissioner held, that the non-compliant development have no view loss or less view loss than a compliant development
- 87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.
- 6. 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 (CLAUSE 4.6(4((a)(ii))

Objectives of Development Standard

The objectives of Clause 4.3 are as follows:

- (a) to establish the maximum limit within which buildings can be designed and floor space can be achieved,
 - (b) to permit building heights that encourage high quality urban form,
 - (c) to provide building heights that maintain satisfactory sky exposure and daylight to buildings, key areas and the public domain,
 - (d) to nominate heights that will provide an appropriate transition in built form and land use intensity."

In order to address the requirements of Subclause 4.6(4)(a)(ii), the objectives of Clause 4.3 are addressed in turn below

Objective (a): "to establish the maximum limit within which buildings can be designed and floor space can be achieved"

This objective articulates the ultimate function of the height of buildings development standard. The maximum height for buildings on land within the former Rockdale Local Government Area is identified on the Height of Buildings Map. As previously described, the maximum building height permitted on the subject site is 14.5m and the maximum height of the proposal is 17.62m. The proposal contravenes the standard, which has prompted the preparation of this written variation request. Despite the nature and scale of development proposed by this Development Application, Clause 4.3 achieves the objective of establishing a maximum building height for the site, using the Height of Buildings Map as a



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mechanism to do so. This written request identifies the extent of variation proposed and explains why the variation is acceptable in the circumstances.

Objective (b): "to permit building heights that encourage high quality urban form"

A building height control of 14.5m allows for a four storey residential flat building compliant with the floor-to-ceiling height controls of the ADG. The proposal is four storeys and compliant with the relevant floor-to-ceiling height requirements.

The design of the building ensures functional internal layouts and adopts a contemporary appearance with the street front façades containing interesting and articulated presentation through the use of balcony design and architectural elements. The massing has been determined by setbacks and ADG controls. The building is consistent with the street setbacks of the adjoining developments as per the DCP and 6m side setbacks as per the ADG, resulting in a building which reinforces the streetscape and domestic character of the area.

The built form of the building is of a high quality urban from and the minor non-compliance for the lift overrun, fire stair access and the rooftop plant do not detract from achieving Objective (b).

Objective (c): "to provide building heights that maintain satisfactory sky exposure and daylight to buildings, key areas and the public domain

The main non-compliant portion of the development is the central lift core, plant room and fire stairs and roof pergola, which will have minimal shadow impacts (see **Annexure B**) and cannot be readily seen from any public place, since it is located within the central portion of the top of the building. The communal open space on the rooftop is setback from all edges of the building, and will therefore result in no visual impact or loss of privacy.

Additionally, it is a better privacy outcome to utilise the roof top for communal open space then if it were located at ground level abutting habitable areas of adjoining buildings.

Objective (d): to nominate heights that will provide an appropriate transition in built form and land use intensity

As previously described, with exception of the lift core, fire stairs, plant room and roof pergola the building is otherwise compliant with the maximum height limit and provides a 4 storey development as an expected outcome of the development standard. The roof structures will have no adverse impacts since they are located centrally within the development and do not increase the scale or intensity of development when viewed by the casual observer. The non-compliant portions of the development do not add to the intensity of development on the site. The building height breach allows for an improved outcome in this regard, and therefore the proposal aligns with this objective despite the non-compliance.

Objectives of the Zone

The objectives of Zone R4 are as follows:

- To provide for the housing needs of the community within a high density residential environment.
- To provide a variety of housing types within a high density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents."

Clause 4.6(4)(a)(ii) also requires that the consent authority be satisfied that the development is in the public interest because it is consistent with relevant zone objectives. The proposed development is consistent with the objectives of Zone R4 in that it will result in the development of 12 apartments in a residential flat building and will thus provide for the housing needs of the community in a high density residential environment. The development will provide for a range



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of dwelling sizes and accessible and adaptable accommodation types and will therefore align with the objective to provide a variety of housing types.

For these reasons the development proposal meets the objectives for development in Zone R4, despite non-compliance with the building height development standard.

7. THE CONCURRENCE OF THE SECRETARY HAS BEEN OBTAINED (CLAUSE 4.6(4)(b)

In accordance with circular PS08-003 prepared by the Department of Planning & Environment dated 9 May 2008, the concurrence of the Secretary is assumed to allow for the proposed LEP variation under Clause 4.6.

 WHETHER CONTRAVENTION OF THE DEVELOPMENT STANDARD RAISES ANY MATTER OF SIGNIFICANCE FOR STATE OR REGIONAL ENVIRONMENTAL PLANNING (CLAUSE 4.6(5)(a))

Contravention of the maximum height development standard proposed by this application does not raise any matter of significance for State or regional environmental planning.

9. THE PUBLIC BENEFIT OF MAINTAINING THE DEVELOPMENT STANDARD (CLAUSE 4.6(5)(b))

As detailed in this submission there are no unreasonable impacts that will result from the proposed variation to the maximum building height. As such there is no public benefit in maintaining strict compliance with the development standard. Whilst, the proposed building height exceeds the maximum permitted on the site by 3.12m (22%), the exceedance relates to the lift overrun and roof structures over the communal open space and overall the height of the building complies. The height exceedance will be imperceptible in visual terms.

10. CONCLUSION

Having regard to all of the above, it is our opinion that compliance with the maximum height development standard is unnecessary in the circumstances of this case as the development meets the objectives of that standard and the zone objectives.

Therefore, insistence upon strict compliance with that standard would be unreasonable. On this basis, the requirements of Clause 4.6(3) are satisfied and the variation supported.

Planning Ingenuity Pty Ltd

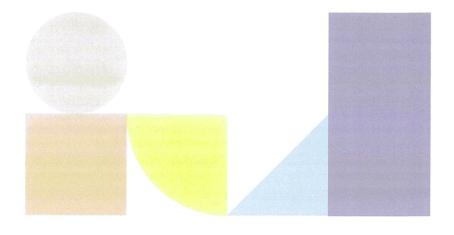
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ANNEXURE A

Photomontages





ORIGINAL DA WITH OUTLINE OF REVISED DA MASSING



REVISED DA

368 ROCKY POINT ROAD COMPARISON OF ENVELOPES 06.09.18



ORIGINAL DA WITH OUTLINE OF REVISED DA MASSING



REVISED DA

368 ROCKY POINT ROAD COMPARISON OF ENVELOPES 06.09.18



ORIGINAL DA WITH OUTLINE OF REVISED DA MASSING (NOTE NO CHANGE)



REVISED DA

368 ROCKY POINT ROAD COMPARISON OF ENVELOPES 06.09.18



ANNEXURE B

Shadow Diagrams - 21 June

