

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
on **Tuesday 13 November 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 - 23 October
20183

5 REPORTS – PLANNING PROPOSALS

Nil

6 REPORTS – DEVELOPMENT APPLICATIONS

6.1 DA-16/150/06- 42 Church Avenue, Mascot.....12
6.2 DA-2017/1238/02 and DA-2017/1238/03 - 42 Church Avenue, Mascot 92
6.3 DA-2017/190 - DA-2017/190 - 117 Forest Road, Arncliffe180
6.4 DA-2018/138 - DA-2018/138 - 104 Caroline Street, Kingsgrove217
6.5 DA-2012/71 - 25-33 Wilson Street, Botany248
6.6 DA-2018/1144 - 27 Hambly Street, Botany300
6.7 DA-2007/23/2/E - DA-2007/23/2/E - 30-32 Guess Avenue & 4 Lusty
Street Wolli Creek.....385

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

13/11/2018

Item No	4.1
Subject	Minutes of the Bayside Local Planning Panel Meeting - 23 October 2018
Report by	Fausto Sut, Manager Governance and Risk
File	SC17/819

Recommendation

That the Minutes of the Bayside Local Planning Panel meeting held on 23 October 2018 be confirmed as a true record of proceedings.

Present

Jan Murrell, Chairperson
Robert Montgomery, Independent Expert Member
Ross Bonthorne, Independent Expert Member
Jesse Hanna, Community Representative

Also present

Luis Melim, Manager Development Services
Fausto Sut, Manager Governance & Risk
Marta Gonzalez-Valdes, Coordinator Development Assessment
Pascal Van De Walle, Coordinator Development Assessment
Andrew Ison, Senior Development Assessment Planner
Angela Lazaridis, Senior Development Assessment Planner
Sumeet Badhesha, Development Assessment Planner
Eric Alessi, Development Assessment Planner
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 6.05 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 Planning Panel Meeting - 9 October 2018

Decision

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

5 Reports – Planning Proposals

Nil

6 Reports – Development Applications

6.1 DA-2016/68 - 19 Dowling Street, Arncliffe

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

The following people spoke:

- Mr Peter Ellerington, affected neighbour, spoke against the officer's recommendation.
- Ms Carolyn Ellerington, affected neighbour, spoke against the officer's recommendation.
- Mr Hussam Mourad, affected neighbour, spoke against the officer's recommendation.
- Mr Mohamad Mourad, affected neighbour, spoke against the officer's recommendation.
- Mr Brett Maynard, Director, GTA Consultants (Traffic), spoke for the officer's recommendation and responded to the Panel's questions.
- Mr Rachid Andary, Director, Fuse Architecture, spoke for the officer's recommendation and responded to the Panel's questions.
- Mr Ben Tesoriero, Director, Creative Planning Solutions, spoke for the officer's recommendation and responded to the Panel's questions.
- Mr Ben Irawan, Senior Pastor of Life Centre International, spoke for the officer's recommendation and responded to the Panel's questions.

Determination

- 1 The Panel considers the applicant should be given the opportunity to reconsider the car parking provision layout and drop off and pick up area to accommodate a school for 200 students of varying ages between K to Year 12. This includes the provision of basement parking under the new wing facing Kembla Street. The Management Plan needs to specifically address the parking drop off / pick up for the school in a detailed manner. The Management Plan is to also include consideration of management of the use of the rooftop and maximum numbers of students gathered at any one time.
- 2 The applicant is to submit amended plans and other documentation to the Council within 3 weeks for assessment and referral to the Panel in a timely manner for final determination.
- 3 That the objectors be advised of the Bayside Local Planning Panel's decision.

Name	For	Against
Jan Murrell	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Robert Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ross Bonthorne	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Jesse Hanna	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Reason for Determination

The Panel considers further consideration of options needs to be investigated to accommodate and manage the pick up and drop off of students and the Plan of Management is to be more detailed and site specific.

6.2 SF18/1786 - DA-2016/117/02 - 671-683 Gardeners Road, Mascot

The following person spoke:

- Mr Walter Gordon spoke for the officer's recommendation and responded to the Panel's questions.

Determination

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 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 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 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 deferring the timing of lot consolidation to be prior to the registration of the strata subdivision.
- 104(a) is to be retained as worded.

Name	For	Against
Jan Murrell	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Robert Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ross Bonthorne	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Jesse Hanna	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Reason for Determination

The Panel is satisfied the changes to conditions are minor and will not result in adverse impacts.

6.3 SF18/2138 - DA-2017/1022/03 - 130-150 Bunnerong Road, Eastgardens

The following person spoke:

- Mr Walter Gordon spoke for the officer's recommendation and responded to the Panel's questions.

Determination

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, except that the Occupation Certificate is to read the Final Occupation Certificate.

Name	For	Against
Jan Murrell	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Robert Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ross Bonthorne	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Jesse Hanna	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Reason for Determination

The amended condition will still allow the implementation of the landscape plan with a twelve-month period of maintenance instead of five years.

6.4 SF18/2139 - DA-2016/143/05 - 130-150 Bunnerong Road, Eastgardens

The following person spoke:

- Mr Walter Gordon spoke for the officer's recommendation and responded to the Panel's questions.

Determination

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, except reference to the Occupation Certificate is to be the Final Occupation Certificate, as follows:

- amend Condition No. 67 to modify the duration of the landscape bond; and
- delete Condition No. 112 for simplicity purposes.

Name	For	Against
Jan Murrell	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Robert Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ross Bonthorne	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Jesse Hanna	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Reason for Determination

The Panel is satisfied that maintenance of landscaping 12 months after Final Occupation Certificate is appropriate.

6.5 DA-2015/173/C - 105 Ramsgate Road, Ramsgate

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

The following person spoke:

- Mr Gerard Turrisi, town planner, spoke for the officer's recommendation and responded to the Panel's questions.

Determination

- 1 That the applicant is provided the opportunity to redesign the 5th floor penthouse to reduce the FSR and set back the 5th floor to provide for a four storey presentation of this corner site. The amended plans are to be to the satisfaction of Council.
- 2 That the General Manager (or nominee) is delegated the authority to determine the application subject to amended plans being received by Council putting into the effect the necessary changes detailed in Recommendation 1.
- 3 That the objector be advised of the Bayside Local Planning Panel's decision.

Name	For	Against
Jan Murrell	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Robert Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ross Bonthorne	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Jesse Hanna	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Reason for Determination

- 1 The five floors, as proposed, are considered to be an overdevelopment of the site and do not respond appropriately to the zone interface.
- 2 The proposed management to the 5th floor penthouse will reduce the gross floor area (GFA) of the development and FSR will be more compliant.
- 3 The Panel considers that the proposed modification provides a better architectural resolution for the development and for the context of the locality.
- 4 The Panel considers that the 5th floor must be set back to provide for a four storey presentation given the constrained site.
- 5 The proposed amendments were discussed with the applicant who agreed that the plans could be changed to achieve the above.

6.6 SF18/2179 - DA-14/214/04 - Supplementary Planning Assessment Report - 5 Myrtle Street, Botany

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

The following people spoke:

- Mr John Volkerts, concerned neighbour, spoke against the officer's recommendation and responded to the Panel's questions.
- Mr Matthew Ng, applicant, spoke for the officer's recommendation and responded to the Panel's questions.

Determination

- 1 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, except conditions are to be imposed to require: a dilapidation survey report of all adjoining properties prior to the issuing of a Certificate of Compliance; and an amended landscape plan is to be submitted to Council for the approval of the General Manager (or nominee) to show a quality landscape setting and the opportunity for communal open space within the site. The following conditions are also imposed:
 - a amend 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
 - 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.

Name	For	Against
Jan Murrell	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Robert Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ross Bonthorne	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Jesse Hanna	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Reason for Determination

The Panel is satisfied that the amended plans to provide for basement parking and consequently reduce the height of the building to be compliant within the 10 m has been achieved. It is noted however that the deep soil landscaped area has been decreased and as such there is a need for an amended plan that focuses on a quality landscaped setting with communal open space.

The Panel has also imposed a condition to ensure a dilapidation survey report be carried out prior to the issuing of a Constructoin Certificate.

The Panel notes the applicant undertakes to resolve previous concerns that have arisen for neighbouring properties and this should be carried out prior to development of the site.

6.7 DA-2017/517 - Supplementary Planning Assessment Report - 1B Park Road Sans Souci

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

The following person spoke:

- Ms Julie Horder, planner, spoke for the officer's recommendation and responded to the Panel's questions.

Determination

- 1 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.
- 2 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.

- 3 That Development Application DA-2017/517 for the Construction of a four (4) storey residential flat building comprising twelve (12) units and basement carparking is APPROVED pursuant to Section 4.16 (1)(a) of the Environmental Planning and Assessment act 1979 subject to the conditions of consent attached to this report and subject to the applicant providing details of the roof structure to Council's satisfaction. The structure should be sufficiently set back from the edge of the building and be of a light weight material so as not to be a dominant feature.

Name	For	Against
Jan Murrell	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Robert Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ross Bonthorne	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Jesse Hanna	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Reason for Determination

The Panel is satisfied with the additional information provided by the applicant and considers there is no reason as to why approval should not be granted. Furthermore the Clause 4.6 variations to height and FSR are considered to be reasonable in the circumstances of the case and the variations are supported. The Panel is satisfied that adverse impacts have been mitigated.

The Chairperson closed the meeting at 9:45 pm.

Certified as true and correct.

Jan Murrell
Chairperson

Bayside Local Planning Panel

13/11/2018

Item No	6.1
Application Type	Section 4.55(1A) Application to modify approved mixed use development
Application No	SF18/2178
Lodgement Date	28/06/2018
Property	DA-16/150/06- 42 Church Avenue, Mascot
Ward	Mascot
Owner	Karimbla Property (No. 45) Pty Ltd
Applicant	Karimbla Constructions Services (NSW) Pty Ltd
Proposal	Section 4.55(1A) Application to modify Development Consent No. 16/150 to relocate the mailroom in the basement and relocate the courtyard fence to Unit G37 and modifications to conditions
No. of Submissions	Nil
Cost of Development	0
Report by	Michael McCabe, Director of City Futures

Officer Recommendation

That the Bayside Local Planning Panel approve the Section 4.55(1A) Application to modify Development Consent No. 16/150 to increase the size of the terrace to Unit G37 and modifications to conditions at 42 Church Avenue, Mascot, as follows:

- 1 That Condition No. 1 be modified to reflect the proposed plans that are subject to this application.
 - 2 That Condition No. 83(n) be modified to reflect the timing of providing the public art proposal prior to the issue of the Occupation Certificate.
 - 3 That Condition No. 152 be modified to reflect the subject modification application.
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Location Plan



Attachments

- 1 Planning Assessment Report [↓](#)
- 2 Proposed Western Elevation [↓](#)
- 3 Proposed Northern Elevation [↓](#)
- 4 Proposed Ground Floor Level [↓](#)
- 5 Proposed Basement Level [↓](#)
- 6 Statement of Environmental Effects [↓](#)

BAYSIDE COUNCIL

Planning Assessment Report

Application Details

Application Number:	16/150/06
Date of Receipt:	28 June 2018
Property:	42 Church Avenue Mascot Lot 1 in DP 376752 Lot 3 in DP 376752 Lot 21 in DP1014063
Owners:	Karimbla Properties (No. 45) Pty Ltd
Applicant:	Karimbla Constructions Services (NSW) Pty Ltd
Proposal:	Section 4.55(1A) Application to modify Development Consent No. 2016/150 to increase the size of the terrace to Unit 37, relocation of the mailroom and amend condition 83(n) relating to timing of public art proposal
Recommendation:	Approval, subject to recommended conditions of consent
Value:	N/A
No. of submissions:	Nil
Author:	Angela Lazaridis, Senior Development Assessment Planner
Date of Report:	30 October 2018

Key Issues

Development Application No. 16/150 was approved by the Sydney Eastern City Planning Panel on 20 July 2017 for the construction of a mixed use development incorporating a 4 storey podium with four x 14 storey towers containing residential units, retail space, childcare centre, private recreation facilities, basement and above ground 'sleeved' car parking and 36,819sqm of gross floor area; landscaping and dedication of land along the Church Avenue frontage; construction of southern half of a new east-west street along the northern alignment of the site; landscaping and dedication of a new public park, associated excavation, earthworks and landscaping and land subdivision. The subdivision of the site involves three new lots which include the development site, Church Avenue street widening will be a separate lot and Galloway Street to the north and the public park to be dedicated to Council will be another lot. There have been a number of modifications that have been approved which may have changed the above description and FSR.

Bayside Council received Modification Application No. 16/150/06 on 28 June 2018 seeking consent to modify Development Consent No. 2016/150 to increase the size of the terrace to Unit 37, relocation of the mailroom and amend condition 83(n) relating to timing of public art proposal at 42 Church Avenue Mascot.

The application was placed on public exhibition for a fourteen (14) day period from 4 July to 18 July 2018. No objections were received.

The proposed modifications are supported with the exception of the relocation of the mailroom into the basement. The proposed location of the mailroom will not be easily identifiable and does not promote good amenity and meeting place for the residents. Additionally the proposed location is not consistent with the controls of Part 4C of the BBDCP 2013 as well as the objectives of the Apartment Design Guide. Therefore the mailboxes of each individual tower should be located within each respective tower lobby. Condition No. 64(g) is to be retained within the consent.

The Section 4.55(1A) Application has been assessed in accordance with the relevant requirements of the *Environmental Planning and Assessment Act 1979* and is recommended for approval, except for the mailroom relocation.

Recommendation

That the Bayside Local Planning Panel approve Section 4.55(1A) Application to modify Development Consent No. 16/150 to increase the size of the terrace to Unit G37 and modifications to conditions at 42 Church Avenue, Mascot, as follows:

1. That Condition No. 1 be modified to reflect the proposed plans that are subject to this application;
2. That Condition No. 83(n) be modified to reflect the timing of providing the public art proposal prior to the issue of the Occupation Certificate.
3. That Condition No. 152 be modified to reflect the subject modification application.

Background

History

- Development Application No. 2016/150 was approved by the Sydney Central Planning Panel on 20 July 2017 for the construction of a mixed use development incorporating a 4 storey podium with four x 14 storey towers containing residential units, retail space, childcare centre, private recreation facilities, basement and above ground 'sleeved' car parking and 36,819sqm of gross floor area (FSR of 3.32:1); landscaping and dedication of land along the Church Avenue frontage; construction of southern half of a new east-west street along the northern alignment of the site; landscaping and dedication of a new public park, associated excavation, earthworks and landscaping and land subdivision. The subdivision of the site involves three new lots which include the development site, Church Avenue street widening will be a separate lot and Galloway Street to the north and the public park to be dedicated to Council will be another lot.
- Section 4.55(1A) Application was lodged with Council on 4 August 2017 for the modification of 101(c) to allow for the extension of construction hours. This application is currently under assessment (DA-16/150/02).
- Section 4.55(1) Application was lodged with Council on 22 September 2017 for the modification of Condition No. 130(b). This was approved under delegated authority on 22 September 2017 (DA-16/150/03).

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- Section 4.55(1A) Application was lodged with Council on 19 January 2018 to delete Condition No. 144. This application was approved on 23 October 2018 by the Bayside Local Planning Panel (DA-16/150/04).
- Section 4.55(1A) Application was lodged with Council on 28 June 2018 to modify the approved development to increase the size of the terrace to Unit G37 and relocation of the mailroom. This application is currently under assessment (DA-16/150/06).
- Development Application No. 2017/1166 was approved on 14 December 2017 by the Bayside Planning Panel for alterations to the approved building by deleting the childcare centre and replacement with 27 additional apartments. An FSR of 3.41:1 (37,903sqm) was approved for the site with a total of 367 units. Two of the originally proposed units was not supported by the Panel therefore the Panel requested that they were converted to a community room. The number and size of the retail tenancies did not change as part of this proposal.
- Development Application No. 2017/1238 was approved on 8 May 2018 by the Bayside Planning Panel for changes to approved development to add retail tenancies to the Church Avenue and Bourke Street frontages, increasing the retail floor area from 512sqm to 1,037sqm. The overall FSR that was approved was 38,172sqm which results in an FSR of 3.44:1.
- Section 4.55(1A) Application was lodged with Council on 13 February 2018 to modify Development Consent No. 2016/150 to modify the approved mixed use development regarding car parking, GFA and unit mix. This was approved by the Bayside Local Planning Panel on 28 August 2018.

Site Description

The subject site is legally known as 42 Church Avenue, Mascot and forms three parcels of land described as Lot 1 in DP 376752, Lot 3 in DP 376752 and Lot 21 in DP1014063.

The subject site is located on the western side of Bourke Street between Gardeners Road to the north, Kent Road to the west and Church Avenue to the south. Galloway Street is a new street currently under construction and runs along the northern boundary of the site. The site is approximately 120 metres to the north-west of Mascot Train Station.

The site has a total area of 11,104sqm with a 108.5 metres street frontage to Church Avenue, a 101.5 metre street frontage to Bourke Street, a 101.9 metres western boundary length and a 109.1 metre northern boundary length. The site is generally flat.

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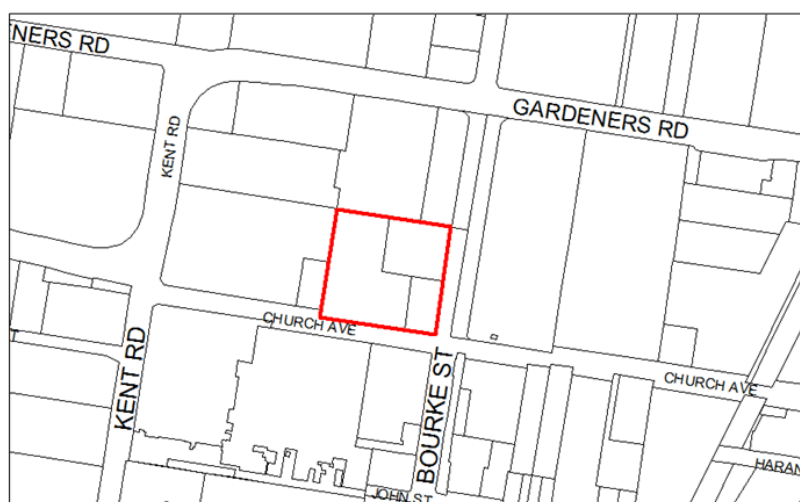


Figure 1. Locality Plan

The site is currently demolished of all structures with construction well underway. The corner of the south-western side of the development is impacted by road widening. The site is located within the 20-25 ANEF zone and is within 25 metres of the Sydney Trains easement for underground rail (Airport Tunnel).

The site is within the B4 Mixed Use zone of the BBLEP 2013 and is within Urban Block 1 of the Mascot Station Town Centre Precinct within Part 9A of the BBDCP 2013. The table below lists the relevant details of the surrounding mixed-use developments.

Description and Assessment of the Proposed 4.55(1A) Modifications

Modification No. 1: Increase in the size of the ground floor terrace of Unit G37

The proposed modification seeks to amend the ground floor terrace at Unit G37 by relocating the courtyard fence therefore increasing the size of the courtyard. The unit is a three bedroom unit and the proposed size of the terrace will increase from 54sqm to 85sqm. The below figures demonstrate the location of the terrace and elevations of the proposed impact to the northern and western elevations.

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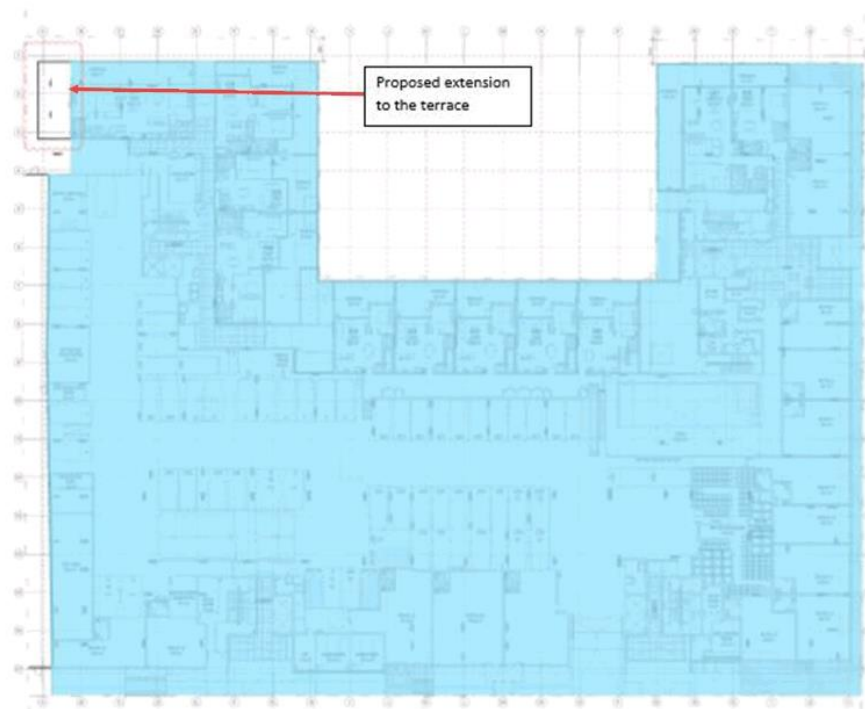


Figure 2. Proposed extension of Unit G37 terrace

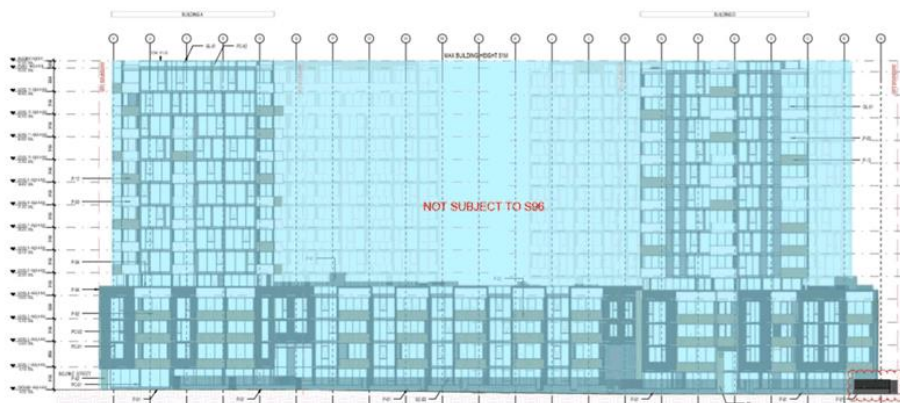


Figure 3. Proposed northern elevation showing amendment to terrace

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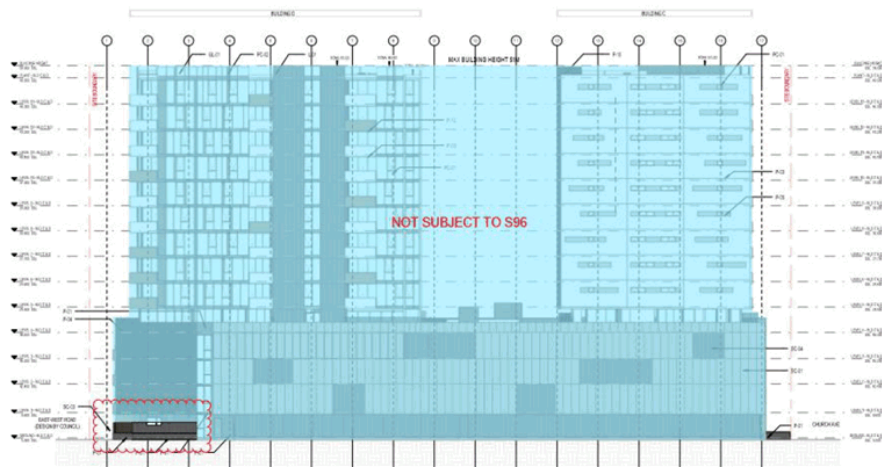


Figure 4. Proposed western elevation showing amendment to terrace

The modification will result in a reduction in the approved 3 metre setback from the western boundary to now achieving a 2 metre setback. The loss in one metre is not considered significant as the proposal will retain access off Galloway Street to Church Avenue and will not impact the amenity of the adjoining development located to the west. Therefore the proposal is minor therefore this modification is supported.

Modification No. 2: Locate the mailroom within Basement Level 1

The proposed modification seeks to amend the basement level 1 plan to provide a mailroom to store the mailboxes of the residents of the building.

The applicant has provided the following statement to support the relocation of the mailroom to the basement:

"It is proposed to provide for a centrally located mailroom from which all residents will collect their mail. The room is to be located in a convenient position within the basement to ensure all residents have easy access to it. The proposed location is consistent with the requirements of Australia Post."

The proposed location of the mailroom is demonstrated in the figure below. As shown, the new location of the mailroom is hidden amongst storage area and car parking spaces underneath Tower D. Access to this part of the basement will be most direct from the lift core of tower D otherwise residents will have to cross through the basement to retrieve their mail.

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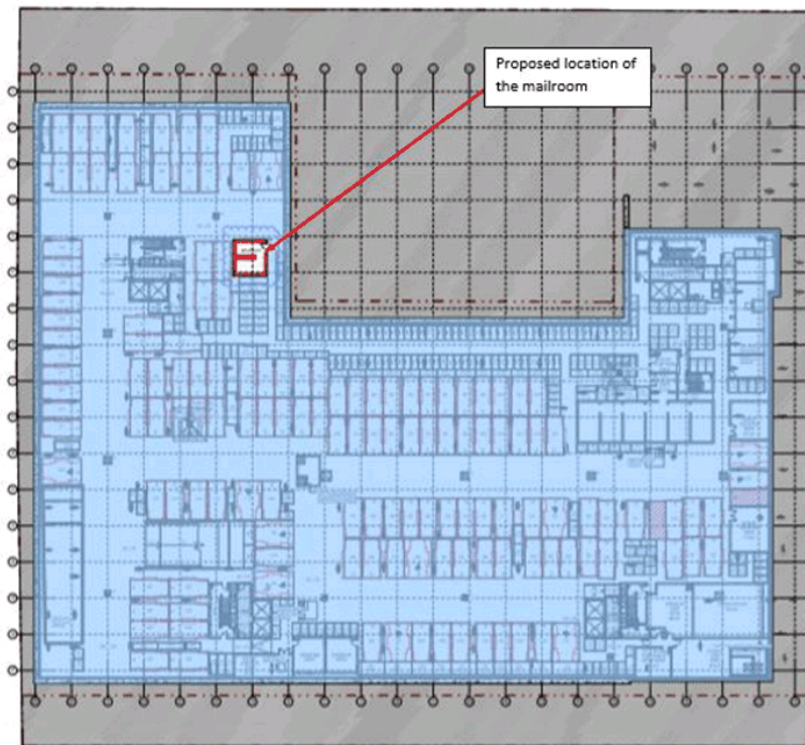


Figure 5. Proposed location of the mailroom within Basement Level

The basement does not provide for an inviting space for residents to meet and collect mail as all mail boxes are compacted within one small room in a section of the car parking level which is not distinguishable or identifiable than what it would be if it was located at the lobbies. Additionally the mailboxes are not clearly visible from the street or from the public domain as required within Part 4C of the BBDCP 2013 as well as prescribed within Objective 3C-2 of the ADG. Therefore the proposed modification is not supported.

In addition to the applicants wish to relocate the mailroom to the basement, Condition No. 64(g) which states 'the location of the mailboxes within the lobby of each building is to be identified on the amended plans' is sought to be removed. As discussed above, Council does not agree in relocating the mailroom to the basement therefore the condition continues to apply.

Modification No. 3: Amend Condition No. 83(n) relating to timing of public artwork

The proposed modification seeks to amend the wording of Condition No. 83(n) which relates to the proposed public artwork process. The condition is worded as follows:

83. *The public domain landscape areas shown on the plan by Urbis, plans CS-000, FI- 200 to FI-210 to FI-212 (Issue C, dated May 2017) shall comprise detailed landscape construction documentation (plans and specifications) to be submitted to and approved by Council's Landscape Architect prior to the issue of the Construction Certificate for*

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public domain works. The landscape documentation is to be prepared by Urbis Landscape Architects and shall include, but not be limited to:

n) *A detailed public art proposal*

Due to the timing of delivering the public artwork design proposal to Council to consult and choose a successful artwork will result in a delay in receiving the construction certificate for the remainder of the public domain works. Discussions with Council's Landscape Architect have led to an agreement that the timing of providing additional information to satisfy the condition relating to the public art proposal can be modified from prior to the issue of the Construction Certificate for public domain works to prior to the issue of an Occupation Certificate.

Modifications to Conditions

The following conditions are proposed to be amended:

- Condition No. 1 will be modified to reflect the proposed plans that are subject to this application. The basement plan that shows the proposed location of the mailroom will not be included as support for the new location is not provided;
- Condition No. 83(n) is to be modified to reflect that designs for the public artwork is to be provided prior to the issue of the Occupation Certificate;
- Condition No. 152 is to be modified to reflect the subject modification application.

Statutory Considerations

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

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 modifications to ground floor terrace, mailroom and conditions, and as such, the modifications will result in substantially the same development as approved under DA-16/150 and then subsequently modified. It is considered that the proposed amendments are suitable in the context of the site and the locality.

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- 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 modifications to ground floor terrace, mailroom and conditions, 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 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 of the Botany Bay DCP 2013 – Notification and Advertising, the application was placed on public exhibition for a fourteen (14) day period from 4 July to 18 July 2018.

- 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 were received during the public notification period.

S4.15(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:

Environmental Planning and Assessment Act 1979 – Part 4, Division 5 – Special Procedures for Integrated Development and Environmental Planning and Assessment Regulations 2000 – Part 6, Division 3 – Integrated Development

The relevant requirements under Division 5 of the EP&A Act and Part 6, Division 3 of the EP&A Regulations have been considered in the assessment of the development application.

Development Application No. 16/150 was approved as integrated development as the proposal approved basement car parking that would intercept the groundwater table. General Terms of Approval were placed in the consent relating to excavation of the basement level. The subject application does not change the envelope of the basement level approved therefore the subject application is not integrated development and does not need to be referred to Water NSW.

State Environmental Planning Policy (Infrastructure) 2007

The development is in close proximity to the rail corridor, with Mascot Station located close to the site. The original application for the built form was referred to Sydney Trains who provided appropriate conditions relating to excavation near the rail corridor. As the subject application

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does not propose any changes to the excavation of the basement and the building, the application did not need to be referred to Sydney Trains for comments.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 ("BASIX") applies to the proposed development. The development application was not required to provide a revised BASIX Certificate as the proposed changes do not modify any windows or opening or thermal comfort as originally approved.

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-16/150. Therefore SEPP No. 55 does not need to be assessed as part of this proposal.

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 Development Application. Due to the proposed modifications being predominately encased within the approved built form approved under DA-16/150, the development application was not required to be presented to the Design Review Panel. The applicant submitted a Design Verification Statement which has been conditioned in the consent.

In regard to Objective 3C-2 of the Apartment Design Guide, the amenity of the public domain is to be retained and enhanced. This includes mail boxes to be located within the lobbies, perpendicular to the street alignment or integrated into front fences where individual street entries are provided. The proposed relocation of the mail room to the basement is not consistent with this control as it does not promote good amenity as it removes the area from the public domain. It also does not allow for mailboxes to be identifiable and easily accessible from the public domain or from the key lobby areas. It is recommended that the mail boxes of the individual towers be located within their respective lobbies or in a better suited location.

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 Development Application and the following information is provided:

Principal Provisions of BBLEP 2013	Complies Yes/No	Comment
Land use Zone	-	The site is zoned B4 Mixed Use under the BBLEP 2013.

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Principal Provisions of BBLEP 2013	Complies Yes/No	Comment
Is the proposed use/works permitted with development consent?	Yes	The proposal involves additional retail premises are permissible with Council's consent under the BBLEP 2013.
Does the proposed use/works meet the objectives of the zone?	Yes	The proposed development is consistent with the following objectives of the B4 zone: <ul style="list-style-type: none"> 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.
What is the height of the building?	N/A	The maximum building height for the site is 44 metres. The approved development within DA-16/150 was approved with a maximum building height of 45.8 metres (RL 51). There is no change to the height of the development as part of this application.
What is the proposed FSR?	N/A	The maximum FSR allowed on the site is 3.2:1 (35,532sqm). Approved: 36,832sqm (3.32:1) No change to the FSR of the development as part of this application.
Is the site within land marked "Area 3" on the FSR Map	N/A	The subject site is not identified as being within "Area 3" on the FSR map.
Is the land affected by road widening?	N/A	The subject site is affected by RMS widening of the splay on the corner of Church Avenue and Bourke Street. This was considered in DA-16/150 and does not change this as part of this application.
Is the site listed in Schedule 5 as a heritage item or within a Heritage Conservation Area?	N/A	The subject site is not identified as a Heritage Item or within a Heritage Conservation Area.
The following provisions in Part 6 of the LEP apply to the development: 6.1 – Acid sulfate soils (ASS) 6.2 – Earthworks 6.3 – Stormwater management 6.8 - Airspace operations	N/A	DA-16/150 approved the built form therefore ASS, excavation, stormwater management, airspace, aircraft noise, active street frontage and design excellence has been considered as part of that application and as there is no amendments relating to these issues, assessment of these issues is not warranted.

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Principal Provisions of BBLEP 2013	Complies Yes/No	Comment
6.9 – Development in areas subject to aircraft noise 6.15 – Active Street Frontages 6.16 – Design excellence		

The assessment of the proposal against the objectives and requirements of the BBLEP 2013 have been met and are considered acceptable in this case.

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 (BBDCP) 2013

The most relevant and applicable clauses of the BBDCP 2013 are considered in the assessment of this development proposal and are provided below.

Part 4C – Residential Flat Building

In the absence of any controls relating to site facilities within Part 9A – Mascot Station Town Centre Precinct of the BBDCP 2013, Part 4C – Residential Flat Buildings will be used to assess the proposed location of the mail room.

Part 4C.3.1 – Building Entries

Control C1 of Part 4C.3.1 of the BBDCP 2013 requires building entrances to allow for an area where residents meet and collect mail. Control C2 states that street numbering and mailboxes must be clearly visible from the primary street. Additionally Control C5 states that mailboxes are to be designed and provided so that they are convenient for residents and do not clutter the appearance of the development from the street. The proposed location of the mail room in the basement is not convenient for the residents as firstly the basement does not provide for an inviting space for residents to meet and collect mail as all mail boxes are compacted within one small room in a section of the car parking level which is not distinguishable or identifiable than what it would be if it was located at the lobbies. Additionally the mailboxes are not clearly visible from the street or from the public domain. It is recommended that the mailboxes of the residents that occupy the four towers be provided at their individual lobby entries to allow for easy access to residents.

Part 4C.7- Mixed Use

Further justifying the above point, Control C8 of Part 4C.7- Mixed Use of the BBDCP 2013 requires site facilities, storage, mailboxes and garbage collection points must be designed to adequately service the needs of the occupants of the building and are to be conveniently located within the development. Reiterating the above discussion, the proposed mailroom is not in a convenient location, being relocated to one of the basement car parking levels in a small room towards the north-western side of the site. This is inconvenient for residents who live in towers A, B and C which do not have direct access to the mailroom and will need to

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walk across the car park to retrieve their mail. Therefore the proposed location of the mailroom is not supported.

Part 9A – Mascot Station Town Centre Precinct

The site is located within Urban Block 1 of the Mascot Station Town Centre. Part 9A.3.2 of the BBDCP 2013 provides guidelines relating to the desired future character of Urban Block 1. The proposed increase to a terrace on the ground floor, changes to the timing of the deliverance of the public art proposal and any other subsequent change will not result in any departure in the controls prescribed under Part 9 of the BBDCP 2013.

In regard to the requirement for a public art proposal, Control C7 of Part 9A.5- Public Domain Works requires key development sites as identified within the public domain strategy and appendix A of the Mascot Town Centre Precinct Masterplan to provide a public art proposal and the details of the designs are to be done in consultation with Council. This section of the BBDCP 2013 does not stipulate the timing of providing the design and approval of the artwork therefore the proposed modification to the wording of the condition is acceptable as the developer will provide for a public artwork within the approved pocket park located on the site.

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 have no significant adverse environmental, social or economic impacts in the locality.

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

The proposal does not alter the conclusions that were resolved and approved within DA-16/150, DA-2017/1166 and DA-2017/1238. The unit mix does not impact on the flooding, zone of influence with the railway and the groundwater issues.

The proposed development is permissible in the zone and satisfies the objectives of the zone. The proposed changes are not considered to be substantial and no significant planning issues are raised that would warrant the refusal of the proposed development.

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

In accordance with Part 2 of the Botany Bay DCP 2013 – Notification and Advertising, the application was placed on public exhibition for a fourteen (14) day period from 4 July to 18 July 2018. No submissions were received during the public notification period.

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

It is considered that granting approval to the proposed development will have no significant adverse impact on the public interest.

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Conclusion

Modification Application No. 16/150/06 was received on 28 June 2018 seeking consent to increase the size of the terrace to Unit G37, relocation of the mailroom and amend condition 83(n) relating to timing of public art proposal.

The proposed increase in the size of the ground floor terrace area of Unit G37 is not considered to cause a significant impact onto adjoining properties in addition depart from any control that applies to the development. The proposed change to Condition No. 83(n) relating to the timing of providing Council with a public art proposal from prior to the issue of the Construction Certificate to the relevant Occupation Certificate is also accepted when taking into consideration Council's assessment of the art proposal process. This is also supported by Council's Landscape Architect who initially imposed the condition of consent. These above changes are approved.

The proposed relocation of the mailroom into the basement is not supported as the new location is unsuitable and does not comply with the design criteria of the apartment design guide as well as Part 4C of the BBDCP 2013 which requires these areas to be easily accessible from the public domain. Therefore, the mailroom will need to be included within the lobbies or in another location which is easily accessible from the lobbies.

The proposal has been assessed in accordance with Section 4.15 of the *Environmental Planning and Assessment Act 1979*. The proposal is permissible within the B4 – Mixed Use zone and is considered to result in a development which is suitable in the context. Therefore, the application is recommended for approval, except for the location of the mailroom, subject to conditions of consent.

Attachment

Schedule 1 – Conditions of Consent

Premises: 42 Church Avenue, Mascot

DA No: DA-16/150/06

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
DWG No. 0001 Rev B C - Cover Sheet		<i>Dated 13 February 2017; Received 24 February 2017 Dated 3 August 2018; Received 6 August 2018</i>

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DWG No. 0002 Rev A- Site Analysis	Crone Architects	Dated 28 July 2016; Received 24 February 2017
DWG No. 0003 Rev A- Setback and Storey Height Analysis		Dated 28 July 2016; Received 24 February 2017
DWG No. 0004 Rev A- Existing Plan		Dated 28 July 2016; Received 24 February 2017
DWG No. 0005 Rev B- GA Parking Level 01- (Basement L01)		Dated 13 February 2017; Received 24 February 2017
DWG No. 0006 Rev C- GA Ground Level		Dated 3 May 2017; Received 11 May 2017
DWG No. 0007 Rev B C- GA Level 01 A0012_P-GD Rev A- Ground Floor		Dated 13 February 2017; Received 24 February 2017 Dated 3 August 2018; Received 6 August 2018 Dated June 2018; Received 28 June 2018
DWG No. 0008 Rev B-C- GA Level 02		Dated 13 February 2017; Received 24 February 2017 Dated 3 August 2018; Received 6 August 2018
DWG No. 0009 Rev B C- GA Level 03		Dated 13 February 2017; Received 24 February 2017 Dated 3 August 2018; Received 6 August 2018
DWG No. 0010 Rev B C- GA Level 04		Dated 13 February 2017; Received 24 February 2017 Dated 3 August 2018; Received 6 August 2018
DWG No. 0011 Rev B- GA Level 05		Dated 13 February 2017; Received 24 February 2017
DWG No. 0012 Rev B- GA Level 06		Dated 13 February 2017; Received 24 February 2017
DWG No. 0013 Rev B- GA Level 07		Dated 13 February 2017; Received 24 February 2017
DWG No. 0014 Rev B- GA Level 08		Dated 13 February 2017; Received 24 February 2017
DWG No. 0015 Rev B- GA Level 09		Dated 13 February 2017; Received 24 February 2017
DWG No. 0016 Rev B- GA Level 10		Dated 13 February 2017; Received 24 February 2017

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DWG No. 0017 Rev B- GA Level 11		Dated 13 February 2017; Received 24 February 2017
DWG No. 0018 Rev B- GA Level 12		Dated 13 February 2017; Received 24 February 2017
DWG No. 0019 Rev B- GA Level 13		Dated 13 February 2017; Received 24 February 2017
DWG No. 0020 Rev A- GA Level 14 (Plant)		Dated 28 July 2016; Received 24 February 2017
DWG No. 0021 Rev A- GA Roof Level		Dated 28 July 2016; Received 24 February 2017
DWG No. 0022 Rev C- North Elevation (A+D)		Dated 3 July 2017; Received 5 July 2017
DWG No. 0023 Rev C- East Elevation (A+B)		Dated 3 July 2017; Received 5 July 2017
DWG No. 0024 Rev B- South Elevation (B+C)		Dated 3 July 2017; Received 5 July 2017
DWG No. 0025 Rev B- West Elevation (C+D) A0034_P-WE Rev A- West Elevation		Dated 3 July 2017; Received 5 July 2017 Dated 1 June 2018; Received 28 June 2018
DWG No. 0026 Rev C- North Section/Elevation (B+C) A0031_P-NE Rev A North Elevation		Dated 3 July 2017; Received 5 July 2017 Dated 1 June 2018; Received 28 June 2018
DWG No. 0027 Rev C- South Section/Elevation (A+D)		Dated 3 July 2017; Received 5 July 2017
DWG No. 0028 Rev B- East Section/Elevation (C+D)		Dated 3 July 2017; Received 5 July 2017
DWG No. 0029 Rev B- West Section/Elevation (A+B)		Dated 3 July 2017; Received 5 July 2017
DWG No. 0030 Rev B- Section 01 (B+C)		Dated 3 July 2017; Received 5 July 2017
DWG No. 0031 Rev C- Section 02 (A+D)		Dated 3 July 2017; Received 5 July 2017
DWG No. 0032 Rev B- Section 03 (C+D)		Dated 3 July 2017; Received 5 July 2017
DWG No. 0033 Rev B- GFA Plans		Dated 13 February 2017; Received 24 February 2017
DWG No. 0034 Rev A- GFA Plans		Dated 28 July 2016; Received 24 February 2017
DWG No. 0035 Rev A- GFA Plans		Dated 28 July 2016; Received 24 February 2017

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DWG No. 0036 Rev D- Shadow Analysis- Winter Solstice		Dated 3 May 2017; Received 11 May 2017
DWG No. 0037 Rev D- Shadow Analysis- Winter Solstice		Dated 3 May 2017; Received 11 May 2017
DWG No. 0043 Rev B- ADG Cross Ventilation		Dated 13 February 2017; Received 24 February 2017
DWG No. 0044 Rev B- ADG Solar Access		Dated 13 February 2017; Received 24 February 2017
DWG No. 0045 Rev B- ADG Solar Access		Dated 13 February 2017; Received 24 February 2017
DWG No. 0046 Rev B- ADG Apartments Direct Sunlight Analysis		Dated 13 February 2017; Received 24 February 2017
DWG No. 0047 Rev B- ADG Apartments Direct Sunlight Analysis		Dated 13 February 2017; Received 24 February 2017
DWG No. 0048 Rev A- Materials Board		Dated 28 July 2016; Received 24 February 2017
DWG No. 0049 Rev A- BASIX Specification		Dated 28 July 2016; Received 24 February 2017
DWG No. 0051 Rev A- Perspective View 02		Dated 28 July 2016; Received 24 February 2017
DWG No. 0052 Rev A- Landscape Diagrams		Dated 13 February 2017; Received 24 February 2017
DWG No. 0053 Rev C- Shadow Analysis- Equinox		Dated 3 May 2017; Received 11 May 2017
DWG No. 0054 Rev C- Shadow Analysis- Equinox		Dated 3 May 2017; Received 11 May 2017
DWG No. 0055 Rev A- NE Winter Solstice		Dated 13 February 2017; Received 24 February 2017
DWG No. 0056 Rev A- NW Winter Solstice		Dated 13 February 2017; Received 24 February 2017
DWG No. 0057 Rev A- NE Equinox		Dated 13 February 2017; Received 24 February 2017
DWG No. 0058 Rev A- NW Equinox		Dated 13 February 2017; Received 24 February 2017
DWG No. 0060 Rev A- Shadow Analysis Winter Solstice		Dated 14 June 2017; Received 20 June 2017

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DWG No. 0061 Rev A-Shadow Analysis Winter Solstice		Dated 14 June 2017; Received 20 June 2017
DWG No. 0062 Rev A-Shadow Analysis Winter Solstice		Dated 14 June 2017; Received 20 June 2017
DWG No. 0063 Rev A-Shadow Analysis Winter Solstice		Dated 14 June 2017; Received 20 June 2017
DWG No. 0059 Rev A-Basement Storage/Bicycle Parking/Media Cupboard		Dated 13 February 2017; Received 24 February 2017
DWG No. CS-000 Rev C-Cover Sheet, Drawing Register and Legend	Urbis Pty Ltd	Dated 11 May 2017; Received 11 May 2017
DWG No. FI-200 Rev E-Planting Plan- Ground Level		Dated 11 May 2017; Received 11 May 2017
DWG No. FI-201 Rev E-Planting Plan- Ground Level		Dated 11 May 2017; Received 11 May 2017
DWG No. FI-202 Rev E-Planting Plan- Ground Level		Dated 11 May 2017; Received 11 May 2017
DWG No. FI-203 Rev E-Planting Plan- Ground Level		Dated 11 May 2017; Received 11 May 2017
DWG No. FI-204 Rev E-Planting Plan- Ground Level		Dated 11 May 2017; Received 11 May 2017
DWG No. FI-210 Rev A-Planting Plan- Level 4		Dated 15 July 2016; Received 11 May 2017
DWG No. FI-211 Rev A-Planting Plan- Level 4		Dated 15 July 2016; Received 11 May 2017
DWG No. FI-212 Rev A-Planting Plan- Level 4		Dated 15 July 2016; Received 11 May 2017
Survey Plan- Sheets 1+2	LTS Lockley Registered Surveyors	Dated 12 September 2014; Received 29 August 2016
Civil Works Package- Rev B	At&I	Dated 2 May 2016; Received 24 February 2017
41176DP- Plan of Subdivision	Matthew Graham Smith	Dated 2014; Received 29 August 2016

(DA-16/150/05)(DA-16/150/06)

Reference Document(s)	Author	Dated / Received by Council
ND 1502- Landscape Design Development Application Report	Urbis	Dated 2 May 2017; Received 11 May 2017
Letter to Council responding to additional information	Meriton Property Services Pty Ltd	Dated 4 May 2017; Received 11 May 2017

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Response Matrix outlining Landscaping issues	Meriton Property Services Pty Ltd	Received 11 May 2017
Addendum Report – Arboricultural- Ref: 3504	TALC	Dated 6 February 2017; Received 24 February 2017
Traffic Impact Assessment Rev B- Ref: 248258	ARUP	Dated 17 February 2017; Received 24 February 2017
Clause 4.6 variation to the FSR development standard	Meriton Property Services Pty Ltd	Received 24 February 2017
Clause 4.6 variation to the height development standard	Meriton Property Services Pty Ltd	Received 18 May 2017
Reflectivity and Glare Assessment- Ref: 610.14464-R011-v1.0	SLR	Dated 23 January 2017; Received 24 February 2017
Response Matrix to additional information request by Council	Meriton Property Services Pty Ltd	Received 24 February 2017
Response to Council DA Traffic Issues	ARUP	Dated 17 February 2017; Received 24 February 2017
Design Statement for DA submission- Ref: CA3392	Crone Architects	Dated 7 July 2016; Received 29 August 2016
DCP Compliance Table	Meriton Property Services Pty Ltd	Received 29 August 2016
BASIX Certificate No. 741493M	Prepared by Efficient Living Pty Ltd	Dated 3 August 2016; Received 29 August 2016
Acoustic Report- Ref: 2016.1100.1/2807A/R0/TA	Acoustic Logic	Dated 28 July 2016; Received 29 August 2016
Waste Management Plan Rev C	Elephants Foot	Dated 26 August 2016; Received 29 August 2016
Access Report- Rev 2- MTN-017	Wall to Wall Design + Consulting	Dated 28 August 2016; Received 29 August 2016
Building Code of Australia Compliance Assessment Report- 1423-80-Rev 00	AE&D Group	Dated 13 July 2016; Received 29 August 2016
Qualitative Environmental Wind Assessment Report- Ref: 610.14464	SLR	Dated 28 July 2016; Received 29 August 2016
Arboricultural Assessment Report	TALC	Dated 9 June 2017; Received 10 July 2017

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Construction Management Plan	Meriton Property Services Pty Ltd	Dated July 2016; Received 29 August 2016
Civil Infrastructure Development Application Report- Rev 01- Ref: 16-363-01	At&I	Dated August 2016; Received 29 August 2016
Remediation Action Plan- Ref: 73894.01	Douglas Partners	Dated July 2014; Received 29 August 2016
Detailed Site Investigation for Contamination- Ref: 73894.00	Douglas Partners	Dated July 2014; Received 29 August 2016
Geotechnical Investigation- Ref: GEOTLCOV25225AA-AC	Coffey	Dated 25 November 2014; Received 29 August 2016
Flood Report Rev 1	Calibre Consulting	Dated 27 July 2016; Received 29 August 2016
Crime Risk and Security Report	Meriton Property Services Pty Ltd	Dated 20 July 2016; Received 29 August 2016
Statement of Environmental Effects	Meriton Property Services Pty Ltd	Dated 29 August 2016; Received 29 August 2016
Advice regarding retail spaces on first floor	Urbis	Dated 5 June 2017; Received 20 June 2017
Letter addressing reasons for deferral	Meriton Property Services Pty Ltd	Dated 20 June 2017; Received 20 June 2017

- 2 No construction works (including excavation) shall be undertaken prior to the issue to the relevant Construction Certificate.
- 3 This Consent relates to land in Lot 1 in DP 376752, Lot 3 in DP 376752 and Lot 21 in DP1014063 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

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- 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.
- 6 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
 - 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

Where relevant, the following external authority conditions apply:

The following conditions are imposed by **Ausgrid**:

- 7 Ausgrid has identified the following assets to be affected by the development works:
- a) Close Proximity of overhead and/or underground cable/s on public land
 - i) Ausgrid require that due consideration be given to the compatibility of proposed development 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.
 - b) In general, conditions to be adhered to by the developer include, but are not limited to, the following:
 - i) Any work undertaken near Overhead Power lines needs to be done in accordance with:

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- WorkCover Document ISSC 23 “Working Near Overhead Power Lines”
 - Ausgrid Network Standards
 - Ausgrid Electrical Safety Rules
- ii) 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
- iii) 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.
- c) 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).
- d) 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.

The following conditions are imposed by **Sydney Airport Corporation Limited (SACL)**:

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- 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

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Airport advises that approval to operate construction equipment (i.e. cranes) should be obtained prior to any commitment to construct.

- f) "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.
- g) 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.
- (a) Application for Approval of Crane Operation
 - (i) Pursuant to s. 183 of the Airports Act 1996 and Reg 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.

The following conditions are imposed by the **NSW Roads and Maritime Services (RMS)**:

- 9 A strip of land has been dedicated as Public Road by private subdivision (DP1014063) along the Bourke Street frontage of the subject property, as shown by yellow colour on the attached aerial – "X". The subject property is further affected by a road proposal at

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the corner of Bourke Street and Church Avenue, as shown by pink colour on the attached aerial – “Y”.

Roads and Maritime raises no objection to the development proposal provided all buildings and structures, together with any improvements integral to the future use of the site are clear of the land required for road.

- 10 The proponent is to be advised that the subject property is within a broad area under investigation for:
 - a) The proposed F6 Project. In this regard, further information can be obtained at www.rms.ndw.gov.au/projects/motorwaydevelopment or by contacting F6 Corridor Study Team via – Email: motorwaydevelopment@rms.nsw.gov.au or by calling 1800789297.
 - b) The contractor for the Westconnex new M5 Project has now been announced and the contractors current design requirements for this project do not require this property. Please note however the detailed design for the project has not been finalised and accordingly land requirements may be subject to change.
 - c) The proposed Westconnex M4-M5 Link Project.

For more information on the Westconnex project, please call 1300660248, email info@westconnex.com.au or visit the project website www.westconnex.com.au

In addition to the above, Roads and Maritime has reviewed the development application and provides the following comments for Council's consideration in the determination of the application:

- 11 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.
- 12 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 AS289.20- 2002 for heavy vehicle usage.

The following conditions are imposed by **Sydney Water**:

- 13 Water
 - a) The trunk water system has adequate capacity to service this development area. The existing 200mm water main in Church Avenue can service the proposed development.
- 14 Wastewater
 - a) The trunk wastewater system has adequate capacity to service this development area. The existing 300mm wastewater main in Church Avenue can service the proposed development.
- 15 Sydney Water E-Planning

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Sydney Water has an email address for planning authorities to submit statutory or strategic planning documents for review. This email address is surbangrowth@sydneywater.com.au. Further advice and requirements for this proposal are at attachments 1 and 2 (overleaf). If you require any further information, please contact Beau Reid of Urban Growth Strategy on 02 8849 5241 or e-mail david.demer@sydneywater.com.au

16 Sydney Water Servicing

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water. 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.

17 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).

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).

The following conditions are imposed by **Sydney Trains**:

18 All excavation and construction works are to be undertaken in accordance with the details, methodology, advice, undertakings and recommendations detailed in the following documents:

- a) Geotechnical Investigation prepared by Coffey dated 25 November 2014 (Ref: GEOTLCOV25225AA-AC);
- b) Potential Impacts on Sydney Trains Tunnel prepared by Coffey dated 1 May 2017 (Ref: 754-SYDGE197961-AB Rev 5);
- c) Dewatering Management Plan prepared by Coffey dated 13 February 2017 (Ref: 754-SYDGE197961AD);
- d) Survey Plans (Drawings Nos 21976 C Sheets 1-4) prepared by B&P Surveyors;
- e) Bulk Excavation Plan- Drawing No. E-1500 dated August 16 prepared by Karimbla Construction Services;
- f) Correspondence titled "Calculations for 900mm diameter foundation piles end bearing on Class III Shale" prepared by CD Group dated 26 April 2017.

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The Principal Certifying Authority is not to issue the Construction Certificate until the measures detailed in the documents approved/certified by Sydney Trains under this Condition are incorporated into the construction drawings and specifications prior to the issuing of the Construction Certificate. Prior to the commencement of works the Principal Certifying Authority is to provide verification to Sydney Trains that this condition has been complied with.

- 19 The following items are to be submitted to Sydney Trains for review and endorsement prior to the issuing of a Construction Certificate:

- a) Machinery to be used during excavation/construction.
- b) Construction, Excavation and Demolition Plan listing the vibration generating equipment, anticipated levels of vibration and proposed method of monitoring.

The Principal Certifying Authority is not to issue the Construction Certificate until it has received written confirmation from Sydney Trains that this condition has been complied with.

- 20 If required by Sydney Trains, prior to the commencement of works, prior to the issue of the Occupation Certificate, or at any time during the excavation and construction period deemed necessary by Sydney Trains, a joint inspection of the rail infrastructure and property in the vicinity of the project is to be carried out by representatives from Sydney Trains and the Applicant. These dilapidation surveys will establish the extent of any existing damage and enable any deterioration during construction to be observed. The submission of a detailed dilapidation report will be required unless otherwise notified by Sydney Trains.
- 21 An acoustic assessment is to be submitted to Council prior to the issue of a construction certificate demonstrating how the proposed development will comply with the Department of Planning's document titled "Development Near Rail Corridors and Busy Roads- Interim Guidelines".
- 22 Prior to the issue of a Construction Certificate the Applicant is to engage an Electrolysis Expert to prepare a report on the Electrolysis Risk to the development from stray currents. The Applicant must incorporate in the development all the measures recommended in the report to control that risk. A copy of the report is to be provided to the Principal Certifying Authority with the application for a Construction Certificate.
- 23 If required by Sydney Trains, prior to the issue of a Construction Certificate a Risk Assessment/Management Plan and detailed Safe Work Method Statements (SWMS) for the proposed works are to be submitted to Sydney Trains for review and comment on the impacts on rail corridor. The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.
- 24 A tunnel monitoring plan (including instrumentation and the monitoring regime during excavation and construction phases) is to be submitted to Sydney Trains for review and endorsement prior to the issuing of a Construction Certificate. The Principal Certifying Authority is not to issue a Construction Certificate until written confirmation has been received from Sydney Trains advising of the need to undertake the tunnel monitoring plan, and if required, that it has been endorsed.

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- 25 Unless advised by Sydney Trains in writing, all excavation, shoring and piling works within 25m of the rail corridor are to be supervised by a geotechnical engineer experienced with such excavation projects.
- 26 No rock anchors/bolts are to be installed into Sydney Trains property or easements.
- 27 Prior to the issuing of an Occupation Certificate the Applicant is to submit as-built drawings to Sydney Trains and Council. The as-built drawings are to be endorsed by a Registered Surveyor confirming that there has been no encroachment into Sydney Trains property or easements, unless agreed to be these authorities. The Principal Certifying Authority is not to issue the final Occupation Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied
- 28 If required, prior to the issue of a Construction Certificate the Applicant is to contact Sydney Trains Rail Corridor Management Group to determine the need for public liability insurance cover. If insurance cover is deemed necessary this insurance be for sum as determined by Sydney Trains and shall not contain any exclusion in relation to works on or near the rail corridor, rail infrastructure. The Applicant is to contact Sydney Trains Rail Corridor Management Group to obtain the level of insurance required for this particular proposal. Prior to issuing the Construction Certificate the Principal Certifying Authority must witness written proof of this insurance in conjunction with Sydney Trains written advice to the Applicant on the level of insurance required.
- 29 If required, prior to the issue of a Construction Certificate the Applicant is to contact Sydney Trains Rail Corridor Management Group to determine the need for the lodgement of a Bond or Bank Guarantee for the duration of the works. The Bond/Bank Guarantee shall be for the sum determined by Sydney Trains. Prior to issuing the Construction Certificate the Principal Certifying Authority must witness written advice from Sydney Trains confirming the lodgement of this Bond/Bank Guarantee.
- 30 Sydney Trains or Transport for NSW (TfNSW), and persons authorised by those entities for the purpose of this condition, are entitled to inspect the site of the development and all structures to enable it to consider whether those structures have been or are being constructed and maintained in accordance with the approved plans and these conditions of consent, on giving reasonable notice to the principal contractor for the development or the owner or occupier of the part of the site to which access is sought.
- 31 Prior to the issuing of a Construction Certificate the Applicant is to submit to Sydney Trains a plan showing all craneage and other aerial operations including loading details for the development and must comply with all Sydney Trains requirements. If required by Sydney Trains, the Applicant must amend the plan showing all craneage and other aerial operations to comply with all Sydney Trains requirements. The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from the Sydney Trains confirming that this condition has been satisfied.
- 32 Copies of any certificates, drawings, approvals/certification or documents endorsed by, given to or issued by Sydney Trains must be submitted to Council for its records prior to the issuing of a Construction Certificate.
- 33 Any conditions issued as part of Sydney Trains approval/certification of any documentation for compliance with the Sydney Trains conditions of consent, those

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approval/certification conditions will also form part of the consent conditions that the Applicant is required to comply with.

The following conditions are imposed by **Water NSW**:

34 The following General Terms of Approval apply:

General

- a) An authorisation shall be obtained for the take of groundwater as part of the activity. Groundwater shall not be pumped or extracted for any purpose other than temporary construction dewatering at the site identified in the development application. The authorisation shall be subject to a currency period of 12 months from the date of issue and will be limited to the volume of groundwater take identified.
- b) The design and construction of the building must prevent any take of groundwater after the authorisation has lapsed by making any below-ground levels that may be impacted by any water table fully watertight for the anticipated life of the building. Waterproofing of below-ground levels must be sufficiently extensive to incorporate adequate provision for unforeseen high water table elevations to prevent potential future inundation.
- c) Sufficient permanent drainage shall be provided beneath and around the outside of the watertight structure to ensure that natural groundwater flow is not impeded and:
 - i) any groundwater mounding at the edge of the structure shall be at a level not greater than 10 % above the level to which the water table might naturally rise in the location immediately prior to the construction of the structure; and
 - ii) any elevated water table is more than 1.0 m below the natural ground surface existent at the location immediately prior to the construction of the structure; and
 - iii) where the habitable 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.
- d) Construction methods and material used in and for construction shall be designed to account for the likely range of salinity and pollutants which may be dissolved in groundwater, and shall not themselves cause pollution of the groundwater.
- e) Documentation (referred to as a 'report') comprising measurements, maps, bore logs, calculations, results, discussion and justification for various matters related to the dewatering process must be provided. 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

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operations (completion report). Reports need to be submitted in a format consistent with electronic retrieval without editing restrictions; raw data should be presented in Excel spreadsheets without editing restrictions.

Prior to excavation

- f) The following shall be included in the initial report:
 - i) measurements of groundwater levels beneath the site from a minimum of three relevant monitoring bores, together with details of the bores used in the assessment including bore logs and three-dimensional identification information.
 - ii) a map of the site and its immediate environs depicting the water table (baseline conditions) shown relative to the topography and approved construction footprint from the surface level and below. An assessment of the potential variation in the water table during the life of the proposed building together with a discussion of the methodology and information on which this assessment is based.
 - iii) details of the present and potential groundwater flow paths and hydraulic gradients in and around the site; the latter in response to the final volumetric emplacement of the construction.
 - iv) a schedule for the ongoing water level monitoring and description of the methodology to be used, from the date of consent until at least two months after the cessation of pumping. [Note that groundwater level measurements should be undertaken on a continuous basis using automatic loggers in monitoring bores.]
- g) The Applicant shall assess the likely impacts of the dewatering activities on other groundwater users or structures or public infrastructure; this assessment will include an appropriate bore, spring or groundwater seep census and considerations relevant to potential subsidence or excessive settlement induced in nearby buildings and property, and be documented together with all calculations and information to support the basis of these in the initial report.
- h) Groundwater quality testing of samples taken from outside the footprint of the proposed construction, with the intent of ensuring that as far as possible the natural and contaminant hydrochemistry of the potential dewatered groundwater is understood, shall be conducted on a suitable number of samples and tested by a NATA-certified laboratory. Details of the sampling locations and the protocol used, together with the test results accompanied by laboratory test certificates shall be included in the initial report. An assessment of results must be done by suitably qualified persons with the intent of identifying the presence of any contaminants and comparison of the data against accepted water quality objectives or criteria for the intended dewatering purpose. In the event of adverse quality findings, the Applicant must develop a plan to mitigate the impacts of the hydrochemistry on the dewatered groundwater and present the details of all assessments and plans in the initial report.
- i) Groundwater quality testing generally in accordance with Clause 8, shall be undertaken on any anniversary or other renewal or alteration of any dewatering authorisation.

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- j) A reasonable estimate of the total volume of groundwater to be extracted shall be calculated and included in the initial report; together with details and calculation methods for the parameters and supporting information to confirm their development or measurement (e.g. permeability determined by slug-testing, pump-testing or other means).
- k) A copy of a valid consent for the development shall be provided in the initial report.
- l) The method of disposal of pumped water shall be nominated (i.e. reinjection, drainage to the stormwater system or discharge to sewer) and a copy of the written permission from the relevant controlling authority shall be provided in the initial report. The disposal of any contaminated pumped groundwater (sometimes called "tailwater") must comply with the provisions of the *Protection of the Environment Operations Act 1997* and any requirements of the relevant controlling authority.
- m) Contaminated groundwater (i.e. above appropriate NEPM 2013 thresholds) shall not be reinjected into any aquifer. The reinjection system design and treatment methods to remove contaminants shall be nominated and included in the initial report and any subsequent intermediate report as necessary. The quality of any pumped water that is to be reinjected must be demonstrated to be compatible with, or improve, the intrinsic or ambient groundwater in the vicinity of the reinjection site.

During excavation

- n) Engineering measures designed to transfer groundwater around and beneath the basement shall be incorporated into the basement construction to prevent the completed infrastructure from restricting pre-existing groundwater flows.
- o) Piping, piling or other structures used in the management of pumped groundwater shall not create a flooding hazard or induce mounding of groundwater. Control of pumped groundwater is to be maintained at all times during dewatering to prevent unregulated off-site discharge.
- p) Measurement and monitoring arrangements to the satisfaction of the approval body are to be implemented. Weekly records of the volumes of all groundwater pumped and the quality of any water discharged are to be kept and a completion report provided after dewatering has ceased. Records of groundwater levels are to be kept and a summary showing daily or weekly levels in all monitoring bores provided in the completion report.
- q) Pumped groundwater shall not be allowed to discharge off-site (e.g. adjoining roads, stormwater system, sewerage system, etc.) without the controlling authority's approval and/or owner's consent/s. The pH of discharge water shall be managed to be between 6.5 and 8.5. The requirements of any other approval for the discharge of pumped groundwater shall be complied with.
- r) Dewatering shall be undertaken in accordance with groundwater-related management plans applicable to the excavation site. The requirements of any management plan (such as acid sulfate soils management plan or remediation action plan) shall not be compromised by the dewatering activity.

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- s) The location and construction of groundwater extraction works that are decommissioned are to be recorded in the completion report. The method of decommissioning is to be identified in the documentation.
- t) Access to groundwater management works used in the activity is to be provided to permit inspection when required by the approval body under appropriate safety procedures.

Following excavation

- u) Following cessation of the dewatering operations, the applicant shall submit the completion report which shall include:
 - i) detail of the volume of water taken, the precise periods and location of water taken, the details of water level monitoring in all of the relevant bores; and
 - ii) a water table map depicting the aquifer's settled groundwater condition and a comparison to the baseline conditions; and
 - iii) a detailed interpreted hydrogeological report identifying all actual resource and third party impacts, including an assessment of altered groundwater flows and an assessment of any subsidence or excessive settlement induced in nearby buildings and property and infrastructure.
- v) The completion report is to be assessed by the approval body prior to any certifying agency's approval for occupation or use of the completed construction.

CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE COMMENCEMENT OF ANY WORKS

- 35 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.
- 36 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.

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- 37 A dilapidation report, including a photographic survey prepared by a Practising Structural Engineer, must be prepared on surrounding properties. A copy of the dilapidation report together with the accompanying photographs shall be given to the above property owner/s, and a copy lodged with Principal Certifying Authority prior demolition. The extent of the Dilapidation Survey is to be prepared by a practising Structural Engineer having regard to foundations/structures of the locality
- 38 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.
- 39 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.
- 40 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

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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.

- 41 Prior to the commencement of demolition work a licensed demolisher who is registered with WorkCover NSW must prepared a Work Method Statement to the satisfaction of the Principal Certifying Authority (Council or an accredited certifier) and a copy shall be sent to Council (if it is not the PCA). A copy of the Statement shall also be submitted to WorkCover NSW.

The statement must be in compliance with AS2601:1991 – 'Demolition of Structures', the requirements of WorkCover NSW and conditions of the Development Approval, and shall include provisions for:

- a) Enclosing and making the site safe, any temporary protective structures must comply with the "Guidelines for Temporary Protective Structures (April 2001)";
 - b) Induction training for on-site personnel;
 - c) Inspection and removal of asbestos, contamination and other hazardous materials (by appropriately licensed contractors);
 - d) Dust control – Dust emission must be minimised for the full height of the building. A minimum requirement is that perimeter scaffolding, combined with chain wire and shade cloth must be used, together with continuous water spray during the demolition process. Compressed air must not be used to blow dust from the building site;
 - e) Disconnection of Gas and Electrical Supply;
 - f) Fire Fighting – Fire fighting services on site are to be maintained at all times during demolition work. Access to fire services in the street must not be obstructed;
 - g) Access and Egress – No demolition activity shall cause damage to or adversely affect the safe access and egress of this building;
 - h) Waterproofing of any exposed surfaces of adjoining buildings;
 - i) Control of water pollution and leachate and cleaning of vehicles tyres – Proposals shall be in accordance with the "Protection of the Environmental Operations Act 1997";
 - j) Working hours, in accordance with this Development Consent;
 - k) Confinement of demolished materials in transit;
 - l) Proposed truck routes, in accordance with this Development Consent;
 - m) Location and method of waste disposal and recycling in accordance with the "Waste Minimisation and Management Act 1995".
 - n) Sewer – common sewerage system ad08.
- 42 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

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shall incorporate and reference the construction environmental management plan and address site limitations.

- 43 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.
- 44 This Consent shall not preclude the demolisher from giving notice to other statutory authorities, such as Sydney Water Corporation, WorkCover, etc.
- 45 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.
- 46 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.
- 47 The Remedial Action Plan (RAP) shall be updated by a suitably qualified and experienced contaminated land consultant to reflect the current proposed development layout and to incorporate any new information of soil and groundwater found in any additional sampling and analysis.

The RAP shall be submitted to Council prior to commencement of any remedial action works or any excavation, demolition or other building works undertaken that are not associated with the preparation of the RAP.

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- 48 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.
- 49 A separate site audit statement for the park that is to be dedicated to council is required and Council will require that there is no ongoing management of any land that is to be dedicated to Council.
- 50 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.
- 51 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.
- 52 For any water from site dewatering to be permitted to go to the stormwater, the water must meet ANZECC 2000 Water Quality Guidelines for Fresh and Marine Water for the 95% protection trigger values for marine water. The results of all testing must be completed by a NATA accredited laboratory.

All laboratory results must be accompanied by a report prepared by a suitably qualified person indicating the water meets these guidelines and is acceptable to be released into council's stormwater system. If it is not acceptable, details of treatment measures to ensure that the water is suitable for discharge to council's stormwater shall be provided in this report. Reports shall be provided to council prior to discharge of any groundwater to the stormwater system.
- 53 To ensure that relevant engineering and water quality provisions are met during the period of dewatering for construction, prior to any water from site dewatering to be permitted to go to council's stormwater system a permit to discharge to the stormwater shall be obtained from Council. Dewatering shall not commence until this is issued by Council.
- 54 The applicant shall provide Council with a 24 hour contact number for the manager of the remediation works prior to the commencement of any works at the site.
- 55 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.
- 56 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.
- 57 The Applicant has permission to remove the following trees:

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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 #20, Tree #21, Tree #22, Tree #23, Tree #24, Tree #25, Tree #26, Tree #27, Tree #28, Tree #29, Tree #30, Tree #31, Tree #32, Tree #33, Tree #34, Tree #35, Tree #36, Tree #37, Tree #38, Tree #39, Tree #40, Tree #41, Tree #42, Tree #43, Tree #44, Tree #45, Tree #46, Tree #47, Tree #48, Tree #49, Tree #50, Tree #51, Tree #52, Tree #53, Tree #54, Tree #55, Tree #56, Tree #57, Tree #58, Tree #59, Tree #60, Tree #61, Tree #62, Tree #63, Tree #64, Tree #65, Tree #66, Tree #67, Tree #68, Tree #69, Tree #70, Tree #71, Tree #72, Tree #73 as identified by the Consultant Arborist in the report by Tree and Landscape Consultants (TALC) (dated 9th June 2017). **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 qualified Arborist with their own public liability insurance must be engaged.
- b) All work is to take place on the Council road reserve with the appropriate safety and directional signage implemented to ensure public safety and access otherwise road and footpath closures require a Council Road Occupancy Permit.
- c) A Dial-Before-You-Dig enquiry is required prior to stump grinding the trunk and shall occur without damage to Council infrastructure or underground services/utilities.

Council will take no responsibility for any damage incurred to persons, property or services during the tree removal works.

- 58 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 Church Street and Bourke Road, road reserve. 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.

The written report, together with a copy of the digital video footage of the pipeline shall be submitted to Council prior to the commencement of any works. A written acknowledgment shall be obtained from Council (attesting to this condition being appropriately satisfied) and submitted to the Principal Certifying Authority.

Note: If the existing pipe is full of debris preventing the effective inspection of the pit and pipe system, the contractor shall clear the pipe to a degree where CCTV inspection is possible at the applicants expense.

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59 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) As part of this development, the Ausgrid lighting poles along Bourke Road and Church St, will need to be decommissioned and new lighting poles shall be constructed satisfying P2 lighting requirements 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, 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 Construction Certificate.

Any costs in the relocation, adjustment, and provision of land or support of services as requested by the service authorities and Council are to be the responsibility of the developer.

60 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 practicing engineer, showing all details, including the extent of encroachment and the method of removal (or any other method) and de-stressing 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.

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

61 The applicant must prior to the issue of any Construction Certificate, pay the following fees:

- | | | |
|-----|---------------------------|-----------------------------------|
| (a) | Development Control | \$2,940.00 |
| (b) | Waste Levy | \$12,391.20; |
| (c) | Builders Security Deposit | \$629,880.00 (Condition No. 65) |
| (d) | Section 94 Contributions | \$5,194,622.36 (Condition No. 66) |

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- 62 Prior to the issue of any Construction Certificate, the applicant shall lodge a Damage Deposit of **\$629,880.00** (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.
- 63 Bayside Council 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 **\$5,194,622.36** is payable as calculated below:

City of Botany Bay Section 94 Contributions Plan 2016

The s94 contributions (as indexed to April quarter 2017) for residential are as follows:

a) Community Facilities- Citywide	\$798,693.83
b) Recreation Facilities- Mascot Precinct	\$81,027.65
c) Recreation Facilities- Citywide	\$3,469,129.18
d) Transport Management- Citywide	\$326,870.05
e) Transport Management- Mascot	\$459,437.20
f) Administration	\$59,518.46

TOTAL: \$5,194,622.36

The total Section 94 Contribution of **\$5,194,622.36** is to be paid to Council prior to the issue of any Construction Certificate.

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.

- 64 Prior to the issue of the relevant Construction Certificate, the applicant shall submit amended plans to Council's Manager of Development Services for approval, showing the following:
- a) Storage areas are to comply with the minimum ADG requirement of 6sqm for 1 bedroom apartments, 8sqm for 2 bedroom apartments and 10sqm for 3 bedroom apartments. 50% of the storage area is to be included within the apartments. A breakdown of the storage area is to be provided within a Schedule;
 - b) The northern patios/courtyards of the ground floor apartments of Building A and D along Galloway Street (northern setback) are to be setback 3 metres from the site boundary to comply with the 3 metre setback requirement under Part 9A of the BBDGP 2013;
 - c) Internal reconfiguration of the 2 and 3 bedroom apartments to provide an open storage area within/close to, the entry way of the apartment and be in addition to storage in the kitchen, bathrooms and bedrooms;
 - d) Study nooks are to be provided to two and three bedroom units and are not to be enclosed in cupboard areas that do not have access to ventilation and

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sunlight. It is recommended that study nooks are located within the open planned area of the apartments;

- e) A loading dock management plan of the ground floor loading dock is to be prepared demonstrating the management of the loading dock during operations. This is to be provided to the Council and the Principal Certifying Authority prior to issue of the Occupation Certificate.
 - f) Front entries of the apartments, dining rooms, kitchen floors and internal storage areas are to be finished with materials that are water resistant and easy to clean; and
 - g) The location of mailboxes within the lobby of each building is to be identified on the amended plans.
 - h) The first floor level must be designed as flexible space to allow for future adaption. It must have a minimum floor to ceiling height of 3.3 metres.
 - i) The residential/commercial (dual use) first floor flexible space is to include design features which allow for future adaptability of this space for employment generating activities.
- 65 Storage cages located in car parking areas are to be provided with a perforated roof/ceiling that is located a minimum of 500mm away from any sprinkler heads. This will ensure compliance with Part E1.5 of the BCA & Australian Standard 2118 is maintained. Details are to be submitted to the certifying authority for approval prior to the issue of the relevant Construction Certificate.
- 66 Plans and specifications for the storage room for waste and recyclable materials shall be submitted to the Certifying Authority with the application for the relevant 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.
- 67 The drawings for the construction certificate for the basement and above ground car park shall show the following parking requirements:

Car Parking Rates	Required
0.6 space / 1 bed unit	54.6 52.8 spaces
0.9 space / bed unit	156.6 162.9 spaces
1.4 space / bed unit	105.99.4 spaces
1 visitor space / 7 dwellings	48.6 spaces
Retail Spaces	20 spaces
Child Care Centre	29.5 spaces
TOTAL REQUIRED	415.414 spaces (rounded up)

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Car Parking Rates	Required
TOTAL PROVIDED	510 spaces

Any excess parking is to be allocated to residential apartments. This information is to be provided prior to the issue of the relevant Construction Certificate. (DA-16/150/05)

- 68 Prior to the issue of the relevant Construction Certificate, any recommendations from the amended Qualitative Wind Assessment Report are to be incorporated into the design in order to ensure compliance with Council's maximum wind criteria (as set out at Part 9A.4.5.4 Wind Mitigation, Control C1); 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.

- 69 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 issue of the relevant 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 28/07/2016, Report reference number 20161100.1/2807A/R0/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.

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.

- 70 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 relevant Construction Certificate and its location and specifications endorsed on the construction drawings.

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- 71 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 (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.
- 72 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.
- 73 A Construction Management Program shall be submitted to, and approved by the Private Certifying Authority prior to the issue of any 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,

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- 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.

74 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) for approval. The plan shall:

- a) be prepared by a RMS accredited consultant,
- b) nominate a contact person who is to have authority without reference to other persons to comply with instructions issued by Council's Traffic Engineer or the Police,
- c) during construction, if access from **Bourke 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.

75 Prior to the release 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

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- 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.
- 76 Prior to the release 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,
 - 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.
- 77 Prior to the release 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 10 August 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.
- 78 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.
- 79 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 and 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.)

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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,
 - b) 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.
- 80 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.
- 81 An Acid Sulfate Soils Management Plan, that has been prepared by a suitably qualified and experienced environmental/geotechnical consultant, shall be submitted to the Principal Certifying Authority (and the Council if the Council is not the Principal Certifying Authority) prior to the issue of any Construction Certificate. This plan shall include any site specific procedures and mitigation measures required and shall include a site analysis from a NATA registered laboratory. The plan shall provide details of the following:
- a) Site specific mitigation measures to both minimise the disturbance of acid sulfate soils as well as any measures relating to acid generation and acid neutralisation of the soil;
 - b) Management of acid sulfate affected excavated material;
 - c) Measures taken to neutralise the acidity of any acid sulfate affected material; and
 - d) Run-off control measures for the acid sulfate affected soil.

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This report shall be provided prior to the issue of any construction certificate and all recommendations of the report shall be implemented during works on site.

- 82 The **private domain landscape** areas shown on the plan by Urbis, Plans CS-000, FI-200 to FI-204, FI-210 to FI-212 (Issue C, dated May 2017) shall comprise detailed landscape construction documentation (plans and specifications) to be submitted to and approved by Council's Landscape Architect prior to the issue of the Occupation Certificate. The landscape documentation is to be prepared by Urbis Landscape Architects and shall include, but not be limited to:
- a) Along Galloway Street deep soil landscaping setback shall be increased to three (3) metres forward of patios. Landscaping shall include a mix of medium and large canopy trees.
 - 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) Canopy trees are required to be incorporated within the landscape setback along Galloway Street frontage and Church Avenue frontage.
 - d) A mix of medium sized, deciduous and evergreen trees are to be used extensively within the level 4 communal park. Any 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.
 - e) 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.
 - f) 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.
 - g) Indicate the location of all basement structures relative to the landscape areas.
 - h) Areas of paving, schedule of materials, edge treatments, tactiles, playground and fitness equipment details, and sectional construction details. Use of WSUD initiatives or materials is required to be indicated.
- 83 The **public domain landscape** areas shown on the plan by Urbis, Plans CS-000, FI-200 to FI-204, FI-210 to FI-212 (Issue C, dated May 2017) shall comprise detailed landscape construction documentation (plans and specifications) to be submitted to and approved by Council's Landscape Architect prior to the issue of the Construction Certificate for public domain works. The landscape documentation is to be prepared by Urbis Landscape Architects and shall include, but not be limited to:
- a) The clear delineation of all public domain areas as follows:
 - i) Galloway Street and Church Avenue footpath areas –
 - ii) The ground level Public park located between Building D and Building A

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- 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 Church Avenue, Galloway Street and within the new community park south of Galloway Street.
- 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. Deciduous trees are to be incorporated in strategic locations to allow solar access and improve amenity. Any 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) The public park shall include a combination of seating in addition to blade seating walls. Incorporate picnic settings to improve amenity.
- j) Areas of paving, schedule of materials, edge treatments, tactiles and sectional construction details. Paving to Council Draft Public Domain schedule/specification. This includes areas within the new ground level community park. Drainage details in specific locations such as the public parks, use of WSUD initiatives or materials.
- k) Details of all fencing, privacy screening, arbors and the like – elevations and materials, impacting or visible to public domain areas.
- l) 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.
- m) Rigid polyethylene sheet type tree root barriers are to be specified as required to protect structural elements.
- n) A detailed public art proposal. ***This is to be provided prior to the issue of an Occupation Certificate. (DA-16/150/06)***

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- 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) A tree removal and tree retention plan is required to be submitted that clearly shows trees numbered to correspond with the Arborist report.

DURING WORKS

84

- 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.

85 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 made safe for pedestrian and vehicular traffic at all times. Any damage to Council's infrastructure and surrounding development (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.

86 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.

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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.

- 87 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.
- 88 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.
- 89 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.
- 90 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) The updated Remedial Action Plan (RAP).
- 91 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.
- 92 For any water from site dewatering to be permitted to go to the stormwater system, the water must meet ANZECC 2000 Water Quality Guidelines for Fresh and Marine Water for the 95% protection trigger values for Marine Water. All testing must be completed by a NATA accredited laboratory. All laboratory results must be accompanied by a report prepared by a suitably qualified and experienced person indicating the water is acceptable to be released into Councils stormwater system. If it is not acceptable, details of treatment measures to ensure that the water is suitable for discharge to council's stormwater shall be provided in this report. Reports shall be provided to council prior to discharge of any groundwater to the stormwater system.

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- 93 To ensure that relevant engineering and water quality provisions are met during the period of dewatering for construction, prior to any water from site dewatering to be permitted to go to council's stormwater system a permit to discharge to the stormwater shall be obtained from Council. Dewatering shall not commence until this is issued by Council.
- 94 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.
- 95 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.
- 96 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;
 - b) "Managing Urban Stormwater - Soils and Construction" (2004) Landcom ('The Blue Book'); and
 - c) Protection of the Environment Operations Act 1997.
- 97 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.
- 98 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.
- 99 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.
- 100 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.
- 101 The following shall be complied with during construction and demolition:
 - (a) Construction Noise

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- (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 05:00pm
 - (ii) Saturday 08:00am to 01:00pm
 - (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.
- 102 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.
- 103 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.
- 104 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.
- 105 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

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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.

- 106 The public footpaths in Church Avenue, Galloway Street and Bourke Road shall be constructed in accordance with the approved Public Domain Plan 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. Pavers shall be ordered allowing for adequate lead time for manufacture (10-12 weeks).
- 107 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.
- 108 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.
- 109 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.

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

- 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) 317 residential spaces
 - b) 49 visitors spaces
 - c) 20 retail spaces
 - d) 29 child care centre spaces
 - e) 1 carwash bay located on the ground floor car park level
- Any excess parking is to be allocated to an apartment.
- 111A The FSR, unit mix and car parking shall be consistent with the terms and conditions of DA-16/150 (as modified), DA-2017/1166 and DA-2017/1238 (as modified). (DA-16/150/05)
- 112 Prior to the issue of the relevant Occupation Certificate, at least 72 bicycle spaces are to be provided in the car park.
- 113 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.
- 114 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 and new stormwater drainage infrastructure on **Church Street, Bourke Road, and Galloway St.**
- 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.
- 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

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of Council. A written acknowledgement shall be obtained from Council (attesting this condition being appropriately satisfied) and submitted to the Principal Certifying Authority.

- 115 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.
- 116 Prior to the issue of any Occupation Certificate, the applicant shall carry out the following works:
 - a) On Church St, adjacent to development, reconstruct existing Kerb and Gutter for the full length of the property in accordance with Council Infrastructure Specifications. Location of kerb & gutter to be confirmed with Council prior to construction,
 - b) On Church St, adjacent to development, demolish existing concrete footpath and construct new paved footpath as per Council's Infrastructure and Landscape Architect specifications,
 - c) On Church St, adjacent to development, construct new stormwater pipe underneath the new kerb & gutter location and repair (where required), at the applicants expense, the existing 750 diameter pipe, as per Council's Infrastructure specifications,
 - d) On Bourke Road, adjacent to development, reconstruct existing Kerb and Gutter for the full length of the property in accordance with Council Infrastructure Specifications. Location of kerb & gutter to be confirmed with Council prior to construction,
 - e) On Bourke Road, adjacent to development, demolish existing concrete footpath and construct new paved footpath as per Council's Infrastructure and Landscape Architect specifications, and
 - f) Construct the relevant portion of the new Galloway Street as per civil engineering design and in accordance with Council Infrastructure specifications and with the written approval by Council. The road pavement shall be designed for construction vehicle traffic and certified by a suitably qualified pavement engineer.
- 117 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.
- 118 Prior to the issue of any 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

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- 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.

119 Prior to the issue of any Occupation Certificate, the following is to be complied with:

- a) Dedicate to Council and at no expense to the Council and generally in accordance with the Architectural Plans by Crone Architects, dated 28 July 2016, Part 22 of the Statement of Environmental Effects, by Meriton, dated 29 August 2016 and the following:
- i. Dedicate the portion of land to Council for the purpose of widening Church Avenue. The areas of the land to be dedicated shall be the full length of Church Avenue frontage of the development site and as detailed in the Botany Bay Development Control Plan 2013. The Plan of Dedication shall be lodged with Council and 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,
 - ii. Dedicate the portion of land to Council for the purpose of constructing new park off Galloway Street. The areas of the land to be dedicated shall be as detailed in the Botany Bay Development Control Plan 2013. The Plan of Dedication shall be lodged with Council and 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, and
 - iii. Dedicate the portion of land to Council for the purpose of constructing a portion of Galloway Street. The areas of the land to be dedicated shall be as detailed in the Botany Bay Development Control Plan 2013. The Plan of Dedication shall be lodged with Council and 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.

120 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

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Certifying Authority). The report is to be submitted after completion of remediation works and prior to the issue of any occupation certificate.

- 121 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. This shall be provided to issue of any applicable Occupation Certificate.

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 or applicable dedication of land to Council. 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.

- 122 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 any use or occupation of the premises. 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.

123

- a) The Stratum subdivision of the development shall be the subject of a further Development Application to Council; and
- b) The subdivision application must be accompanied by a formal copy of the by-laws which shall be in accordance with the plans and documentation approved under this Consent and must also include the following:
 - i) 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 Development Consent No. 16/150.
 - ii) Responsibilities with regard to the maintenance of artificial features at the property in accordance with the plans and details approved under Development Consent No. 16/150.
 - iii) Responsibilities regarding the maintenance of the car wash bay the Owners Corporation / building owner.
 - iv) Responsibilities for ensuring owners and/or tenants have adequate and hygienic 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 in accordance with a Plan of Management.
 - v) 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

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- not pollute waters and in accordance with the Protection of the Environment Operations Act 1997.
- vi) The Owners Corporation/Executive Committee obligations under clauses 177, 182, 183, 184, 185 and 186 of the *Environmental Planning and Assessment Regulation 2000*.
 - vii) 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;
 - viii) A graffiti management plan for the removal of graffiti and similar vandalism within seven (7) days of its occurrence and surface re-instatement;
 - ix) 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;
 - x) Maintenance of required acoustic measures of Development Consent No. 16/150; and
 - xi) CCTV surveillance of all public areas within the development site.
- 124 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.
- 125 Prior to the issue of the relevant 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.
- 126 Prior to the issue of the relevant Occupation Certificate, 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 on-street resident parking schemes.
- 127 Prior to release of the any Occupation Certificate the developer must submit to the Principal 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).

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- 128 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.
- 129 Prior to the issue of any 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.
- 130 Prior to the issue of any 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 ~~3.2:1~~ **3.32:1** and height of 51m AHD as approved under this Development Consent No. 16/150, have been strictly adhered to and any departures are to be rectified in order to issue the Occupation Certificate. **(DA-16/150/03)**
 - (c) The development as built, stands within Lot 1 in DP 376752, Lot 3 in DP 376752 and Lot 21 in DP1014063.
- 131 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.
- 132 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).
- 133 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 an Occupation Certificate. This amended plan supercedes 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 and Council's DCP all times.
- 134 The Applicant is to submit payment for a Public Works Defects Liability Bond of \$250,000.00 for all hard structures, paving, drainage and so on within the public domain. 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 public domain work by Council. If rectification or maintenance work is required within this period then Council will forfeit all or part of the bond to undertake the required work, unless the Applicant undertakes this work.
- 135 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 lodgment of a bond in the sum of \$100,000.00 after practical completion of landscape works within all public domain areas, to ensure establishment and maintenance of the landscaping in accordance

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with the approved plans until handover to Council. 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.

- 136 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 Bayside Council prior to the Issue of an Occupation Certificate.
- 137 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 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 and to Council's satisfaction all times.
- 138 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

- 139 The commercial tenancy on ground floor is approved for the use as commercial premises and/or food and drink premises in accordance with the definition in the Standard Instrument.
- 140 The use of the retail tenancies is subject to a separate approval (DA or complying development certificate).
- 141 The use of the child care centre is subject to a separate development application for its fitout.
- 142 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.
- 143 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.

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Maintenance but does not include trimming or pruning of the trees under any circumstances.

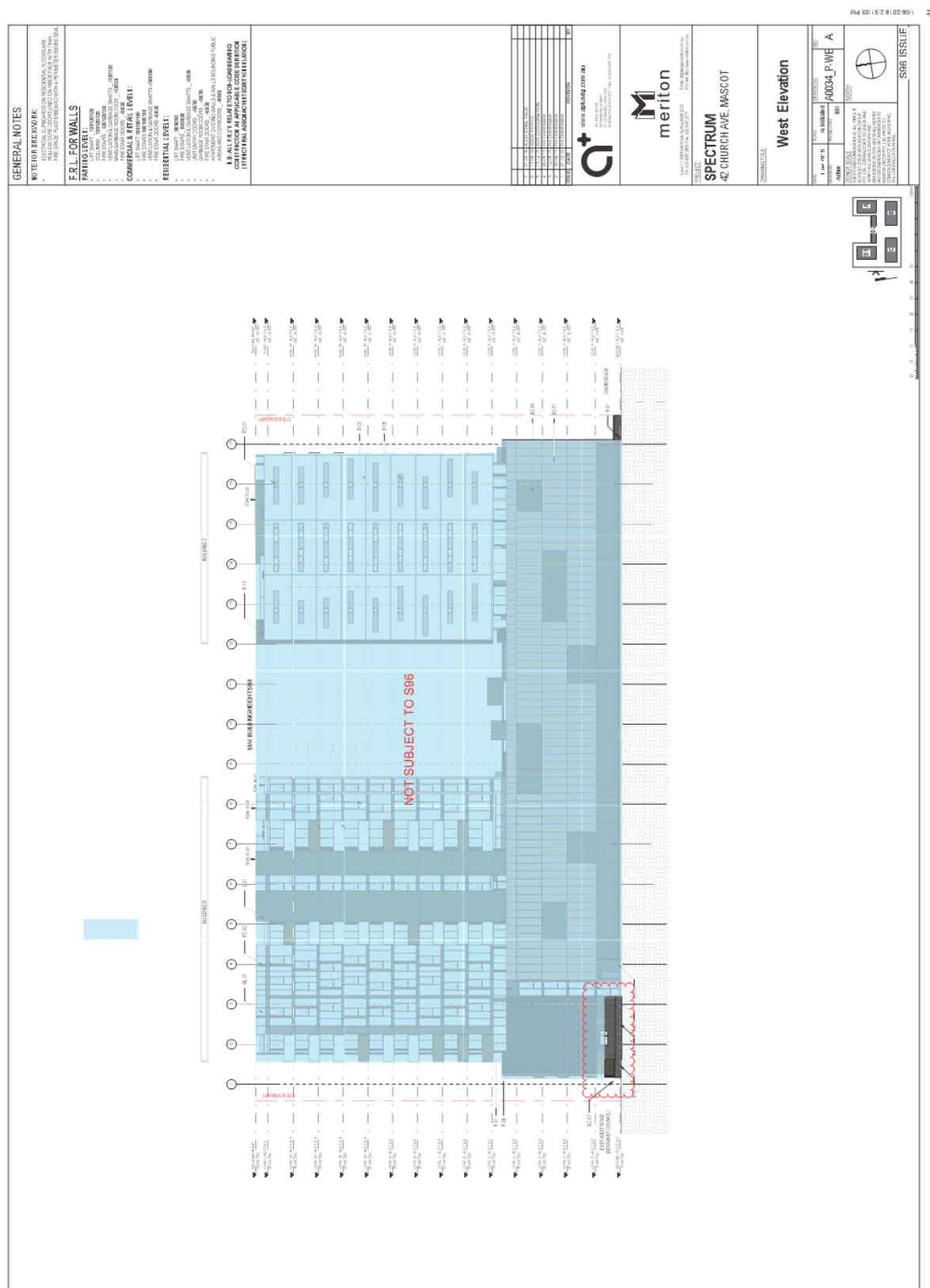
- 144 ~~Ongoing maintenance of the road verges and footpaths and nature strips in Church Avenue and Galloway Street shall be undertaken by the owner/body corporate/Strata Corporation. Maintenance includes mowing, watering and maintaining the landscaping in these areas at all times. Maintenance does not include pruning, trimming, shaping or any work to street trees at any time.~~ (DA-2016/150/04)
- 145 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 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.
- 146 Any air conditioning units (where possible) 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.
- 147 All loading and unloading associated with the retail tenancy is to be undertaken within the ground floor of Building B.
- 148 No garbage collection associated with the retail premises is permitted between 10pm and 6am.

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- 149 The collection of garbage associated with the residential premises shall be restricted to 6am to 6pm Monday to Sunday.
- 150
- (a) The adaptable apartments approved under this development consent are to remain as adaptable units at all times; and
 - (b) 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.
- 151 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.
- 152 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. 16/150 dated as 29 August 2016 and further amended by DA-16/150/03 dated 22 September 2017 and as further modified by DA-16/150/05 dated 13 February 2018 **and as further modified by DA-16/150/06 dated 28 June 2018** and that any alteration, variation, or extension to the use, would require further Approval. (DA-16/150/03)(DA-16/150/05)(**DA-16/150/06**)

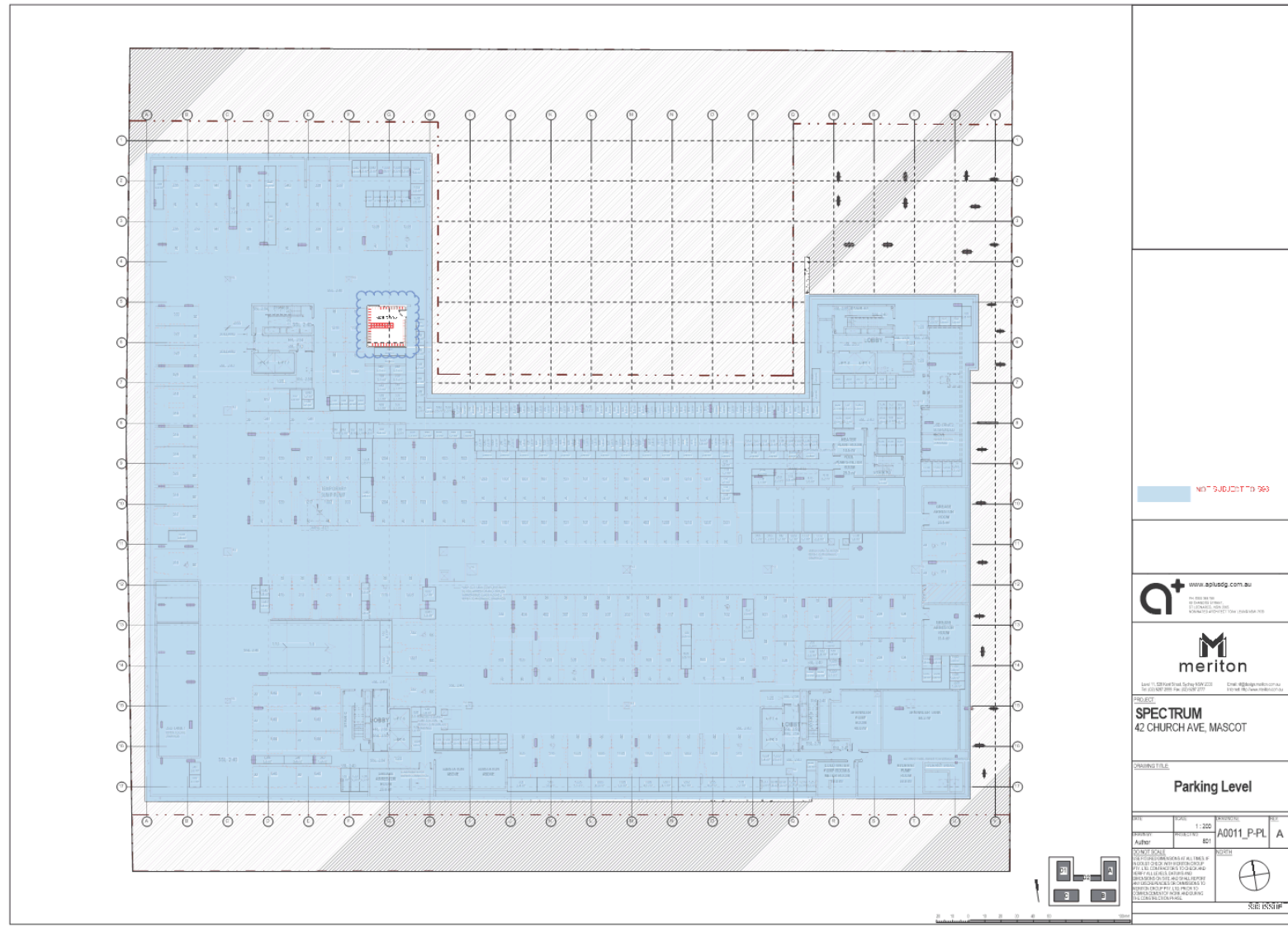
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Statement of Environmental Effects

Section 4.55 Application

42 Church Avenue, Mascot

Relocate mailroom in basement and relocate courtyard fence to Unit G37.

26 June 2018

PREPARED BY

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Statement of Environmental Effects

42 Church Avenue, Mascot

Relocate mailroom in basement and relocate courtyard fence to Unit G37

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Annexure**Annexure 1: Approved Plans****Annexure 2: Proposed Plans****Annexure 3: Design Verification Statement**

Statement of Environmental Effects

42 Church Avenue, Mascot

Relocate mailroom in basement and relocate courtyard fence to Unit G37

1 Introduction

This Statement of Environmental Effects relates to a Section 4.55 Application seeking Council's consent to correct development consent DA16/150.

The subject Section 4.55 Application seeks to relocate mailroom in basement and relocate courtyard fence to Unit G37.

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 4.15 (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.

Statement of Environmental Effects

42 Church Avenue, Mascot

Relocate mailroom in basement and relocate courtyard fence to Unit G37

2 Site and Surroundings

2.1 The Site

The site is known as 42 Church Avenue, Mascot, and it comprises three parcels of land located on the northwestern corner of Church Avenue and Bourke Street. **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 Lots 1 and 3 in DP 376752 and Lot 21 in DP 1014063. It has a 108.5 metre frontage to Church Avenue; a 101.5 metre frontage to Bourke Street; a 101.9 metre western side boundary; and a 109.1 metre northern boundary. The total site area is 11,104 sqm.

The site has been approved for redevelopment – refer section 3.1 of this Statement.

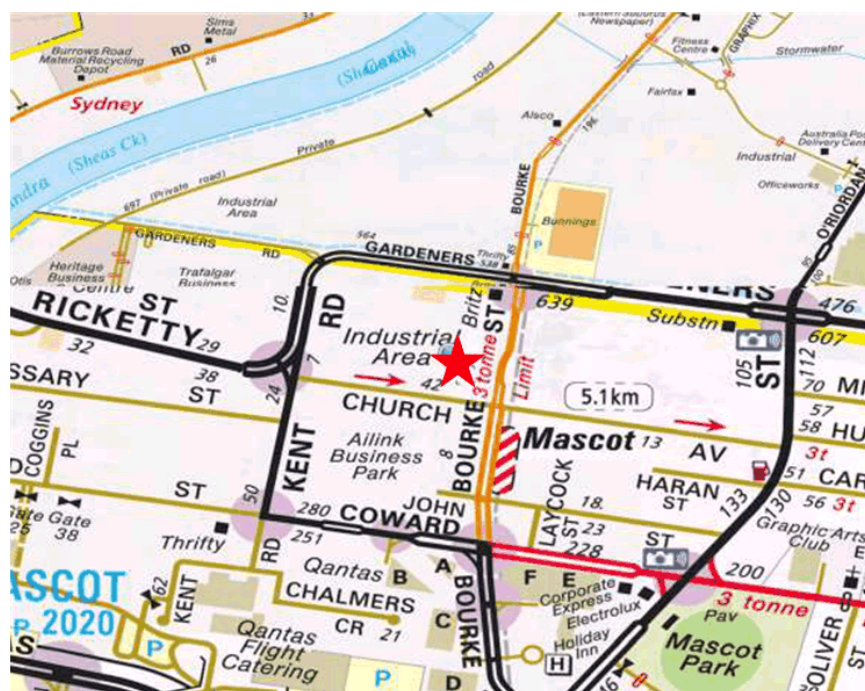


Figure 1: Location of subject site marked with red star

Statement of Environmental Effects

42 Church Avenue, Mascot

Relocate mailroom in basement and relocate courtyard fence to Unit G37



Figure 2: Aerial view of subject site – shaded yellow (as at 21 January 2018)

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 diagonally opposite the Mascot Railway Station, and it is on the northern fringe of the town centre that surrounds the station.

To the east, on the other side of Bourke Street, is a commercial / warehouse. To the southeast are mixed use residential and commercial buildings and the Mascot Railway.

The adjoining site to the north is currently partly vacant and partly occupied with commercial buildings.

To the south of the site, on the on the other side of Church Avenue, is a multi-storey mixed use building with ground floor retail and residential apartments above.

The adjoining site to the west is occupied by a residential flat building and also part of the redevelopment of No.9 Kent Road for residential flat buildings.

Statement of Environmental Effects

42 Church Avenue, Mascot

Relocate mailroom in basement and relocate courtyard fence to Unit G37

3 Proposed Modifications

3.1 Relevant Background

3.1.1 Main Development Consent

On 25 July 2017, the JRPP issued its consent (DA16/150) for the following development:

Integrated Development Application for the construction of a mixed use development incorporating a 4 storey podium with four x 14- storey towers containing residential units, retail space, childcare centre, private recreation facilities, basement and above ground 'sleeved' car parking and 35,532sqm of gross floor area; landscaping and dedication of land along the Church Avenue frontage; construction of southern half of a new east-west street along the northern alignment of the site; landscaping and dedication of a new public park; associated excavation, earthworks and landscaping; and land subdivision.

Approved drawings that are relevant to the proposal are shown at **Annexure 1**.

3.1.2 Other Approvals and Applications

DA 2017/1166

On 14 December 2017, the Council issued its consent (DA 2017/1166) for the following development:

Alterations to the approved building by deleting the childcare centre and replacement with 29 additional apartments

DA 2017/1238

On 8 May 2018, the Council issued its consent (DA 2017/1238) for the following development:

Changes to approved development to add retail tenancies to the Church Avenue and Bourke Street frontages, increasing the retail floor area from 512sqm to 1,0375qm

3.2 Proposed Amendments

It is proposed to amend DA16/150 by relocating the mailroom in basement and relocating a courtyard fence to Unit G37.

It is proposed to provide for a centrally located mailroom from which all residents will collect their mail. The room is to be located in a convenient position within the basement to ensure all residents have easy access to it. The proposed location is consistent with the requirements of Australia Post. It is proposed to delete condition 64(g) – refer section 3.3 below – as a result of the proposed amended location.

The proposed relocation of the courtyard fence is to allocate space to the private courtyard of Unit G37.

The proposed amendments are shown on the amended drawings at **Annexure 2**.

Statement of Environmental Effects

42 Church Avenue, Mascot

Relocate mailroom in basement and relocate courtyard fence to Unit G37

3.3 Proposed Amended Conditions**3.3.1 Condition 1**

It is proposed to amend Condition 1 to reference the proposed amended plans.

3.3.2 Condition 64(g)

It is proposed to delete existing conditions 64(g) as follows:

~~The location of mailboxes within the lobby of each building is to be identified on the amended plans.~~

Statement of Environmental Effects

42 Church Avenue, Mascot

Relocate mailroom in basement and relocate courtyard fence to Unit G37

4 Threshold Test – Substantially the Same

It is considered that the development is substantially the same as the original approval.

The proposal seeks very minor amendments – one being located within the basement and the other being a minor adjustment to a fence alignment.

On this basis, the proposed amendments are considered to constitute substantially the same development and are, therefore, accessible under Section 4.55 of the Environmental Planning and Assessment Act, 1979.

Statement of Environmental Effects

42 Church Avenue, Mascot

Relocate mailroom in basement and relocate courtyard fence to Unit G37

5 Environmental Planning Assessment

5.1 Section 4.15(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.

5.1.2 State Environmental Planning Policy No 65 – Quality of Residential Flat Buildings

State Environmental Planning Policy No 65 – Quality of Residential Flat Buildings (SEPP 65) applies to the proposal. The proposal remains compliant with the requirements of the Apartment Design Guide. A Design Verification Statement is included at **Annexure 3**.

5.2 Section 4.15(1)(a)(ii): Draft Environmental Planning Instruments

There are no draft environmental planning instruments that apply to the subject site.

5.3 Section 4.15(1)(a)(iii): Development Control Plans

5.3.1 Botany Development Control Plan

Botany Development Control Plan applies to the subject site. However, none of its provisions are particularly relevant in the assessment of the proposed amendments.

5.4 Section 4.15(1)(a)(iiia): Planning Agreements

Not applicable.

5.5 Section 4.15(1)(a)(iv): Regulations

The Section 4.55 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 4.15(1)(b): Likely Impacts

There are no impacts arising from the proposed amendment.

5.7 Section 4.15(1)(c): Suitability of the Site

The proposed relocated mailroom within the basement provides a central position from which residents collect their mail. The proposed location is compliant with the regulations of Australia Post and will have no adverse impact.

The minor relocation of the courtyard fence is to provide a more generous outdoor space for Unit G37. The relocated courtyard fence does not impact on the streetscape and does not affect any communal open space. No impacts will result.

Statement of Environmental Effects

42 Church Avenue, Mascot

Relocate mailroom in basement and relocate courtyard fence to Unit G37

5.8 Section 4.15(1)(d): Submissions

Should notification be required for the proposal, Council will consider submissions at the close of the notification period.

5.9 Section 4.15(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 4.55 under consideration, particularly, given the absence of any demonstrable adverse impacts resulting from the proposal.

Statement of Environmental Effects

42 Church Avenue, Mascot

Relocate mailroom in basement and relocate courtyard fence to Unit G37

6 Conclusion

The subject Section 4.55 Application seeks to relocate mailroom in basement and relocate courtyard fence to Unit G37.

The proposal satisfies the relevant heads of consideration under Section 4.15 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 4.55 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 4.55 application and amend the development consent in the manner requested.

Annexure 1: Approved Plans

Annexure 2: Proposed Plans

Annexure 3: Design Verification Statement

Bayside Local Planning Panel

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Item No	6.2
Application Type	Section 4.55(1A) Application to modify approved mixed use development
Application No	SF18/2310
Lodgement Date	22/05/2018
Property	DA-2017/1238/02 and DA-2017/1238/03 - 42 Church Avenue, Mascot
Ward	Mascot
Owner	Karimbla Property (No. 45) Pty Ltd
Applicant	Karimbla Constructions Services (NSW) Pty Ltd
Proposal	<p>DA-2017/1238/02 Section 4.55(1A) Application to modify Development Consent No. 2017/1238 to amend Condition Nos. 20(b), 28, 36, 37, 41 and 47</p> <p>DA-2017/1238/03 Section 4.55(1A) Application to modify Development Consent No. 2017/1238 to amend Condition Nos. 24, 45 and 49(b) relating to car parking allocation converting retail spaces to residential spaces</p>
No. of Submissions	Nil
Cost of Development	0
Report by	Michael McCabe, Director of City Futures

Officer Recommendation

That the Bayside Local Planning Panel approve the two Section 4.55(1A) Applications to modify Development Consent No. 2017/1238 to amend Condition Nos. 24 and 45 relating to car parking allocation, Condition Nos. 49(b), 36, 37, 41 and 47 at 42 Church Avenue, Mascot, as follows:

1. That Condition No. 1 is to be modified to reflect the proposed plans that are subject to this application.
2. That Condition No. 24 and 45 is modified relating to car parking numbers and allocation within the development to provide a reduced number of retail spaces and additional residential spaces.
3. That Condition No. 49(b) is to be modified to reflect the updated FSR/GFA calculations due to the additional residential car parking on the site.
4. That Condition No. 36 is to be deleted relating to excavation and fill on the site.
5. That Condition No. 37 is to be deleted relating to contaminated soil being used on site.

6. That Condition No. 41 is to be deleted relating to vibration during construction.
7. That Condition No. 47 is to be deleted relating to services within the road reserve to be relocated or adjusted to match the levels of the development.

Location Plan



Attachments

- 1 Planning Assessment Report [↓](#)
- 2 Original Development Assessment Report- DA-2017/1238 [↓](#)
- 3 Amended Ground Floor Plan [↓](#)
- 4 Statement of Environmental Effects- DA-2017/1238/02 [↓](#)
- 5 Statement of Environmental Effects- DA-2017/1238/03 [↓](#)

BAYSIDE COUNCIL

Planning Assessment Report

Application Details

Application Number:	DA-2017/1238.02 and DA-2017/1238/03
Date of Receipt:	22 May 2018 and 27 August 2018
Property:	42 Church Avenue Mascot Lot 1 in DP 376752 Lot 3 in DP 376752 Lot 21 in DP1014063
Owners:	Karimbla Properties (No. 45) Pty Ltd
Applicant:	Karimbla Constructions Services (NSW) Pty Ltd
Proposal:	DA-2017/1238/02 Section 4.55(1A) Application to modify Development Consent No. 2017/1238 to amend Condition Nos. 20(b), 21, 28, 36, 37, 41 and 47 DA-2017/1238/03 Section 4.55(1A) Application to modify Development Consent No. 2017/1238 to amend Condition Nos. 24, 45 and 49(b) relating to car parking allocation converting retail spaces to residential spaces
Recommendation:	Approval, subject to recommended conditions of consent.
Value:	N/A
No. of submissions:	Nil
Author:	Angela Lazaridis, Senior Development Assessment Planner
Date of Report:	30 October 2018

Key Issues

Development Application No. 2017/1238 was approved by the Bayside Local Planning Panel on 8 May 2018 for changes to the approved development to add retail tenancies to the Church Avenue and Bourke Street frontages, increasing the retail floor area from 512sqm to 1,037sqm. There are also two other development applications that have been approved for the built form which dictate minor changes to the built form, FSR and car parking.

Bayside Council received Section 4.55(1A) Application No. 2017/1238/02 on 22 May 2018 to modify Development Consent No. 2017/1238 to amend Condition Nos. 20(b), 21, 28, 36, 37, 41 and 47. Section 4.55(1A) Application No. 2017/1238/03 was received on 27 August 2018 to amend Condition Nos. 24, 45 and 49(b) relating to car parking allocation converting retail spaces to residential spaces at 42 Church Avenue, Mascot.

Due to the nature of the proposed modifications, both conditions were not required to be placed on public notification as stipulated within Part 2 of the BBDCP 2013.

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In regards to DA-2017/1238/02, a number of conditions related to demolition and excavation works which did not form part of the assessment of the approved development therefore these were acceptable to be deleted. However Condition Nos. 20(b) and 21 which related to footpath crossing deposit and Condition No. 28 which relates to traffic management plans required prior to the issue of the Construction Certificate are required to be provided prior to the issue of the Construction Certificate. Details on the reason for retention are provided within the report below.

In regards to DA-2017/1238/03, the applicant seeks consent for minor changes to the ground floor resulting in reallocation of 18 retail car parking spaces to residential spaces. The proposed reallocation is accepted based on the discussion provided below. In summary, the location of the retail shops in a heavily trafficable street as well as access to the retail car spaces by patrons and no loss in the overall number of car parking spaces approved on the site is the basis of support for this modification. The change to the ground floor will result in some minor changes to Condition Nos. 24 and 45 which outline the car parking numbers for each use and the change in Condition No. 49(b) relating to FSR from the additional residential car parking spaces is supported and further elaborated below.

The Section 4.55(1A) Applications have been assessed in accordance with the relevant requirements of the *Environmental Planning and Assessment Act 1979* and is recommended for approval, except for Condition Nos. 19(b), 20 and 28 of the consent.

Recommendation

That the Bayside Local Planning Panel approve the two Section 4.55(1A) Applications to modify Development Consent No. 2017/1238 to amend Condition Nos. 24 and 45 relating to car parking allocation, Condition Nos. 49(b), 36, 37, 41 and 47 at 42 Church Avenue, Mascot, as follows:

1. That Condition No. 1 is to be modified to reflect the proposed plans that are subject to this application;
2. That Condition No. 24 and 45 is modified relating to car parking numbers and allocation within the development to provide a reduced number of retail spaces and additional residential spaces;
3. That Condition No. 49(b) is to be modified to reflect the updated FSR/GFA calculations due to the additional residential car parking on the site;
4. That Condition No. 36 is to be deleted relating to excavation and fill on the site;
5. That Condition No. 37 is to be deleted relating to contaminated soil being used on site;
6. That Condition No. 41 is to be deleted relating to vibration during construction; and
7. That Condition No. 47 is to be deleted relating to services within the road reserve to be relocated or adjusted to match the levels of the development.

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Background

History

Original Development Application:

- Development Application No. 2017/1238 was approved by the Bayside Local Planning Panel on 8 May 2018 for changes to the approved development to add retail tenancies to the Church Avenue and Bourke Street frontages, increasing the retail floor area from 512sqm to 1,037sqm.

Relevant Applications to the site:

- Development Application No. 2016/150 was approved by the Sydney Central Planning Panel on 20 July 2017 for the construction of a mixed use development incorporating a 4 storey podium with four x 14 storey towers containing residential units, retail space, childcare centre, private recreation facilities, basement and above ground 'sleeved' car parking and 36,819sqm of gross floor area (FSR of 3.32:1); landscaping and dedication of land along the Church Avenue frontage; construction of southern half of a new east-west street along the northern alignment of the site; landscaping and dedication of a new public park, associated excavation, earthworks and landscaping and land subdivision. The subdivision of the site involves three new lots which include the development site, Church Avenue street widening will be a separate lot and Galloway Street to the north and the public park to be dedicated to Council will be another lot.
- Section 4.55(1A) Application was lodged with Council on 4 August 2017 for the modification of 101(c) to allow for the extension of construction hours. This application is currently under assessment (DA-16/150/02).
- Section 4.55(1) Application was lodged with Council on 22 September 2017 for the modification of Condition No. 130(b). This was approved under delegated authority on 22 September 2017 (DA-16/150/03).
- Section 4.55(1A) Application was lodged with Council on 19 January 2018 to delete Condition No. 144. This application was approved on 23 October 2018 by the Bayside Local Planning Panel (DA-16/150/04).
- Section 4.55(1A) Application was lodged with Council on 28 June 2018 to modify the approved development to increase the size of the terrace to Unit G37 and relocation of the mailroom. This application is currently under assessment (DA-16/150/06).
- Development Application No. 2017/1166 was approved on 14 December 2017 by the Bayside Planning Panel for alterations to the approved building by deleting the childcare centre and replacement with 27 additional apartments. An FSR of 3.41:1 (37,903sqm) was approved for the site with a total of 367 units. Two of the originally proposed units was not supported by the Panel therefore the Panel requested that they were converted to a community room. The number and size of the retail tenancies did not change as part of this proposal.
- Section 4.55(1A) Application was lodged with Council on 13 February 2018 to modify Development Consent No. 2016/150 to modify the approved mixed use development regarding car parking, GFA and unit mix. This was approved by the Bayside Local Planning Panel on 28 August 2018.

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Site Description

The subject site is legally known as 42 Church Avenue, Mascot and forms three parcels of land described as Lot 1 in DP 376752, Lot 3 in DP 376752 and Lot 21 in DP1014063.

The subject site is located on the western side of Bourke Street between Gardeners Road to the north, Kent Road to the west and Church Avenue to the south. Galloway Street is a new street currently under construction and runs along the northern boundary of the site. The site is approximately 120 metres to the north-west of Mascot Train Station.

The site has a total area of 11,104sqm with a 108.5 metres street frontage to Church Avenue, a 101.5 metre street frontage to Bourke Street, a 101.9 metres western boundary length and a 109.1 metre northern boundary length. The site is generally flat.

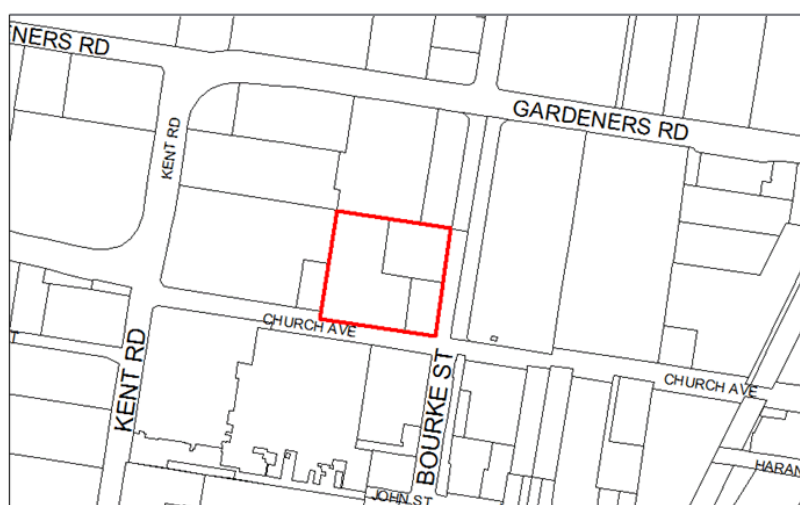


Figure 1. Locality Plan

The site is currently demolished of all structures with construction well underway. The corner of the south-western side of the development is impacted by road widening. The site is located within the 20-25 ANEF zone and is within 25 metres of the Sydney Trains easement for underground rail (Airport Tunnel).

The site is within the B4 Mixed Use zone of the BBLEP 2013 and is within Urban Block 1 of the Mascot Station Town Centre Precinct within Part 9A of the BBDCP 2013. The table below lists the relevant details of the surrounding mixed-use developments.

Description and Assessment of the Proposed 4.55(1A) Modifications

DA-2017/1238/02

Modification No. 1: Delete Condition No. 20(b) and 21 relating to footpath crossing deposit

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Condition Nos. 20(b) and 21 relate to a footpath crossing deposit that was imposed on consent for the site as part of the application. The condition is worded as follows:

"20.b) Footpath Crossing Deposit \$629,880.00

21. Prior to the issue of any Construction Certificate, the applicant shall lodge a Footpath Crossing Deposit of \$629,880.00 (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."

The applicant seeks to delete the footpath crossing deposit as their argument is based on the fact that a footpath crossing deposit was imposed in the development application for the built form (DA-16/150) as well as a second development application relating to additional residential units (DA-2017/1161) therefore they have already paid a damage deposit for the protection of Council's Assets and should not be enforced within this application.

The proposed modification to the condition was referred to Council's Development Engineer for review. Support was not provided on the basis that each development application must be treated as an individual consent and to remove any conditions would leave a risk that compliance with one may occur before the other current DA conditions have been met. Therefore the conditions are to be retained within the consent and the proposed modification is not supported.

Modification No. 2: Delete Condition No. 28 relating to the requirement of a traffic management plan prior to the issue of the Construction Certificate

Condition No. 28 relates to the requirement to provide a traffic management report prior to the issue of the Construction Certificate. The wording of the condition is as follows:

"28. 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) for approval. The plan shall:

- a) be prepared by a RMS accredited consultant,*
- b) nominate a contact person who is to have authority without reference to other persons to comply with instructions issued by Council's Traffic Engineer or the Police,*
- c) during construction, if access from **Bourke 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

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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”.

Similar to the rationale in retaining Condition Nos. 20(b) and 21, the traffic management plan is subject to an individual development application. The proposal was referred to Council's Development Engineer for review who did not support the conditions removal. Therefore the condition is to be retained within the consent and the proposed modification is not supported.

Modification No. 3: Delete Condition No. 36 relating to excavation and fill on the site

Condition No. 36 relates to excavation and fill on the site. The wording of the condition is as follows:

“36. 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.”

The condition specifically relates to excavation which was not proposed as part of the proposal therefore the condition was imposed in error. The removal of the condition is supported.

Modification No. 4: Delete Condition No. 37 relating to contaminated soil being used on site

Condition No. 37 relates to contaminated soil being used on site. The wording of the condition is as follows:

“37. 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.”

Similar to Condition No. 36, the approved development under DA-2017/1238 did not involve excavation of the site and would only involve additional retail to replace car parking. All works are above ground therefore there is no issue relating to contaminated soil. The removal of the condition is supported.

Modification No. 5: Delete Condition No. 41 relating to vibration during construction

Condition No. 41 relates to vibration during construction. The wording of the condition is as follows:

“41. 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.”

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There is no demolition works approved as part of the original development application therefore the condition was imposed in error. The removal of the condition is supported.

Modification No. 6: Delete Condition No. 47 relating to services within the road reserve to be relocated or adjusted to match the levels of the development

Condition No. 47 relates to services within the road reserve to be relocated or adjusted to match the levels of the development. The wording of the condition is as follows:

"47. 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."

The approved development related to additional retail spaces within the approved built form as approved in DA-16/150. There was no change to the public domain along Church Avenue and Bourke Street resultant of the approved changes in DA-2017/1238. Therefore the condition is not applicable and the removal of the condition is supported.

DA-2017/1238/03

Modification No. 1: Reallocation of retail car parking spaces to residential car spaces

The applicant seeks to amend the ground floor car parking layout to reallocate 18 retail car parking spaces to residential and visitor. The development approved a total of 42 retail spaces as part of DA-2017/1238 which approved a total of 1,037sqm retail area. The applicant has provided the below table with a breakdown of the car parking allocation being sought:

	Approved	Proposed Amended	Net Change
Units	1 bed x 115 2 bed x 177 3 bed x 77 Total: 369	No change	Nil change
FSR / GFA	3.44:1 / 38,172 sqm	Approved GFA of buildings: 38,172 sqm Proposed GFA of excess car parking: 234 sqm (18 car spaces) Proposed FSR / GFA total: 3.46:1 / 38,406 sqm	Add 0.02:1 / 234 sqm (1% change)
Car Parking	Residential: 337 Visitors: 51 Retail: 42 Total: 430	Residential: 355 Visitors: 51 Retail: 24 Total: 430	Residential: Plus 18 car spaces Visitors: No change Retail: Minus 18 car spaces Total: Nil change

The applicant has provided the following justification for the retail car parking reallocation:

"The proposed reduction in car parking is due to a reduced demand for retail car parking on the subject site. Given the proximity of the site to Mascot Station, the demand for retail customer and worker parking is lower than in alternative locations that are further away from the railway station. Therefore, rather than have car parking spaces sitting idle and unused in the development which poses a security risk and management concern- it is considered better to have those spaces allocated for residential use."

The approved development provided for 15 separate retail tenancies on the ground floor of the development fronting onto Church Avenue and Bourke Street. The proposal originally

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approved a total of 42 car parking spaces for the retail component. The modification will result in a loss of 18 retail spaces however an additional 18 residential spaces are proposed. Therefore the total number of retail spaces will be 24 spaces while the total number of residential spaces will number 355 spaces (excluding visitor spaces). As indicated within the SEE, the applicant has allocated an additional 5 spaces to the one bedroom units, an additional 9 spaces for the two bedroom units and an additional 4 spaces for the three bedroom units.

The retail areas range between 52.4sqm and 109.6sqm in size. The calculation of the car parking for retail was assessed under Table 1 of Part 3A- Parking and Access of the BBDCP 2013. The car parking rate is 1/25sqm for shops therefore the appropriate amount of car parking spaces was approved. Due to its location within Mascot Station, it is anticipated that the uses will be more for commercial and business premises or café/restaurants and will be heavily utilised by pedestrian traffic from the surrounding residents and office workers within the area. The proposed change to the car parking will result in at least one retail car parking space for each tenancy with the ability for the larger tenancies to have two spaces. It is also key to note that the car parking level has not provided a separate commercial and residential area separated by security doors therefore access into the car parking area for retail patrons could possibly be an issue in the future. The ADG and the RMS car parking rates provide a reduced rate than the BBDCP 2013 however there is a possibility that the units, particularly the one bedroom units, will be left without a car parking space and will rely on on-street car parking. The surrounding streets within Mascot Station are already at capacity with car parking difficult to find particularly during day or night. Due to the issues as raised above with security access for retail patrons to the parking spaces, it could be assumed that these spaces would be left empty and only be utilised by staff.

The below figure of the ground floor plan demonstrates the allocation of residential, visitor and retail car parking on the ground floor. While the spaces have been marked, they have not been specifically allocated to the residences.

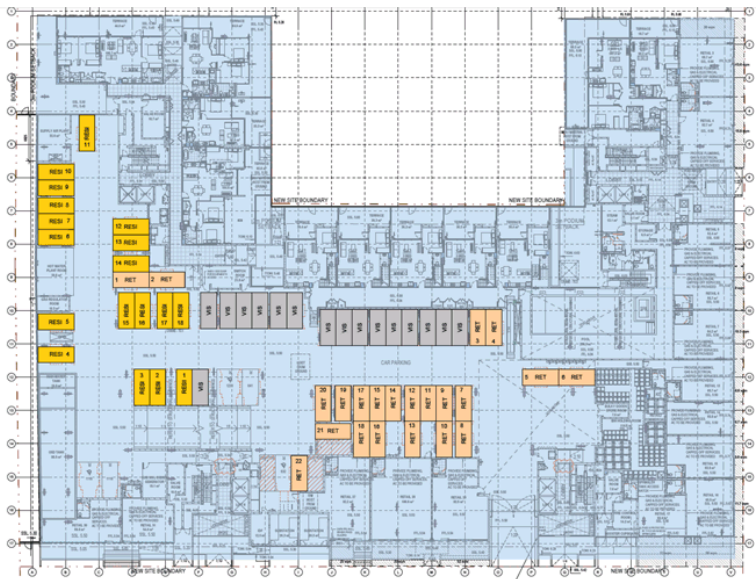


Figure 2. Proposed car parking allocation of ground floor

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To achieve consistency with the assessment of additional car parking provided within the site, the additional car parking spaces are contributed to GFA even though there is no change to the bulk and scale of the existing development. The application is a modification therefore there is no requirement for a Clause 4.6 variation to be provided. The proposed increase in GFA is 234sqm which is an increase of 0.02:1 (1%) and an increase in the overall approved FSR from 3.44:1 to 3.46:1. This modification has been reflected within Condition No. 49(b) of the consent. Based on the above justification, it is considered that the reallocation of the car parking spaces is acceptable and the modification is to be supported.

Modification No. 2: Condition Nos. 24 and 45 relating to car parking allocation for residential and retail car spaces

Condition Nos. 24 and 45 relates to drawings for the construction certificate for the basement and above ground car parking levels as well as delivering the required car parking spaces prior to the issue of the Occupation Certificate. The conditions are worded and amended as follows:

"24. The drawings for the construction certificate for the basement and above ground car parking levels shall show the following parking requirements:

Car Parking Rates	Required
<i>0.6 space / 1 bed unit</i>	69 spaces 74 spaces
<i>0.9 space /2 bed unit</i>	160 spaces 169 spaces
<i>1.4 space /3 bed unit</i>	108 spaces 112 spaces
<i>1 visitor space / 7 dwellings</i>	51 spaces
<i>Retail Spaces</i>	42 spaces 24 spaces
TOTAL PROVIDED	430 spaces

This information is to be provided prior to the issue of the relevant Construction Certificate.

45. Prior to the issue of the relevant Occupation Certificate, car parking is to be allocated as follows and appropriately linemarked:

- a) ~~337~~ 355 residential spaces*
- b) 51 visitors spaces*
- c) ~~42 retail spaces~~ 24 retail spaces*
- d) 1 carwash bay located on the ground floor car park level"*

The change to the conditions are a result of the car parking assessment as discussed in Modification No. 1 above. The modifications have been applied to the conditions as found in the schedule of conditions of consent. The change in the conditions are supported in this instance.

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Modification No. 3: Condition No. 49(b) relates to FSR/GFA calculations that have been approved within the development

Condition No. 49(b) relates to the updated FSR/GFA calculations due to the additional residential car parking on the site. The wording of the condition, as amended, is as follows:

“49. Prior to the issue of any 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:

- b) A Floor Space Ratio (FSR) of 3.44:1 3.46:1 as approved under this Development Consent No. 2017/1238 and height of 51m AHD as approved under this Development Consent No. 16/150, have been strictly adhered to and any departures are to be rectified in order to issue the Occupation Certificate.”*

The proposed modifications are a result of the discussion provided in Modification No. 1 above. The additional residential car parking space contribute to additional GFA even though there is no change to the number of approved car parking spaces on the site. The increase in residential car parking spaces results in an additional 234sqm of GFA which is a 1% increase and 0.02:1 increase. The overall increase in GFA to 3.46:1 is acceptable as there is no negligible change in the built form.

Statutory Considerations

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

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 modifications to the ground floor car parking allocation and to conditions, and as such, the modifications will result in substantially the same development as approved under DA-2017/1238 and then subsequently modified. It is considered that the proposed amendments are 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*

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The Section 4.55(1A) modification application relates to the ground floor car parking allocation and to conditions, 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 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*

Due to the nature of the proposed modifications, the applications were not required to be notified in accordance with Part 2 of the Botany Bay DCP 2013- Notification and Advertising.

- 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 were received as not notification was required.

S4.15(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 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-16/150 which approved the built form on the site. Therefore SEPP No. 55 does not need to be assessed as part of this proposal.

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 Development Application and the following information is provided:

Principal Provisions of BBLEP 2013	Complies Yes/No	Comment
Land use Zone	-	The site is zoned B4 Mixed Use under the BBLEP 2013.

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Principal Provisions of BBLEP 2013	Complies Yes/No	Comment
Is the proposed use/works permitted with development consent?	Yes	The proposal involves additional retail premises are permissible with Council's consent under the BBLEP 2013.
Does the proposed use/works meet the objectives of the zone?	Yes	The proposed development is consistent with the following objectives of the B4 zone: <ul style="list-style-type: none"> 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.
What is the height of the building?	N/A	The maximum building height for the site is 44 metres. The approved development within DA-16/150 was approved with a maximum building height of 45.8 metres (RL 51). There is no change to the height of the development as part of this application.
What is the proposed FSR?	No – Refer to discussion in modification 1 above	The maximum FSR allowed on the site is 3.2:1 (35,532sqm). Approved: 38,172sqm Proposed: 38,406sqm Additional GFA: 234sqm (as a result of 18 additional residential car spaces) While there is a slight increase in the FSR and GFA within the development, this is a result of including additional car parking under one use. It is key to note that the number of car parking spaces has not changed as originally approved in DA-2017/1238 or respective application at Da-16/150 and relevant modifications.
Is the site within land marked "Area 3" on the FSR Map	N/A	The subject site is not identified as being within "Area 3" on the FSR map.
Is the land affected by road widening?	N/A	The subject site is affected by RMS widening of the splay on the corner of Church Avenue and Bourke Street. This was considered in DA-16/150 and does not change this as part of this application.
Is the site listed in Schedule 5 as a heritage item or within a Heritage Conservation Area?	N/A	The subject site is not identified as a Heritage Item or within a Heritage Conservation Area.

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Principal Provisions of BBLEP 2013	Complies Yes/No	Comment
<p>The following provisions in Part 6 of the LEP apply to the development:</p> <p>6.1 – Acid sulfate soils (ASS) 6.2 – Earthworks 6.3 – Stormwater management 6.8 – Airspace operations 6.9 – Development in areas subject to aircraft noise 6.15 – Active Street Frontages 6.16 – Design excellence</p>	N/A	DA-16/150 approved the built form therefore ASS, excavation, stormwater management, airspace, aircraft noise, active street frontage and design excellence has been considered as part of that application and as there is no amendments relating to these issues, assessment of these issues is not warranted.

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 (BBDCP) 2013

The most relevant and applicable clauses of the BBDCP 2013 are considered in the assessment of this development proposal and are provided below.

Part 3A – Parking and Access

Table 1 within Part 3A- Parking and Access of the BBDCP 2013 requires shops to provide one car parking space per 25sqm. The calculation of car parking for residential is 0.6 spaces for one bedroom unit, 0.9 spaces for a two bedroom unit and 1.4 spaces for a three bedroom unit as required under the RMS rates and as prescribed within the ADG as the site is located within 800 metres of a train station. The proposal required a total of 42 retail spaces however as described within the assessment section of the report above, 18 of the retail car parking spaces are to be reallocated to the residential component. This results in a shortfall of 18 retail spaces and an excess of 18 residential spaces within the development. The discussion provided above provides a basis of the shortfall which is considered acceptable in this case. The overall number of car parking spaces within the development will not be modified as part of the proposal therefore the modification is supported.

Part 9A – Mascot Station Town Centre Precinct

The site is located within Urban Block 1 of the Mascot Station Town Centre. Part 9A.3.2 of the BBDCP 2013 provides guidelines relating to the desired future character of Urban Block 1. The proposed changes to conditions, the reallocation of car parking within the site and any other subsequent change will not result in any departure in the controls prescribed under Part 9 of the BBDCP 2013.

S.4.15(1)(a)(iv) - Provisions of regulations

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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 have no significant adverse environmental, social or economic impacts in the locality.

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

The proposal does not alter the conclusions that were resolved and approved within DA-16/150, DA-2017/1166 and DA-2017/1238. The proposed changes do not impact on the flooding, zone of influence with the railway and the groundwater issues.

The proposed development is permissible in the zone and satisfies the objectives of the zone. The proposed changes are not considered to be substantial and no significant planning issues are raised that would warrant the refusal of the proposed development.

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

Due to the nature of the proposed modifications, the applications were not required to be notified in accordance with Part 2 of the Botany Bay DCP 2013- Notification and Advertising.

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

It is considered that granting approval to the proposed development will have no significant adverse impact on the public interest.

Conclusion

Section 4.55(1A) Application No. 2017/1238/02 on 22 May 2018 to modify Development Consent No. 2017/1238 to amend Condition Nos. 20(b), 21, 28, 36, 37, 41 and 47 while Section 4.55(1A) Application No. 2017/1238/03 was received on 27 August 2018 to amend Condition Nos. 24, 45 and 49(b) relating to car parking allocation converting retail spaces to residential spaces at 42 Church Avenue, Mascot.

The conditions of consent that were sought to be modified as part of both applications are accepted on the basis that these conditions related to excavation and demolition which did not form part of the approved development within DA-2017/1238. The conditions modified within DA-2017/1238/03 relate to the proposed modification of the ground floor car parking allocation. While the proposal results in a shortfall in the number of retail spaces and an increase in the number of residential car spaces, the overall number of car parking spaces has not change. Due to the usability and access of these spaces and the lack of car parking spaces provided to some of the one bedroom units, the proposed change is supported.

The proposal has been assessed in accordance with Section 4.15 of the *Environmental Planning and Assessment Act 1979*. The proposal is permissible within the B4 – Mixed Use zone and is considered to result in a development which is suitable in the context. Therefore, the application is recommended for approval, except for Condition Nos. 19(b), 20 and 28 of the consent.

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Attachment

Schedule 1 – Conditions of Consent

Premises: 42 Church Avenue, Mascot DA No: DA-2017/123802 and DA-2017/1238/03

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
A1001- Cover Sheet- Rev 1	Aplus design	Dated 29 November 2017; Received 26 April 2018
A1002 – Parking Level- Rev 1		Dated 29 November 2017; Received 11 December 2017
A1003 – Ground Level Plan- Rev 1 A0012_P-GD Ground Rev A		Dated 29 November 2017; Received 11 December 2017 Received 1 November 2018
A1004 – Level 1 Plan- Rev 1		Dated 29 November 2017; Received 11 December 2017
A1009 – South Elevation Plan- Rev 1		Dated 29 November 2017; Received 11 December 2017
A1010- East Elevation Plan- Rev 1		Dated 29 November 2017; Received 11 December 2017
A1011- Section 1 Plan- Rev 1		Dated 29 November 2017; Received 11 December 2017
A1012- GFA Calculation Plan- Rev 1		Dated 29 November 2017; Received 11 December 2017
FI-200- Ground Floor Landscape Plan- Rev G	Urbis	Dated 7 December 2017; Received 11 December 2017
FI-201- Ground Floor Landscape Plan- Rev G		Dated 7 December 2017; Received 11 December 2017
FI-202- Ground Floor Landscape Plan- Rev G		Dated 7 December 2017; Received 11 December 2017
FI-203- Ground Floor Landscape Plan- Rev F		Dated 7 December 2017; Received 11 December 2017
FI-204- Ground Floor Landscape Plan- Rev F		Dated 7 December 2017; Received 11 December 2017

(DA-2017/1238/03)

Reference Document(s)	Author	Dated / Received by Council
Amended DA Access Report	Wall to Wall Design Consulting	Dated 11 December 2017; Received 11 December 2017
Clause 4.6 variation	Meriton Group	Received 11 December 2017
Construction Management Plan	Meriton Group	Dated August 2017; Received 11 December 2017
Traffic Impact Assessment- Rev E	ARUP	Dated 11 December 2017; Received 11 December 2017

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Landscape Report	Urbis	Dated 7 December 2017; Received 11 December 2017
Design Verification Statement	Aplus design	Dated 26 April 2018; Received 26 April 2018

- 2 No construction works (including excavation) shall be undertaken prior to the issue to the Construction Certificate.
- 3 This Consent relates to land in Lot 1 in DP 376752, Lot 3 in DP 376752 and Lot 21 in DP1014063 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.

CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE COMMENCEMENT OF ANY WORKS

- 6 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.

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- (b) Any such sign is to be removed when the work has been completed.
- 7 A dilapidation report, including a photographic survey prepared by a Practising Structural Engineer, must be prepared on surrounding properties. A copy of the dilapidation report together with the accompanying photographs shall be given to the above property owner/s, and a copy lodged with Principal Certifying Authority prior demolition. The extent of the Dilapidation Survey is to be prepared by a practising Structural Engineer having regard to foundations/structures of the locality
- 8 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.
- 9 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.

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- 10 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.
- 11 Prior to the commencement of demolition work a licensed demolisher who is registered with WorkCover NSW must prepared a Work Method Statement to the satisfaction of the Principal Certifying Authority (Council or an accredited certifier) and a copy shall be sent to Council (if it is not the PCA). A copy of the Statement shall also be submitted to WorkCover NSW.

The statement must be in compliance with AS2601:1991 – ‘Demolition of Structures’, the requirements of WorkCover NSW and conditions of the Development Approval, and shall include provisions for:

- a) Enclosing and making the site safe, any temporary protective structures must comply with the “Guidelines for Temporary Protective Structures (April 2001)”;
- b) Induction training for on-site personnel;
- c) Inspection and removal of asbestos, contamination and other hazardous materials (by appropriately licensed contractors);
- d) Dust control – Dust emission must be minimised for the full height of the building. A minimum requirement is that perimeter scaffolding, combined with chain wire and shade cloth must be used, together with continuous water spray during the demolition process. Compressed air must not be used to blow dust from the building site;
- e) Disconnection of Gas and Electrical Supply;
- f) Fire Fighting – Fire fighting services on site are to be maintained at all times during demolition work. Access to fire services in the street must not be obstructed;
- g) Access and Egress – No demolition activity shall cause damage to or adversely affect the safe access and egress of this building;
- h) Waterproofing of any exposed surfaces of adjoining buildings;
- i) Control of water pollution and leachate and cleaning of vehicles tyres – Proposals shall be in accordance with the “Protection of the Environmental Operations Act 1997”;
- j) Working hours, in accordance with this Development Consent;
- k) Confinement of demolished materials in transit;
- l) Proposed truck routes, in accordance with this Development Consent;
- m) Location and method of waste disposal and recycling in accordance with the “Waste Minimisation and Management Act 1995”.
- n) Sewer – common sewerage system ad08.

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- 12 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.
- 13 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.
- 14 This Consent shall not preclude the demolisher from giving notice to other statutory authorities, such as Sydney Water Corporation, WorkCover, etc.
- 15 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.
- 16 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.
- 17 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.
- 18 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.
- 19 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 practicing engineer, showing all

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details, including the extent of encroachment and the method of removal (or any other method) and de-stressing 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.

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

- 20 The applicant must prior to the issue of any Construction Certificate, pay the following fees:
- | | | |
|-----|---------------------------|--------------------------|
| (a) | Development Control | \$875.00 |
| (b) | Footpath Crossing Deposit | \$629,880.00 (See below) |
| (c) | Section 94 Contributions | \$64,896.25 (See below) |
- 21 Prior to the issue of any Construction Certificate, the applicant shall lodge a Footpath Crossing Deposit of **\$629,880.00** (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.
- 22 Bayside Council 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 **\$64,896.25** is payable as calculated below:

City of Botany Bay Section 94 Contributions Plan 2016

The s94 contributions (as of April 2018) for the additional retail GFA is as follows:

a)	Community Facilities- Citywide	\$9,977.38
b)	Recreation Facilities- Mascot Precinct	\$1,012.28
c)	Recreation Facilities- Citywide	\$43,339.72
d)	Transport Management- Citywide	\$4,083.58
e)	Transport Management- Mascot	\$5,739.73
f)	Administration	\$743.73

TOTAL: \$64,896.25

The total Section 94 Contribution of **\$64,896.25** is to be paid to Council prior to the issue of any Construction Certificate.

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.

- 23 A Waste Management and Minimisation Plan is to be submitted to the Principal Certifying Authority prior to the issue of the relevant Construction Certificate. Plans and specifications for the storage room for waste and recyclable materials shall be submitted. 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.

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Washing facilities shall be provided within close proximity to the garbage and recycling storage area.

- 24 The drawings for the construction certificate for the basement and above ground car parking levels shall show the following parking requirements:

Car Parking Rates	Required
0.6 space / 1 bed unit	69 74 spaces
0.9 space / 2 bed unit	160 169 spaces
1.4 space / 3 bed unit	108 112 spaces
1 visitor space / 7 dwellings	51 spaces
Retail Spaces	42 24 spaces
TOTAL PROVIDED	430 spaces

This information is to be provided prior to the issue of the relevant Construction Certificate. (DA-2017/1238/03)

- 25 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 (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.

- 26 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.

- 27 A Construction Management Program shall be submitted to, and approved by the Private Certifying Authority prior to the issue of any Construction Certificate. The program shall detail:

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- 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.
- 28 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) for approval. The plan shall:
- a) be prepared by a RMS accredited consultant,
 - b) nominate a contact person who is to have authority without reference to other persons to comply with instructions issued by Council's Traffic Engineer or the Police,

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- c) during construction, if access from **Bourke 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.

- 29 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.

DURING WORKS

30

- 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.

- 31 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 made safe for pedestrian and vehicular traffic at all times. Any damage to Council's infrastructure and surrounding development (including damage caused by, but not limited to, delivery

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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.

- 32 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.
- 33 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.
- 34 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.
- 35 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.
- 36 ~~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. (DA-2017/1238/02)~~
- 37 ~~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. (DA-2017/1238/02)~~

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- 38 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;
 - b) "Managing Urban Stormwater - Soils and Construction" (2004) Landcom ('The Blue Book'); and
 - c) Protection of the Environment Operations Act 1997.
- 39 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.
- 40 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.
- 41 ~~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. (DA-2017/1238/02)~~
- 42 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 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 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 01:00pm

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- (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.
- 43 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.
- 44 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.

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

- 45 Prior to the issue of the relevant Occupation Certificate, car parking is to be allocated as follows and appropriately linemarked:
 - a) ~~337~~ 355 residential spaces
 - b) 51 visitors spaces
 - c) ~~42~~ 24 retail spaces
 - d) 1 carwash bay located on the ground floor car park level

(DA-2017/1238/03)
- 46 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.
- 47 ~~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. (DA-2017/1238/02)~~
- 48 Prior to the issue of any 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.
- 49 Prior to the issue of any 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

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- (b) A Floor Space Ratio (FSR) of ~~3.44:1~~ **3.46:1** as approved under this Development Consent No. 2017/1238 and height of 51m AHD as approved under this Development Consent No. 16/150, 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 Lot 1 in DP 376752, Lot 3 in DP 376752 and Lot 21 in DP1014063.
- 50 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.
- 51 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).
- 52 Prior to the issue of the relevant Occupation Certificate, evidence of a Sydney Water permit or consent for discharge of wastewater to the sewer shall be submitted to the Principal Certifying Authority. 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.
- 53 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.
- 54 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

- 55 A separate application is to be submitted for the use and fit out of the retail tenancies.
- 56 No roller shutters are to be installed to any of the commercial shopfronts that front Bourke Street and Church Avenue.
- 57 Council's footway (area between property boundary and street kerb) is to be kept clean, tidy, washed and maintained at the applicant's expense.
- 58 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.
- 59 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

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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.

- 60 Ongoing maintenance of the road verges and footpaths and nature strips in Church Avenue and Galloway 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.
- 61 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 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.
- 62 Any air conditioning units (where possible) 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.
- 63 All loading and unloading associated with the retail tenancy is to be undertaken within the ground floor of Building B.

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- 64 No garbage collection associated with the retail premises is permitted between 10pm and 6am.
- 65 The collection of garbage associated with the residential premises shall be restricted to 6am to 6pm Monday to Sunday.
- 66 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.

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BAYSIDE COUNCIL

Planning Assessment Report

Application Details

Application Number:	2017/1238
Date of Receipt:	11 December 2017
Property:	42 Church Avenue, Mascot Lot 1 in DP 376752 Lot 3 in DP 376752 Lot 21 in DP1014063
Owners:	Karimbla Properties (No. 45) Pty Ltd
Applicant:	Karimbla Constructions Services (NSW) Pty Ltd
Proposal:	Changes to approved development to add retail tenancies to the Church Avenue and Bourke Street frontages, increasing the retail floor area from 512sqm to 1,037sqm
Recommendation:	Approve the development, subject to conditions.
Value:	\$322,265.00
No. of submissions:	Nil
Author:	Angela Lazaridis, Senior Development Assessment Planner
Date of Report:	18 April 2018

Key Issues

Bayside Council received Development Application No. 2017/1238 on 11 December 2017 seeking consent for changes to the approved development to add retail tenancies to the Church Avenue and Bourke Street frontages, increasing the retail floor area from 512sqm to 1,037sqm at 42 Church Avenue, Mascot.

The application was placed on public exhibition for a fourteen (14) day period from 11 January to 25 January 2018. No objections were received.

Key issues in the assessment of the development application relate to FSR. The approved GFA for the development is 37,903sqm which is an FSR of 3.41:1. The proposed modifications will achieve a GFA of 38,172sqm which is an FSR of 3.44:1. This continues to be less than 10% of the overall calculation and has been calculated to include the additional GFA of 620.3sqm and remove the excess car parking GFA of 351sqm that was previously included in the FSR calculation under DA-2017/1166. The additional GFA/FSR is acceptable in this instance as the bulk of the development will not change and the new retail spaces will be located along the southern side of the development, replacing the surplus car parking and plant areas which are relocated elsewhere within the development. The new retail along Church Avenue will add interest to this elevation and surveillance. The applicant submitted an amended Clause 4.6 variation which has been considered below in Note 1 below.

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The proposal has a two car space departure as the ADG/DCP controls require the proposed development to have a total of 432 car parking spaces however the applicant has provided a total of 430 car parking spaces. The shortfall in car parking would fall within the visitor car parking spaces. Due to its close location to Mascot Station, the departure in visitor car parking spaces is acceptable as the residential and retail car parking spaces comply. A condition of consent has been imposed to allocate the car parking spaces within the development.

The proposal has not provided a waste management plan as the additional retail tenancies increase the size of the waste collection generated. It is indicated on the plans that waste bins have been accommodated within the waste holding room. A waste management plan has been conditioned within the consent.

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

Recommendation

It is RECOMMENDED:

1. That the Bayside Planning Panel supports the variation to clause 4.4 in accordance with the Clause 4.6 justification provided by the applicant and that the proposed development is in the public interest as it is consistent with the objectives of the FSR and the objectives for the B4 Mixed Use zone; and
2. That the Development Application No. 2017/1238 for changes to the approved development to add retail tenancies to the Church Avenue and Bourke Street frontages, increasing the retail floor area from 512sqm to 1,037sqm at 42 Church Avenue, Mascot, be approved subject to the conditions attached to this report.

Background

History

Development Application No. 16/150 was approved by the Sydney Central Planning Panel on 20 July 2017 for the construction of a mixed use development incorporating a 4 storey podium with four x 14 storey towers containing residential units, retail space, childcare centre, private recreation facilities, basement and above ground 'sleeved' car parking and 36,819sqm of gross floor area; landscaping and dedication of land along the Church Avenue frontage; construction of southern half of a new east-west street along the northern alignment of the site; landscaping and dedication of a new public park, associated excavation, earthworks and landscaping and land subdivision. The subdivision of the site involves three new lots which include the development site, Church Avenue street widening will be a separate lot and Galloway Street to the north and the public park to be dedicated to Council will be another lot.

The childcare centre was approved with a GFA of 558sqm indoor space and 686sqm of outdoor space. The site was approved with 514 car parking spaces which were allocated to residential, visitors, retail and for the childcare centre. One wash bay was approved on the site.

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Section 4.55(1A) Application was lodged with Council for the modification of 101(c) to allow for the extension of construction hours. This application is currently under assessment.

Development Application No. 2017/1166 was approved on 14 December 2017 by the Bayside Planning Panel for alterations to the approved building by deleting the childcare centre and replacement with 29 additional apartments. An FSR of 3.41:1 (37,903sqm) was approved for the site with a total of 369 units. The number and size of the retail tenancies did not change as part of this proposal.

Proposal

The proposed development seeks consent for changes to approved development to add retail tenancies to the Church Avenue and Bourke Street frontages, increasing the retail floor area from 512sqm to 1,037sqm.

A new tenancy is proposed along Bourke Street and new tenancies are proposed along Church Avenue. The proposal will result in a total of 15 retail tenancies on the ground floor with each tenancy having sanitary facilities. The addition of the retail tenancies along Church Avenue will result in a loss of car parking spaces and reconfiguration of plant areas on the southern side of the ground floor plan, with minor modifications to the basement level. The development was approved with excess car parking spaces so the additional car parking spaces generated by the additional retail of 22 car spaces can be accommodated within the development without any changes to the residential car spaces approved in the previous application. Any surplus car parking spaces have been reduced to close to compliance.

Due to the ground floor reconfiguration, the approved gym which was connected to the swimming pool area has now been moved to Level 1 therefore there is an increase of 95sqm to this area to accommodate for this space. The existing swimming pool and associated facilities have been reconfigured to accommodate the addition retail tenancy along Bourke Street.

The additional retail space results in an increase in the waste collection bins which have been accommodated within the approved waste holding room. The proposal will not alter the approved loading dock area.

The proposal will alter the southern elevation of the building to replace the predominantly solid walls along the ground floor and replace with the shop tenancies.



Figure 1. Proposed Southern Elevation along Church Avenue

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There is no change to the approved units on the ground floor and above.

The car parking breakdown is provided as follows:

Unit Type	Proposed Mix	RMS Rate	Minimum Required	Rounded	Proposed Break Up
1 Bedroom	115	0.6/unit	69.0	69.0	
2 Bedroom	177	0.9/unit	159.3	160.0	
3 Bedroom	77	1.4/unit	107.8	108.0	
Units Subtotal			336	337	337
Visitors	369	1 per 7	52.7	53.0	51
Retail (sqm)	1037	1 per 25 sqm (DCP rate)	41.5	42.0	42
			430	432	430

Site Description

The subject site is legally known as 42 Church Avenue, Mascot and forms three parcels of land described as Lot 1 in DP 376752, Lot 3 in DP 376752 and Lot 21 in DP1014063.

The subject site is located on the western side of Bourke Street between Gardeners Road to the north, Kent Road to the west and Church Avenue to the south. Galloway Street is a new street currently under construction and runs along the northern boundary of the site. The site is approximately 120 metres to the north-west of Mascot Train Station.

The site has a total area of 11,104sqm with a 108.5 metres street frontage to Church Avenue, a 101.5 metre street frontage to Bourke Street, a 101.9 metres western boundary length and a 109.1 metre northern boundary length. The site is generally flat.

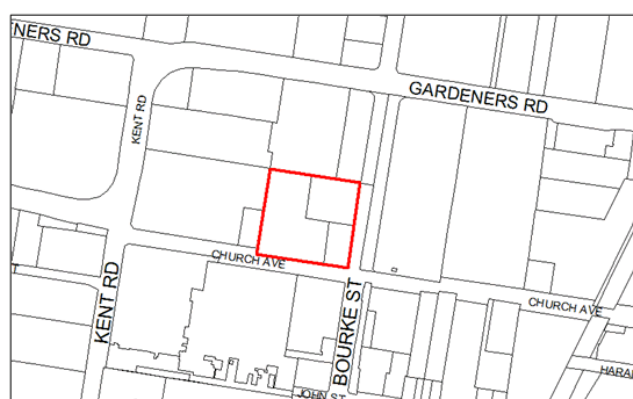


Figure 2. Locality Plan

The site is currently demolished of all structures with excavation begun for the basement car parking level. The corner of the south-western side of the development is impacted by road widening. The site is located within the 20-25 ANEF zone and is within 25 metres of the Sydney Trains easement for underground rail (Airport Tunnel).

The site is within the B4 Mixed Use zone of the BBLEP 2013 and is within Urban Block 1 of the Mascot Station Town Centre Precinct within Part 9A of the BBDGP 2013. The table below lists the relevant details of the surrounding mixed-use developments.

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Figure 3. Subject site

Statutory Considerations

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

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

The following Environmental Planning Instruments are relevant to this application:

Environmental Planning and Assessment Act 1979 – Part 4, Division 5 – Special Procedures for Integrated Development and Environmental Planning and Assessment Regulations 2000 – Part 6, Division 3 – Integrated Development

The relevant requirements under Division 5 of the EP&A Act and Part 6, Division 3 of the EP&A Regulations have been considered in the assessment of the development application.

Development Application No. 16/150 was approved as integrated development as the proposal approved basement car parking that would intercept the groundwater table. General Terms of Approval were placed in the consent relating to excavation of the basement level. The subject application does not change the envelope of the basement level approved therefore the subject application is not integrated development and does not need to be referred to Water NSW.

State Environmental Planning Policy (Infrastructure) 2007

The development is in close proximity to the rail corridor, with Mascot Station located close to the site. The original application for the built form was referred to Sydney Trains who provided appropriate conditions relating to excavation near the rail corridor. As the subject application does not propose any changes to the excavation of the basement and the building, the application did not need to be referred to Sydney Trains for comments.

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State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 ("BASIX") applies to the proposed development. The development application was not required to provide a revised BASIX Certificate as the proposed changes relate only to the retail and car parking area.

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-16/150. Therefore SEPP No. 55 does not need to be assessed as part of this proposal.

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 Development Application. Due to the proposed modifications being predominately encased within the approved built form approved under DA-16/150, the development application was not required to be presented to the Design Review Panel. The applicant submitted a Design Verification Statement on 26 April 2018 which has been conditioned in the consent.

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 Development Application and the following information is provided:

Principal Provisions of BBLEP 2013	Complies Yes/No	Comment
Land use Zone	-	The site is zoned B4 Mixed Use under the BBLEP 2013.
Is the proposed use/works permitted with development consent?	Yes	The proposal involves additional retail premises are permissible with Council's consent under the BBLEP 2013.
Does the proposed use/works meet the objectives of the zone?	Yes	The proposed development is consistent with the following objectives of the B4 zone: <ul style="list-style-type: none"> 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

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Principal Provisions of BBLEP 2013	Complies Yes/No	Comment
		<i>patronage and encourage walking and cycling.</i>
What is the height of the building?	N/A	<p>The maximum building height for the site is 44 metres.</p> <p>The approved development within DA-16/150 was approved with a maximum building height of 45.8 metres (RL 51).</p> <p>There is no change to the height of the development as part of this application.</p>
What is the proposed FSR?	No- Refer to Note 1	<p>The maximum FSR allowed on the site is 3.2:1 (35,532sqm).</p> <p>DA-2017/1166 approved a GFA of 37,903sqm which was an FSR of 3.41:1. This was contributed from the additional GFA from the new units and the additional car parking over the car parking requirement stipulated within the ADG.</p> <p>The proposed development will increase the FSR to 3.44:1 (38,172sqm). This results in a variance of 7.5%.</p> <p>The applicant has provided a Clause 4.6 variation to the additional GFA and this has been discussed within Note 1 below.</p>
Is the site within land marked "Area 3" on the FSR Map	N/A	The subject site is not identified as being within "Area 3" on the FSR map.
Is the land affected by road widening?	Yes	The subject site is affected by RMS widening of the splay on the corner of Church Avenue and Bourke Street. This was considered in DA-16/150 and does not change this as part of this application.
Is the site listed in Schedule 5 as a heritage item or within a Heritage Conservation Area?	N/A	The subject site is not identified as a Heritage Item or within a Heritage Conservation Area.
<p>The following provisions in Part 6 of the LEP apply to the development:</p> <p>6.1 – Acid sulfate soils (ASS) 6.2 – Earthworks 6.3 – Stormwater management 6.8 – Airspace operations 6.9 – Development in areas subject to aircraft noise 6.15 – Active Street Frontages</p>	N/A	DA-16/150 approved the built form therefore ASS, excavation, stormwater management, airspace, aircraft noise, and active street frontage has been considered as part of that application and as there is no amendments relating to these issues, assessment of these issues is not warranted.

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Principal Provisions of BBLEP 2013	Complies Yes/No	Comment
6.16 – Design excellence	Yes	<p>The bulk, scale and height of the proposed development has been established as part of DA-16/150 however the street façade along Church Avenue has improved by providing active street frontage to this elevation.</p> <p>The Applicant has adequately addressed the recommendations of the DRP and the proposed development is considered to be consistent with Clause 6.16 of BBLEP 2013.</p>

Note 1 – Variation to the FSR development standard

Clause 4.4 of the BBLEP 2013 specifies that the FSR of a building may not exceed the maximum FSR specified on the relevant FSR map. The maximum FSR for this site is 3.2:1. Development Application No. 2017/1166 was approved with an FSR of 3.41:1 and resulted in a GFA of 37,903sqm. At the time the FSR was calculated with an additional 28 car spaces however it was noted that there was an error in the calculation as there were an additional 25 car spaces that were not included as at the time of determination.

The current proposal seeks to increase the overall GFA by 269sqm to a total GFA of 38,172sqm or 3.44:1 which includes the additional retail and the relocation of the gym. The addition of the retail and gym results in a total GFA of 620.3sqm however the excess car parking GFA of 351sqm that was approved in DA-2017/1166 has been removed as the proposed retail uses will utilise these spaces in association with the tenancies hence the additional 269sqm GFA for the development.

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

(2) Consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument...

(3) Consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

(a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) That there are sufficient environmental planning grounds to justify contravening the development standard.

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

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It is proposed to convert excess car parking GFA - identified above – into retail GFA. In the process, excess car parking is to be eliminated. The table below provides a summary of the proposed new Floor Space Ratio and Gross Floor Area.

Proposed GFA of buildings	38,172 sqm
Proposed GFA of excess car parking	Nil
Proposed GFA total	38,172 sqm
Proposed FSR total	3.44:1

Matters for consideration:

a) Is the requirement a development standard?

The variation sought relates to the FSR of the proposal. The FSR control is a development standard, as it provides a numerical restriction to a particular aspect of the development, rather than a prohibition.

b) Is the development standard excluded from the operation of this clause?

Clause 4.6(8) outlines the exclusions of the operation of Clause 4.6, which are:

- *Complying Development;*
- *Statement Environmental Planning Policy (Building Sustainability Index: BASIX) 2004;*
- *Clause 4.3(2A) – Height controls for certain sites on land in Zone R3 Medium Density Residential or Zone R4 High Density Residential.*
- *Clause 4.4B(3) – Exceptions to floor space ratio in Zone R3 and Zone R4.*
- *Clause 5.4 - Controls relating to miscellaneous permissible uses.*

As the proposal does not relate to any of these types of developments, the variation to the Clause 4.4(2) FSR control sought is not excluded from the operation of Clause 4.6.

c) What is the underlying objective or purpose of the standard?

The objectives of the FSR control in clause 4.4 are as follows:

- a) *to establish standards for the maximum development density and intensity of land use,*
- b) *to ensure that buildings are compatible with the bulk and scale of the existing and desired future character of the locality,*
- c) *to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing, and are not likely to undergo, a substantial transformation,*
- d) *to ensure that buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks, and community facilities,*
- e) *to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,*
- f) *to provide an appropriate correlation between the size of a site and the extent of any development on that site,*
- g) *to facilitate development that contributes to the economic growth of Botany Bay.*

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The proposal is consistent with the above objectives, in that:

- a) *The proposal results in an overall development density of 3.44:1. This is 2,640m² above the maximum GFA, being 7.5% over the permissible density control. A variation of this scale in the context of the site and surrounding development will be unperceivable in the overall scale and built form of the development. Importantly, the proposed additional floor space is contained entirely within the existing built form. Therefore, the additional floor space does not contribute to an increase in bulk and scale of the building.*
- b) *The site is located within the Mascot Town Centre. The 2,640m² variation to the FSR control will not alter the built form from what can be supported in a compliant development. The proposal has been designed to provide a much more appealing frontage to Church Avenue, by deleting car parking and providing retail tenancies along the frontage. Accordingly, the proposed development will still deliver a built form that is compatible with the bulk and built form envisaged by the desired future character planned for the Mascot Town Centre.*
- c) *The site is located within a precinct undergoing transition from a predominantly industrial area, to a mixed-use town centre. There are a number of developments proposed or under construction surrounding the site.*
- d) *The departure from strict compliance with the numerical FSR control will not result in bulk or scale that is unacceptable. The proposed development includes the creation of a public park and will also ensure its successful funding to meet the Council's requirements. The amenity of this park will not be adversely affected by the proposed additional gross floor area of the development.*
- e) *The proposal will have a positive relationship with the new public park and will not have any adverse impacts on its amenity.*
- f) *The proposed development has an overall site area of 11,104m². The scale of the site has been reflected in the scale and built form proposed for the development. The scale of the non-compliance with the FSR control in the context of the overall development is reflected in the variation being approximately 7.5% above the permissible density control. However, all additional floor space proposed is located entirely within the existing approved built form on the site.*
- g) *The proposal will deliver a total of 369 apartments and retail. This will positively contribute to the economic development and viability of the Mascot Town Centre through:*
 - a. *Redeveloping a currently under-utilise site; and*
 - b. *Providing new retail space within the Mascot town centre area.*

d) Is compliance with the development standard is unreasonable or unnecessary in the circumstances of the case?

In Wehbe v Pittwater Council (2007) NSWLEC 827 Preston CJ set-out the five ways of establishing that compliance with a development standard is unreasonable or unnecessary in support of justifying a variation. These are:

- 1. Establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development are achieved notwithstanding noncompliance with the standard.*
- 2. Establish that the underlying objective or purpose is not relevant to the development with the consequences that compliance is unnecessary.*
- 3. Establish that the underlying objective or purpose would be defeated or thwarted if compliance was required that the consequences that compliance is unreasonable.*

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4. Establish that 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 unreasonable and unnecessary.
5. Establish that 'the zoning of particular land' was 'unreasonable or unnecessary' so that 'a development standard for that zoning was also unreasonable or unnecessary as it was applied to that land' and that compliance with the standard in that case would also be unreasonable and unnecessary.

In applying the test in *Wehbe v Pittwater Council*, only one of the ways of establishing the development standard is unreasonable and unnecessary needs to be demonstrated. As outlined in Section 3(c) above, the proposed development is able to achieve the objectives of the height development standard, even though the development results in a noncompliance with the numerical standard. On this basis, the development is able to demonstrate that the development is unreasonable and unnecessary in accordance with the first way Preston CJ outlines in *Wehbe v Pittwater Council*.

In the recent decision of *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 Pain J upheld the decision of Pearson C which indicated that a variation must be justified on sufficient environmental planning grounds particular to the circumstances of the proposed development and development site rather than grounds that would apply to a similar development on the site or a development in the vicinity.

However, in the more recent case of *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 Preston CJ stated that the consent authority did not have to be satisfied directly that compliance with each development standard was unreasonable and unnecessary in the circumstances of the case, but only indirectly by being satisfied that the appellant's written request adequately addressed the matter in Clause 4.6(3)(a) that compliance with each development standard was unreasonable and unnecessary. This decision indicates a move away from the more prescriptive approach to consideration of Clause 4.6 variation requests taken in *Four2Five v Ashfield Council*.

Applying Preston's CJ decision in *Randwick City Council v Micaul*, the proposed development is able to demonstrate that strict compliance with the numerical FSR development standard is unnecessary in the particular circumstances of the proposal, as the development is able to:

- Meet the objectives of the development standard as outlined in Section 3(c);
- Meet other built form development standards;
- Satisfactorily address all relevant planning considerations as detailed in section 3(e); and
- There are various other examples of previously approved developments in the Mascot Station area that exceed (significantly in some instances) the 3.2:1 FSR control. These are shown in the table below.

The table above clearly demonstrates that the development standard has been virtually abandoned or destroyed in this instance. It also demonstrates that the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary, and that the underlying object of purpose would be defeated or thwarted if compliance was required, and therefore compliance is unreasonable.

Site	FSR
39 Kent Road Mascot	4.26:1
214 Coward Street Mascot	4.24:1
208-210 Coward Street Mascot	4.00:1
246 Coward Street Mascot	3.88:1

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8 Bourke Street and 37 Church Avenue Mascot	3.82:1
2-4 Haran Street Mascot	3.79:1
7-9 Kent Road Mascot	3.78:1
7 Bourke Street and 30-32 John Street Mascot	3.75:1
19-33 Kent Road Mascot	3.72:1
230 Coward Street Mascot (25 John Street)	3.6:1

e) Are there sufficient environmental planning grounds to justify contravening the development standard?

The variation to the FSR development standard is considered well founded and reasonable for the following reasons:

- *The proposed development is consistent with the underlying objectives and purpose of the development standard as demonstrated above;*
- *The proposed non-compliance relates to the LEP 2013 provisions for FSR will not have any adverse impact on the bulk and scale of the development when viewed from surrounding properties;*
- *Despite the non-compliance with the FSR control, the proposal is consistent with the scale of development anticipated in the locality. This is ensured by proposing all additional gross floor area within the existing approved building envelope;*
- *The proposal will support the delivery of a communal open space with public access during the day, which will positively contribute to the establishment of the Mascot Town Centre; and*
- *The provision of some additional car parking beyond the minimum required can be supported on traffic planning grounds, as evident in the Traffic Report prepared by Arup.*

f) Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and objectives for development within the zone in which the development is proposed to be carried out?

As outlined throughout the SEE and this Clause 4.6 Variation Statement, the proposal is consistent with the objectives of the FSR development standard and objectives of the B4 zone.

The principle aim of the proposal is to provide new residential apartments. The provision of a new public park is also proposed. The proposed variation to the FSR control does not result in the loss of amenity to the neighbouring properties in any way, as the proposed additional gross floor area is contained entirely within the existing building envelope. The proposed FSR is considered to be acceptable particularly when balanced against the benefits of the project which are:

- *Provision of new housing and employment opportunities on land zoned for this purpose within the short term.*
- *Development of an under-utilised site (being currently occupied by industrial warehouses) identified for future mixed use development (being zoned B4 Mixed Uses).*
- *Contribution to the delivery of key infrastructure, namely the public park.*
- *The proposal will provide positive social outcomes through the provision of on-site housing, child care facilities and a new public park.*

g) Whether contravention of the development standard raises any matter of significance for State or regional environmental planning.

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The proposed variation to the FSR development standard does not conflict with any matters of State or regional environmental planning significance, nor does it conflict with any State Planning Policies or Ministerial directives. The significance of the non-compliance is acceptable in the context of the overall development of the Mascot area and the broader Bayside Council area.

h) The public benefit of maintaining the development standard.

It is considered that due to the absence of any demonstrable adverse impacts arising from the proposed development, adherence to the subject development standards would hinder the attainment of the objectives of the Act. Further, the proposed development is consistent with the objectives of the development standard. Therefore, such adherence would not be in the public interest in this instance."

Council Officer's comments:

An assessment of the applicant's Clause 4.6 variation has been carried out. As demonstrated, there is a variation in FSR by 7.5% (2,640sqm) from the development standard. The proposed development has been designed so that the additional retail tenancies and the relocation of the gym area are encompassed within the approved development. These modifications will not impact on the amenity of the neighbouring properties. The site has reduced the surplus of car parking originally approved which have been included within the GFA calculations and now results in a departure of two car parking spaces.

The applicant's justification is generally agreed with. The proposed modification to increase the FSR is considered acceptable as it will not increase the visual bulk or scale of the approved development and will not result in any adverse impacts on the locality.

The objectives of the FSR development standard and the B4 mixed use zone continue to be consistent with the assessment that was carried out in DA-16/150 and in DA-2017/1166. The proposal will add an additional 525sqm of retail space to an approved built form which provides employment opportunities.

The exceedance in FSR is not out of character with other approved developments in the immediate area which exceed the FSR standard and the exceedance in FSR does not result in any adverse external impacts.

The table above clearly demonstrates that the development standard has been virtually abandoned or destroyed in this instance. It also demonstrates that the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary, and that the underlying object of purpose would be defeated or thwarted if compliance was required, and therefore compliance is unreasonable.

Based on the above, the variation is not contrary to the public interest and is able to be supported.

Botany Bay Development Control Plan (BBDCP) 2013

The most relevant and applicable clauses of the BBDCP 2013 are considered in the assessment of this development proposal and are provided below.

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Control	Proposed	Complies (yes/no)
3A Parking and Access		
3A.2. Parking Provisions of Specific Uses		
<u>Residential visitor spaces (within ADG)</u> 1 space/ 7 units (53 req.) <u>Commercial (retail)</u> 1 space / 25sqm (42 req.) <u>Service Bays</u> 1/100 units (4 req.) Note: 50% of service bays to be designed for MRV or larger) Note: No requirement for car wash bays	<u>Visitor spaces</u> 51 car parking spaces provided therefore 2 space departure. <u>Commercial</u> The original development was approved with 20 retail spaces for a retail space of 512sqm. The proposal provides a total of 42 car parking spaces for retail which complies. <u>Service Bays</u> Service vehicle: No change to the 1 space provided Car wash bay: No change to the 1 space provided Service vehicles: No change to the 1 MRV space provided (Building B)	No – Refer to Note 2 below Yes N/A
3A.3.1 Car Park Design Pedestrian entrances and exits shall be separated from vehicular access paths.	The waste collection and servicing has been approved on the ground floor parking level under Building B. This arrangement is acceptable as there is no change to the management and storage method approved for the development. However the condition of consent requiring a waste management plan has been imposed in the consent. Pedestrian entrances and exits are separated from vehicular access paths as approved in DA-16/150.	Yes
C40 The waste collection point shall be designed to: (i) Allow waste loading operations to occur on a level surface away from parking areas, turning areas, aisles, internal roadways and ramps; and (ii) Provide sufficient side and vertical clearance to allow the lifting arc for automated bin lifters to remain clear of any walls or ceilings and all service ducts, pipes and the like.	The development was approved with the garbage holding room located under Building B. The site continues to allow an MRV garbage truck within the site and also continues to contain the bulky waste storage area and separate retail/commercial waste room. Additional bins have been provided within the waste holding room.	Yes

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Control	Proposed	Complies (yes/no)
3A.3.2 Bicycle Parking C1-C5 To comply with AS2890.3 & AUSTROADS. (i.e. 10% of the required amount of car parking = 44)	There is no change in the 68 bicycle spaces provided within the development.	N/A
3A.3.4 On-site Loading & Unloading C1-C11 1 service bay/50dwgs (50% to be Medium Rigid Vehicle (MRV) or larger) (4 req.)	No change to the approved arrangement of 1 loading bay for MRV.	N/A
3I Crime Prevention Safety & Security		
Site layout, design & uses; Building design; Landscaping & lighting; Public domain, open space & pathways; Car parking areas; Public Facilities.	Appropriate conditions have been recommended in the consent.	Yes
3L Landscaping and Tree Management		
General Requirements; Planting design & species; Landscaping in car parks; Green roofs.	There is a slight decrease in landscaping along the southern side of the site to accommodate access to the retail tenancies. This loss is acceptable.	Yes
3N Waste Minimisation & Management		
General Requirements; Residential Development; Mixed Use Development.	No waste management plan has been submitted as part of this application. Condition imposed in consent. Plans demonstrate that the approved waste room has accommodated additional bins for the retail tenancies.	Conditioned

Note 2 – Departure in Car Parking

The *Guide to Traffic Generating Developments* requirement for residential visitor spaces is calculated on a rate of 1 car space per 7 dwellings for sites within 800 metres of a train station. The approved and proposed development required visitor car parking spaces of 53 spaces. The proposal will remove car parking spaces to accommodate the retail spaces on the ground floor therefore the number of visitor car parking spaces has been reduced from 53 car parking spaces to 51 car parking spaces. This is a departure of 2 car parking spaces. The applicant has provided a justification relating to car parking departure as follows:

'In respect of car parking proposed in the DA, we note that the visitor car parking requirement generated by the proposal is for 53 car parking spaces. It is proposed to provide 51 car parking spaces, which results in a shortfall of 2 visitor car parking spaces. However, this is considered to be acceptable given that the site is located within the town centre of Mascot and is in close proximity to public transport options. It is also noted that there is public street car parking opportunities in the area. The proposal complies with all other car parking allocations, including retail. It is likely that visitors to the site may also offer custom to the retail tenancies in the building. The shortfall of two visitor car parking spaces represents 3.8% variation from the requirement, which is insignificant. Overall, for these reasons, the proposed variation is considered to be acceptable.'

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The location of the site in close proximity to the Mascot Train Station is beneficial for the departure in visitor car parking spaces as there are alternate methods of transportation to the site. The development complies with the residential and retail car parking requirements for the development therefore the loss of two visitor car parking spaces is acceptable. It is anticipated that the majority of the walk-ins to the retail shops would be residents from the surrounding development or workers from the commercial towers to the south of the site. In this instance, the departure in car parking is acceptable.

Part 4C – Residential Flat Buildings

Part 4C.7 – Mixed Uses

Part 4C.7 – Mixed Use of the Botany Bay DCP 2013 provides controls relating to mixed use developments. The additional retail tenancies along Bourke Street and Church Avenue are located at the ground level and comprise of individual sanitary facilities within each tenancy. The ground floor car parking level was approved with a large waste room to accommodate the waste accumulated from the retail uses. The garbage room has not been separated into residential and retail waste therefore the waste management plan is to be amended to provide this detail. There was no waste management accompanying this development application therefore an appropriate condition has been imposed within the consent.

The additional retail spaces along Church Avenue encourages street activation along this street while the additional retail tenancies along Bourke Street will continue to comply with the street activation requirement under the BBLEP 2013. Previously Church Avenue only had the vehicular access and entry lobbies to Building B and C. The design of the parking areas and loading facilities continue to comply with no substantial changes to the loading bay and the approved car parking located within the ground floor car parking level on its southern side have been removed to accommodate the retail spaces. The changes as part of this application will not create any conflict with any other uses within the approved development. The height of ceilings for the retail spaces continue to comply with the ADG requirement of 3.3 metres as specified above in the report. The car parking spaces attributed to the retail spaces will be appropriately allocated and linemarked prior to the relevant Occupation Certificate. Additionally, the lobbies on the Church Avenue frontage will continue to be distinguished from the retail tenancies and easily identifiable from the public.

Part 9A – Mascot Station Town Centre Precinct

The site is located within Urban Block 1 of the Mascot Station Town Centre. Part 9A.3.2 of the BBDCP 2013 provides guidelines relating to the desired future character of Urban Block 1. In regards to street character, the DCP states that Church Avenue is to be a predominantly residential street with wide pathways. Additionally, the interface between the public and private domain at ground level is to be visually open, with multiple building and dwelling entries and no continuous blank facades is encouraged.

The original development was approved at the Church Avenue frontage with a solid façade with the exception of the two lobbies for the individual buildings. The proposal will provide glass frontages for the retail and will break the solidness of this elevation. While the desired future character does state that Church Avenue is to be predominantly residential, the proposal wraps the retail around the corner from Bourke Street. The shops will provide a better visual aesthetic outcome on Church Avenue which currently has vehicular access and loading dock entries on the opposite side of the site. It will integrate with the existing retail (café) at the adjoining property to the west at 52 Church Avenue. The Church Avenue frontage will enhance pedestrian interest and provide safety and security by ensuring passive surveillance of the public domain. Therefore the proposal for retail along Church Avenue is appropriate in this instance.

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S.4.15(1)(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 have no significant adverse environmental, social or economic impacts in the locality.

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

The proposal does not alter the conclusions that were resolved and approved within DA-16/150 and DA-2017/1166. The additional retail does not impact on the flooding, zone of influence with the railway and the groundwater issues.

The proposed development is permissible in the zone and satisfies the objectives of the zone. The traffic impacts are not considered to be significant given the relatively small scale of the development and no significant planning issues are raised that would warrant the refusal of the proposed development.

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

In accordance with Part 2 of the Botany Bay DCP 2013 – Notification and Advertising, the application was placed on public exhibition for a fourteen (14) day period from 11 January to 25 January 2018. No submissions were received during the public notification period.

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

It is considered that granting approval to the proposed development will have no significant adverse impact on the public interest.

Section 7.11 Contributions (Former Section 94 Contributions)

The Section 7.11 Contributions, as calculated within the Section 94 Contributions Plan 2016, for the proposed development are calculated as follows:

Retail Tenancies

The proposal results in an additional retail GFA of 525sqm. Table 9.2 of the Plan provides a breakdown of the calculation of employees per the development type. The proposed development is categorised as row shops with frontage to a street. Therefore the GFA for one employee is 22.3sqm. The calculation is as follows:

$$525\text{sqm} / 22.3\text{sqm} = 24 \text{ workers}$$

The indexed rate for workers within Mascot Station Precinct is \$2704.01. The calculation is as follows:

$$24 \text{ workers} \times \$2,704.01 = \$64,896.25$$

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Therefore the total contribution payable for the proposal is **\$64,896.25**. A breakdown of the figure is provided in the condition of consent. The applicant is to pay an indexed rate of the contribution based on the timing of the payment.

Conclusion

Development Application No. 2017/1238 was received on 11 December 2017 for changes to approved development to add retail tenancies to the Church Avenue and Bourke Street frontages, increasing the retail floor area from 512sqm to 1,037sqm at 42 Church Avenue, Mascot.

The development departs from the FSR development standard. A Clause 4.6 variation has been provided with the development application and it is considered that the variation is well founded. Other issues relating to car parking and waste management have been addressed within the report or through conditions of consent.

The proposal has been assessed in accordance with Section 4.15 of the *Environmental Planning and Assessment Act 1979*. The proposal is permissible within the B4 – Mixed Use zone and is considered to result in a development which is suitable in the context. Therefore, the application is recommended for approval, subject to conditions of consent.

Attachment

Schedule 1 – Conditions of Consent

Premises: 42 Church Avenue, Mascot

DA No: DA-2017/1238

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
A1001- Cover Sheet- Rev 1	Aplus design	Dated 29 November 2017; Received 26 April 2018
A1002 – Parking Level- Rev 1		Dated 29 November 2017; Received 11 December 2017
A1003 – Ground Level Plan- Rev 1		Dated 29 November 2017; Received 11 December 2017
A1004 – Level 1 Plan- Rev 1		Dated 29 November 2017; Received 11 December 2017
A1009 – South Elevation Plan- Rev 1		Dated 29 November 2017; Received 11 December 2017
A1010- East Elevation Plan- Rev 1		Dated 29 November 2017; Received 11 December 2017
A1011- Section 1 Plan- Rev 1		Dated 29 November 2017; Received 11 December 2017

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A1012- GFA Calculation Plan- Rev 1		Dated 29 November 2017; Received 11 December 2017
FI-200- Ground Floor Landscape Plan- Rev G	Urbis	Dated 7 December 2017; Received 11 December 2017
FI-201- Ground Floor Landscape Plan- Rev G		Dated 7 December 2017; Received 11 December 2017
FI-202- Ground Floor Landscape Plan- Rev G		Dated 7 December 2017; Received 11 December 2017
FI-203- Ground Floor Landscape Plan- Rev F		Dated 7 December 2017; Received 11 December 2017
FI-204- Ground Floor Landscape Plan- Rev F		Dated 7 December 2017; Received 11 December 2017

Reference Document(s)	Author	Dated / Received by Council
Amended DA Access Report	Wall to Wall Design Consulting	Dated 11 December 2017; Received 11 December 2017
Clause 4.6 variation	Meriton Group	Received 11 December 2017
Construction Management Plan	Meriton Group	Dated August 2017; Received 11 December 2017
Traffic Impact Assessment- Rev E	ARUP	Dated 11 December 2017; Received 11 December 2017
Landscape Report	Urbis	Dated 7 December 2017; Received 11 December 2017
Design Verification Statement	Aplus design	Dated 26 April 2018; Received 26 April 2018

- 2 No construction works (including excavation) shall be undertaken prior to the issue to the Construction Certificate.
- 3 This Consent relates to land in Lot 1 in DP 376752, Lot 3 in DP 376752 and Lot 21 in DP1014063 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.

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CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE COMMENCEMENT OF ANY WORKS

- 6 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.
- 7 A dilapidation report, including a photographic survey prepared by a Practising Structural Engineer, must be prepared on surrounding properties. A copy of the dilapidation report together with the accompanying photographs shall be given to the above property owner/s, and a copy lodged with Principal Certifying Authority prior demolition. The extent of the Dilapidation Survey is to be prepared by a practising Structural Engineer having regard to foundations/structures of the locality
- 8 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.
- 9 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,

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- 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.
- 10 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.
- 11 Prior to the commencement of demolition work a licensed demolisher who is registered with WorkCover NSW must prepared a Work Method Statement to the satisfaction of the Principal Certifying Authority (Council or an accredited certifier) and a copy shall be sent to Council (if it is not the PCA). A copy of the Statement shall also be submitted to WorkCover NSW.
- The statement must be in compliance with AS2601:1991 – 'Demolition of Structures', the requirements of WorkCover NSW and conditions of the Development Approval, and shall include provisions for:
- a) Enclosing and making the site safe, any temporary protective structures must comply with the "Guidelines for Temporary Protective Structures (April 2001)";
 - b) Induction training for on-site personnel;
 - c) Inspection and removal of asbestos, contamination and other hazardous materials (by appropriately licensed contractors);
 - d) Dust control – Dust emission must be minimised for the full height of the building. A minimum requirement is that perimeter scaffolding, combined with chain wire and shade cloth must be used, together with continuous water spray during the demolition process. Compressed air must not be used to blow dust from the building site;
 - e) Disconnection of Gas and Electrical Supply;

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- f) Fire Fighting – Fire fighting services on site are to be maintained at all times during demolition work. Access to fire services in the street must not be obstructed;
 - g) Access and Egress – No demolition activity shall cause damage to or adversely affect the safe access and egress of this building;
 - h) Waterproofing of any exposed surfaces of adjoining buildings;
 - i) Control of water pollution and leachate and cleaning of vehicles tyres – Proposals shall be in accordance with the “Protection of the Environmental Operations Act 1997”;
 - j) Working hours, in accordance with this Development Consent;
 - k) Confinement of demolished materials in transit;
 - l) Proposed truck routes, in accordance with this Development Consent;
 - m) Location and method of waste disposal and recycling in accordance with the “Waste Minimisation and Management Act 1995”.
 - n) Sewer – common sewerage system ad08.
- 12 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.
- 13 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.
- 14 This Consent shall not preclude the demolisher from giving notice to other statutory authorities, such as Sydney Water Corporation, WorkCover, etc.
- 15 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

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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.

- 16 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.
- 17 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.
- 18 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.
- 19 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 practicing engineer, showing all details, including the extent of encroachment and the method of removal (or any other method) and de-stressing 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.

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

- 20 The applicant must prior to the issue of any Construction Certificate, pay the following fees:

(a)	Development Control	\$875.00
(b)	Footpath Crossing Deposit	\$629,880.00 (See below)
(c)	Section 94 Contributions	\$64,896.25 (See below)
- 21 Prior to the issue of any Construction Certificate, the applicant shall lodge a Footpath Crossing Deposit of **\$629,880.00** (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.
- 22 Bayside Council 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 **\$64,896.25** is payable as calculated below:

City of Botany Bay Section 94 Contributions Plan 2016

The s94 contributions (as of April 2018) for the additional retail GFA is as follows:

a) Community Facilities- Citywide	\$9,977.38
b) Recreation Facilities- Mascot Precinct	\$1,012.28
c) Recreation Facilities- Citywide	\$43,339.72

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d) Transport Management- Citywide	\$4,083.58
e) Transport Management- Mascot	\$5,739.73
f) Administration	\$743.73

TOTAL: \$64,896.25

The total Section 94 Contribution of **\$64,896.25** is to be paid to Council prior to the issue of any Construction Certificate.

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.

- 23 A Waste Management and Minimisation Plan is to be submitted to the Principal Certifying Authority prior to the issue of the relevant Construction Certificate. Plans and specifications for the storage room for waste and recyclable materials shall be submitted. 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.
- 24 The drawings for the construction certificate for the basement and above ground car parking levels shall show the following parking requirements:

Car Parking Rates	Required
0.6 space / 1 bed unit	69 spaces
0.9 space / 2 bed unit	160 spaces
1.4 space / 3 bed unit	108 spaces
1 visitor space / 7 dwellings	51 spaces
Retail Spaces	42 spaces
TOTAL PROVIDED	430 spaces

This information is to be provided prior to the issue of the relevant Construction Certificate.

- 25 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:
- 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,
 - Negotiate with the utility authorities (e.g. AusGrid, Sydney Water, Telecommunications Carriers and Council in connection with:

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- i. The additional load on the system, and
 - ii. The relocation and/or adjustment of the services affected by the construction.
- 26 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.
- 27 A Construction Management Program shall be submitted to, and approved by the Private Certifying Authority prior to the issue of any 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,

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- 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.
- 28 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) for approval. The plan shall:
- a) be prepared by a RMS accredited consultant,
 - b) nominate a contact person who is to have authority without reference to other persons to comply with instructions issued by Council's Traffic Engineer or the Police,
 - c) during construction, if access from **Bourke 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.*
- 29 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.

DURING WORKS

- 30
- 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

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- 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.
- 31 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 made safe for pedestrian and vehicular traffic at all times. Any damage to Council's infrastructure and surrounding development (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.
- 32 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.
- 33 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.
- 34 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.
- 35 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.

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- 36 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.
- 37 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.
- 38 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;
 - b) "Managing Urban Stormwater - Soils and Construction" (2004) Landcom ('The Blue Book'); and
 - c) Protection of the Environment Operations Act 1997.
- 39 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.
- 40 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.
- 41 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.
- 42 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 Interim Construction Noise Guideline and the Protection of the Environment Operations Act 1997.
 - (b) Level Restrictions
 - (i) Construction period of 4 weeks and under:

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- (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 01:00pm
 - (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.
- 43 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.
- 44 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.

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

- 45 Prior to the issue of the relevant Occupation Certificate, car parking is to be allocated as follows and appropriately linemarked:
 - a) 337 residential spaces
 - b) 51 visitors spaces
 - c) 42 retail spaces
 - d) 1 carwash bay located on the ground floor car park level
- 46 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.

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- 47 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.
- 48 Prior to the issue of any 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.
- 49 Prior to the issue of any 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 3.44:1 as approved under this Development Consent No. 2017/1238 and height of 51m AHD as approved under this Development Consent No. 16/150, 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 Lot 1 in DP 376752, Lot 3 in DP 376752 and Lot 21 in DP1014063.
- 50 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.
- 51 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).
- 52 Prior to the issue of the relevant Occupation Certificate, evidence of a Sydney Water permit or consent for discharge of wastewater to the sewer shall be submitted to the Principal Certifying Authority. 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.
- 53 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.
- 54 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

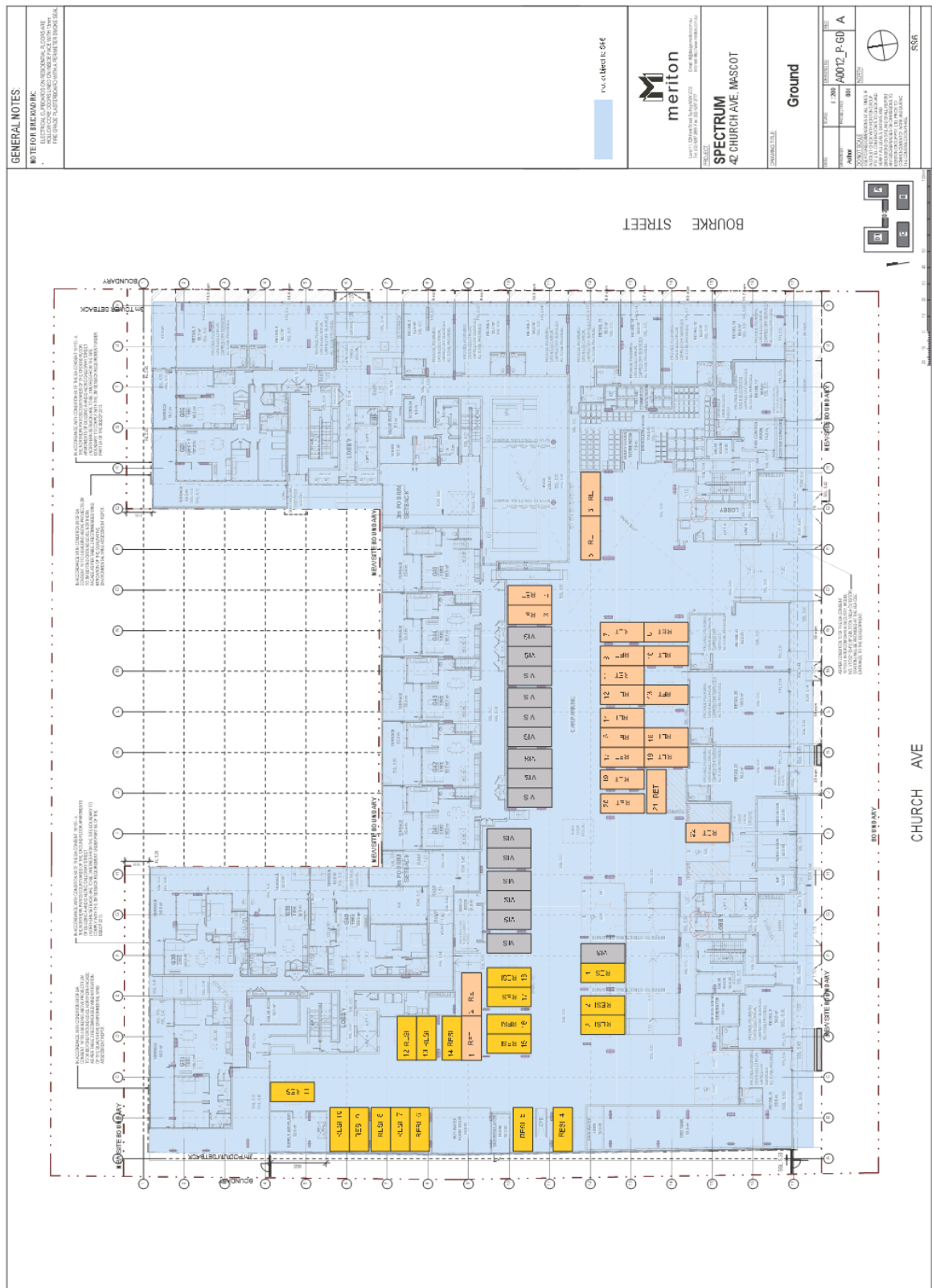
- 55 A separate application is to be submitted for the use and fit out of the retail tenancies.

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- 56 No roller shutters are to be installed to any of the commercial shopfronts that front Bourke Street and Church Avenue.
- 57 Council's footway (area between property boundary and street kerb) is to be kept clean, tidy, washed and maintained at the applicant's expense.
- 58 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.
- 59 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.
- 60 Ongoing maintenance of the road verges and footpaths and nature strips in Church Avenue and Galloway 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.
- 61 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 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.
- 62 Any air conditioning units (where possible) 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.

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- (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.
- 63 All loading and unloading associated with the retail tenancy is to be undertaken within the ground floor of Building B.
- 64 No garbage collection associated with the retail premises is permitted between 10pm and 6am.
- 65 The collection of garbage associated with the residential premises shall be restricted to 6am to 6pm Monday to Sunday.
- 66 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.



Statement of Environmental Effects

Section 4.55 Application

42 Church Avenue, Mascot

Amend conditions 24, 28, 36, 37, 41 and 47

21 May 2018

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Annexure

Annexure 1: Amended Conditions

Statement of Environmental Effects
42 Church Avenue, Mascot
Amend conditions 24, 28, 36, 37, 41 and 47

1 Introduction

This Statement of Environmental Effects relates to a Section 4.55 Application seeking Council's consent to correct development consent DA 2017/1238.

The subject Section 4.55 Application seeks to amend conditions 24, 28, 36, 37, 41 and 47.

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 4.15 (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 42 Church Avenue, Mascot, and it comprises three parcels of land located on the northwestern corner of Church Avenue and Bourke Street. **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 Lots 1 and 3 in DP 376752 and Lot 21 in DP 1014063. It has a 108.5 metre frontage to Church Avenue; a 101.5 metre frontage to Bourke Street; a 101.9 metre western side boundary; and a 109.1 metre northern boundary. The total site area is 11,104 sqm.

The site has been approved for redevelopment – refer section 3.1 of this Statement.

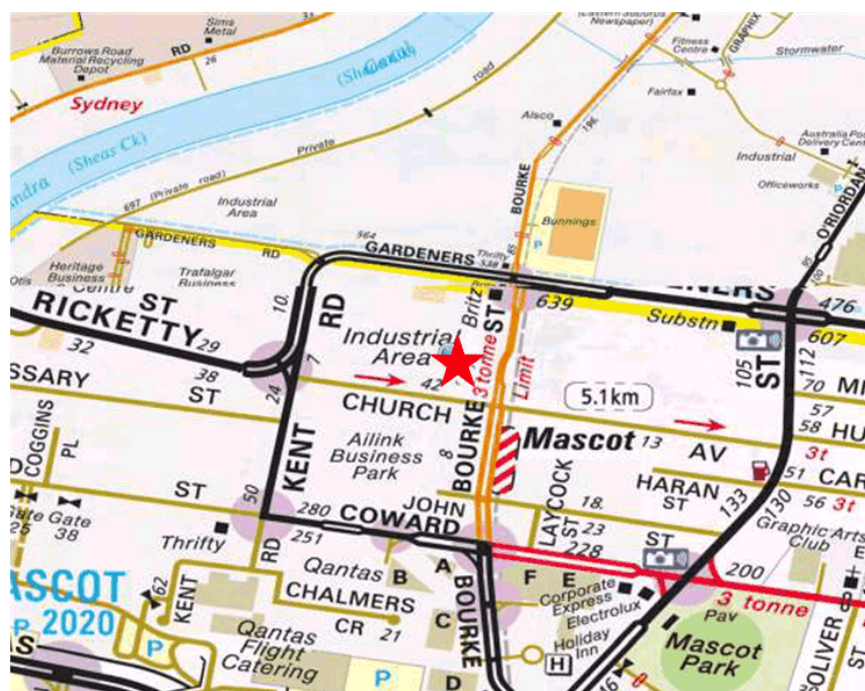


Figure 1: Location of subject site marked with red star



Figure 2: Aerial view of subject site – shaded yellow (as at 21 January 2018)

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 diagonally opposite the Mascot Railway Station, and it is on the northern fringe of the town centre that surrounds the station.

To the east, on the other side of Bourke Street, is a commercial / warehouse. To the southeast are mixed use residential and commercial buildings and the Mascot Railway.

The adjoining site to the north is currently partly vacant and partly occupied with commercial buildings.

To the south of the site, on the on the other side of Church Avenue, is a multi-storey mixed use building with ground floor retail and residential apartments above.

The adjoining site to the west is occupied by a residential flat building and also part of the redevelopment of No.9 Kent Road for residential flat buildings.

3 Proposed Modifications

3.1 Relevant Background

3.1.1 Main Development Consent

On 25 July 2017, the JRPP issued its consent (DA16/150) for the following development:

Integrated Development Application for the construction of a mixed use development incorporating a 4 storey podium with four x 14- storey towers containing residential units, retail space, childcare centre, private recreation facilities, basement and above ground 'sleeved' car parking and 35,532sqm of gross floor area; landscaping and dedication of land along the Church Avenue frontage; construction of southern half of a new east-west street along the northern alignment of the site; landscaping and dedication of a new public park; associated excavation, earthworks and landscaping; and land subdivision.

3.1.2 Other Approvals

DA 2017/1166

On 14 December 2017, the Council issued its consent (DA 2017/1166) for the following development:

Alterations to the approved building by deleting the childcare centre and replacement with 29 additional apartments

DA 2017/1238

On 8 May 2018, the Council issued its consent (DA 2017/1238) for the following development:

Changes to approved development to add retail tenancies to the Church Avenue and Bourke Street frontages, increasing the retail floor area from 512sqm to 1,0375qm

3.2 Proposed Amendments

It is proposed to amend conditions 24, 28, 36, 37, 41 and 47. **Annexure 1** contains the proposed amended conditions and the reasons for the proposed amendments.

Statement of Environmental Effects

42 Church Avenue, Mascot
Amend conditions 24, 28, 36, 37, 41 and 47

4 Threshold Test – Substantially the Same

It is considered that the development is substantially the same as the original approval.

The proposed amendments involve amending 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 4.55 of the Environmental Planning and Assessment Act, 1979.

5 Environmental Planning Assessment

5.1 Section 4.15(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 4.15(1)(a)(ii): Draft Environmental Planning Instruments

There are no draft environmental planning instruments that apply to the subject site.

5.3 Section 4.15(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 4.15(1)(a)(iiia): Planning Agreements

Not applicable.

5.5 Section 4.15(1)(a)(iv): Regulations

The Section 4.55 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 4.15(1)(b): Likely Impacts

The proposal will have no adverse physical or amenity or environmental impacts on the approved development.

5.7 Section 4.15(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 4.15(1)(d): Submissions

Should notification be required for the proposal, Council will consider submissions at the close of the notification period.

5.9 Section 4.15(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 4.55 under consideration, particularly, given the absence of any demonstrable adverse impacts resulting from the proposal.

Statement of Environmental Effects
42 Church Avenue, Mascot
Amend conditions 24, 28, 36, 37, 41 and 47

6 Conclusion

The subject Section 4.55 Application seeks to amend conditions 24, 28, 36, 37, 41 and 47.

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 4.55 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 4.55 application and amend the development consent in the manner requested.

Annexure 1: Amended Conditions

PROPOSED AMENDED CONDITIONS - DEVELOPMENT CONSENT DA 2017/1238**CONDITION 20**

The applicant must prior to the issue of any Construction Certificate, pay the following fees:

(a) Development Control \$875.00

~~(b) Footpath Crossing Deposit \$629,880.00 (See below)~~

(c) Section 94 Contributions \$64,896.25 (See below)

Reason for amendment:

The footpath deposit is being paid under the main development consent for the site (DA16/150).

CONDITION 28

~~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) for approval. The plan shall:~~

~~a) be prepared by a RMS accredited consultant,~~

~~b) nominate a contact person who is to have authority without reference to other persons to comply with instructions issued by Council's Traffic Engineer or the Police,~~

~~c) during construction, if access from Bourke 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.~~

Reason for amendment:

The Traffic Management Plan has been prepared under the main development consent for the site (DA16/150).

CONDITION 36

~~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.~~

Reason for amendment:

This is being addressed under the main development consent for the site (DA16/150).

PROPOSED AMENDED CONDITIONS - DEVELOPMENT CONSENT DA 2017/1238

CONDITION 37

~~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.~~

Reason for amendment:

This is being addressed under the main development consent for the site (DA16/150).

CONDITION 41

~~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.~~

Reason for amendment:

The development does not involve any demolition works. These were completed under the main development consent for the site (DA16/150).

CONDITION 47

~~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.~~

Reason for amendment:

This condition is not relevant to the approved development, which is only for internal changes to provide for shops.

(Amended)
Statement of Environmental Effects
Section 4.55 Application

42 Church Avenue, Mascot

Amend conditions 24, 45 and 49(b)

19 October 2018

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1 Introduction

This Statement of Environmental Effects relates to a Section 4.55 Application seeking Council's consent to correct development consent DA 2017/1238.

The subject Section 4.55 Application seeks to amend conditions 24, 45 and 49(b).

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 4.15 (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 42 Church Avenue, Mascot, and it comprises three parcels of land located on the northwestern corner of Church Avenue and Bourke Street. **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 Lots 1 and 3 in DP 376752 and Lot 21 in DP 1014063. It has a 108.5 metre frontage to Church Avenue; a 101.5 metre frontage to Bourke Street; a 101.9 metre western side boundary; and a 109.1 metre northern boundary. The total site area is 11,104 sqm.

The site has been approved for redevelopment – refer section 3.1 of this Statement.

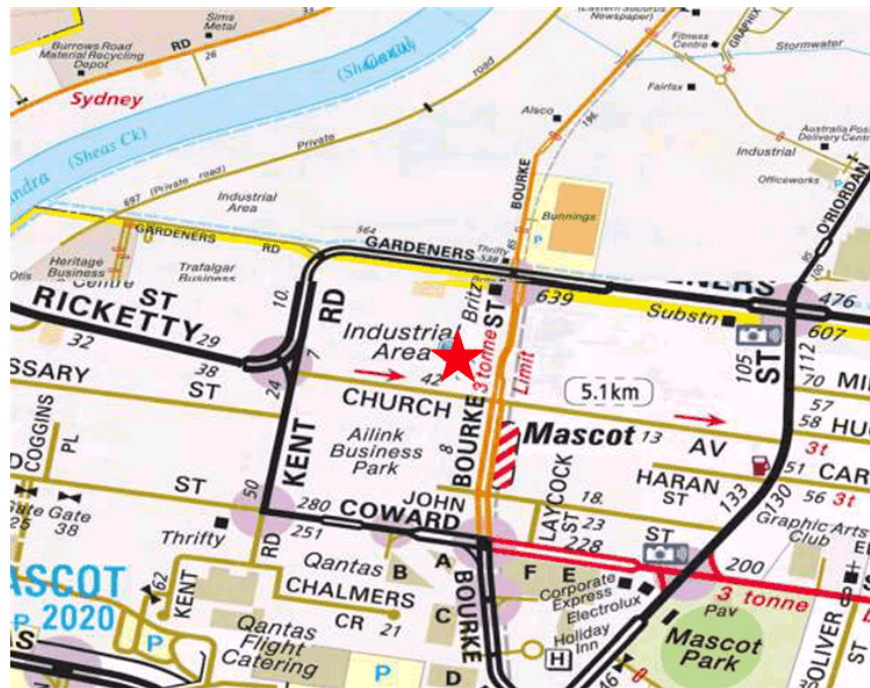


Figure 1: Location of subject site marked with red star



Figure 2: Aerial view of subject site – shaded yellow (as at 21 January 2018)

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 diagonally opposite the Mascot Railway Station, and it is on the northern fringe of the town centre that surrounds the station.

To the east, on the other side of Bourke Street, is a commercial / warehouse. To the southeast are mixed use residential and commercial buildings and the Mascot Railway.

The adjoining site to the north is currently partly vacant and partly occupied with commercial buildings.

To the south of the site, on the on the other side of Church Avenue, is a multi-storey mixed use building with ground floor retail and residential apartments above.

The adjoining site to the west is occupied by a residential flat building and also part of the redevelopment of No.9 Kent Road for residential flat buildings.

3 Proposed Modifications

3.1 Relevant Background

3.1.1 DA 2016/0150

On 25 July 2017, the JRPP issued its consent (DA16/150) for the following development:

Integrated Development Application for the construction of a mixed use development incorporating a 4 storey podium with four x 14- storey towers containing residential units, retail space, childcare centre, private recreation facilities, basement and above ground 'sleeved' car parking and 35,532sqm of gross floor area; landscaping and dedication of land along the Church Avenue frontage; construction of southern half of a new east-west street along the northern alignment of the site; landscaping and dedication of a new public park; associated excavation, earthworks and landscaping; and land subdivision.

3.1.2 DA 2017/1166

On 14 December 2017, the Council issued its consent (DA 2017/1166) for the following development:

Alterations to the approved building by deleting the childcare centre and replacement with 29 additional apartments

3.1.3 DA 2017/1238

On 8 May 2018, the Council issued its consent (DA 2017/1238) for the following development:

Changes to approved development to add retail tenancies to the Church Avenue and Bourke Street frontages, increasing the retail floor area from 512sqm to 1,037sqm

3.2 Proposed Amendments

It is proposed to amend conditions 24, 45 and 49(b) of DA 2017/1238. The conditions relate to car parking allocation. Essentially, it is proposed to reallocate 18 retail car parking spaces to residential use, as detailed in the table below. The table below also shows the implications of the on the GFA and FSR figures of the approved development.

The proposed reduction in car parking is due to a reduced demand for retail car parking on the subject site. Given the proximity of the site to Mascot Station, the demand for retail customer and worker parking is lower than in alternative locations that are further away from the railway station. Therefore, rather than have car parking spaces sitting idle and unused in the development – which poses a security risk and management concern – it is considered better to have those spaces allocated for residential use.

	Approved	Proposed Amended	Net Change
Units	1 bed x 115 2 bed x 177 3 bed x 77 Total: 369	No change	Nil change
FSR / GFA	3.44:1 / 38,172 sqm	Approved GFA of buildings: 38,172 sqm Proposed GFA of excess car parking: 234 sqm (18 car spaces) Proposed FSR / GFA total: 3.46:1 / 38,406 sqm	Add 0.02:1 / 234 sqm (1% change)
Car Parking	Residential: 337 Visitors: 51 Retail: 42 Total: 430	Residential: 355 Visitors: 51 Retail: 24 Total: 430	Residential: Plus 18 car spaces Visitors: No change Retail: Minus 18 car spaces Total: Nil change

3.3 Proposed Amended Conditions

3.3.1 Condition 24

It is proposed to correct and amend Condition 24 as follows:

The drawings for the construction certificate for the basement and above ground car parking levels shall show the following parking requirements:

Car Parking Rates	Required	Approved
0.6 space /1 bed unit	69 spaces	<u>74 spaces</u>
0.9 space /2 bed unit	160 spaces	<u>169 spaces</u>
1.4 space /3 bed unit	108 spaces	<u>112 spaces</u>
1 visitor space / 7 dwellings	51 spaces	<u>51 spaces</u>
Retail Spaces	42 spaces	<u>24 spaces</u>
TOTAL PROVIDED	430 spaces	<u>430 spaces</u>

This information is to be provided prior to the issue of the relevant Construction Certificate.

3.3.2 Condition 45

It is proposed to amend Condition 45 as follows:

Prior to the issue of the relevant Occupation Certificate, car parking is to be allocated as follows and appropriately linemarked:

- a) ~~337~~ 355 residential spaces
- b) 51 visitors spaces
- c) ~~42~~ 24 retail spaces
- d) 1 carwash bay located on the ground floor car park level

3.3.3 Condition 49(b)

It is proposed to amend Condition 49(b) as follows:

A Floor Space Ratio (FSR) of ~~3.44~~ 3.46 as approved under this Development Consent No. 2017/1238 and height of 51m AHD as approved under this Development Consent No. 16/150, have been strictly adhered to and any departures are to be rectified in order to issue the Occupation Certificate.

4 Threshold Test – Substantially the Same

It is considered that the development is substantially the same as the original approval.

The proposed amendments involve amending conditions only, which has no physical change to any part of the approved development. 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 4.55 of the Environmental Planning and Assessment Act, 1979.

5 Environmental Planning Assessment

5.1 Section 4.15(1)(a)(i): Environmental Planning Instruments

5.1.1 Botany Local Environmental Plan 2013

Zoning and Permissibility

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.

Floor Space Ratio

Clause 4.4 of the LEP prescribes a maximum floor space ratio of 3.2:1. This equates to a maximum gross floor area of 35,533 sqm.

The proposal seeks an FSR of 3.46:1 with a gross floor area of 38,406 sqm. The proposal seeks a variation of 2,873 sqm.

The proposal seeks a variation of 1% above the existing approved FSR on the site (refer to table in section 3.2 of this Statement) and 8% above the LEP FSR of 3.2:1. In any case, the proposed variation does not have any physical change to the building at all. No alterations are required in any manner to achieve the proposed reallocation of car parking.

5.2 Section 4.15(1)(a)(ii): Draft Environmental Planning Instruments

There are no draft environmental planning instruments that apply to the subject site.

5.3 Section 4.15(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 4.15(1)(a)(iiia): Planning Agreements

Not applicable.

5.5 Section 4.15(1)(a)(iv): Regulations

The Section 4.55 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 4.15(1)(b): Likely Impacts

The proposal will not have any physical changes to the development. The reallocation of car parking spaces will not have the potential to increase traffic movements on the site, as no change is proposed to the number of parking spaces. The proposed reallocation is simply designed to better manage the parking allocation on the site. Overall, no impacts will occur.

Statement of Environmental Effects
42 Church Avenue, Mascot
Amend conditions 24, 45 and 49(b)

5.7 Section 4.15(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 4.15(1)(d): Submissions

Should notification be required for the proposal, Council will consider submissions at the close of the notification period.

5.9 Section 4.15(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 4.55 under consideration, particularly, given the absence of any demonstrable adverse impacts resulting from the proposal.

6 Conclusion

The subject Section 4.55 Application seeks to amend conditions 24, 45 and 49(b).

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 4.55 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 4.55 application and amend the development consent in the manner requested.

**Bayside Planning
Panel**

13/11/2018

Item No	6.3
Application Type	Bayside Planning Panel
Application No	DA-2017/190
Lodgement Date	01/12/2016
Property	DA-2017/190 - 117 Forest Road, Arncliffe
Ward	Mascot
Owner	Mrs Kerry Saba and Mr Safwat Saba
Applicant	Mrs Kerry Saba and Mr Safwat Saba
Proposal	Alterations to existing building and addition of two (2) dwellings with access from Towers Place
No. of Submissions	Seven (7) public objections
Cost of Development	\$358,375
Report by	Michael McCabe, Director of City Futures

Officer Recommendation

- 1 That Development Application No. 2017/190 for alterations and additions to the existing building at 117 Forest Road, Arncliffe be refused for the following reasons:
 - a. The proposal hinders the attainment of the objects specified in Sections 1.3(c) of the Environmental Planning and Assessment Act 1979 since the proposed development does not promote the orderly and economic use and development of the land intended for a low density residential environment.
 - b. The application is unsatisfactory in respect to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 as the proposed development does not comply with the provisions of the Rockdale Development Control Plan 2011 in respect to:-
 - i. The proposal entails the reduction of landscaped setting hence compromising the curtilage of the existing dwelling and its relationship with surrounding properties. The proposed landscaping and inclusion of carparking within the front setback is not compatible with the existing streetscape.
 - ii. The internal amenity of the units is unsatisfactory as seven of the units do not meet the minimum area and three units do not have a private open space. The proposed development does not alleviate these issues. Instead, the proposal will further reduce the open space area, which could otherwise be utilised for the benefit of the residents.
 - iii. The bulk and scale is not compatible with the low density residential character of the local area and creates visual impacts.
-

- c. The application is unsatisfactory in respect to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as the proposed alteration and additions to the existing "residential flat building" is contrary to the land's zoning objectives for a low density residential environment.
 - d. Having regard to the above non-compliance and pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development is unsatisfactory and represents an over development of the land.
 - e. 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, approval of the development application is not in the public interest.
- 2 That the objectors be advised of the Bayside Planning Panel decision.
-

Location Plan



Attachments

- 1 Planning Assessment Report [↓](#)
- 2 Cover Page and Location Plan [↓](#)

- 3 Site Analysis Plan [↓](#)
- 4 East and West Elevations Plan [↓](#)
- 5 North and South Elevations Plan [↓](#)
- 6 Roof Plan [↓](#)

BAYSIDE COUNCIL

Planning Assessment Report

Application Details

Application Number:	DA-2017/190
Date of Receipt:	1 December 2016
Property:	117 Forest Road, ARNCLIFFE (Lot B DP 362957)
Owner(s):	Ms Kerry Ann Saba Mr Safwat Wadee Saba
Applicant(s):	Ms Kerry Ann Saba Mr Safwat Wadee Saba
Proposal:	Alterations to existing building and addition of two (2) dwellings with access from Towers Place
Recommendation:	Refused
No. of submissions:	Seven (7)
Author:	Marta M Gonzalez-Valdes
Date of Report:	31 October 2018

Key Issues

The development application seeks consent for some minor alterations to the existing building and the addition of two new dwellings at the rear. The site is located on the corner of Forest Road and Towers Place. The site is zoned R2 - Low Density Residential Development. The development application has been characterised by the applicant as alterations and additions to an existing residential flat building. Residential flat buildings are prohibited in the R2 zone. As such the applicant has submitted a case to argue that the site benefits from existing use rights. The applicant's claim has been considered within the parameters of Division 4.11 - Existing uses of the Environmental Planning and Assessment Act, 1979 and the existing use rights provisions under Part 5 of the Environmental Planning and Assessment Regulation 2000.

The proposal does not comply with the floor space ratio (FSR) and building height controls applying to the site (0.5:1 FSR and 8.5m building height). The proposed FSR is 0.63:1 and the proposed building height is 9.3m. As established by case law, the strict application of development standards in environmental planning instruments such as floor space ratio and building height could not be used as bases for refusal as they would derogate the applicant's existing use rights benefits. On this basis the applicant has not submitted a CI4.6 justification to the variation to the development standards and the assessment has been carried out on merit. On merit the proposal is an over development with excessive bulk and scale.

The existing building is a 'low rental residential building' when assessed against the parameters of SEPP (Affordable rental Housing) 2009. The building has been subject to improvements since 2006, including the removal of shared facilities such as bathrooms. These renovations have been carried out

without development consent. Despite those improvements, the applicant has demonstrated that the current rental values of the units are below the median rental price for Rockdale LGA in the 24 months prior to lodgement of the development application. The proposed modifications to the current building as part of this application are not considered to result in significant improvements and/or changes to current rental prices and as such the existing building will be retained as a 'low rental residential building' and will not generate a loss of affordable rental housing in the area.

Recent case law (*Saffioti v Kiama Municipal* [2018] NSWLEC 1426) has found that DCP provisions are relevant to the assessment of an application relying on existing use rights 'as a development control plan (DCP) is not an environmental planning instrument for the purposes of the EP&A Act, under s 1.4 of the Act, and so the provisions of a DCP cannot derogate in the manner prescribed in s 4.67(3)' (at 86). Though it is noted this is a Commissioner decision.

The proposal fails when assessed against the provisions of the DCP in regard to setbacks, bulk and scale, streetscape, internal amenity, site coverage and car parking as stated in this report. Seven units do not meet the minimum unit size representing 70% of the development. One of the existing studio units is significantly undersized (16sq.m.) when compared with current standards. Three of the units do not have private open space at all. Rather than creating better amenity for the residents by utilising the rear of the property for parking and/or private or communal space, the proposal involves further intensification of the site creating additional bulk and scale and reducing the landscape setting of the building. The addition has been designed as an ad-hoc wing to the existing building with no internal nor external connection within the site. Further the proposed addition reduces the level of amenity of existing Units 3 and 8 by blocking windows and doors. The proposal is not consistent with the objectives of the DCP.

The applicant has provided significant documentation to demonstrate existing use rights. Whilst it is possible that the property enjoys existing use rights, the issues raised are highly complex. It is not considered that the applicant has discharged the required onus at this stage and in any event, given that the proposal is not supported on its merits it is not considered necessary to conclusively resolve the existing use rights issues at this time. If existing use rights were ultimately accepted, any non conforming use would need to be of a scale and intensity that is appropriate and can be maintained in perpetuity. Based on this and the objections received from neighbours, approval of the development application is not in the public interest.

Recommendation

1. THAT Development Application No. 2017/190 for alterations and additions to the existing building at 117 Forest Road, Arncliffe be refused for the following reasons:

- a) The proposal hinders the attainment of the objects specified in Sections 1.3(c) of the Environmental Planning and Assessment Act 1979 since the proposed development does not promote the orderly and economic use and development of the land intended for a low density residential environment.
- b) The application is unsatisfactory in respect to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 as the proposed development does not comply with the provisions of the Rockdale Development Control Plan 2011 in respect to:-
 - i) The proposal entails the reduction of landscaped setting hence compromising the curtilage of the existing dwelling and its relationship with surrounding properties. The proposed landscaping and

- inclusion of carparking within the front setback is not compatible with the existing streetscape,
- ii) The internal amenity of the units is unsatisfactory as seven of the units do not meet the minimum area and three units do not have a private open space. The proposed development does not alleviate these issues. Instead, the proposal will further reduce the open space area, which could otherwise be utilised for the benefit of the residents.
 - iii) The bulk and scale is not compatible with the low density residential character of the local area and creates visual impacts.
- c) The application is unsatisfactory in respect to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as the proposed alteration and additions to the existing "residential flat building" is contrary to the land's zoning objectives for a low density residential environment.
- d) Having regard to the above non compliance and pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development is unsatisfactory and represents an over development of the land.
- e) 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, approval of the development application is not in the public interest.

2. THAT the objectors be advised of the Bayside Planning Panel decision.

Background

History

- In the 1910's, a two (2) storey "house" was erected on the subject site and is known as "The Gables". It is noted that there is no record in Council's archives for the actual construction of the dwelling nor any subsequent formal approval for any internal alterations relating this property.
- On 1 December 2016, Development Application No. 2017/190 was lodged for the demolition of the existing outbuildings, alterations and additions to an existing "residential flat building" and Strata subdivision (as described in the submitted Statement of Environmental Effects). The applicant included a Legal Advice relating to the existing use rights claim. This application is the subject of this report.
- On 11 April, 2017, a site inspection was organised with the property owners to view the interiors of the existing premises and its surroundings. The inspection was carried out so as to have a better understanding of the intended works.
- On 27 October 2017, Council received advice from its solicitors.
- On 8 December 2017, Council reached the applicant to advise the proposal faces a number of fundamental planning concerns as follows:-

a. Existing use rights.- Whilst the information provided may conclude that the land enjoys existing use rights for the purposes of a residential flat building, potential outstanding issues are raised relating to the impact upon any potential of a use for the purposes of a boarding

house. In this respect, the applicant was to carefully consider the undertaken public objections,

- b. Strata Subdivision. - The inability to Strata subdivide the site due to site's constraints,
- c. Bulk and scale of the development,
- d. Front and rear setbacks,
- e. Tree preservation and landscaping setting,
- f. Inadequate location of the waste collection area,
- g. Adequate and sufficient car parking provision,
- h. Visual amenity and privacy to the neighbouring properties located immediately to the north and western quadrants of the development site,
- i. Aircraft noise and acoustic attenuation noise nor provided,
- j. Storm water drainage matters, and
- k. The loss of "Low Rental Dwellings" as per the relevant provisions of the State Environmental Planning Policy (Affordable Rental Housing) 2009 as a result of the subdivision of the development site.

- On 24 January 2018, Council officers met the applicant(s) to discuss the letter of concerns.
- On 22 March 2018, the applicant submitted -via e-mail- draft amended documentation for Council's perusal as agreed at the previous meeting. At the time, the applicant advised that Strata subdivision is no longer proposed.
- On 25 July 2018, a further meeting was held with the applicant to discuss the plans above and outstanding documentation.
- On 17 August 2018, the applicant submitted additional information to support the existing use rights claim and additional plans.

Proposal

The application seeks approval for the works described as follows:-

- Demolition of the existing roller door (accessed off Towers Place) and part of the rendered wall to accommodate gates to individual courtyards,
- Demolition of an existing shed and awning currently positioned at the north of the development site,
- Retention of the existing building containing 8 self contained units'
- Erection of a two (2) storey addition at the northern side of the existing building containing two (2) dwellings, one - two (2) bedroom unit at the ground floor and one - two (2) bedroom unit with attic at the upper level. Independent pedestrian access is to be provided via Torrens Place,
- Provision of three (3) car parking spaces at the front of the development site (Forest Road side) and one (1) space at the north-eastern corner off Towers Place,
- Relocation of the existing car parking space at the front setback,
- Associated landscaping works to enable the proposed development,
- Removal of four (4) existing trees, two (2) at the front setback and two (2) at the northern quadrant (rear) of the development site,
- Stormwater works.

The total number of residential dwellings proposed is ten (10). Five (5) dwellings are located on the ground floor and Five (5) dwellings are located at first floor level (existing and proposed). There does not seem to be any physical connection between the the existing building and the proposed units.

The proposed addition represents 147.72 sq.m. of additional gross floor area within the site.



Figure 1 - Existing rear elevation. The ground floor windows will be filled in, the roof over the courtyard area will be removed and the new building attached at this point.

Site location and context

The site is legally described as Lot B in DP 362957 being (No. 117) Forest Road in Arncliffe. The site has an area of 730.8 square metres (as per the submitted Survey Plan) and is relatively a regular shaped lot located at the north-western corner of Forest Road and Towers Place. The development site features dual street frontage being to Forest Road (whose dimension is 8.625 metres) and a secondary frontage to Towers Place (whose dimension is 38.38 metres). The site is relatively flat in topography as it is located at the top of the geographical crest of the Road.

The site contains a part single storey/part two (2) storey building, which the applicant(s) describe as a "residential flat building". The site has been historically known as "The Gables". The building currently contains eight (8) "residential units", which have been adapted and occupied for such purposes for a number of years now. It is noted that Council has no record that such conversions and/or whether occupations were ever carried out legitimately.

The front setback to Forest Road is characterised by landscaping and a paved area accommodating one car space. There is an existing driveway on the Towers Place frontage providing access to a roller door. A review of historical aerial photos shows that the roller door provided access to a detached garage which no longer exists on the site. Below is an aerial view of the site in 2005.



Figure 2 - Aerial view of the property in 2005

The site is located within a R2 – Low Density Residential zone hence the site is surrounded by low scale residential development sited on relatively large lots.

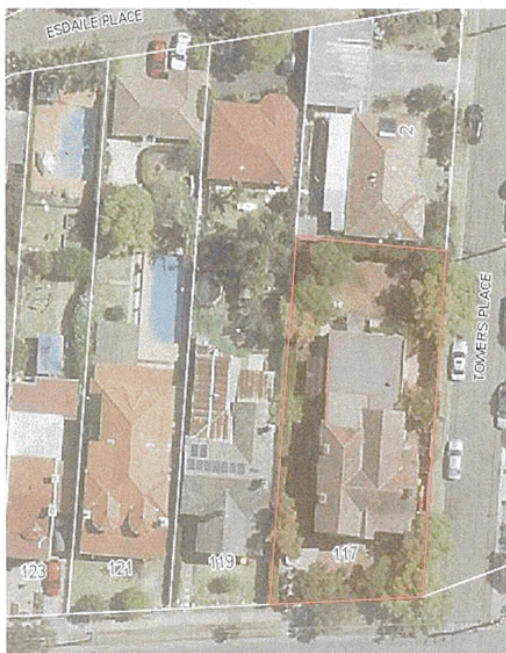


Figure 3 - Subject site and immediate surrounding properties

Abutting the south of the site is Forest Road, which is a four (4) lane classified road as per the Schedule of Classified Roads and Unclassified Regional Roads of the NSW Transport Roads and Maritime Services.

The site is located approximately 691 metres south-west of the local commercial town centre and the

Amcliffe Railway Station, where taxi ranks and buses convey passengers to Rockdale and Sydney CBD.

The site is not listed as heritage item nor is located in a heritage conservation area. However, the site features an inventory sheet and may be of heritage interest. The property is noted as worthy of preservation due to its historical aesthetic qualities. The sheet describes the property as "a half single two (2) storey Federation house with very tall chimneys. Needs some minor maintenance."

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 (Affordable Rental Housing) 2009

Part 3 of the the *State Environmental Planning Policy (Affordable Rental Housing) 2009* (AHSEPP) seeks to retain or mitigate the loss of existing affordable rental housing. It establishes an assessment process for proposals in the greater Sydney metropolitan region (including the Illawarra and Hunter regions) that impact on existing residential flat buildings and boarding houses, to mitigate the potential impact on existing affordable rental housing.

Clause 47(2) provides that a very low income household, low income household or moderate income household is taken to include a household that occupies a low rental dwelling or a boarding room in a boarding house. This means that such accommodation is "affordable housing" as defined in the Act and, in accordance with the NSW Government guideline "Affordable Rental Housing SEPP - Guidelines for Retention of Existing Affordable Rental Housing - October 2009" (the Guidelines), it follows that its loss will reduce the availability of affordable housing for the purposes of s94F(1)(a) of the Act.

Clause 48 provides that this part applies to all land within the Sydney Region, which includes Bayside Council.

Clause 49 states that Part 3 only applies to buildings that were low-rental residential buildings at 28 January 2000. The applicant has advised that they were unable to obtain records for all apartments dating back to 2000, however based on the information that they were able to obtain for between 2001 and 2005, they confirm that the rental price for the one bedroom units within the building was less than the median rental price for a one bedroom unit in the Rockdale LGA according to the *Rent and Sales Report (2000)* which identified the median rental for a one-bedroom unit to be \$170 / week. They noted that there is no median available for studio apartments in this report. However, based on the information available they consider that the building was a low-rental residential building as at 28 January 2000.

A detailed assessment of Part 3 has been provided by the applicant in the submitted Statement of Environmental Effects prepared by Genevieve Slattery (dated 18 November 2016). The assessment

was based on the proposed strata subdivision of the building. However this aspect of the application has been withdrawn and is no longer applicable. However some aspects of the assessment, in particular the rental data, is relevant as stated below.

An assessment of Part 3 has been undertaken in accordance with the NSW Government guideline *"Affordable Rental Housing SEPP - Guidelines for Retention of Existing Affordable Rental Housing - October 2009"* (the Guidelines).

Clause 50(1) - In accordance with clause 50(1)(b) of the SEPP, a person must not alter or add to the structure or fabric of the inside or outside of the building to which Part 3 applies without obtaining development consent.

The Guidelines provide more specific criteria to establish whether Part 3 applies when alterations and additions to a building are involved. Specifically the Guidelines state that Part 3 applies when the alterations and additions to a building 'result in the structure or fabric being upgraded to a higher standard, such as replacing shared kitchen or bathroom facilities with individual facilities, providing additional on-site carparking, or to comprehensive refurbishment of the building intended to raise the standard of accommodation and enable an increase in rents or tariffs. Part 3 does not apply to routine maintenance activities needed to prevent the deterioration of the building and/or to ensure the health and safety of residents or maintain a reasonable standard of accommodation. Such work would be consistent with the aim of the SEPP to retain low rental accommodation. Examples of routine maintenance include periodic repairs, painting, renewal of floor coverings, replacement of light fittings, re-wiring or work carried out to comply with a fire safety order'.

The proposed changes to the existing building under this application are considered to be of a minor scale involving the closure of two north facing windows and a door, improvements to landscaping and additional carparking. However, there is evidence from letters by long term residents, from visual observation when undertaking a site visit as part of the assessment of the application, and from statements by the owner of the property; that since the property was sold in 2006; the building has been significantly renovated, including the removal of share facilities and other works to improve the amenity of residents and to re-instate some original architectural elements to the fabric of the building.

A 'low-rental residential building' includes a building with one or more 'low-rental units'. The applicant has confirmed that at the time of lodgement, all of the one (1) bedroom units were let at a price that did not exceed the median rental at any time within the 24 month period prior to lodgement of the development application as detailed in the relevant *NSW Rent and Sales Report* published by Housing NSW for a dwelling of the same type within the Rockdale LGA. Therefore, the building is considered to be a 'low rental residential building'. The applicant notes again that there is no median for studio apartments. Based on this it can be established that despite the alterations undertaken to the building since 2006, the building is still considered to be a 'low rental building' and Part 3 of the SEPP does not apply.

Clause 50(2) - The Guidelines recommends that when there is concern that there may be some impacts on the local housing market, the criteria in Part 3 can be considered when assessing the social and economic impacts of the development under section 4.55(1)(b) of the Act.

The applicant has addressed the requirements of this clause and an assessment is undertaken in the table below:

Guidelines	Applicant's Consideration	Assessment
(a) whether there is likely to be a reduction in affordable housing on the land to which the application relates.	The applicant advises that none of the existing occupants will be required to relocate however they do not provide a full assessment of this clause. Based on their assessment of later clauses and their analysis of 2011 ABS data, they consider that a maximum of 2 existing low-rental dwellings may become owner occupied following strata subdivision.	Refer to Note 1 below.
(b) whether there is available sufficient comparable accommodation to satisfy the demand for such accommodation.	According to the September 2016 REINSW Vacancy Rate Survey, the vacancy rate in Sydney was 1.9%. To this end, sufficient comparable accommodation is considered to be unavailable at the time of lodgement of this DA and further analysis is not required.	The applicant's position is agreed with. Based on the rental vacancy rate of 1.9% it is considered that insufficient comparable accommodation is available.
(c) whether the development is likely to cause adverse social and economic effects on the general community.	The applicant considers that the proposal will have minimal social and economic impacts on the general community, with respect to the provision of affordable housing and that the proposal will result in a positive social and economic effect.	As the proposal is still a 'low cost residential building', it is considered that the proposal is unlikely to result in adverse social and economic impacts on the community through the loss of low-cost rental housing.

(d) whether adequate arrangements have been made to assist the residents (if any) of the building likely to be displaced to find alternative comparable accommodation.	No residents would be displaced as none of the existing tenants will be asked to vacate the existing building. The applicant does, however, agree to imposition of conditions as detailed in their SEE to assist residents should the units be sold after subdivision and the new owners wish to occupy their units.	Strata subdivision is no longer part of this application. As all improvements have already been carried out, there is no reason to believe the residents will be displaced.
(e) the extent to which the development contributes to any cumulative loss of affordable housing in the local government area.	The proposal would not contribute to the cumulative loss of affordable housing given that only 2 of the low-rental dwellings would become owner occupied.	The proposal does not involve the strata subdivision of the building. The Local Government Housing Kit on the Housing NSW website confirms that there was a 20.7% increase in rental stock for Low Incomes in the Rockdale LGA between June 2011 and December 2015. The proposal will therefore not have a significant cumulative impact on the loss of affordable housing in the LGA.
(f) the structural soundness of the building, the extent to which the building complies with any relevant fire safety requirements and the estimated cost of carrying out work necessary to ensure the structural soundness of the building and the compliance of the building with the fire safety requirements, etc.	Only minor works are proposed to the existing building, mainly involving the demolition of an existing awning.	Council's Building Surveyors have assessed the proposal and included recommended conditions to ensure that the building is structurally sound and in accordance with current BCA requirements (e.g. fire safety compliance, etc.).

(g) whether the imposition of a condition requiring the payment of a monetary contribution for the purposes of affordable housing would adequately mitigate the reduction of affordable housing resulting from the development.	The assessment concludes that no monetary contribution is required to be paid in conjunction with the proposed development.	The payment of a monetary contribution is not considered necessary in this case as the building is still a low cost residential building following approval.
(h) In the case of a boarding house, the financial viability of the continued use of the boarding house.	N/A	N/A

Note 1 - The strata component of the application has been withdrawn. However the application involves modifications to the structure or fabric of the building. Further statements from long term residents and a visual inspection of the site indicate significant improvements have been carried out inside the building without development consent. It is noted that despite the renovations, all of the one bedroom units have been rented at a value less than the median rental price for Rockdale LGA. The units are therefore considered 'low rental dwellings'. Based on this, it is unlikely, approval of the application will result in a reduction in affordable housing.

Clause 50(3) - For the purposes of subclause (2)(b), sufficient comparable accommodation is conclusively taken to be not available if the average vacancy rate in private rental accommodation for Sydney as published monthly by the Real Estate Institute of New South Wales is, for the 3 months immediately preceding the date of lodgement of the development application, less than 3 per cent. The vacancy rate for the middle ring suburbs in Sydney was 1.9% for the March 2016 quarter and therefore insufficient comparable accommodation was available at the time of lodgement.

Clause 51 - Contributions for Affordable Housing - In accordance with Clause 51(2), where the consent authority is satisfied that the proposal will, or is likely to, reduce the availability of affordable housing within the area then a condition may be imposed under Section 94F of the EP&A Act requiring that a contribution be paid. Based on the data of unit rentals against the median rent for the Rockdale LGA, the building is still considered a 'low cost residential building' and therefore payment of a contribution is not required.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

The State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (BASIX SEPP) requires all new development applications for BASIX affected buildings to be accompanied by a BASIX Certificate to demonstrate that proposals will meet the NSW State government targets for sustainability, including water, thermal comfort and energy efficiency.

The application is accompanied by a BASIX Certificate, which indicates that the sustainability targets will be met, provided that the development is constructed in accordance with the BASIX commitments specified in the Certificate. A condition would be recommended to ensure the proposal meets the objectives of the SEPP if the proposal is to be approved.

State Environmental Planning Policy (Infrastructure) 2007**Clause 101 - Development with frontage to classified road**

The proposed development is located on land with a frontage to a classified road i.e. Forest 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 proposed development maintains the existing vehicular crossing from Forest Road. A secondary vehicular access also exists at the side in Towers Place. The proposal will intensify the use of the driveway in Forest Road as it is intended to add two car parking spaces within the front setback. The proposal is not for a traffic generating development. As such, the application has been considered in respect to the SEPP and is satisfactory in this regard.

Clause 102 - Impact of road noise or vibration on non-road development,

The proposed development is for the alterations and additions to an existing building that is located on land in or adjacent to a road corridor with an annual average daily traffic volume of 15,483 vehicles (based on the traffic volume data published on the website of the RMS). This does not exceed the required 40,000 vehicles under the SEPP or the 20,000 vehicles under the draft SEPP. Accordingly, Clause 102 - Impact of road noise or vibration on non-road development, is not required to be considered as part of this assessment.

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.

The development proposal involves the removal of trees and vegetation. One significant tree located on the western boundary towards the rear and the street tree are to be retained. Council's Tree Management Officer has recommended appropriate conditions that would be imposed in the draft Notice of Determination. 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 applicant has provided the following assessment of State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55):

"SEPP 55 applies to the site, and seeks to ensure that the site is suitable for the proposed development. The site has been used for many decades for residential purposes, as have the adjoining properties. To this end, it is considered unlikely that the site would be subject to contamination and hence, is suitable for the proposed residential development".

The applicant's position is agreed with. The Council's property information system does not identify the property as being potentially contaminated, and the aerial photos from 1943 show that the property has been continuously used since that time for residential purposes. Based on the site visit and information available for the application, it is concluded that there is no evidence to show that the

property has been used for a use that may have resulted in contamination of the site. Accordingly, the consent authority being the Council can be satisfied that, in accordance with Clause 7 of SEPP 55, the land is suitable for the continued and expanded residential use.

State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development

The proposal relates to an existing house, whose rooms have been converted and partitioned into individual residential units throughout the years without formal consent(s) from the Council. The proposal relies on existing use rights.

Clause 4(b) of State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development (SEPP 65) indicates that the Policy applies to buildings only if they are *at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking) and a building containing 4 or more dwellings*. As such the SEPP and the Apartment Design Guide (ADG) are not applicable.

As established in *Stromness Pty Limited v Woollahra Municipal Council* [2006] NSWLEC 587 at 95, 'to the extent that the SEPP contains any prescriptive requirements, these cannot be applied to derogate from the Applicant's existing use rights. Where an environmental planning instrument can inform the merit assessment to be undertaken under s 79C, then an instrument such as SEPP 65 does apply to assist in the merit assessment of a residential flat building. While I agree that s 108(3) prevents the application of SEPP 65 as a basis for refusing an application relying on existing use rights, its provisions can guide a merit assessment as it is raising matters that should otherwise be considered on a merit assessment of a residential flat building under s 79C no matter where it is located.'

As such a general consideration has been given to a number of the objectives and recommendations contained in the SEPP 65's Apartment Design Guide (ADG) to assist with understanding whether an adequate level of amenity would be achieved to future occupants of the development. The key matters from the ADG are provided in the table below:-

Existing Development

Unit Number	No. Beds	GFA (Applicant's Calculations)	GFA (Council Calculations)	GFA ADG Compliance	POS	POS Compliance	Cross Ventilation	Solar > 2 hours
1	1	55 m ²	52.5m2	Y	47 m ²	Y	Y	N
2	1	35 m ²	35 m2	N (-15m ²)	Nil	NO	Y	N
3	Studio	30 m ²	28.5 m2	N (-6.5m ²)	28 m ²	Y	NO	N
4	1	32 m ²	31 m2	N (-4m ²)	Nil	NO	Y	Y
5	1	48 m ²	46.5 m2	N (-3.5m ²)	26 m ²	Y	Y	N
6	Studio	27 m ²	23 m2	N (-7m ²)	7 m ²	Y	Y	N
7	Studio	16 m ²	16 m2	N (-19m ²)	Nil	NO	Y	N

8	1	35 m ²	33 m ²	N (-17m ²)	45 m ²	Y	NO	Y
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Proposed Addition(s)

Unit Number	No. Beds	GFA (Applicant's Calculations)	GFA (Council Calculations)	GFA ADG Compliance	POS	POS compliance	Cross Ventilation	Solar > 2 hours
9	2	81m ²	81.65m ²	Y	41.1m ²	Y	Y	Y
10	2	67m ²	67.7m ²	Y	8.68m ²	NO	Y	Y

The proposed development would result in seven (7) units of the overall number of units (representing 70%) that would not satisfy the minimum sizes recommended by the ADG. Furthermore, three (3) of these units do not include private open spaces. The private open space for proposed Unit 10 is below the minimum 10 square metre recommended by the ADG. Two (2) tenancies that are undersized and currently benefit from natural cross-ventilation would no longer benefit from natural cross-ventilation and light as a result of the proposed addition to the northern aspect of the existing building.

Concerns have been raised whether the proposal would comply with the provisions of the SEPP for universal design and whether the development would cater for mobility impaired persons. The ADG requires a range of dwelling types that match the demographic diversity of the Bayside Area and are accessible or may be adapted to meet the needs of people who have limited physical mobility. The ADG indicates that at least 20% of the units within a residential flat building should be of Universal Design Housing, designed to meet the needs of the residents as they age. The building does not comply with the objectives of the ADG relating to universal design and adaptability.

Generally, the proposal would be unable to comply with the objectives and intentions of the SEPP 65 and its ADG and being a prohibited land use in the zone, the proposal is not supported for the intentions of a residential flat building.

Rockdale Local Environmental Plan 2011

Relevant clauses	Compliance with objectives	Compliance with standard/provision
2.3 Zone R2 Low Density Residential	No - see discussion	No - see discussion
2.7 Demolition requires consent	Yes	Yes - see discussion
4.3 Height of buildings	No - see discussion	No - see discussion
4.4 Floor space ratio - Residential zones	No - see discussion	No - see discussion
4.6 Exceptions to development standards	Yes - see discussion	No - see discussion
6.1 Acid Sulfate Soil - Class 5	Yes - see discussion	Yes - see discussion
6.2 Earthworks	Yes	Yes - see discussion
6.4 Airspace operations	Yes	Yes - see discussion
6.7 Stormwater	Yes - see discussion	Yes - see discussion

Relevant clauses	Compliance with objectives	Compliance with standard/provision
6.12 Essential services	Yes	Yes - see discussion

2.3 Zone R2 Low Density Residential

The development application is for the alterations and additions to a "residential flat building" (as noted in the submitted Statement of Environmental Effects). The site is located within a R2 - Low Density Residential zone. The existing land use has been characterised as "Residential Flat Buildings", which is listed as a prohibited land use within the zone pursuant to the Rockdale Local Environmental Plan 2011 (Rockdale LEP). The proposed addition is for two dwellings attached to the building with no physical connection to the existing building.

Notwithstanding such prohibition, if "*existing use rights*" can be satisfactorily established for the land affected by the proposed development, then the consent authority may approve a development application, however subject to meeting the relevant requirements applying to existing uses under Sections 4.65 through 4.70 of the Environmental Planning and Assessment Act, 1979 as well as the existing use rights provisions under Part 5 of the Environmental Planning and Assessment Regulation 2000.

The proposal was accompanied by a "Legal Advice" letter prepared by Apex Planning and Environment and dated 26 October 2016 on behalf of the applicant and to enable lodgement of their development proposal. The Legal Advice provided by the applicant concludes as follows:-

"12. In my opinion, it is beyond doubt that the use of the Property for the purpose of flats is an existing use within the meaning of Section 106(a) of the Environmental Planning and Assessment Act 1979 (EPA Act).

13. I am aware that a development application has been prepared and is ready to be lodged with Council ("the DA"). I note that the DA seeks to construct a further two (2) dwellings attached to the building. As stated above, the effect of Section 108 of the EPA Act (and Environmental Planning and Assessment Regulation) is to permit the altering, adding to, or enlargement of an existing use. In my opinion, the Council is empowered to grant consent to the DA should it see fit on the merits."

Section 106 (currently nominated as Section 4.65 under Division 4.11 Existing Use Rights) of the Environmental Planning and Assessment Act 1979 (EPA Act), reads:-

(a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for this Division, have the effect of prohibiting that use, and

(b) the use of a building, work or land:

(i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and

(ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse.

For the continuance and limitation on an existing use, Clause 4.66 of the EP&A Act states:-

(1) Except where expressly provided in this Act, nothing in this Act or an environmental planning instrument prevents the continuance of an existing use.

(2) Nothing in subsection (1) authorises:

(a) any alteration or extension to or rebuilding of a building or work, or

(b) any increase in the area of the use made of a building, work or land from the area actually physically and lawfully used immediately before the coming into operation of the instrument therein mentioned, or

(c) without affecting paragraph (a) or (b), any enlargement or expansion or intensification of an existing use, or

(d) the continuance of the use therein mentioned in breach of any consent in force under this Act in relation to that use or any condition imposed or applicable to that consent or in breach of any condition referred to in section 4.17(1)(b), or

(e) the continuance of the use therein mentioned where that use is abandoned.

Of relevance is Clause 42(2) of the Environmental Planning and Assessment Regulation 2000 as follows:

42 (2) The enlargement, expansion or intensification:

(a) must be for the existing use and for no other use, and

(b) must be carried out only on the land on which the existing use was carried out immediately before the relevant date.

Comment: - Under the Rockdale LEP, Bayside Council is the responsible authority for ensuring that the legal provisions of this instrument are carried out. In this particular case, the alleged existing use, which the applicant and owner are making of the land, is prohibited by law.

Council sought legal advice from its solicitors in relation to the existing use claim only. Following this advice, the applicant was requested to respond to the public submissions as to the alleged use of the property for the purposes of a boarding house.

The relevant statements from the residents are below:

- 'Our understanding is that it is supposed to be a single occupancy dwelling but even casual observation will reveal that in our 37 years living at 123 Forest Road it has always been used as a Boarding House not flats. I have personally known people who have stayed there. Having been in the property on a few occasions, including a viewing prior to being purchased by the previous owner it is a typical Boarding House with small rooms for sleeping and shared amenities.'
- 'In fact an excerpt from advertising material used in the sale of the property in May 2006 reads: "The Gables is presently owner occupied, with the rest being leased out as accommodation rooms, currently returning \$48,800.00 p.a. gross with potential for substantial increase" Note that the current owners purchased the property advertised as being "Owner occupied" with "accommodation rooms" leased out, only since this sale to the current owners in May 2006 has the property been advertised with all bedrooms leased as separate rooms. Also during the sale of the property in May 2006 the property was listed as containing only 7 bedrooms.'
- 'I have a cousin that lived there for a while. We had a look at it when it was for sale (in the early 2000's I think.) prior to the new owner doing repairs and alterations. The home had several bedrooms but shared bathrooms(3) and kitchen facilities and was in need of extensive repairs at that time. It was definitely not configured as flats.'

In the response the applicant's solicitor argues that the plans submitted with the application show self

contained units each containing a bed, kitchen and bathroom. It goes further to cite various case law where the definition of 'boarding house' was tested including: *Mackay v Newcastle City Council* [2007] NSWLEC 377 at [20], *Roberts v Waverley Municipal Council* (1198) 14 NSWLR 423 and *Kamel & C Pty Ltd (as Trustee for Urbanski Property Trust) v Federal Commissioner of Taxation* [2004] ATC 2075 at [26]. In item 6 and 7 of the response and as a summary, the solicitors conclude:

6. In my opinion, the submissions made by the objectors to the DA cannot be sustained in circumstances where the layout of the building did not permit the provision of board and/or meals and each of the "Units" was, and are, self-contained with no common facilities for the occupants apart from the provision of access to each unit. Further, the definition of "dwelling" in the LEP provides that: dwelling means a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile.

Further, a residential flat building is defined in the LEP as:

residential flat building means a building containing 3 or more dwellings, but does not include an attached dwelling or multi dwelling housing.

7. As noted above, the layout of the building on the subject property comprises 8 "units", all of which are self contained and meet the definition of a "dwelling". They are constructed and/or adapted to be used as a separate domicile. In my opinion, it is beyond doubt that the correct and proper categorisation of the building is a "residential flat building".

The applicant has provided extensive documentation to support the existing use rights claim. However, there still exists some doubt as to the appropriate characterisation of any existing use rights and whether such rights have been proved to the required standard. For example, the applicant states that 'each of the "Units" was, and are, self - contained for no common facilities for the occupants apart from the provision of access to each unit'. However, contrary to this point there is historical evidence of there being common facilities (see for example letter dated 25 August 2015 from Margaret Freedman provided by the applicant). There is also no evidence of consent being granted to facilitate the currently existing 8 'units' (including the current self contained facilities), and the evidence also indicates that historically there were only 4 or 6 'units', not 8. In any event, for the reasons outlined elsewhere in this report, even if it were to be accepted that the land does enjoy existing use rights, the proposal is unsatisfactory on its merits. Accordingly, the applicant's onus is not considered to have been discharged at this stage, and in any event it is not considered necessary to conclusively resolve the existing use rights issues at this time.

The proposed development has also been assessed having regards to the relevant provisions of the Rockdale Local Environmental Plan 2011 (RLEP). The subject land is zoned R2 - Low Density Residential under the provisions of RLEP. The objectives of the zone are:-

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

The proposal has been assessed against the planning principles established by the Land and Environment Court in *Fodor Investments Pty Ltd v Hornsby Shire Council* [2005] NSWLEC 7 in relation to existing use rights as follows:

1. How do bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relates to what it is permissible on surrounding sites?
2. What is the relevance of the building in which the existing [use] takes place?
3. What are the impacts on the adjoining land?

4. What is the internal amenity?

The application seeks consent to the construction of two (2) additional units at the northern side of the existing premises. This represents an additional 147.72sq.m. of gross floor area. The proposed addition creates bulk towards the rear of the site by reducing the setbacks from the boundaries, reducing the landscaped area within the site and creating negative impacts on the character of the building as seen from Forest Road by incorporating additional parking. The proposal will have a negative impact on the existing curtilage of the building and will increase the site coverage beyond to what it is predominant is the surrounding low density area.

The bulk and scale of the building extending towards the rear and the proposed setbacks are not compatible with that of surrounding properties. Visual impacts to neighbouring properties, in particular the western neighbour, are significant. The proposal lacks internal amenity to three of the existing dwellings by not providing private open space, seven dwellings do not meet the minimum internal area and one of the new dwellings has an undersized area of private open space. The proposal does not have a communal area and by occupying the rear of the site with the new addition, the proposal will further eliminate any possibility of making improvements to the amenity of existing residents.

It is considered that the proposed development is not of a scale or density compatible with the low density residential environment and does not comply with the objectives of the zone. The proposal is not satisfactory when assessed against the planning principles established by the Land and Environment Court and is not supported.

2.7 Demolition requires consent

The proposed development seeks consent for the demolition of the existing roller door, part of the existing rendered wall to Towers Place and the existing single storey metal shed and awning. The proposal therefore satisfies the provisions of this Clause.

4.3 Height of buildings

The maximum height of the proposed addition is 9.3 metres from the natural ground level and therefore, the proposal exceeds the maximum permissible 8.5 metres height shown for the land in the Height of Buildings Map (Sheet HOB_003) of the RLEP 2011. The variation is 800mm.

The proposed height is not compatible with the scale of the nearby R2 zone and does not allow an appropriate transition in built form and land use intensity. The current proposal does not satisfy the objectives of the height provisions in RLEP 2011 in providing a building height, which is consistent with the desired residential development in the area.

4.4 Floor space ratio - Residential zones

Clause 4.4 of the RLEP aims 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 [area]*. Additionally, the maximum floor space ratio (FSR) for a building is not to exceed the FSR stipulated under the Floor Space Ratio Map (Sheet FSR_003). The FSR required for the zone 0.5:1.

The proposed FSR would be in the order of 0.63:1 and does not comply with the stipulated development standard for R2 zones. The additions present a total gross floor area of approximately 469.19 square metres (including the existing building's floor area) hence a departure of 33% over the development standard stipulated under the RLEP and is not supported.

A detailed and well founded Clause 4.6 "Exceptions to Development Standards" under the RLEP has not been submitted demonstrating compliance with the zone objectives and the objectives of the floor space ratio standard. The applicant argues that 'the FSR development standard in clause 4.4(2) of RLEP would have the effect of derogating from the right to add to the existing use and therefore has no effect.'

It is noted that the existing building only would comply with the FSR standard. It is only with the addition that the proposal exceeds the standard. The addition is not considered to be part of the existing building as it has nil relationship with the existing building other than having the proposed parking spaces for one of the new units in the Forest Road frontage, which can only be accessed via the footpath.

In this regard the additional floor space is not supported as it is not considered to be consistent with the objectives of the FSR control.

4.6 Exceptions to development standards

If it is assumed that the property benefits from existing user rights, as argued by the applicant, clause 4.6 of the RLEP 2011 does not apply. See discussion above in relation to existing use rights.

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 would be required on site for erection of the proposed two (2) storey addition at the northern side of the existing building. The objectives and requirements of Clause 6.2 "Earthworks" 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. Notwithstanding, relevant conditions would be 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 if approval is granted to the proposal.

6.4 Airspace operations

The proposed development is affected by the Obstacle Limitation Surface (OLS), which is set at RL51metres AHD. The proposed addition RL 60.169AHD (as per the submitted architectural plans) and therefore will penetrate the OLS. The application sought approval under the Airports (Protection of Airspace) Regulations 1996, for the potential intrusion of the proposed development into the airspace, which under the regulations, is prescribed airspace for Sydney Airport.

Sydney Airports advised that the application has been referred to CASA for approval a the proposal intercepts the obstacle limitation surface (OLS). At the time of writing this report a response has not yet been received.

6.7 Stormwater

The proposal involves a combined on site detention tank and rainwater tank 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 are currently 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

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 objectives	Compliance with standard/provision
4.1.3 Water 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 - General	No - see discussion	No - see discussion
4.3.1 Open Space and Landscape Design - Residential Flat Buildings	No - see discussion	Yes - see discussion
4.3.2 Private Open Space - Residential Flat Building/Shoptop housing	No - see discussion	No - see discussion
4.3.3 Communal Open Space	No - see discussion	No - see discussion
4.4.2 Solar Access - Residential Flat Buildings and Shop Top Housing	No - see discussion	Yes - see discussion
4.4.3 Natural Lighting and Ventilation - Residential	Yes	Yes - see discussion
4.4.5 Visual privacy	Yes - see discussion	Yes - see discussion
4.4.5 Acoustic privacy	No - see discussion	No - see discussion
4.5.1 Social Equity - Housing Diversity and Choice	No - see discussion	No - see discussion
4.6 Parking Rates Residential Flat Buildings	No - see discussion	No - see discussion
4.6 Car Park Location and Design	No - see discussion	No - see discussion
4.6 Vehicles Enter and Exit in a Forward Direction	Yes - see discussion	Yes - see discussion
4.7 Air Conditioning and Communication Structures	Yes	Yes - see discussion
4.7 Waste Storage and Recycling Facilities	No - see discussion	No - see discussion
4.7 Laundry Facilities and Drying Areas	Yes	Yes - see discussion
5.1 Storey Height and Setbacks - Dwelling house and Attached Dwellings	No - see discussion	No - see discussion
5.2 RFB - Site Coverage	No - see discussion	No - see discussion

4.1.4 Soil Management

The Soil and Water Management Plan has been submitted and general erosion and sediment control strategies are proposed to ensure that the potential for impact on adjoining land and surrounding waterways is minimised.

Temporary fencing is to be erected along the boundaries of the site. A builders all weather access is required to be provided onto the site.

4.2 Streetscape and Site Context - General

The proposal is located in a R2 - Low Density Residential Zone. This clause requires the design of the buildings to be consistent with the dominant character of the area and to respond sensitively to the context.

The following components of a streetscape should be considered to ensure new built elements "fit-in" with the established streetscapes and the character of the area:-

- setbacks,
- materials, colours textures,
- scale of the buildings, height, bulk,
- roof form, pitch,
- landscaping, garden treatments,
- space between buildings, rhythm,
- facades, window placement,
- heritage themes,
- fences, driveways,
- existing street trees,
- balance between solid walls and openings,
- avoid symmetrical design elements.

Comment:- The immediate context is relatively low scale, consisting of single and double storey low density residential development. A characteristic of low density areas is the large setbacks of buildings particularly at the rear. Buildings are generally single storey at the rear. For dwellings and medium density developments, the DCP recommends a rear setback of at least 6m for the first floor level. The proposed addition will reduce the northern setback to 3.0 metres and would break the consistent pattern of open corridors in the low density area and as recommended by the DCP. The proposed development does not create an appropriate transition in built form.

The primary frontage of the overall site is to its southern quadrant facing Forest Road. However, independent entrance off Towers Place has been planned for the proposed addition. The proposed addition will feature a front setback of 2.3 metres to Towers Place. The adjacent development to the north (being No. 2 Towers Place) has a front setback, which varies from approximately 3.6 to 4.5 metres to the boundary. The proposed front setback of 2.3m including the first floor component is not compatible with the setback of the adjoining building and those on the opposite side of Towers Place, whose average front setback is at least 6 metres.

In addition to the above, the proposal is utilising the front setback and front curtilage of the existing building for carparking. The existing limited concrete area on the Forest Road frontage will be significantly increased to allow maneuvering of vehicles and the addition of two carparking spaces. The existing carparking space will be relocated behind the building line reducing the landscaped area further. Refer to figures below. One of the carparking spaces is to be provided for one of the new units at the rear, which is not practical as there is no access to the carparking space from within the property. The provision of additional parking at the front is to the detriment of the existing attributes of the streetscape and is not supported.

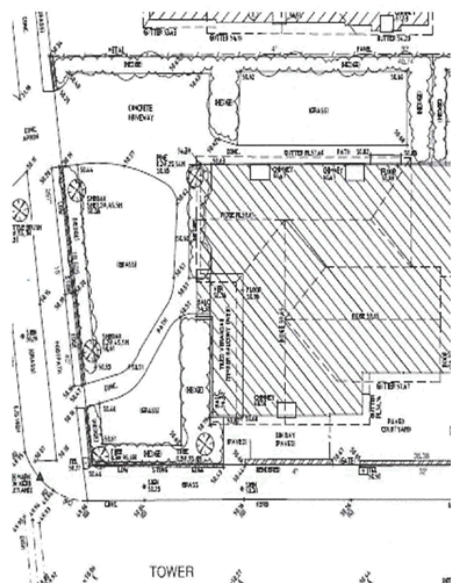


Figure 4 - Existing front landscaped area.
Source: Survey Plan Norton Survey Partners

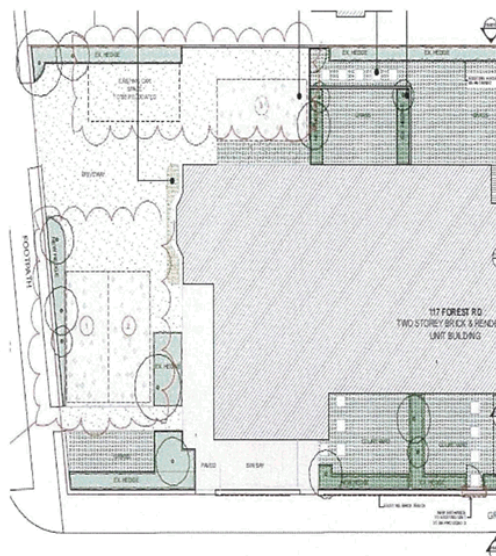


Figure 5 - Proposed front landscaped area
Source: Landscape Plan BKA Architecture

The proposed addition will not have a front door/living room/kitchen window addressing the street, with the building's frontage and entry points not being readily apparent from the street.

Consequently, considering the proposed density and scale of the development, the overall building

design is not consistent with nor it enhances the character and amenity of the local area. The proposed addition will re enforce a non conforming use in perpetuity. The overall proposal does not have regard for the low density environmental characteristics and constitutes an over development of the site.

The proposed development has been designed with appropriate use of articulation and modulation to the facades via the incorporation of balconies, pedestrian entries at ground level, upper level voids and a range of materials, which may add visual interest to the facades although not responsive to the intensity and scale of development in the area.

4.3.1 Open Space and Landscape Design - Residential Flat Buildings

The proposal complies with the minimum 15% landscaped area required under this clause. However, the proposal compromises the existing front setback, which is an important feature of the site with the addition of three carparking spaces. The use of the existing front garden for parking and the proposed rear addition compromise the streetscape and the environmental amenity. The proposal removes the existing landscaping corridor characteristic of low density areas and as recommended by the DCP (refer to diagram below). The proposal is not consistent with the objectives of this clause.

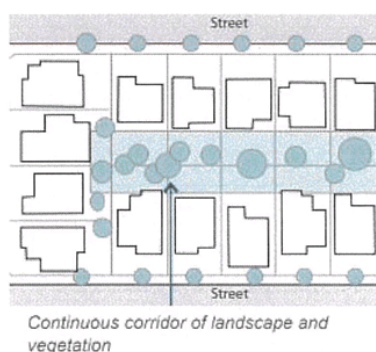


Figure 6 - DCP landscaping provision for low density areas

4.3.2 Private Open Space - Residential Flat Building/Shoptop housing

Private open space areas should be of dimensions to suit the projected requirements of the house occupants and to accommodate outdoor recreation needs. The premises have been extensively modified in an unregulated manner since the rooms of a house has been converted into individual occupancies.

The Rockdale Development Control Plan 2011 adopts the private open space provisions of the SEPP 65's ADG. As stated previously, three of the units (existing) do not have a designated private open space and the private open space of the new dwelling is undersised. The proposal does not comply with this clause.

4.3.3 Communal Open Space

This clause requires a communal area at the rate of 5sq.m. per dwellings for residential flat buildings (RFBs) containing 12 or more dwellings. For RFBs with less than 12 dwellings, an equivalent area of private open space is to be provided to each unit. The proposed extension removes the only area that could have been used for communal use with the potential to improve the amenity of residents. Further three units do not have any private open space. The proposal does not contribute to social interaction and recreational opportunities for the residents and is not consistent with the objectives of this clause.

As such the proposal is not supported in this regard.

4.4.2 Solar Access - Residential Flat Buildings and Shop Top Housing

The objectives of the solar access provision within the Rockdale DCP is to ensure that reasonable solar access to living areas within dwellings and to open space around dwellings is achieved. Rooms generally used during the daytime should be capable of receiving adequate sunlight. Dwelling-houses should not unreasonably obscure sunlight to habitable rooms, solar collectors or open space of adjoining development during the winter months.

The proposal seeks to locate the two (2) storey addition attached to the northern wall of the existing building. The addition will block three (3) windows currently located at the northern aspect of the existing building, which provide natural ventilation and sunlight to a bathroom, kitchen and a bedroom. Additionally, the private open space will be affected in terms of solar access by the positioning of this addition and the dividing fence, whose shadows cast towards the south onto the yard. The open space at the northern side will not be able to receive adequate solar access in winter time.

Whilst the proposal complies with the numerical controls in regard to impacts on neighbouring buildings and units within the site (if taking into account the total number of units), the proposed extension impacts on the amenity of existing Units 3 and 8 and as such the proposed extension is not consistent with one of the objectives of the clause and is not supported in this instance.

4.4.3 Natural Lighting and Ventilation - Residential

The proposed development has been designed to achieved natural ventilation and lighting, incorporating minimum ceiling heights of 2.7 metres to the ground and first floors. The majority of the units enjoy cross ventilation. However, the proposal results in the reduction of light and ventilation of Units 3 and 8 as previously discussed.

4.4.5 Visual privacy

The proposed development has been generally designed and sited to minimise the overlooking of adjoining properties. The proposed deck in the new ground floor unit is elevated and in close proximity to the rear boundary, including the retention of the existing tree. The level of the deck must be reduced and landscaping should be planted along the boundaries. Subject to these requirements, the proposal is satisfactory in regard to privacy impacts.

4.4.5 Acoustic privacy

An acoustic report has been submitted. The report does not address compliance with this clause in regard to acoustic insulation of floors for the proposed extension. A condition of consent would be required to achieve compliance with this control and the objectives of the clause.

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 fails in the following controls:

- No three bedroom apartments are proposed.
- No adaptable unit is proposed.

The proposal is therefore not considered to satisfy the requirements of Part 4.5 of RDCP 2011.

4.6 Parking Rates Residential Flat Buildings

Council requires that parking for residential flat buildings be provided as follows:-

- 10 spaces for the residential component, plus
- 2 spaces for the visitors, plus
- 1 space for a bicycle, plus
- 1 space for motorcycle

Concil's DCP allows consideration of the historical parking deficiency on the site when alterations and additions are proposed. There is one carparking space on site. However, it is noted that the site has a layback on the Towers Place frontage and a roller door, which previously lead to a garage. Therefore there was vehicular access to the site in the past and the possibility to improve the current situation by providing car parking spaces at the rear. The number of carparking spaces that the rear area accommodated was one. It is estimated that at least four (4) car parking spaces may be able to be accommodated on site at the rear. The existing building generates a demand of 8 carparking spaces, two visitor spaces, one bicycle and one motorcycle space. With the proposed addition, the proposal would be required to provide two additional parking spaces (for the new dwellings) and one visitor space. Considering the historical deficiency, the proposal would be required to provide two (2) car spaces for the new dwellings, one space for the existing building and one (1) visitor space. A total of 4 spaces.

The proposal provides four (4) car parking spaces to serve the development, positioned at the frontage and rear of the development site. The proposed addition would remove the possibility of additional parking at the rear of the site. There is no physical connection within the site between the car parking space that would be allocated to one of the new units and the unit itself. The proposed arrangement of utilising the public footpath is not practical nor is it appropriate. In addition, the proposed parking in the front setback significantly reduces landscape planting and the two spaces are not supported as discussed previously.

The location of the site offers significant constraints having frontage to a state road with clearway restrictions and to Towers Place, which is very narrow and on a dead end. A site inspection and the submissions by the residents, confirm that on street parking is limited. On the site inspection several cars were found parked in the footpath. The proposal does not cater for sufficient and convenient parking required for a "residential flat building" development in this context and the proposal is not consistent with the requirements and objectives of this clause.

4.6 Car Park Location and Design

According to this clause, proposals should provide vehicular access to buildings that is simple, safe and direct and also that maintains the amenity of the adjoining properties. The design and location of the garages and car parking spaces should not adversely affect the integrity of the building and its setting and/or the character of the area. Car parking should be provided behind the building line so as to avoid impacts on the streetscape's visual amenity.

The site provides space for four (4) car parking spaces, two (2) spaces accommodated within the front setback, one (1) space located on the western side of the building (behind the front building line) and one (1) space accommodated along the north-eastern boundary of the site with access via Towers Place.

The proposed location of the parking area in front of the building line has a negative impact on the streetscape and the existing setting of the building. The loss of private open space on the western side of the building to accommodate the carparking space is not appropriate. Further, one of the proposed units at the rear does not have convenient and safe access to the parking area with access from Forest Road. In this regard the proposal is contrary to the objectives of this clause and is not supported.

4.6 Vehicles Enter and Exit in a Forward Direction

The main vehicular entry to the site is via Forest Road and will remain unchanged. A new vehicular crossing is proposed via Towers Place, which will provide vehicular access to a single car parking space (nominated as Space 4). Council's engineer has reviewed the parking layout and raised no issues. The proposal complies with this clause.

4.7 Air Conditioning and Communication Structures

Plans do not depict the location of proposed residential air conditioning units on site. Accordingly, a condition may be imposed on the draft Notice of Determination requiring air conditioning units to be obscured from public view should they be provided if approval is granted to the proposal.

4.7 Waste Storage and Recycling Facilities

The aims of the waste minimisation and management requirements under the Rockdale DCP is to ensure that waste storage and recycling facilities are of appropriate size, location, design and construction. Waste disposal collection points should not compromise the amenity of the adjacent properties in terms of noise, odour and aesthetic impacts.

A Waste Management Plan has been submitted. Details of the waste management for the existing building have not been stated. The plans show a garbage area within the front setback of the proposed extension. This area is not linked to the existing building so it seems to benefit only the two new units. Details of the structure is unknown. Impacts on the streetscape is likely. Based on the information provided, the proposal is not considered to have addressed this clause appropriately and is not supported in this instance.

4.7 Laundry Facilities and Drying Areas

Plans illustrate the provision of internal laundry facilities within the units. The provisions of this clause have been satisfied.

5.1 Storey Height and Setbacks - Dwelling house and Attached Dwellings

This clause has been used as a guide to indicate what the planning controls stipulate in regard to setbacks of buildings in a low density residential zone. Council's Development Control Plan stipulates a 3 metre rear setback provided for the ground level component to be increased to 6 metres for the upper storey. The DCP also refers to the predominant front setback within the street to determinate an appropriate front setback for new buildings. Further the DCP encourages first floor levels to be setback from the street to minimise the bulk of buildings in low density residential zones.

The proposal would not achieve the prescriptive measures stipulated for rear and front setbacks under the Rockdale DCP. It is also considered that the proposal would reduce the level of landscaping and would not protect the visual amenity of the properties at the north and western quadrant. The reduced 2.3m front setback of the proposed extension is uncharacteristic of Towers Place, in particular recent dwellings constructed on the opposite side. The proposal is not considered satisfactory regarding setbacks.

5.2 RFB - Site Coverage

Under this clause, the building footprint for residential flat buildings should not exceed 35% of the site area. The proposed building footprint has been calculated as 45% of the site area. Given the site location in a low density zone, the proposed building footprint is not considered appropriate. Further as previously discussed in this report, the lack of communal space and provision of private open space for some dwellings is not supported. Rather than increasing the intensity of the site and building footprint, the proposal should have regard to improving the amenity of existing residents by providing better facilities within the site.

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. The proposal involves the demolition of some elements of the existing building. Council's building surveyor has assessed the fire safety considerations under the BCA and advised that the building is a Class 2 building of Type B construction. Additional measures will be required during construction to achieve compliance with the BCA.

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 relevant planning controls. The impacts that have not already been addressed are as follows:

Social Impact

Whilst strata subdivision is not part of the proposal, the legitimisation of the existing use and its further intensification will maintain in perpetuity a non conforming use not in accordance with Council's policies and the environmental capacity of the land as envisaged by current planning policies for a low density residential area. It is likely that this building will be lost in the future to the low cost market creating a void in the Rockdale affordable housing stock. The existing building does not provide adequate facilities to all its residents such as private open space and/or areas to socialise. Further the parking is not sufficient for the intensity of development. The proposed addition further exacerbates this issue by developing the rear of the site as a separate entity, which would otherwise be used for parking or as a recreation area for the residents.

Heritage Impact

The property is not listed in Schedule 5 - Heritage of Rockdale Local Environmental Plan 2011. However Council's heritage advisor has reviewed the proposal and advised that 'the property has heritage value as an excellent example of a late 19th century Federation two storey dwelling house. It has rarity in Bayside West as a surviving late 19th century brick building with its upper walls fully clad in timber shingles. The property has historical value by providing physical evidence of the historical development of Arncliffe at the end of the 19th Century and prior to the Towers Estate subdivision of 1911. The property has potential local heritage value.'

The applicant provided a Statement from 'Heritage and Environmental Design' which concludes that

'the proposed new building will have minimal adverse impact on the aesthetic significance of "The Gables" and the surrounding streetscape.'

Council's heritage advisor has advised that the documents do not meet the standards for heritage impact assessment or heritage management documents as they do not include an assessment of heritage significance. Heritage significance needs to be assessed and clearly defined in order to determine the impact of development upon heritage significance. As the property is not heritage listed there is no statutory requirement to provide a heritage impact statement.

Based on this, Council's heritage advisor has no objection to the proposed addition.

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 is acceptable in regard to safety and security.

Construction

The proposed extension is to be constructed in timber cladding and colorbond roof. There are no specific issues relating to the BCA in the proposed design. Conditions of consent would be necessary to ensure minimal impacts to the surrounding properties and soil and water management measures are in place during construction.

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. The applicant claims that site is subject to the existing use rights provisions of the EP&A Act and Regulation. The land is already at its capacity and further intensification of the non conforming use is not considered appropriate in this instance. The site is not suitable for the development as proposed.

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

The proposed development was placed on exhibition and was notified to adjoining and nearby landowners between 12 December 2016 and 13 January 2017 in accordance with Part 8 of the Rockdale DCP. Seven (7) public submissions were received, objecting the development application. The objections are noted below as follows:-

Issue: The proposal relates to a "boarding house" not to a "residential flat building"

Comment: The applicant has submitted information to support their claim that the existing building enjoys existing use rights as a residential flat building and not a boarding house.

Issue: "Flat buildings" are prohibited in low density residential areas and should not be accepted as "existing usage"

Comment: This issue has been addressed in the report

Issue: The proposed additions bear no resemblance to the existing dwelling at No. 117 Forest Road

Comment: The plans have been amended. The existing building is not listed as a heritage item. Nevertheless it is recognised as having some heritage value as an excellent example of a late 19th

century Federation two storey dwelling house. Council's heritage advisor has assessed the proposed additions and raised no objection on heritage grounds.

Issue: The development does not cater for mobility impaired persons

Comment: This issue is valid and has been highlighted in the assessment of the report as a non compliance matter.

Issue: Towers Place is very congested -parking wise. Some residents tend to park onto the footpath illegally.

Comment: Noted. The proposal is not considered to be appropriate on parking grounds as previously stated in this report.

Issue: Inadequate parking provided in the site.

Comment: As above.

Issue: Inadequate private open space provided in the site.

Comment: This issue has been identified in the assessment and addressed previously in this report.

Issue: Excessive floor space ratio

Comment: Refer to comments in the report under CI 4.4 of RLEP assessment.

Issue: Visual amenity and privacy.

Comment: The proposed bulk and setbacks are uncharacteristic of the area however, the proposal is not considered to be unreasonable in regard to privacy impacts as discussed in the report.

Issue: Noise pollution.

Comment: The proposal is unlikely to generate unreasonable noise impacts to neighbours.

Issue: The proposed design does not respond with the surrounding properties.

Comment: The streetscape issue has been previously addressed in this report and is was found to be unacceptable.

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

The proposed development seeks to legitimise and extend an existing use, which is prohibited in the zone. Recent case law (*Saffioti v Kiama Municipal* [2017] NSWLEC 65) has established that DCP provisions are relevant to the assessment of an application relying on existing use rights. Whilst the proposed retention of the existing heritage significant building is commended, the proposal fails when assessed against provisions of the DCP in regard to setbacks, bulk and scale, streetscape, site coverage, landscaped area and car parking as stated in this report. Based on this and the submissions lodged, it is considered that the proposed development is not in the public interest.

S7.11 Contribution towards provision or improvement of amenities or services

A Section 7.11 Contribution Payment is payable in accordance with Council's Policy should this development application be approved.

DEVELOPMENT APPLICATION

ALTERATIONS & ADDITIONS TO EXISTING RESIDENTIAL FLAT BUILDING

117 Forest Road Arncliffe NSW 2205
 Lot B DP 362957

ARCHITECTURAL DRAWINGS

	ID	REVISION_ SHEET TITLE	SCALE		
000 GENERAL					
	DA-000-000	G_COVER PAGE / LOCATION PLAN	N.T.S.	Ⓢ	A3
100 Site Plans					
	DA-100-001	E_SITE ANALYSIS PLAN	1:200	Ⓢ	A3
110 GA Plans					
	DA-110-000	G_GROUND FLOOR PLAN	1:100	Ⓢ	A3
	DA-110-001	F_LEVEL 01 PLAN	1:100	Ⓢ	A3
	DA-110-002	F_ROOF PLAN	1:100	Ⓢ	A3
	DA-110-003	C_ATTIC PLAN	1:100	Ⓢ	A3
210 GA Elevation					
	DA-210-001	G_EAST & WEST ELEVATIONS	1:100	Ⓢ	A3
	DA-210-002	G_NORTH & SOUTH ELEVATIONS	1:100	Ⓢ	A3
310 GA Sections					
	DA-310-001	F_SECTIONS	1:100	Ⓢ	A3
720 Shadow Diagrams					
	DA-720-001	E_PROPOSED WINTER SHADOW DIAGRAMS	1:200	Ⓢ	A3
	DA-720-002	E_PROPOSED EQUINOX SHADOW DIAGRAMS	1:200	Ⓢ	A3
	DA-720-003	E_SOLAR ACCESS AXONOMETRY	N.T.S.	Ⓢ	A3
810 Supplementary Drawings					
	DA-810-001	F_CONTEXT DRAWINGS _ GROUND FLOOR	1:150	Ⓢ	A3
	DA-810-002	G_CONTEXT DRAWINGS _ LEVEL1	1:150	Ⓢ	A3
	DA-810-003	F_CONTEXT DRAWINGS _ STREETScape	1:150	Ⓢ	A3
	DA-810-004	C_CONTEXT DRAWINGS _ ATTIC	1:150	Ⓢ	A3
900 3D VIEWS					
	DA-900-001	F_COLOUR & MATERIAL BOARD	N.T.S.	Ⓢ	A3

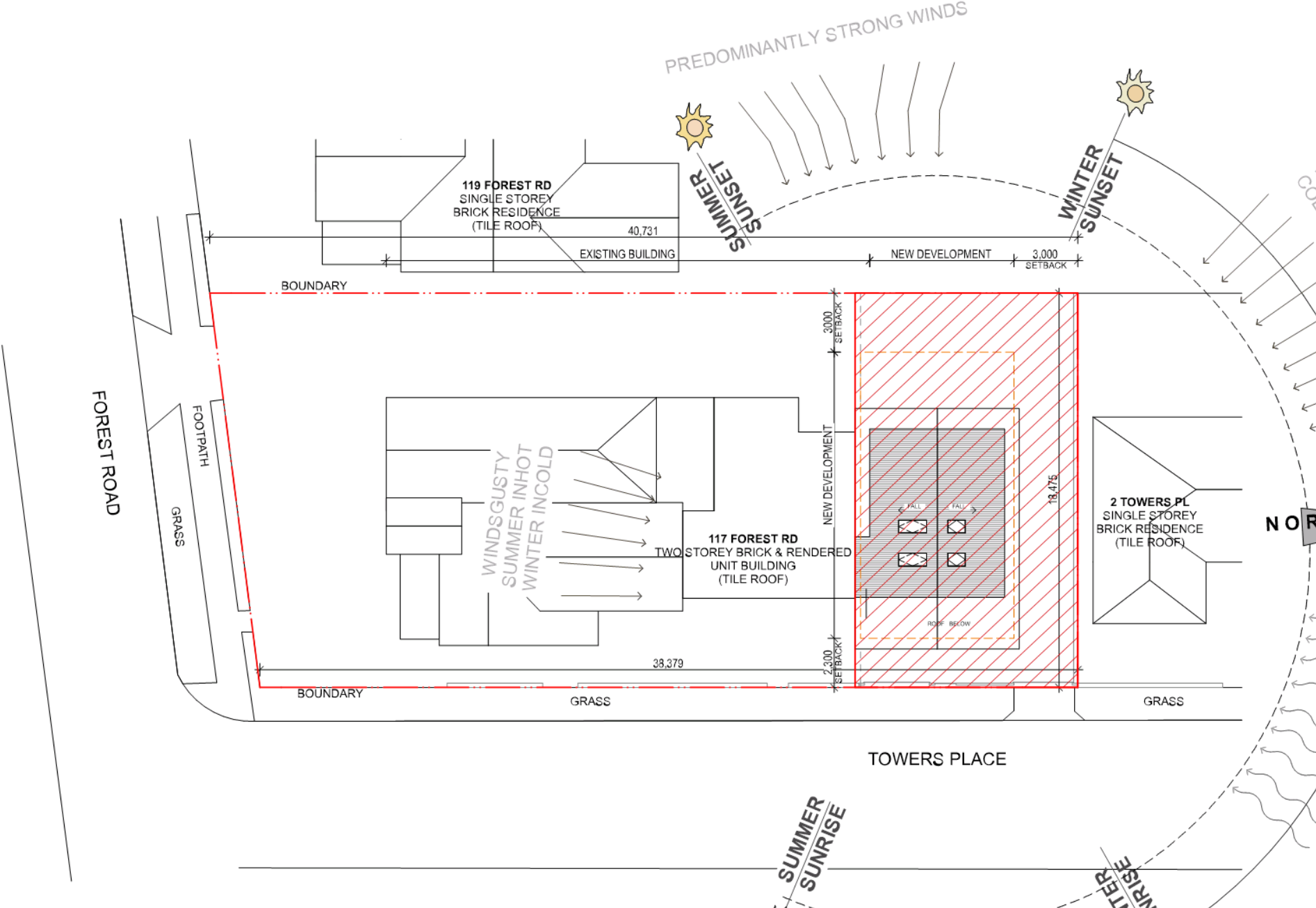


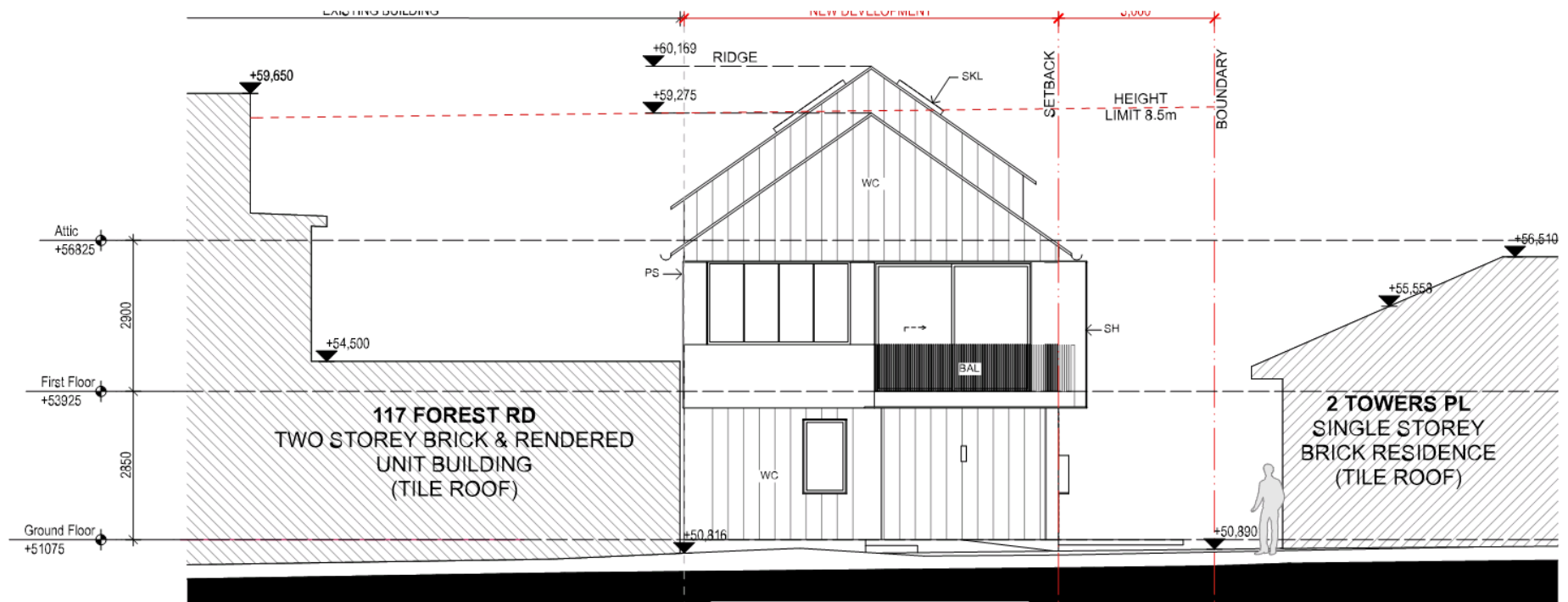
LOCATION PLAN



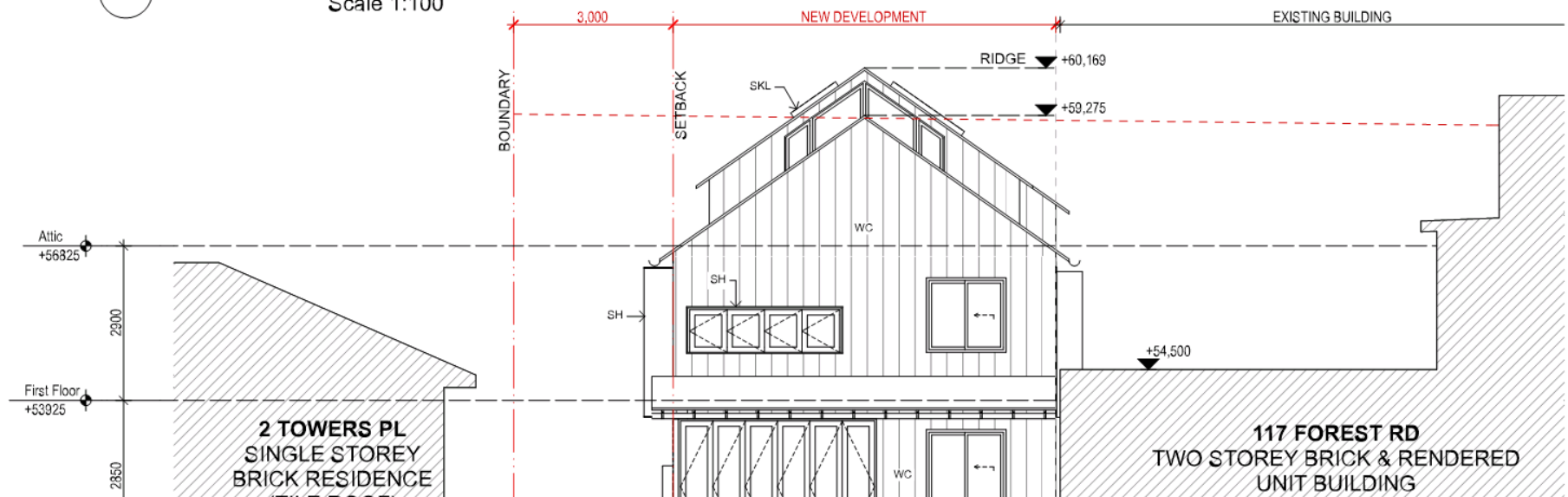
CALCULATIONS

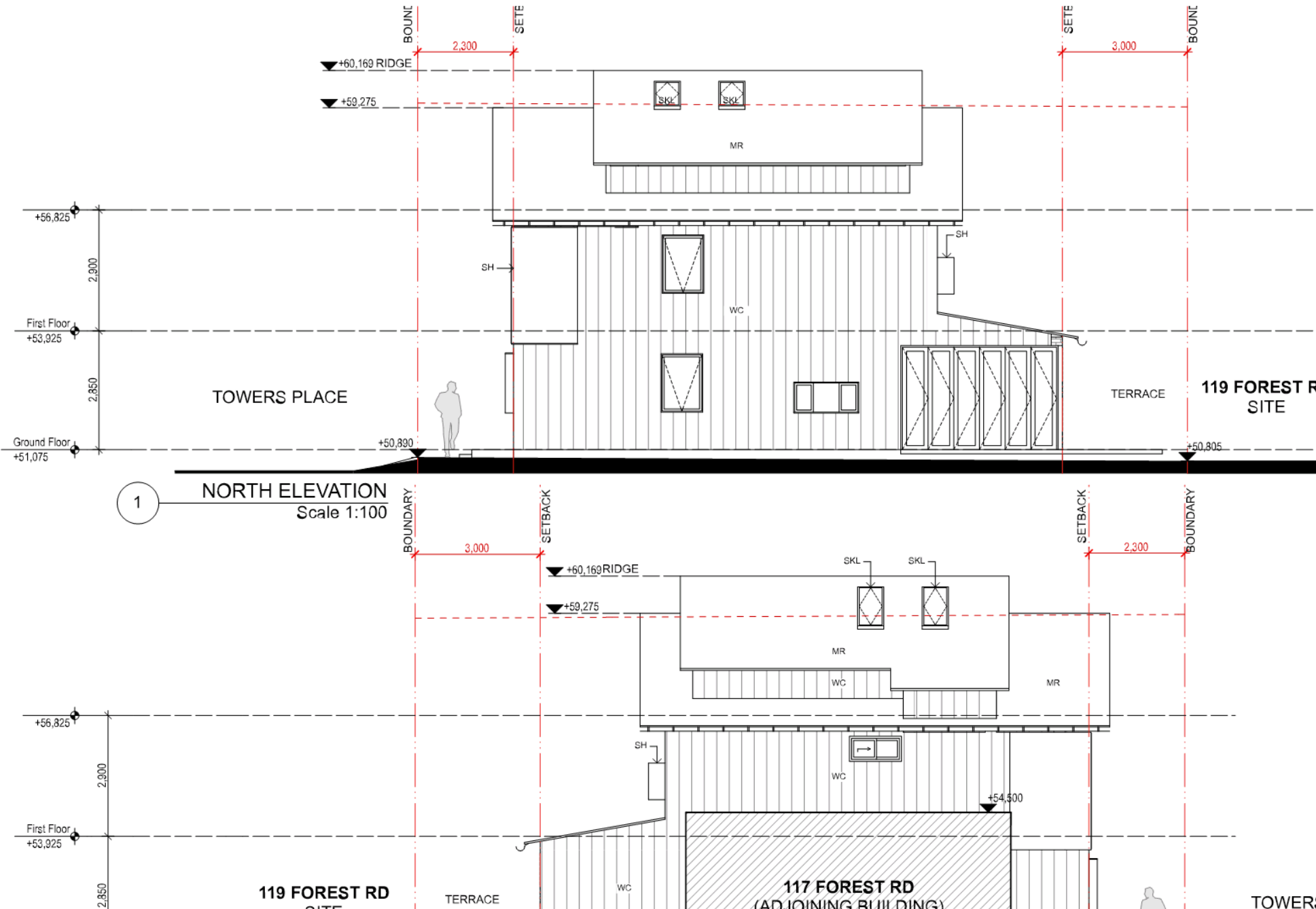
SITE AREA	730.8 sq.m	
	PERMISSIBLE	PROPOSED
RANDWICK LEP 2012		
FSR	0.5:1	0.63:1 (EXISTING 316.47 m²)
HEIGHT	MAX 8.5m	

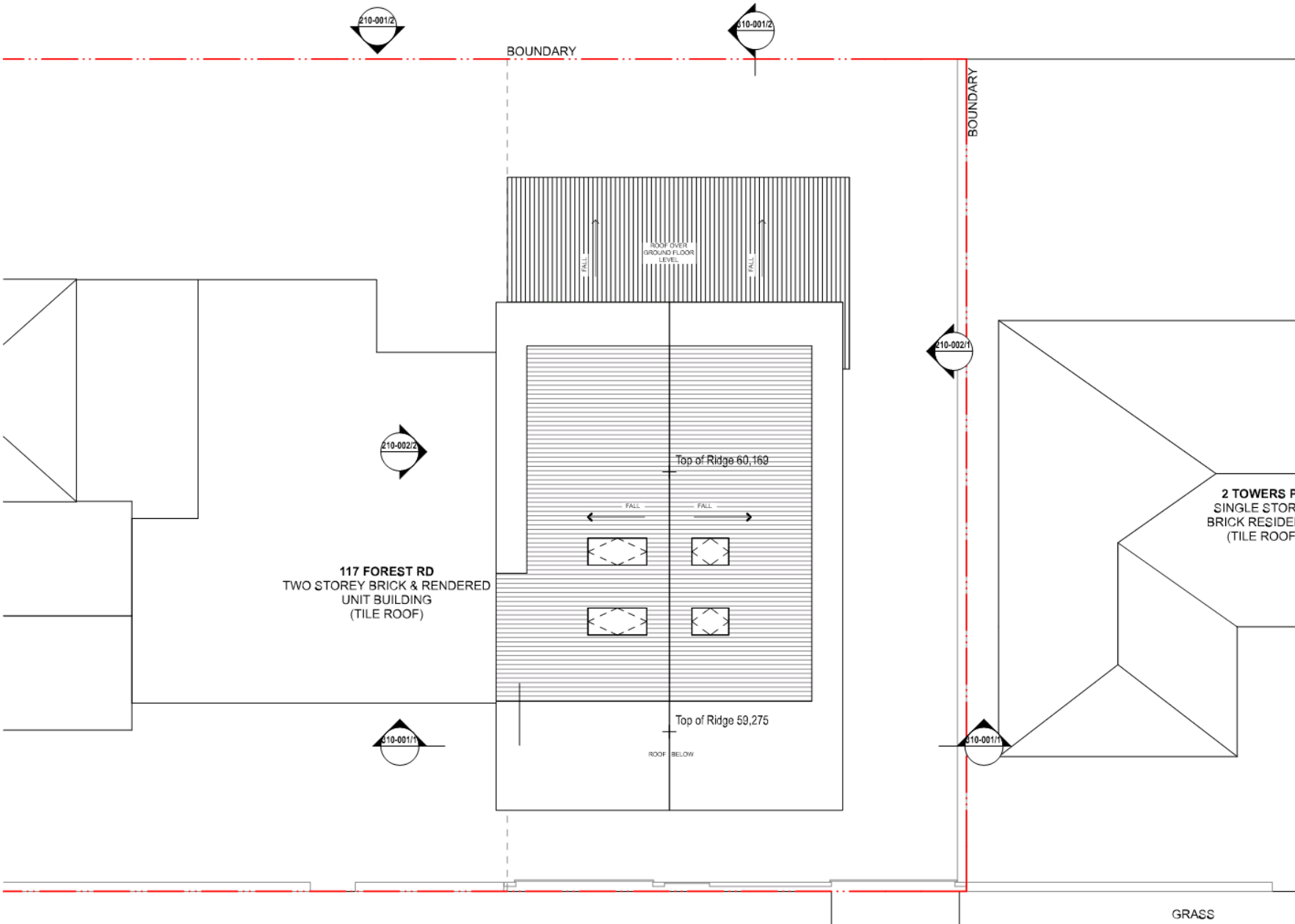




1 EAST ELEVATION
Scale 1:100







Bayside Local Planning Panel

13/11/2018

Item No	6.4
Application Type	Development Application
Application No	DA-2018/138
Lodgement Date	29/05/2018
Property	DA-2018/138 - 104 Caroline Street, Kingsgrove
Ward	Rockdale
Owner	Golden Harbour Investment Pty Ltd
Applicant	Chuan Jiang He
Proposal	To demolish the existing structures and construct a child care centre with capacity for 133 children operating Monday to Friday 7:00am to 6:00pm with basement car parking.
No. of Submissions	Forty-six (46)
Cost of Development	\$1,782,969.00
Report by	Michael McCabe, Director of City Futures

Officer Recommendation

- 1 That Development Application No.2018/138 for demolition of the existing structures and construction of a child care centre with capacity for 133 children operating Monday to Friday 7:00am to 6:00pm with basement car parking be **REFUSED** pursuant to Section 4.16(1)(b) of the Environmental Planning and Assessment Act 1979 for the following reasons:
 - a. 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 and conflicting information has been provided by the applicant to enable a proper and thorough assessment of the proposed development.
 - b. The proposed development, pursuant to the provisions of Section 4.15(1)(a)(i) and Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, is of a design, form and bulk and scale that is unsatisfactory with respect to the low density residential streetscape and site context of which the property is located within. Consequently, the proposal is inconsistent with the objectives of the R2 Low Density Residential zone within Rockdale LEP 2011, the objectives of Part 4.2 Streetscape and Site Context of Rockdale DCP 2011 and Part 3.3 Building Orientation, Envelope and Design within the Child Care Planning Guideline.
 - c. The proposed development, pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, is inconsistent with the provisions of the Education and Care Services National Regulations specifically in relation to the design of the outdoor play areas, supervision, natural light and ventilation and the provision of an emergency and evacuation plan.
 - d. The proposed development, pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, does not comply with the

nondiscretionary minimum outdoor play space development standards within Clause 25(b) of State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017.

- e. Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is unsatisfactory with respect to Part 3 of the Child Care Planning Guideline as it relates to local character and streetscape, building orientation, envelope and design, visual and acoustic privacy and traffic, parking and pedestrian circulation.
- f. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development does not comply with the Floor Space Ratio development standard within Clause 4.4 of the Rockdale Local Environmental Plan 2011. The consent authority is not in a position to grant consent to the development because no request pursuant to Clause 4.6 of the Rockdale Local Environmental Plan 2011 to vary the floor space ratio development standard in Clause 4.4 of the Rockdale Local Environmental Plan 2011 has been submitted.
- g. Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not meet the objectives of the Rockdale Development Control Plan 2011 including: Part 4.2 Streetscape
 - a. and Site Context, Part 4.4.6 Noise impact non-residential, Part 4.5.2 Social equity equitable access, Part 4.6 Parking Rates Child care centres, Part 4.6 Car park location and design and Part 6.1 Child Care Centres in respect of building design, visual and acoustic impact, indoor and outdoor space and parking and pedestrian access.
- h. Pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development is excessive in terms of bulk, scale and proposed capacity and would adversely impact upon the amenity of the locality.
- i. Pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development is unsatisfactory as it fails to demonstrate acceptable disposal of stormwater from the subject land in accordance with Section 6 of Rockdale Technical Specification Stormwater management.
- j. The proposed development, pursuant to the provisions of Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, is not considered suitable for the site, in view of the proposed intensity of development and the likely adverse impacts upon the streetscape and the amenity of surrounding properties.
- k. Having regard to the issues raised in submissions received by Council in opposition to the proposed development, pursuant to the provisions of Section 4.15(1)(d) of the Environmental Planning and Assessment Act 1979, the proposal results in unacceptable impacts on adjoining /nearby properties.
- l. Pursuant to the provisions of Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, and in consideration of the impacts and submissions made, the proposed development is not considered to be in the public interest

2 That the objector's be advised of the Bayside Local Planning Panel's determination.

Location Plan



Attachments

- 1 Planning Assessment Report [↓](#)
- 2 Site Plan [↓](#)
- 3 Basement Floor Plan [↓](#)
- 4 Ground Floor Plan [↓](#)
- 5 First Floor Plan [↓](#)
- 6 Roof Plan [↓](#)
- 7 Elevations [↓](#)
- 8 Sections [↓](#)

BAYSIDE COUNCIL

Planning Assessment Report

Application Details

Application Number:	DA-2018/138
Date of Receipt:	29 May 2018
Property:	104 Caroline Street, KINGSGROVE (Lot A DP 361159), (Lot B DP 361159)
Owner(s):	Golden Harbour Investment Pty Ltd HTH Investments Pty Ltd
Applicant:	Mr Chuan Jiang He
Proposal:	Demolition of existing structures and construction of a child care centre with capacity for 133 children operating Monday to Friday 7:00am to 6:00pm with basement carpark
Recommendation:	Refused
No. of submissions:	46
Author:	Patrick Nash
Date of Report:	29 October 2018

Key Issues

The key issues identified in this proposal relate to:

- Calculations of the outdoor play areas are inconsistent with Clause 108 of the Education and Care Services National Regulations. As a result, the proposal does not comply with the non-discretionary minimum outdoor play space development standards within State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017;
- Unsatisfactory configuration of indoor and outdoor spaces which are inconsistent with the Child Care Planning Guidelines and Rockdale DCP 2011;
- Non-compliance with the floor space ratio development standard in Clause 4.4 of Rockdale LEP 2011;
- The scale of the development is unsatisfactory with respect to the low density residential streetscape and site context of which the property is positioned within;
- Traffic, parking and pedestrian circulation within the basement parking is unresolved and presents an unsafe conflict between cars and users of the centre;
- Non-conformity with equitable access requirements;
- Amenity impacts upon neighbouring residential properties with respect to acoustic privacy and visual bulk and scale; and
- Inconsistent, insufficient and conflicting information presented in the architectural drawings and other supporting information.

Recommendation

A. That Development Application No.2018/138 for demolition of the existing structures and construction of a child care centre with capacity for 133 children operating Monday to Friday 7:00am to 6:00pm with basement car parking be **REFUSED** pursuant to Section 4.16(1)(b) of the Environmental Planning and Assessment Act 1979 for the following reasons:

1. 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 and conflicting information has been provided by the applicant to enable a proper and thorough assessment of the proposed development.
2. The proposed development, pursuant to the provisions of Section 4.15(1)(a)(i) and Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, is of a design, form and bulk and scale that is unsatisfactory with respect to the low density residential streetscape and site context of which the property is located within. Consequently, the proposal is inconsistent with the objectives of the R2 - Low Density Residential zone within Rockdale LEP 2011, the objectives of Part 4.2 Streetscape and Site Context of Rockdale DCP 2011 and Part 3.3 - Building Orientation, Envelope and Design within the Child Care Planning Guideline.
3. The proposed development, pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, is inconsistent with the provisions of the Education and Care Services National Regulations specifically in relation to the design of the outdoor play areas, supervision, natural light and ventilation and the provision of an emergency and evacuation plan.
4. The proposed development, pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, does not comply with the non-discretionary minimum outdoor play space development standards within Clause 25(b) of State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017.
5. Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is unsatisfactory with respect to Part 3 of the Child Care Planning Guideline as it relates to local character and streetscape, building orientation, envelope and design, visual and acoustic privacy and traffic, parking and pedestrian circulation.
6. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development does not comply with the Floor Space Ratio development standard within Clause 4.4 of the Rockdale Local Environmental Plan 2011. The consent authority is not in a position to grant consent to the development because no request pursuant to Clause 4.6 of the Rockdale Local Environmental Plan 2011 to vary the floor space ratio development standard in Clause 4.4 of the Rockdale Local Environmental Plan 2011 has been submitted.
7. Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not meet the objectives of the Rockdale Development Control Plan 2011 including: Part 4.2 - Streetscape and Site Context, Part 4.4.6 - Noise impact - non residential, Part 4.5.2 - Social equity - equitable access, Part 4.6 - Parking Rates - Child care centres, Part 4.6 - Car park location and design and Part 6.1 - Child Care Centres in respect of building design,

visual and acoustic impact, indoor and outdoor space and parking and pedestrian access.

8. Pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development is excessive in terms of bulk, scale and proposed capacity and would adversely impact upon the amenity of the locality.

9. Pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development is unsatisfactory as it fails to demonstrate acceptable disposal of stormwater from the subject land in accordance with Section 6 of Rockdale Technical Specification Stormwater management.

10. The proposed development, pursuant to the provisions of Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, is not considered suitable for the site, in view of the proposed intensity of development and the likely adverse impacts upon the streetscape and the amenity of surrounding properties.

11. Having regard to the issues raised in submissions received by Council in opposition to the proposed development, pursuant to the provisions of Section 4.15(1)(d) of the Environmental Planning and Assessment Act 1979, the proposal results in unacceptable impacts on adjoining /nearby properties.

12. Pursuant to the provisions of Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, and in consideration of the impacts and submissions made, the proposed development is not considered to be in the public interest.

B. That the objectors be advised of the Bayside Local Planning Panel's determination.

Background

History

Pre-DA - 2018/1

Pre-DA advice was issued on 15 February 2018 concerning a proposal for a new two storey childcare centre with basement car park accommodating a total of 100 children. In summary, the advice issued to the applicant raised particular concerns relating to the design and appearance of the development with respect to the existing and future residential context, the proposed building length, roof form, lack of articulation, colours and materials, overshadowing and compliance with the Child Care Planning Guideline.

Subject Application: DA-2018/138

- 29 May 2018 - The subject DA was submitted to Council.
- 5 June 2018 - The application was placed on neighbour notification for 14 days. A total of 46 submissions were received.
- 5 September 2018 - The application was considered at the Bayside Traffic Development Advisory Committee.
- 12 October 2018 - A letter was sent to the applicant outlining various concerns relating to:

Streetscape, bulk and scale, design of the outdoor play areas, non-compliance with the FSR development standard, unsatisfactory design of car parking facilities, floor to floor heights, insufficient information in respect of environmental health and inconsistencies/poorly documented architectural drawings. Council advised the applicant that it is of the view that the design concerns raised are fundamental to the proposal and the application cannot be supported. The applicant was offered the opportunity to withdraw the DA.

- 24 October 2018 - Council had a meeting with the applicant to discuss the contents of the letter dated 12/10/18. On the day of the meeting, the applicant tabled amended plans which were reviewed and considered by Council. The applicant was advised that the amended plans do not resolve the issues raised and in any case, the changes made would constitute a new DA altogether. The applicant was further requested to consider withdrawal of the application but elected not to.

Proposal

Council is in receipt of a development application DA-2018/138 at 104 Caroline Street, Kingsgrove which seeks consent to demolish the existing structures and construct a child care centre with capacity for 133 children operating Monday to Friday 7:00am to 6:00pm with basement car parking.

The proposed development is further described as follows:

Basement Level

- Basement car parking comprised of 18 spaces (10 for staff, 7 for parents drop off/pick up and 1 accessible space);
- Pedestrian walking pathway through the centre of the basement level; and
- Lift and stair access to the upper levels.

Ground Floor Level

- Reception/office and staff amenities;
- Outdoor play area between two buildings in an undercroft area;
- Two indoor play areas;
- Lift and stair access; and
- Outdoor play area within the rear setback.

First Floor Level

- Two indoor play areas which are separated by a large central outdoor play area which has 2.4m high enclosing walls; and
- Lift access and stair access.

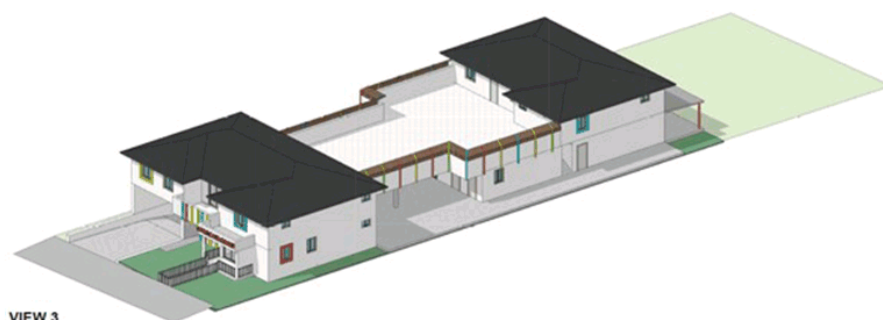
Externally, the proposal includes tree removal, new landscaping works and fencing.

A total of 23 staff are proposed. However, this figure appears to relate to the required staff to children ratios only and is exclusive of other support staff likely to be required in the centre.

The child care centre is proposed to accommodate 133 children comprised of the following age groups:

- 0 to 2 yr olds - 32 children
- 2 to 3 yr olds - 35 children
- 3 to 4 yr olds - 33 children
- 4 to 6 yr olds - 33 children

The submitted 3D view of the proposal is re-produced below:



Site location and context

The subject site is legally described as Lot A and B in DP 361159 and commonly known at 104 Caroline Street, Kingsgrove. The site is located on the eastern side of Caroline Street, opposite St Ursula's College. The site is generally rectangular in shape and has frontage to Caroline Street of 20.1m and an overall site area of 1307m². The site has a minor cross fall from the front boundary towards the rear boundary. The site currently accommodates an existing single storey dwelling, detached outbuilding structures and a swimming pool. There are a number of trees growing throughout the site.

The adjoining dwelling to the north is comprised of a single storey brick dwelling. To the south the site is adjoined by 102 Caroline Street which is a two storey multi-dwelling housing development. The remainder of the streetscape is characterised by one and two storey single dwellings. There are however, some non-residential uses which include St Ursula's college opposite the site, Our Lady of Fatima Primary School to the south and public open space and scout hall at the rear of the site which shares the common northern side boundary.



The subject site as viewed from the opposite side of Caroline Street, Kingsgrove

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 (Educational Establishments and Child Care Facilities) 2017

The State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017, has been considered in the assessment of the Development Application. The table below outlines the key controls within the SEPP that are applicable to the application:

Applicable Clause	Provision	Proposed development	Complies
22 - Concurrence of Regulatory Authority for certain applications	a) Concurrence of regulatory authority required where a variation to the minimum required indoor / outdoor play areas is proposed. <i>(Reg.107/108 of Education & Care Services National Regulations)</i>	Concurrence of regulatory authority not sought by applicant.	N/A
23 – Child Care Planning Guideline	The consent authority must take into consideration any applicable provisions of the Child Care Planning Guideline, in relation to the proposed development	The provisions of the Child Care Planning Guideline have been taken into consideration. The areas of concern identified have been detailed within this report.	No - refer to discussion.

Applicable Clause	Provision	Proposed development	Complies
25 – Non Discretionary Development Standards	a) Location - the development may be located at any distance from an existing or proposed early education and care facility.	Noted.	Yes
	b) Indoor / Outdoor space (i) 3.25sq/m per child indoor (ii) 7sq/m per child outdoor	On the basis of 133 children, the development is required to provide 432m ² of indoor space and 931m ² of outdoor space. The indoor spaces are compliant however concern is raised with the method of calculation of the outdoor spaces.	No - refer to discussion. Yes
	c) Site Area & Site Dimensions -the development may be located on a site of any size and have any length of street frontage or any allotment depth.	The site has a total area of 1376m ² , a street frontage of 20.1m and an allotment depth of 68.44m.	Yes
	d) Colour of building materials or shade structures - the development may be of any colour or colour scheme unless it is a State or local heritage item or in a heritage conservation area.	The site is not within a heritage conservation area and does not contain a heritage item.	Yes

Applicable Clause	Provision	Proposed development	Complies
26 – Development Control Plans	A provision of a development control plan that specifies a requirement, standard or control in relation to any of the following matters (including by reference to ages, age ratios, groupings, numbers or the like, of children) does not apply to development for the purpose of a centre-based child care facility.	The application was accompanied by a plan of management that includes the hours of operation of the facility. The applicant is not required to demonstrate a demand for childcare centres. In regards to the regulatory requirements under the Child Care Planning Guideline, this has been summarised in the table below.	Yes

Non-compliance

Outdoor Play Areas

The submitted drawings indicate that a 224m² outdoor play area is proposed in the middle of the ground floor plan between the two building forms. This calculation appears to be inclusive of periphery hedging and the paved site access paths which are not useable spaces. Clause 108 of the Education and Care Services National Regulations requires *any pathway or thoroughfare and any other space that is not suitable for children* to be excluded when calculating the area of unencumbered outdoor space. In addition, the Design Guidance within Part 4.9 of the Child Care Planning Guidelines states that *calculating unencumbered space for outdoor areas should not include areas of dense hedges or plantings along boundaries which are designed for landscaping purposes and not for children's play*.

The calculations provided are inconsistent with Clause 108 of the Education and Care Services National Regulations. Exclusion of the spaces included within the calculation of unencumbered outdoor space would result in a non-compliance with the non-discretionary minimum outdoor place space requirements within clause 25(b) of SEPP (Educational Establishments and Child Care Facilities) 2017.

Further concerns in respect of the design out of the outdoor play areas is detailed below.

Child Care Planning Guideline

The proposed development has been considered against the Child Care Planning Guideline. The following comments are made in respect of the proposal's departure from the relevant Key Design Guidelines within Part 3:

Streetscape/bulk and scale (Part 3.2 - Local character, streetscape and the public domain) (Part 3.3 - Building Orientation, Envelope and Design)

The bulk and scale of the development is not supported as it would result in unreasonable impacts upon surrounding residential properties and presents external massing that is not compatible with the local character and surrounding streetscape. The scale of the proposed development is significantly larger than the buildings in its surroundings.

Particular concern is raised with the inclusion of a first floor outdoor play area between the two building forms which dictates the need for 2.4m high walls along the side boundaries extending for up to approximately 20m in length. These walls would be visible (to varying degrees) from the public domain and present a building form that is not characteristic of the streetscape, noting that the site is within the R2 – Low Density Residential zone. The overall side wall length of the development is some 40m. The majority of the properties within the adjoining villa development to the south at No.102 Caroline Street are orientated directly towards the subject site (i.e. – to the north). The ensuing visual bulk and scale impacts presented to those dwellings is not supported.

In view of the above, the proposed development is considered to be unsatisfactory in respect of Part 3.2 – Local character, streetscape and the public domain interface and Part 3.3 – Building Orientation, Envelope and Design within the Child Care Planning Guideline

Outdoor Play Areas

The design of the development does not optimise solar access to the external play areas and is inconsistent with the design considerations detailed within Part 3.3 - Building Orientation, Envelope and Design. The design of the ground floor outdoor play area between the two building forms is effectively an undercroft area. More than 60% of this outdoor play area is covered contrary to Part 4.11 of the Child Care Planning Guideline. Additionally, the floor to floor height for the ground floor level is 2.6m which appears to be low once the first floor thickness, floor coverings and ceiling requirements are factored in. This is particularly consequential for the ground floor outdoor play area as it creates a space that does not promote natural light and has a sense of enclosure unsuitable for an outdoor play area.

Visual and acoustic privacy

The design of the development includes the provision of a sandpit on nil setback to the southern side boundary which does not minimise impacts of acoustic privacy to neighbouring residential properties contrary to the stated objective within Part 3.5 of the Child Care Planning Guideline. Further, a 245m² elevated outdoor play area is proposed in the centre of the site which lends itself to the generation of noise impacts.

Traffic, parking and pedestrian circulation

The layout of the basement parking level includes a pedestrian walkway through the centre of the vehicle aisle which presents an unsafe conflict between cars and users of the centre. This aspect of the development fails to satisfy the stated objectives within Part 3.8 which seeks *to provide a safe and connected environment for pedestrians both on and around the site.*

The traffic and parking impact assessment does not undertake a cumulative traffic impact assessment for all developments within the area. By 'all developments' it means those still have DA approval pending, approved but yet to be constructed, those are under construction and fully built but not yet fully occupied. The application therefore does not satisfy control C33 within Part 3.8 of the Child Care Planning Guideline.

Further concerns in respect of the basement parking layout have been identified within the Rockdale DCP 2011 assessment later in this report.

Education and Care Services National Regulations

Part 4 – Education & Care Services National Regulations			
<i>Regulation</i>	<i>Design Guidance</i>	<i>Proposal</i>	<i>Complies</i>
104 – Fencing or barrier that encloses outdoor spaces	Outdoor space that will be used by children will be enclosed by a fence or barrier that is of a height and design that children preschool age or under cannot go through, over or under it.	Balustrade/walls and fencing is proposed to outdoor areas.	Yes
106 - Laundry & Hygiene Facilities	On site laundry facilities should contain: <ul style="list-style-type: none"> • a washer or washers capable of dealing with the heavy requirements of the facility • a dryer • laundry sinks • adequate storage for soiled items prior to cleaning • an on site laundry cannot be calculated as usable unencumbered play space for children 	A laundry is proposed on the ground floor.	Yes
107 - Indoor Space Requirements	Min 3.25sq/m unencumbered indoor space per child.	133 children 432m ² required 441m ² provided (applicants figures)	Yes
	Storage <ul style="list-style-type: none"> - min 0.3m³ per child external - min 0.2m³ per child internal 	Identified storage spaces throughout the building generally appear compliant.	Yes

108 - Outdoor Space Requirements	Min 7sq/m per child unencumbered outdoor space <i>Note - Calculating unencumbered space should not include areas of dense hedges / plantings along boundaries which are designed for landscaping purposes and not for children's play.</i>	133 children 931m ² required 959m ² proposed (applicant's figures) The applicant's figures are inclusive of periphery hedging and the paved site access paths which are not useable spaces.	No
109 - Toilet & Hygiene Facilities	Toilet and hygiene facilities should be designed to maintain the amenity and dignity of the occupants.	Capable of complying	Yes
110 – Ventilation & Natural Light	To achieve adequate natural ventilation, the design of the child care facilities must address the orientation of the building, the configuration of rooms and the external building envelope, with natural air flow generally reducing the deeper a building becomes. It is recommended that child care facilities ensure natural ventilation is available to each indoor activity room. Consideration should be given to: • providing windows facing different orientations • using skylights as appropriate • ceiling heights.	The design of the western-most area on the ground floor would have unsatisfactory ventilation and natural light given its orientation, floor to ceiling height and proposed window placement.	No
111 – Administrative Space	A service must provide adequate area or areas for the purposes of conducting the administrative functions of the service, consulting with parents of children and conducting private conversations.	Capable of complying.	Yes

112 – Nappy Change Facilities	Design considerations include: <ul style="list-style-type: none"> • properly constructed nappy changing bench or benches • a bench type baby bath within one metre from the nappy change bench • the provision of hand cleansing facilities for adults in the immediate vicinity of the nappy change area • a space to store steps • positioning to enable supervision of the activity and play areas. 	Capable of complying.	Yes
113 – Outdoor Space Natural Environment	Outdoor spaces provided must allow children to explore and experience the natural environment.	<p>The outdoor play area within the rear setback area is capable of complying with this requirement.</p> <p>The outdoor play area between the two buildings in the centre of the ground floor is listed on the architectural plans as being 'vinyl' whereas the landscaped plans propose for this area to be tiled. Each of those finishes would fail to create a natural environment space suitable for children.</p> <p>The architectural plans also indicate the use of vinyl on the first floor outdoor play area which is not suitable.</p>	<p>Yes</p> <p>No</p> <p>No</p>

114 – Outdoor Space Shade	Adequate shaded areas required.	Shade sails proposed. The proposal is capable of complying.	Yes
115 – Premises Designed to Facilitate Supervision	Rooms and facilities within the premises (including toilets, nappy change facilities, indoor and outdoor activity rooms and play spaces) are designed to facilitate supervision of children at all times, having regard to the need to maintain their rights and dignity.	The development has not been designed to maximise sight lines and supervision. In this regard, the extent of window openings (and therefore opportunities for additional supervision) from the indoor play areas towards the outdoor play areas on the ground floor have not been maximised. For example - only windows W16 and W19 would facilitate limited supervision opportunities across the adjacent outdoor play area.	No
97 / 168 - Emergency & Evacuation Procedures	Emergency and evacuation plan should be submitted with a DA.	An emergency and evacuation plan was not submitted with the DA.	No

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

The proposed development includes the removal of a number of trees within the subject site. Council's Tree Preservation Officer reviewed the proposal, landscape plan and submitted Arborist report and advised that the proposed tree removal and replacement plantings are satisfactory. The proposal is therefore consistent with the provisions of the SEPP.

State Environmental Planning Policy No 64—Advertising and Signage

This policy applies to all signage that is visible from a public place except for signage that is exempt

development. In granting consent, Council must take into account whether the signage is consistent with the objectives of this policy and whether the signage satisfies the criteria specified in Schedule 1 of SEPP 64.

Whilst the application does not make any reference to signage, the submitted West elevation drawing appears to show a sign on the front facade of the building. Insufficient details of that sign have been provided to enable a proper assessment against the planning provisions within SEPP 64.

Rockdale Local Environmental Plan 2011

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

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 (LEP 2011). The proposal is defined as a 'child care centre' and is a permissible development with development consent.

Notwithstanding, the proposal given its design and likely impacts upon neighbouring properties is not considered to be consistent with the following objective of the zone:

•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.

2.7 Demolition requires consent

The proposed development seeks consent for the demolition of the existing improvements on the site and hence satisfies the provisions of this Clause.

4.3 Height of buildings

The height of the proposed building is approximately 7.7m and therefore does not exceed the maximum 8.5m height shown for the land on the Height of Buildings Map. The proposed development is acceptable with respect to the objectives of this clause.

4.4 Floor space ratio - Residential zones

The site is subject to a maximum allowable FSR of 0.5:1 in accordance with Clause 4.4 of Rockdale

LEP 2011. The information submitted with the application indicates that an FSR of 0.45:1 is proposed. However, this is exclusive of the 245m² outdoor play area proposed on the first floor plan. The design of the outdoor play area incorporates outer walls along the side elevations which have a height greater than 1.4m. This area should therefore be included in the FSR in accordance with the definition of *gross floor area* in Rockdale LEP 2011, resulting in a proposal which well exceeds the FSR development standard. Additionally, the proposal is considered to be inconsistent with the following objectives of this clause:

- (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.*

4.6 Exceptions to development standards

In view of the above concerns regarding the non-compliance with the floor space ratio, a clause 4.6 exception would be required. However, the application was not accompanied by such. The consent authority therefore does not have any statutory power to consent to the development.

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 in order to construct the proposed car parking areas and enable footings. 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.

6.4 Airspace operations

The proposed development will not impact upon airspace operations.

6.7 Stormwater

The submitted stormwater management plan was reviewed by Councils Development Engineer who indicated that the stormwater system has not been designed in accordance with Section 6 of Rockdale Technical Specification Stormwater management. The proposal is therefore unsatisfactory in respect of clause 6.7 of RLEP 2011.

6.12 Essential services

Services will generally be available on the site. The proposal is satisfactory in relation to the provisions of this clause.

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 objectives	Compliance with standard/provision
4.1.1 Views and Vista	Yes	Yes
4.1.3 Water Management	No - see discussion	No - see discussion
4.1.4 Soil Management	Yes	Yes
4.1.6 Development on Sloping Sites	Yes	Yes
4.1.7 Tree Preservation	Yes	Yes
4.1.9 Lot size and Site Consolidation - Child care centres	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 - Child care centres	Yes - see discussion	Yes - see discussion
4.4.2 Solar Access - General Controls	No - see discussion	No - see discussion
4.4.5 Visual privacy	Yes - see discussion	Yes - see discussion
4.4.5 Acoustic privacy		
4.4.6 Noise Impact - Non-residential	No - see discussion	No - see discussion
4.5.2 Social Equity - Equitable Access	No - see discussion	No - see discussion
4.6 Parking Rates - Child Care Centres	No - see discussion	No - see discussion
4.6 Car Park Location and Design	No - see discussion	No - see discussion
4.7 Air Conditioning and Communication Structures	Yes - see discussion	Yes - see discussion
4.7 Waste Storage and Recycling Facilities	Yes - see discussion	Yes - see discussion
4.7 Service Lines/Cables	Yes	Yes
6.1 Provision of Child Care Places	Yes - see discussion	Yes - see discussion
6.1 Child Care Centre - Location	Yes - see discussion	Yes - see discussion
6.1 Child Care Centre - Building Design	No - see discussion	No - see discussion
6.1 Child Care Centre - Visual and Acoustic Impact	No - see discussion	No - see discussion
6.1 Child Care Centre - Indoor and Outdoor Space	No - see discussion	No - see discussion
6.1 Child Care Centre - Parking and Pedestrian Safety	No - see discussion	No - see discussion
6.1 Child Care Centre - Hours of Operation	Yes	Yes - see discussion

4.1.3 Water Management

Refer to discussion in Clause 6.7 - Stormwater of this report.

4.1.9 Lot size and Site Consolidation - Child care centres

The allotment width of the subject site is 20m and therefore achieves the minimum allotment width guideline of 18m.

4.2 Streetscape and Site Context - General

As per the provisions of Clause 6.1.11 of Rockdale DCP 2011, child care centres must be designed in character with the existing streetscape and are required to be sympathetic within their context. The building form and density proposed results in an external presentation that is inconsistent with the existing and desired future character of the streetscape noting that the site is within the R2 - Low Density Residential zone and typically characterised by one and two storey detached dwellings.

4.3.1 Open Space and Landscape Design - Child care centres

As per the provisions of Clause 4.3.1 Open Space and Landscape Design Child care centres, a minimum of 20% (275m²) of the site area is to be provided as landscaped area. The proposal provides approximately 42% landscaped area which is compliant.

4.4.2 Solar Access - General Controls

The shadow diagram information submitted with the application is insufficient to accurately quantify the additional overshadowing impacts generated by the proposed development. Shadow diagrams (existing and proposed) in plan view have not been provided.

4.4.5 Visual privacy

The visual privacy outcomes proposed are generally satisfactory.

4.4.6 Noise Impact - Non-residential

Council is not satisfied that the design of the proposal minimises acoustic impacts for surrounding residential properties. The following concerns are raised:

- The acoustic report prepared by Renzo Tonin & Associates titled '104 Caroline St, Kingsgrove – DA Noise Assessment for Proposed Childcare Centre' dated 17 May 2018 (Ref: TK316-01F02 Noise Assessment (r1).docx) does not stipulate the maximum number of children permissible in the outdoor play area at any one time;
- A sandpit is proposed on the ground floor on zero side setback to the southern boundary; and
- The 245m² elevated outdoor play area in the centre of the site on the first floor lends itself to noise impacts.

Given the above, the proposal is unsatisfactory in relation to the provisions and objectives of this clause in relation to acoustic amenity.

4.5.2 Social Equity - Equitable Access

The application was accompanied by an Access Report which has identified the following key compliance issues:

- Circulation space does not comply within the Office as required by Clause 6.5 (Circulation to turn) and 13 (Door approach circulation on leaving) of AS 1428.1;
- The Circulation space within the front and rear ground floor accessible sanitary facilities is not consistent with Clause 15 of AS 1428.1 2009; and
- Accessible sanitary facilities are required within the first floor.

Conformity with the above requirements would necessitate to modifications to the design of the building and a likely loss of indoor play area. The proposal does not satisfy Part 4.5.2 of RDCP 2011.

4.6 Parking Rates - Child Care Centres

Car parking for the proposed development is required to be provided at the following rates:

Land use	Vehicle	Bicycle	Motorcycle
Child care centres	<ul style="list-style-type: none"> 1 space/20 children 1 spaces/2 members of staff (part or full time) 1 space/residential component 	1 space/10 children	-

133 children are proposed and the submitted Plan of Management states that there will be 23 staff members. The application of the above rates results in a requirement for 7 spaces for children/parents and 11 spaces for staff. However, the proposed 23 staff members relates to the minimum child to staff ratio and appears to be exclusive of likely Directors, Management, Cleaners, Kitchen staff, reception and the like. Inclusion of these additional staff members would yield a higher applicable rate of parking which the proposal would not comply with. Further concerns are raised with the design and layout of the proposed basement as discussed below.

4.6 Car Park Location and Design

The objectives of this clause seek to ensure sufficient, convenient and safe on-site car parking is provided. The design of the proposed basement does not satisfy this requirement with the following concerns noted:

- Parking spaces designated for pickup/drop off should be at least 2.6m in width and the basement aisle width is required to be 6.6m to comply with AS/NZS 2890.1:2004 section 2.4.1. All parking spaces adjacent to walls are required to have an additional clearance of 0.3m.
- A turning bay is necessary in the basement to allow for people who have entered the car parking facility when it is full to exit safely and efficiently.
- The low level driveway to the basement is required to have at least 0.3m clearance either side in accordance with AS/NZS 2890.1:2004 figure 2.8, therefore a width of 6.10m is required.
- The pedestrian path proposed in the middle of the aisle result in an unacceptable pedestrian/vehicular conflict and does not satisfy control 11(d) within this part of RDCP which requires basement car parking *to be designed for safe and convenient pedestrian movement and to include separate pedestrian access points to the building that are clearly defined and easily negotiated.*

4.7 Air Conditioning and Communication Structures

The submitted plans do not illustrate the provision of air conditioning units. Suitable conditions could address this matter, however the application is not supported for other reasons.

4.7 Waste Storage and Recycling Facilities

Plans illustrate the provision of appropriately sized and located bin storage area adjacent to the kitchen on the ground floor, away from neighbouring residential dwellings. The proposal satisfies the requirements of this clause.

6.1 Provision of Child Care Places

The controls detailed within this part of RDCP 2011 relate to the number of children and age ratios. However, these provisions do not apply to centre-based child care facilities in accordance with Clause 26 of SEPP (Educational Establishments and Child Care Facilities) 2017.

6.1 Child Care Centre - Location

The location of the site is generally acceptable in respect of the provisions within this part of RDCP

noting that the effect of clauses 25 and 26 of SEPP (Educational Establishments and Child Care Facilities) 2017 is such that new child care centres may be located at any distance from an existing or proposed education and care facility. Additionally, the SEPP precludes the requirement for the applicant to demonstrate the need or demand for child care services.

6.1 Child Care Centre - Building Design

Refer to previous discussion in this report under:

- Child Care Planning Guideline - Streetscape/bulk and scale; and
- Part 4.2 - Streetscape and Site Context.

6.1 Child Care Centre - Visual and Acoustic Impact

The likely visual and acoustic impacts have already been discussed elsewhere within this report. In summary, it is considered that the building has not been orientated and designed to minimise potential impacts on the residential amenity of adjoining properties.

6.1 Child Care Centre - Indoor and Outdoor Space

The design, layout and configuration of the proposed indoor and outdoor spaces are not supported for reasons previously identified within this report.

6.1 Child Care Centre - Parking and Pedestrian Safety

The provisions within this part of RDCP 2011 require the provision of pedestrian access which is segregated from vehicular access on site. In this respect, the proposed pedestrian path through the centre of the vehicle aisle does not achieve the outcome intended by RDCP 2011.

6.1 Child Care Centre - Hours of Operation

The proposed hours of operation are 7am to 6pm Monday to Friday which comply with the RDCP 2011 requirements.

OTHER MATTERS

The following deficiencies have been identified with respect to the information submitted in the DA:

- The floor plans don't include a North point;
- Internal elevations of the proposed development have not been provided;
- Proposed signage details have not been provided;
- The 3D view drawings and the elevations are inconsistent;
- The proposed lift (and its overrun) is not shown on the elevations and roof plan;
- The rear shade sail is not shown on the elevations;
- The architectural drawings are inconsistent with the landscape plans;
- A landscape plan for the first floor outdoor play area has not been provided;
- The first floor shade sail is not shown on the elevations or sections; and
- Shadow diagrams in plan view have not been provided.

Clause 92 EP&A Regulation 2000 – Additional Matters

Clauses 92-94 of the Regulations outline the matters to be considered in the assessment of a development application. Clause 92 requires the consent authority to consider the provisions of AS 2601:1991 - *Demolition of Structures* when demolition of a building is involved. Whilst the proposed development involves demolition work, it is not supported for other reasons.

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 and have been found to be unsatisfactory.

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

The design concerns raised throughout this assessment are fundamental to the proposal and suggestive that the site cannot support development at the intensity proposed. In view of the design outcomes proposed and likely impacts of the proposal upon neighbouring residential properties and the streetscape, the site is not suitable for the development.

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

The development has been notified in accordance with the provisions of Rockdale DCP 2011 and 46 submissions have been received. The issues raised in the submissions are summarised below and have been addressed in the main body of the report:

- Unacceptable traffic generation/impacts;
- Impact of the development upon the availability of on-street car parking;
- There are already enough child care centres in the locality;
- Pedestrian safety;
- Impact on local amenity;
- Lack of turning bay and associated congestion in the basement car parking area;
- Pedestrian path in the centre of the vehicle aisle;
- Staffing numbers proposed;
- Incorrect calculation of outdoor space requirements;
- Proximity to existing child care centres in the locality;
- Parking calculation for staff is exclusive of additional support staff required;
- Adverse impacts upon the amenity of neighbouring dwellings in terms of solar access, traffic, landscaping and building bulk;
- Noise impacts;
- Non-conformity to R2 Low Density Residential zone objectives; and
- Non-conformity to Rockdale DCP 2011 concerning design of child care centres.

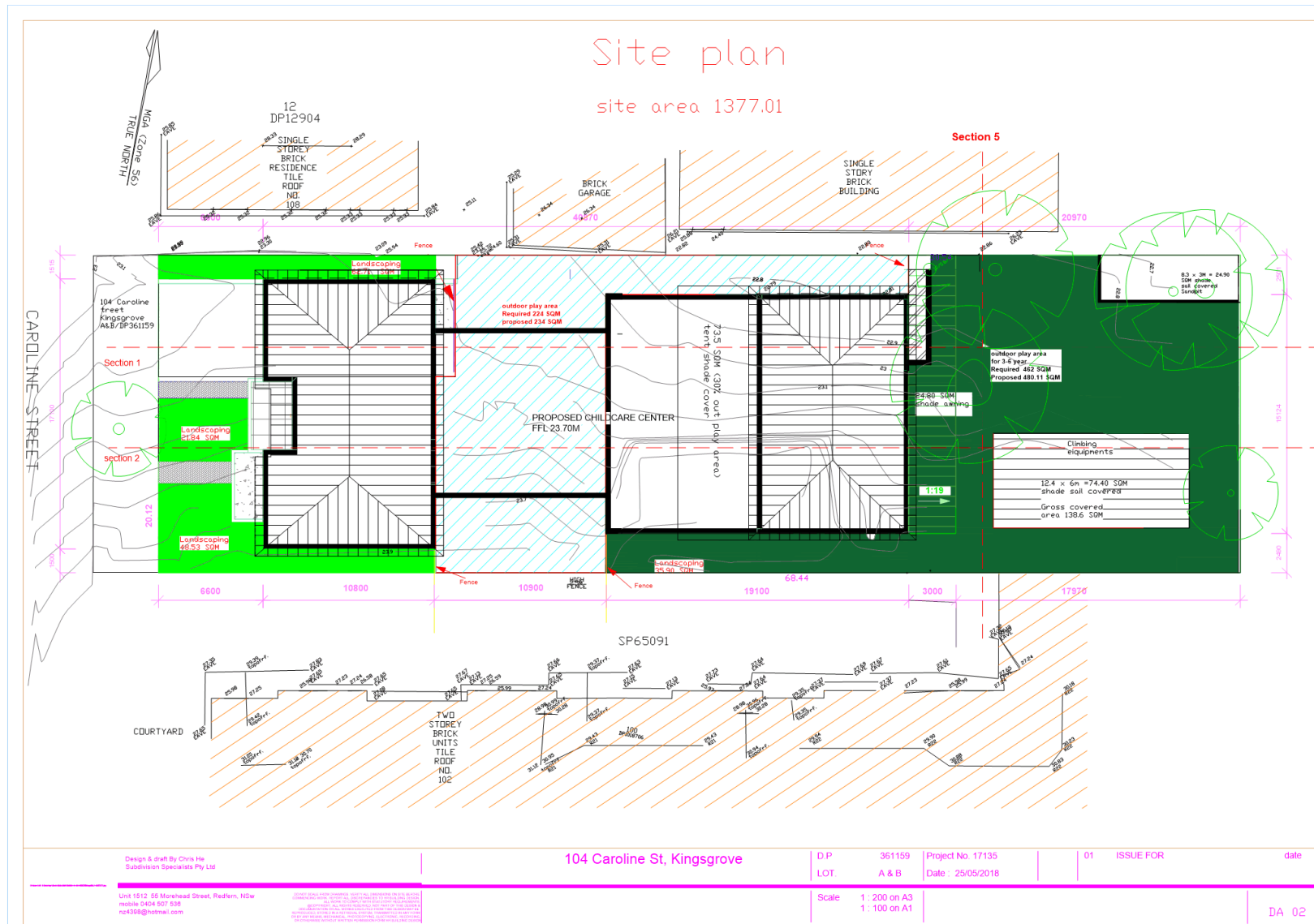
The following further concern has been raised and addressed as follows:

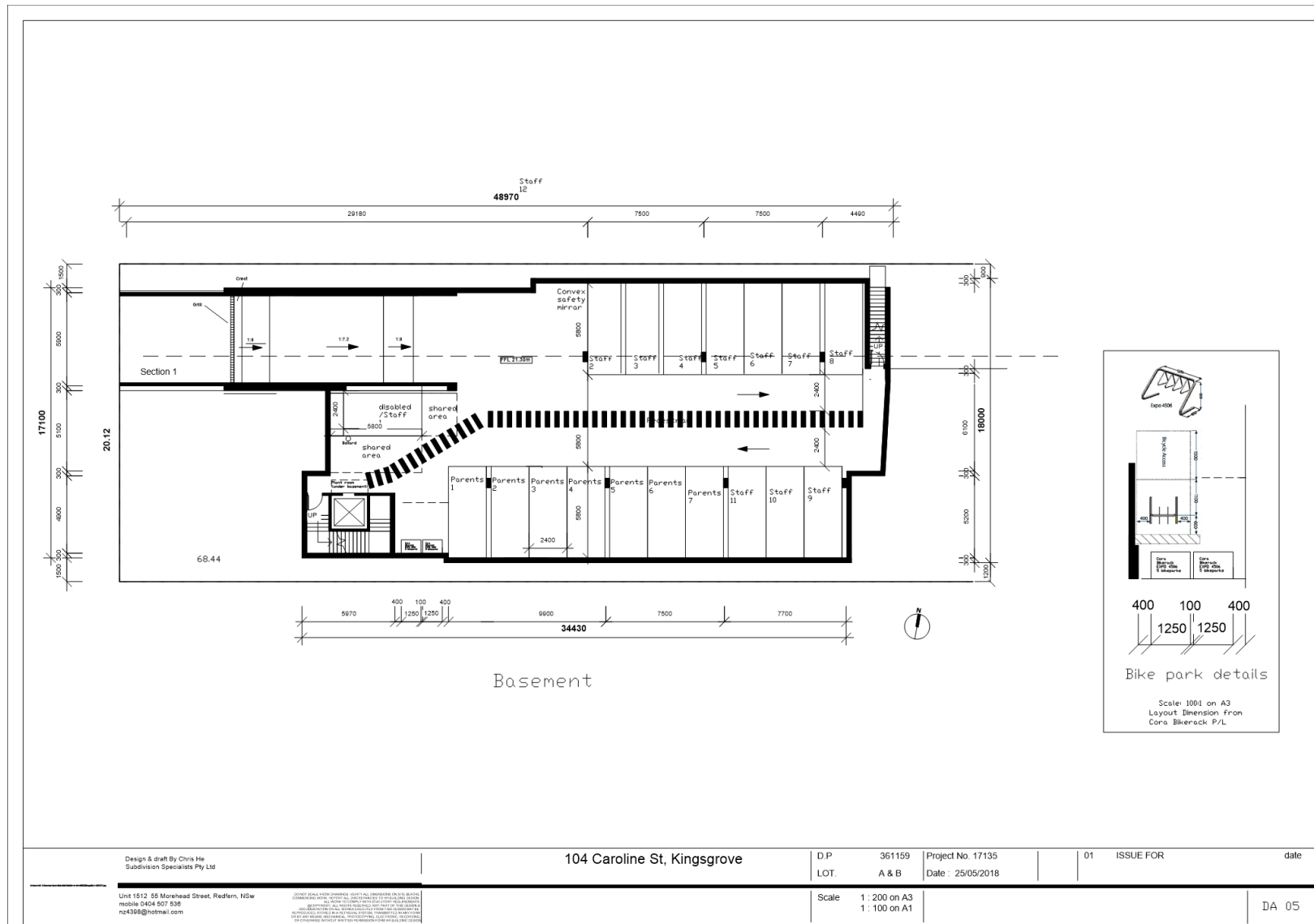
Concern: The acoustic report states that it is anticipated that the use of the outdoor play areas will be limited to up to 2 hours (total) per day which is insufficient.

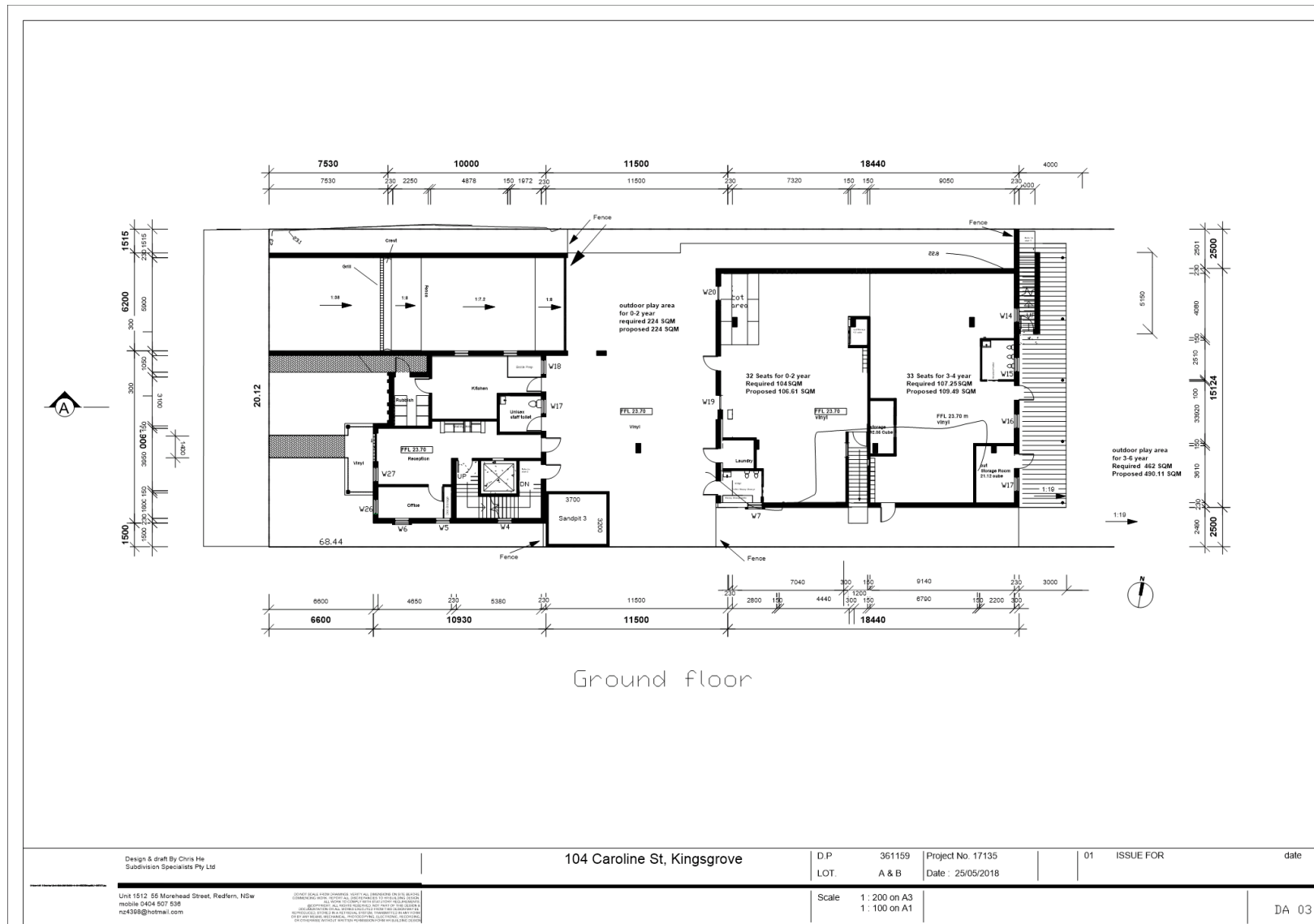
Response: The Plan of Management is inconsistent with the acoustic report in that the daily schedule provided anticipates more than 2 hours of outdoor play time. In addition, a more stringent noise criteria applies for outdoor play areas utilised more than 2 hours per day and that criteria has not been adopted. The concern raised is concurred with and forms a reason for refusal.

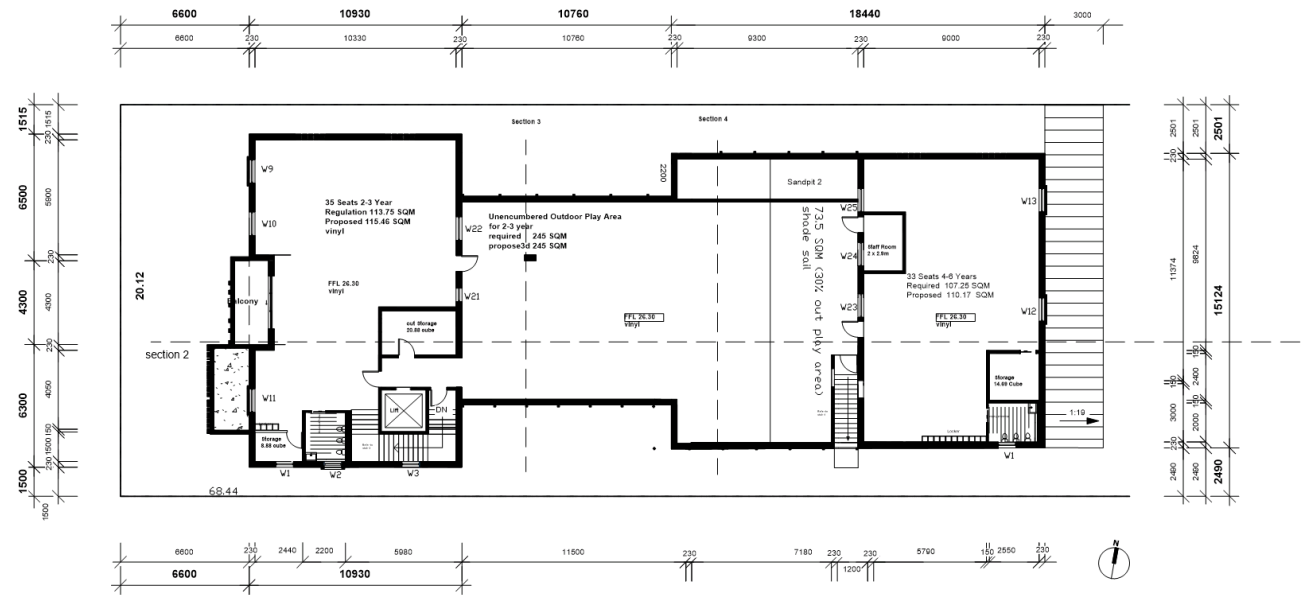
S4.15(1)(e) - Public interest

The proposed development is not considered to be in the public interest given the substantive issues outlined in this report.









First floor

Materials Note

Out wall
Ground floor
Roof

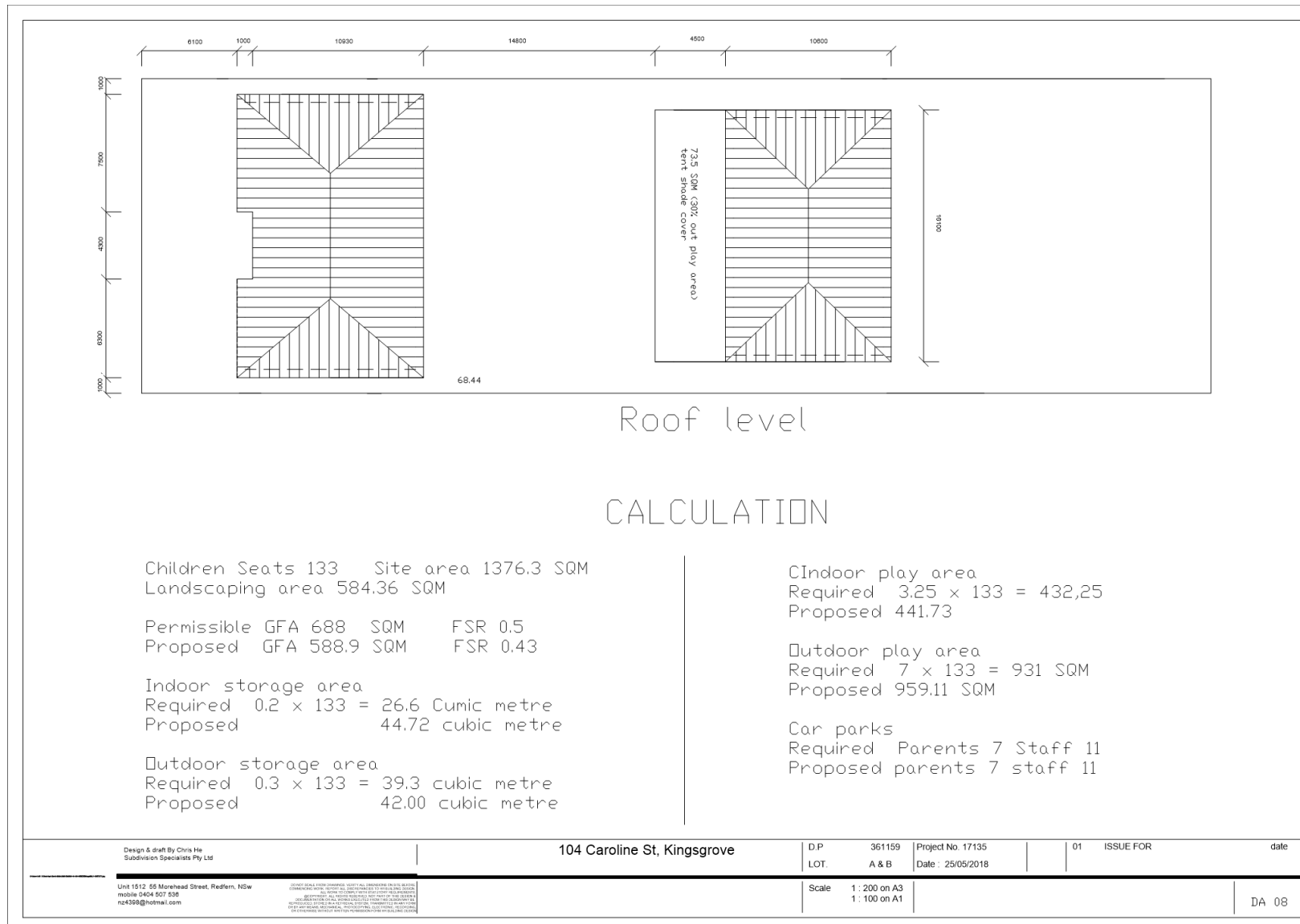
Brick veneer
concrete slab
colourbond

Inner wall
First floor
fence

plaster board
wood
colourbond

All windows facing to east or west glass thickness 3mm
the glass thickness of the front door in 1ST floor 6.3mm

Design & draft By Chris He Subdivision Specialists Pty Ltd	104 Caroline St, Kingsgrove	D.P. LOT.	361159 A & B	Project No. 17135 Date : 25/05/2018	01 ISSUE FOR	date
Unit 1512 55 Morehead Street, Redfern, NSW mobile 0404 957 538 nz4358@hotmail.com		Scale	1 : 200 on A3 1 : 100 on A1			DA 04







Bayside Local Planning Panel

13/11/2018

Item No	6.5
Application Type	Section 4.55(1A)
Application No	SF18/1800
Lodgement Date	28/06/2018
Property	DA-2012/71 - 25-33 Wilson Street, Botany
Ward	Botany Bay
Owner	Mrs M W Stuart and P B Martin
Applicant	Alek Vorobyov – Salameh
Proposal	Modification to Unit 605 (lot 97) to relocate existing balcony balustrades along the southern and eastern elevation to create a larger balcony space to unit 605.
No. of Submissions	One
Cost of Development	Nil
Report by	Michael McCabe, Director of City Futures

Officer Recommendation

- 1 That the Bayside Local Planning Panel approve the Section 4.55(1a) Application to modify Development Consent No. 12/71 for the approved construction of two (2) residential flat buildings (buildings E and F) to allow for modifications to relocate existing balcony balustrades along the southern and eastern elevation to create a larger balcony space to Unit 605 (Lot 97) within building 'E' at 25-33 Wilson Street, Botany as follows:
 - a Amend condition No. 1 to reference the amended plans and documents and to require a new construction certificate for the proposed modification.
 - b Amend condition No. 68(a) to allow for a new occupation certificate for the proposed modification.
 - c Include new condition 3 (e) for the submission of a methodology report for new works relating to the construction of the proposed modifications.
 - d Include condition 3(f) to ensure proposed planting does not form part of the approval.
 - e Include condition 68(c) to ensure owner receives Owners Corporation approval for the occupation of the common area attached to Unit 605.
- 2 That any objectors be notified of the determination made by the Planning Panel.

- 1 Planning Assessment Report 25-33 Wilson Street, Botany [↓](#)
- 2 Existing Floor Plan [↓](#)
- 3 Existing East Elevation [↓](#)
- 4 Existing South Elevation [↓](#)
- 5 Proposed and Existing Section [↓](#)
- 6 Proposed Floor and elevation [↓](#)
- 7 Proposed Floor Plan [↓](#)
- 8 Proposed east elevation [↓](#)
- 9 Proposed South Elevation [↓](#)

Application Details

Application Number:	DA-2012/71/3
Date of Receipt:	28 June 2018
Property:	Unit 605 25-31 Wilson street BOTANY
Owners:	Mrs M W Stuart & P B Martin
Applicant:	Alek Vorobyov Salameh
Proposal:	Section 4.55 (1A) Application to amend Development Consent No. DA-12(71) to relocate existing balcony balustrades along the southern and eastern elevation to create a large balcony space to unit 605.
Recommendation:	Approval
Value:	N/A
No. of submissions:	One
Author:	Adam Iskander – Development Assessment Officer
Date of Report:	30 October 2018

RECOMMENDATION

- 1 That the Bayside Local Planning Panel approve Section 4.55(1a) application to modify Development Consent No. 12/71 to an approved construction of two (2) residential flat buildings (buildings E and F) to allow for the modifications to the balustrades at Unit 605 (Lot 97) within building 'E' at 25-33 Wilson Street, Botany as follows:
 - a amend condition No. 1 to reference the amended plans and documents and to require a new construction certificate for the proposed modification;
 - b amend condition No. 68(a) to allow for a new occupation certificate for the proposed modification;
 - c include new condition 3 (e) for the submission of a methodology report for new works relating to the construction of the proposed modifications;
 - d include condition 3(f) to ensure proposed planting does not form part of the approval; and
 - e include condition 68(c) to ensure owner receives Owners Corporation approval for the occupation of the common area attached to Unit 605
- 2 That any objectors be notified of the determination made by the Planning Panel.

SUMMARY AND DESCRIPTION OF MODIFICATION

Council has received a Section 4.55(1A) application to modify Development Consent No.2012/71 on 9 August 2018 to relocate existing balcony balustrades along the southern and eastern elevations to create a large balcony space to unit 605 increasing the private open space area of the unit from 40sqm to 114sqm. The balustrades will maintain a height of 1.2m

along the eastern elevation and a mix of 1.2m high balustrades and 1.8m high privacy screens along the southern elevation of the balcony.

Planting is also proposed on the balcony to provide further privacy. These plantings consist of Lili pilli, Dracaenas happy and sacred Bamboo. These plants will mature to heights of approximately 1.8m and will sit in terracotta pots.

Applicant has sought consent (in principal) from The Owners Corporation for the exclusive use of the common property to unit 605 (Lot 97) subject to development consent for the proposed works.

This application proposes the following modifications to the conditions of the approved consent:

1. The application will modify Condition 1 and condition 68(a) to read:

Condition 1

(Only the changes of condition 1 are shown below)

Drawing No.	Author	Date Received by Council
Architectural drawings Sheet No. 1/1	JAS Engineers	9 October 2018

No construction works shall be undertaken prior to the issue of the Construction Certificate. A construction certificate must be obtained prior to any works in relation to DA-2012/71/3

Condition 68 (a)

Prior to use and occupation of the building an Occupation Certificate must be obtained under Section 109C(1)(c) and 109N of the Environmental Planning and Assessment Act, 1979. An occupation certificate shall be obtained for the works approved under DA-2017/71/3.

2. Further, the application will require the addition of condition 3 (e), 3(f) and 68 (c) to ensure that the construction of the balustrades are built in accordance with relative standards and permissions granted for the exclusive use of the common area. The conditions are to read as follows:

Condition 3 (e)

A methodology report is to be submitted by a suitably qualified building professional prior to the issue of a Construction Certificate outlining recommended construction methods to ensure compliance with the Building Code of Australia regarding balustrade dimensions and fixing requirements to ensure the integrity of any existing waterproofing to the subject balcony.

Condition 3 (f)

The proposed plantings shown on the plan 'Sheet No. 1/1' for DA 2012/71/3 dated 3 October 2018 by JAS Engineers, shall not form part of the approval.

Condition 68 (c)

Occupation of the extended balcony portion under DA-2012/71/3 to Unit 605 (Lot 97) shall not commence until exclusive use of the common area has been granted to the owners of Unit 605 by The Owners Corporation under Strata Plan No. 89302

BACKGROUND

Development Application No.12/71 was approved by the Joint Regional Planning Panel on 21 November 2012, for the construction of two (2) residential flat buildings comprising of 158 apartments and basement parking for 271 vehicles accessed from New Street 1. The residential flat buildings are known as Building 'E' and 'F' and are located within the wider Park Grove One Masterplan development site. The notice of determination was issued by Council on 14 December 2012.

Two applications to modify the development consent have since been lodged and approved but are not relevant to this application.

The current Section 96(1A) Application has been assessed in accordance with the relevant requirements of the *Environmental Planning and Assessment Act 1979*, and is recommended for approval, subject to conditions of consent.

SITE DESCRIPTION

This subject site is more commonly referred to as the 'Parkgrove One' Masterplan site and has a total area of 3.49 hectares.

The complex is located to the rear of the Banksmeadow Neighbourhood Shops on the northern side of Botany Road. The site has frontages to Wilson Street (to the east), Pemberton Street (to the west) and Rancom Street and Botany Road (to the south).

The complex has an irregular shape with a broken street frontage of 130m to Wilson Street, 115m to Pemberton Street and 140m to Rancom Street. The site also has a 20m frontage along Botany Road. The entire site is located within zone R3 – Medium density residential.



FIGURE 1: UNIT 605 IDENTIFIED ABOVE WITHIN THE RED BOX

The subject site is identified as Unit 605 (lot 97) and is shown above in figure 1. The unit is located on the corner of level 6 and faces both east and south with two balconies facing in these directions as shown in Figure 2 below.

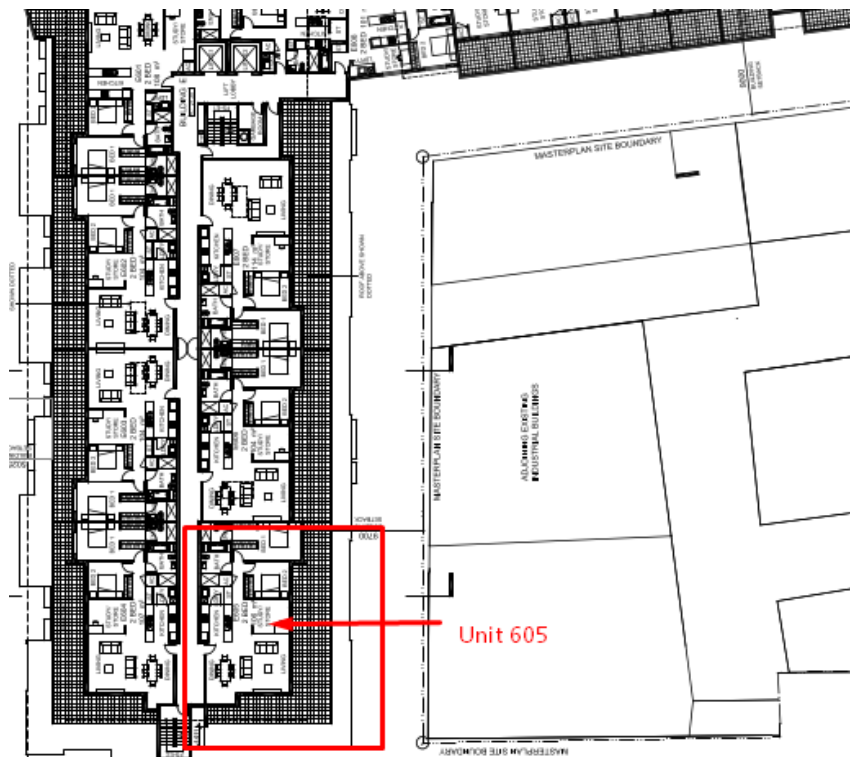


FIGURE 2: LOCATION AND FLOOR LAYOUT OF UNIT 605

To the east of Unit 605 is a six storey block of units at 19-21 Wilson Street. Unit 605 faces the rear of this building (approximately 6m setback) where majority of the windows and balconies are obscured with privacy screens and obscure glazing to the balcony balustrades.

To the South is 12 Rancom Street which is a similar six storey dwelling which also has a row of apartments facing the subject site. The building at 12 Rancom Street is setback approximately 6 m from unit 605.

Statutory Considerations

1 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 amendments to the relocation of the balustrades attached to the balconies which will have minimal environmental impacts;

- 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 amendments to the relocation of the balustrades attached to the balconies of unit 605 which will increase the private open space area of the unit from 40sqm to 114sqm. The modifications will result in substantially the same development as approved under DA-12/71 and then subsequently modified.

- 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 & Notification of the Botany Bay Development Control Plan (BBDCP) 2013, the development application was notified and advertised for 14 days from 3 July 2018 to 19 July 2018.

- 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.***

One submission was received during the public notification period and is addressed in this report

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:

State Environmental Planning Policy 65- Design Quality of Residential Apartment Development

The proposed changes maintains compliance with the requirements under the ADG (Apartment Design Guide) in relation to POS, solar and cross ventilation. There are no substantial changes to the application to warrant a full assessment under the principles of SEPP 65 and the controls within the ADG.

The modification proposes to relocate the existing balustrades further outwards to expand the size of the balcony from 40sqm to 114sqm with the inclusion of privacy screens with a height of 1.8m along the southern portion of the balcony. The eastern elevation has a length of 18.64m and the southern elevation has a length of 12.283m.

The balustrades along the eastern elevation will be designed to match the existing balustrades in terms of materials and the privacy screens on the southern elevation will be constructed with balustrades up to 1.2m with translucent glass and 600mm high louvers above angled at 45 degrees and facing upwards. The materials used is consistent with the existing balustrades

and privacy screens within the building and will not significantly detract from the prevailing character of the building.

Part 3F-1 of the ADG requires building separation of 9m from balconies to boundaries. The application proposes setbacks of approximately 6m to the southern boundary and a 6m setback to the eastern boundary. The reduced setback resulting from the increased size of the balconies will be mitigated by the proposed 1.8m high privacy screens along the southern elevation. The eastern elevation faces the rear of 19-21 Wilson Street which consists of louvers, blade walls, translucent glazed windows and translucent balustrades. The proposed expansion along the eastern elevation will not have direct over-looking into adjoining internal habitable space and adjoining open spaces. Therefore, the reduced setbacks are acceptable within the circumstance.

The 1.2m high balustrades along the eastern elevation will not contribute unreasonably to the impacts of bulk and scale of the building. Also, the 1.8m high privacy screens along the southern elevation will not contribute to the bulk and scale of the dwelling as it faces away from the public domain and is visible only to levels 5 and 6 of the adjoining southern building at 12 Rancom Street.

The proposal will not generate excessive levels of noise as the balcony will be used for residential purposes.

Taking this into consideration, the application is not assessed as creating unreasonable levels of over-looking and maintains reasonable setbacks from the adjoining buildings. The design will not detract from the existing built form of the building and as such complies with controls of the Apartment Design Guide.

Botany Bay Local Environmental Plan 2013

The provisions of the Botany Bay Local Environmental Plan 2013 (BBLEP 2013) have been considered in the assessment of this Development Application and the following information is provided:

Principal Provisions of BBLEP 2013	Complies Yes/No	Comment
Land use Zone	Yes	The site is zoned R3 Medium Density under the BBLEP 2013.
Is the proposed use/works permitted with development consent?	Yes	The proposed modifications are permissible within the zone.
What is the height of the building?	N/A	There is no change proposed to the approved height of the buildings.
What is the proposed FSR?	N/A	There is no change to the approved FSR of the buildings.
Is the site listed in Schedule 5 as a heritage item or within a Heritage Conservation Area?	N/A	The subject site is not identified as a Heritage Item or within a Heritage Conservation Area.
The following provisions in Part 6 of the LEP apply to the development: 6.1 – Acid sulfate soils (ASS) 6.2 – Earthworks 6.3 – Stormwater management 6.8 - Airspace operations	N/A	Works proposed are minor and will have no impacts on these controls.

Principal Provisions of BBLEP 2013	Complies Yes/No	Comment
6.9 – Development in areas subject to aircraft noise 6.16 – Design excellence		

The proposed modifications will be consistent with the objectives of the BLEP 2013 with regard to development in the R3 Medium Density 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 proposed modifications will comply to the same extent with the provisions and objectives of the DCP as the original development consent. The proposed modifications will not impact significantly upon the visible external appearance of the development when viewed from the public domain areas. The modifications to the external façade is acceptable when considering material choice and location.

Streetscape

The proposed changes will not be visible from the surrounding streets and will have minimal impacts when viewed from the public domain of the complex. The unit is on the sixth floor and away from direct line of sight when viewed from the ground floor. The eastern elevation of the balcony will maintain the existing 1.2m high balustrades.

The southern elevation will consist of 1.8m high privacy screen along the balcony edge replacing the existing 1.2m high balustrades. The privacy screens were proposed to eliminate direct over-looking to the adjoining neighbouring balconies to the south. Further, the impacts of the 1.8m high privacy screens will not negatively affect the overall appearance of the residential flat building as the screens are located on the side of the RFB and faces a non-trafficable area of the neighbouring unit at 12 Rancom Street.

As such, the proposed modification ensures that the development remains compatible within the area and creates a higher standard of amenity.

In the event that the neighbouring units along the eastern elevation apply for a similar extension of their balconies, the applications will be assessed individually on their merits, however, it is not anticipated that the expansions of the balconies will detract from the building façade assuming that the balustrades remain at a height of 1.2m along the eastern elevation.

The application satisfies the General Objectives of Part 4C.1.2 of BDCP 2013.

Private Open Space and Landscaping

The expansion of the balcony ensures the residents have a high quality outdoor amenity designed to provide useable private outdoor living areas with privacy and solar access.

The proposed planting pots will create a climbable zone and therefore will not comply with the Building Code of Australia. As such, the plantings will not form part of this approval.

Subject to conditions of consent, the application satisfies the Objectives of Part 4C.2.4 and 4C.2.5 of BDCP 2013.

Setbacks and privacy

The relocation of the existing balustrade will reduce the setbacks between the adjoining RFB's to the east and south. However, the installation of privacy screens will ensure privacy is not compromised with the modification. Also, the eastern side of the balcony faces the rear of the adjoining block of units and has no direct over-looking impacts to internal private habitable spaces or private open spaces.

The proposed modification reduces the impacts of over-looking and as such, the application satisfies the Objectives of Part 4C.2.6 of BDCP 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

Potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls.

A condition has been recommended in the draft notice of consent requiring a methodology report be submitted by a suitably qualified building professional detailing compliance with the Building Code of Australia ensuring waterproofing is not damaged during the installation of the balustrades.

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

The subject site is not known to be affected by any natural hazards or other site constraints that are likely to have a significant adverse impact on the proposed development.

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

The development has been notified in accordance with the provisions of Botany DCP 2013 and one submission has been received. The issues raised in the submission are discussed below:

Issue 1: The modification may hinder an ongoing court case with the developer of the building
Comment: This is a separate issue and is not a planning consideration. Delaying the construction should be discussed with the owners directly.

Issue 2: Construction may compromise the unit beneath which may result in rental loss
Comment: The proposed works are minor and are not anticipated to generate any structural damages to the unit below. However, a condition has been recommended in the draft notice of consent requiring a methodology report for the construction of the balustrades to be submitted by a suitably qualified building professional ensuring compliance with the Building Code of Australia.

Issue 3: Changes to the external appearance of the building should be approved by Owners Corporation. Cost associated with future works effecting the external look for the building may be taken by the Owners Corporation and lead to increase strata fees. Extension of floor area of the apartment should increase the applicants' share of strata levies.

Comment: The application has been approved by the Owners Corporation. Any issues relating to strata levies is a matter for the Owners Corporation and not a planning consideration

Issue 4: An approval of the proposed modification may result in setting a precedent that changes the appearance of the building which was not agreed to by owners of the units on the lower levels.

Comment: Whilst the proposal will set an example, it is not necessarily a precedent as each application will be assessed individually on its planning merits.

It is not assessed that a continuation of the balustrades along the eastern or southern elevation will generate negative impacts in terms of bulk, scale or design.

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

The proposed development is considered satisfactory having regard to the objectives and requirements of Botany Bay Local Environmental Plan 2013 and Development Control Plan 2013. Impacts on adjoining properties have been considered and addressed. As such it is considered that the proposed development is in the public interest.

Conclusion

Development Application No. 2012/71/3 the modification to Unit 605 including extension to the balcony area and balustrading at 25-33 Wilson Street, BOTANY has been assessed in accordance with the relevant requirements of the Environmental Planning and Assessment Act 1979 and is recommended for approval subject to conditions of consent.

Premises: 25-31 Wilson Street, BOTANY

DA No: DA-2012/71/3

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 No.	Author	Date Received by Council
<i>Architectural drawings Sheet No. 1/1</i>	<i>JAS Engineers</i>	<i>9 October 2018</i>
<i>(Amendment s4.55 (1a) DA-2012/71/3)</i>		
Cover Sheet Project 1512 – A00 – Issue 02	Krikis Tayler Architects Pty Ltd	9 May 2012
Basement Plan Project 1512 – A02 – Issue 06	Krikis Tayler Architects Pty Ltd	29 October 2012
Level 1 Plan Project 1512 – A03 – Issue 07	Krikis Tayler Architects Pty Ltd	29 October 2012

Drawing No.	Author	Date Received by Council
Revised Level 1 Part Plan Project 1512 – SK 120709-01 Issue A	Krikis Tayler Architects Pty Ltd	11 July 2012
Level 2 Plan Project 1512 – A04 – Issue 07	Krikis Tayler Architects Pty Ltd	29 October 2012
Level 3 Plan Project 1512 – A05 – Issue 07	Krikis Tayler Architects Pty Ltd	29 October 2012
Level 4 Plan Project 1512 – A06 – Issue 07	Krikis Tayler Architects Pty Ltd	29 October 2012
Level 5 Plan Project 1512 – A07 – Issue 07	Krikis Tayler Architects Pty Ltd	29 October 2012
Level 6 Plan Project 1512 – A08 – Issue 07	Krikis Tayler Architects Pty Ltd	29 October 2012
Level 7 Plan Project 1512 – A09 – Issue 07	Krikis Tayler Architects Pty Ltd	29 October 2012
Roof Plan Project 1512 – A10 – Issue 07	Krikis Tayler Architects Pty Ltd	29 October 2012
Elevations 1 Project 1512 – A11 – Issue 06	Krikis Tayler Architects Pty Ltd	29 October 2012
Elevations 2 Project 1512 – A12 – Issue 06	Krikis Tayler Architects Pty Ltd	29 October 2012
Elevations 3 Project 1512 – A13 – Issue 06	Krikis Tayler Architects Pty Ltd	29 October 2012
Sections Project 1512 – A14 – Issue 05	Krikis Tayler Architects Pty Ltd	29 October 2012
Material Board Project 1512 – A20 – Issue 3	Krikis Tayler Architects Pty Ltd	9 May 2012
Area Calculations – Communal Area Project 1512 – A22 – Issue 2	Krikis Tayler Architects Pty Ltd	29 October 2012
Area Calculations Project 1512 – A21 – Issue 1	Krikis Tayler Architects Pty Ltd	9 May 2012
Longitudinal and Typical Cross Sections – Project KF110883 – C04 – Revision B	KF Williams & Associates Pty Ltd	9 May 2012

Drawing No.	Author	Date Received by Council
Grading Surface Treatment and Turning – Project KF110883 – C03 – Revision B	KF Williams & Associates Pty Ltd	9 May 2012
General Arrangement Plan – Project KF110883 – C02 – Revision B	KF Williams & Associates Pty Ltd	9 May 2012
Civil Design Standard Notes – Project KF110883 – C01 – Revision A	KF Williams & Associates Pty Ltd	9 May 2012
Level 2 Stormwater Plan and Drainage Details Job 120138 – D04 – Revision C	Australian Consulting Engineers Pty Ltd	9 May 2012
Level 1 Stormwater Plan and Drainage Details Job 120138 – D03 – Revision C	Australian Consulting Engineers Pty Ltd	9 May 2012
Basement Stormwater Plan & Drainage Details Job 120138 – D02 – Revision C	Australian Consulting Engineers Pty Ltd	9 May 2012
Cover Sheet, Legend and Drawing Schedule – Job 120138 – D01 – Revision A	Australian Consulting Engineers Pty Ltd	9 May 2012
Landscape Plan April 2012 – Job 17.12/083	iScape Landscape Architecture	9 May 2012

The following documents are for reference.

Document Name	Author	Date Received by Council
Statement of Environmental Effects – Dated 7 May 2012	LJB Planning Pty Ltd	9 May 2012
Design Verification Statement	Krikis Tayler Architects Pty Ltd	9 May 2012
Apartment Schedule	Krikis Tayler Architects Pty Ltd	9 May 2012
Infrastructure Report April 2012 – KF110882	KF Williams & Associates Pty Ltd	9 May 2012
Survey Plan Ref: 04003-1/P	Brunskill McClenahan & Associates Pty Ltd	9 May 2012
Environmental Noise Impact No 4803-2 – 27 April 2012	Day Design Pty Ltd	9 May 2012
Aircraft Noise Report	Day Design Pty Ltd	9 May 2012

Document Name	Author	Date Received by Council
No 4803 – 27 April 2012		
Acid Sulfate Soil Management Plan – Report ID CES021209-AUS-ASSMP – Revision 0	Consulting Scientists Earth	9 May 2012
Remediation Action Plan Report ID CES021209-AUS-12-F2	Consulting Scientists Earth	9 May 2012
Remediation Action Plan Report ID CES021209-AUS-11-F	Consulting Scientists Earth	9 May 2012
Assessor Certificate No. 47325388	Association of Building Sustainability Assessors	9 May 2012
BASIX Certificate Certificate No. 421550M Dated 7 May 2012	Planning and Infrastructure – NSW Government	9 May 2012
Internal Traffic Assessment Ref: 12-028 – April 2012	Thompson Stanbury Associates	9 May 2012
Pedestrian Wind Environment Statement WB320-01F02(REV2)-WS Report - Dated 30 April 2012	Windtech	9 May 2012
Waste Management Plan Dated 27 April 2012	Elephants Foot Recycling Solutions	9 May 2012
FSR Summary Sheet Dated 4 May 2012 – Issue 3a	Krikis Tayler Architects Pty Ltd	9 May 2012
Traffic Report Ref: 8571 – June 2012	Colston Budd Hunt and Kafes Ltd	9 May 2012
Geotechnical Investigation Ref: 1855-AA – Dated 23 July 2012	Asset Geotechnical Engineering Pty Ltd	9 May 2012
Ground water levels within remediation excavation – Ref: 1855-B – Dated 16 June 2012	Asset Geotechnical Engineering Pty Ltd	9 May 2012
Flood Study Ref: 110745 – Revision A Dated September 2012	KF Williams & Associates Pty Ltd	September 2012
Letter – Stage 1A, 9 Wilson Street, Flood and Stormwater Strategy – Dated 12 July 2012	KF Williams & Associates Pty Ltd	July 2012

Document Name	Author	Date Received by Council
KF110880-C01-B		

This consent provides for the issue of staged Construction Certificates, generally defined as follows:

Stage 1 Building work to ground level including lift cores, stairs, columns and underground parking

Stage 2 Works at Level 1 (ground floor) and the remainder of the carparking; and

Stage 3 Building work above the ground floor level.

No construction works shall be undertaken prior to the issue of the Construction Certificate. ***A construction certificate must be obtained prior to any works in relation to DA-2012/71/3***

(Amendment s4.55a(1a) Da-2012/71/3)

2. The applicant must prior to the release of the Stage 1 Construction Certificate pay the following fees:-

(a)	Builders Security Deposit	\$25,000.00
(b)	Development Control	\$11,055.00
(c)	Inspection and Plans checking fee	\$1,000.00
(d)	Waste Levy	\$12,000.00

- 3.

- (a) 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. This Condition does not apply to the venting to atmosphere of the stack above roof level;
- (c) All air conditioning units shall be appropriately treated to ensure that they are concealed from view and compliant with Australian Standard AS1668.2;
- (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;
- (e) ***A methodology report is to be submitted by a suitably qualified building professional prior to the issue of a Construction Certificate outlining recommended construction methods to ensure compliance with the Building Code of Australia regarding balustrade dimensions and fixing requirements to ensure the integrity of any existing waterproofing to the subject balcony.***

(Amendment s4.55(1a) DA-2012/71/3)

Reason for condition 3(e): To ensure that construction is in accordance with the BCA

- (f) ***The proposed plantings shown on the plan 'Sheet No. 1/1' for DA 2012/71/3 dated 3 October 2018 by JAS Engineers, shall not form part of the approval.***

(Amendment s4.55(1a) DA-2012/71/3)

Reason for condition 3(f): the plants do not comply with the Building Code of Australia as they are located within the climbable zone of the balconies

4. This Consent relates to land in Lots B and C in DP380476 and Lots 1 and 2 in DP158551 as such, building works must not encroach on to adjoining lands or other public places.
5. The Strata subdivision of the development shall be the subject of a further Development Application to Council;

Note: The Strata Subdivision Application must be accompanied by a formal copy of the By-Laws which shall be in accordance with the plans and documentation approved under this Consent and should also address the following matters:

- (i) 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 Development Consent No. 12/071.
- (ii) Responsibilities with regard to the maintenance of artificial features at the property in accordance with the plans and details approved under Development Consent No. 12/071.
- (iii) Responsibilities regarding the maintenance of the car wash bays by the Owners Corporation / building owner.
- (iv) Responsibilities for ensuring owners and/or tenants have adequate and hygienic 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 in accordance the conditions of this consent.
- (v) 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 by 12.00 noon.
- (vi) 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.
- (vii) Responsibilities to ensure that graffiti is removed as soon as practicable. In this regard a graffiti management plan is to be incorporated into the maintenance plan for the development.
- (viii) Responsibilities to ensure the appropriate management and operation of the communal building and associated facilities located in the south eastern corner of the site. In this regard it should be noted that:
 - separate commercial letting of the facility for parties etc is not permitted;

- hours of operation of the facility shall be limited to between 7.00am and 9.00pm; and
 - the use of amplified music is not permitted.
- (ix) The Owners Corporation/Executive Committee obligations under clauses 177, 182, 183, 184, 185 and 186 of the *Environmental Planning and Assessment Regulation 2000*.
 - (x) The landscape contractor shall be engaged weekly for a minimum period of 26 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 monthly maintenance is required.
 - (xi) New street trees shall be maintained by the Owner/Strata Corporation for 24 months after planting. Maintenance includes watering twice weekly for a period of 4 months min. (or until established) and after that at a frequency to sustain adequate growth, bi-annual feeding with a suitable fertilizer, weed removal and replenishment of the mulched base, but does not include trimming or pruning the trees under any circumstances. Any trees that fail to thrive shall be replaced by the owner/strata corporation to Council's satisfaction at their expense.

6.

- (a) Construction of New Street 1 and the pocket park are to be carried out and completed on or before 31 January 2015; and,
- (b) The temporary flood basin is to be constructed and completed within the next 90 days, the time period of which commences from the date of this approval.

Note:

- (i) The extent of temporary flood storage area is identified in "Flood Study- Amendments to Master Plan (Rev A), Parkgrove, Botany", prepared by KF Williams & Associates Pty Ltd., Reference No. KF 110745, dated 24 Sep 2012.
- (ii) On-Site Detention system shall be provided to the Building E & F unless the storage volume of OSD has been included in the proposed temporary flood storage basin.

(Condition 6 Amended under DA12/71/02)

7. 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. 421550M for the development are fulfilled.

Note Relevant BASIX Certificate means:

- (a) 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
- (b) If a replacement BASIX Certificate accompanies any subsequent application for a construction certificate, the replacement BASIX Certificate.
- (c) BASIX Certificate has the meaning given to that term in the Environmental Planning and Assessment Regulation 2000.

8. 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.
9. All remediation work must be carried out in regards to and in accordance with:
- (a) Managing Land Contamination: Planning Guidelines SEPP 55 Remediation of Land;
 - (b) EPA Guidelines made under the Contaminated Land Management Act 1997; and
 - (c) the Status Report on Investigations and Assessment: Parkgrove Development Site, Wilson Street and Pemberton Street, Botany prepared by Consulting Earth Scientists, Report ID: CES100403-LPP-01-F , dated 28 May 2010;
 - (d) The Report on Groundwater Remediation Pilot Trial: Remedial Design Optimisation Programme-Former Aerosols Australia Site, 1617 Botany Road, Botany prepared by Consulting Earth Scientists, Report ID: CES021209-AUS-20-D, dated 11 January 2007;
 - (e) The Remedial Action Plan: Former Aerosols Australia Site and Proposed Commercial Redevelopment, 1617 Botany Road, 8 Pemberton Street and Part 25-33 Wilson Street Botany prepared by Consulting Earth Scientists, Report ID: CES021209-AUS-12-F2, dated 13 February 2006; and
 - (f) The Additional Soil and Groundwater Investigation: Former Aerosols Australia Site, 1617 Botany Road, Botany, prepared by Consulting Earth Scientists, Report ID: CES021209-AUS-18-F2, dated 6 February 2006.
 - (g) The Remedial Action Plan: Part of Former Brambles Site 25-33 Wilson Street, Botany, prepared by Consulting Earth Scientists, Report ID: CES021209-AUS-11-F, dated 15 June 2005.

Monitoring

- (h) 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.

Waste Classification – Excavated Materials

- (i) All materials excavated from the site (fill or natural) shall be classified in accordance with the NSW Department of Environment and Climate Change

(DECC) Waste Classification Guidelines (2008) prior to being disposed of to a NSW approved landfill or to a recipient site.

Importation of Fill

- (j) To prevent contaminated soil being used onsite, all imported fill shall be certified VENM material and shall be validated in accordance with the Department of Environment, Climate Change and Water (DECCW) approved guidelines to ensure that it is suitable for the proposed development. 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.

Dewatering Water Quality Requirements

- (k) 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 Freshwater. 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.

Additional information - Contamination

- (l) Any new information that comes to light during construction which has the potential to alter previous conclusions about site contamination and remediation must be notified to Council and the accredited certifier immediately.

CONDITIONS IMPOSED BY AN EXTERNAL AUTHORITY

- 10. The proposed development is to comply with the General Terms of Approval dated 30 July 2012 issued by NSW Office of Water. The conditions are outlined as follows:
 - (a) Prior to issue of Stage 1 Construction Certificate the General Terms of Approval (GTA) listed below are to be met. The technical documentation require by the GTAs must be provided to the NSW Office of Water at the time an application for a Water Licence for temporary construction dewatering is made.

General Terms of Approval

- 1. General and Administrative Issues.
 - a. Groundwater shall not be pumped or extracted for any purpose other than temporary construction dewatering.
 - b. Pumped water (tailwater) shall not be allowed to discharge off-site (eg adjoining roads, stormwater system, sewerage system, etc) without the controlling authorities approval and/or owners consent.
 - c. The licensee shall allow (subject to Occupational Health and Safety Provisions) the NSW Office of Water or any person authorised by it, full and free access to the works (excavation or bore/borefield), either during or after construction, for the purpose of carrying out inspection

or test of the works and its fittings and shall carry out any work or alterations deemed necessary by the NSW Office of Water for the protection and proper maintenance of the works, or the control of the water extracted to prevent wastage and for the protection of the quality and prevention from pollution or contamination of the groundwater.

- d. If a work is abandoned at any time the licensee shall notify the NSW Office of Water that the work has been abandoned and seal off the aquifer by such methods as agreed to or directed by the NSW Office of Water.
- e. Suitable documents are to be supplied to the NSW Office of Water of the following:

- A report of prediction of the impacts of pumping on any licensed groundwater users or groundwater dependent ecosystems in the vicinity of the site. Any adverse impacts will not be allowed and the project will need to be modified.

- A report of assessment of the potential for salt water intrusion to occur as a result of the dewatering. This report is only required for sites within 250m of any marine or estuarine foreshore area. The generation of conditions leading to salt water intrusion will not be allowed, and the proposal will need to be modified.

- Descriptions of the methods used and actual volume of groundwater to be pumped (kilolitres/megalitres) from the dewatering works, the works locations, the discharge rate (litres per second), duration of pumping (number of days/weeks), the amount of lowering of the water table and the anticipated quality of the pumped water.

- Descriptions of the actual volume of pumped water (tailwater) to be reinjected (kilolitres/megalitres), the reinjection locations, the disposal rate (litres per second), duration of operation (number of days/weeks) and anticipated quality of treated water to be reinjected.

- Monitoring of groundwater levels (minimum of 3 weekly measurements of depth to water at a minimum of 3 locations broadly distributed across the site) beneath the proposed development site prior to construction. This requirement is only for sites where the proposed structure shall extend greater than one floor level into the existing ground level.

2. Specific Conditions.

- a. The design and construction of the structure must preclude the need for permanent dewatering.
- b. The design and construction of the structure that may be impacted by any watertable must include a water proof retention system (i.e. a fully tanked structure) with adequate provision for future fluctuations of water table levels. (It is recommended that a minimum allowance for a water table variation of at least +/-1.0 metre beyond any expected fluctuation be provided). The actual water table fluctuation and fluctuation safety margin must be determined by a suitably qualified professional.
- c. Construction methods and material used in and for construction are not to cause pollution of the groundwater.
- d. Monitoring of groundwater levels is to be continued at least weekly during the construction stage and at least weekly over a period of at least 2 months following cessation of dewatering, with all records being provided to the NSW Office of Water on expiration of the licence. This requirement is only for sites where the proposed structure shall extend greater than one floor level into the existing ground level.

- e. Groundwater quality testing must be conducted (and report supplied to the NSW Office of Water). Samples must be taken prior to the commencement of dewatering, (and ongoing to the satisfaction of the NSW Office of Water for any extraction and reinjection activities). 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.
- f. Discharge of any contaminated pumped water (tailwater) that is not to be reinjected, must comply with the provisions of the Protection of the Environment Operations Act 1997 and any requirements of the relevant controlling authority. The method of disposal of pumped water (i.e. street drainage to the stormwater system or discharge to sewer) and written permission from the relevant controlling authority must be presented to the NSW Office of Water in support of the licence application.
- g. Discharge of any contaminated pumped water (tailwater) that is to be reinjected, must comply with the provisions of the Protection of the Environment *Operations Act 1997*. The quality of any pumped water (tailwater) that is to be reinjected must be compatible with, or improve the intrinsic or ambient groundwater in the vicinity of the reinjection site. Contaminated groundwater is not to be reinjected into any aquifer. The following must be demonstrated in writing:
 - The treatment to be applied to the pumped water (tailwater) to remove any contamination.
 - The measures to be adopted to prevent redistribution of any contamination in the groundwater system. Any reinjection proposal that is likely to further spread contamination within the groundwater system will not be allowed and the project will need to be modified.
 - The means to avoid degrading impacts on the identified beneficial use of the groundwater. Any reinjection proposal that is likely to lower the identified beneficial use of a groundwater system will not be allowed and the project will need to be modified.
- h. Written advice be provided from the Certifying Authority to the NSW Office of Water to certify that the following ground settlement issues have been addressed in reports submitted by the proponent:
 - Assessment by a suitably qualified geotechnical professional that the proposed dewatering activity does not pose an unacceptable risk of off-site impacts such as damage to surrounding buildings or infrastructure as a result of differential sediment compaction and surface settlement during and following pumping of groundwater.
 - Settlement monitoring activities to be undertaken prior to, during and for the required period of time following the dewatering pumping to confirm the impact predictions.
 - Locations of settlement monitoring points, and schedules of measurement.

3. Formal Application Issues.

- a. An application must be completed on the prescribed form for the specific purpose of temporary construction dewatering and a licence obtained from the NSW Office of Water prior to the installation of the groundwater

- extraction works. A plan drawn to scale will be required with the application clearly identifying the location of the dewatering installations.
- b. Upon receipt of a Development Consent from City of Botany Bay Council, a fully completed licence application form, unambiguous documentation of the means by which the below-ground areas of the development will be designed and constructed to prevent any groundwater seepage inflows (and therefore preclude any need for permanent or semi-permanent pumping), together with all other required supporting information, the NSW Office of Water will issue a Water Licence under Part 5 of the *Water Act, 1912*.
 - c. A licence application under Part 5 of the *Water Act 1912* must be accompanied by a \$151.00 fee and must specify the proposed volume of groundwater to be pumped in total (megalitres). The licence is also subject to administrative charges as determined from time to time by the Independent Pricing and Regulatory Tribunal (IPART).
- (b) Prior to the issue of Stage 1 Construction Certificate, the applicant must present proof of receiving the Water Licence from the NSW Office of Water to the Certifying Authority.
11. The proposed development is to comply with the General Terms of Approval dated 29 June 2012 issued by Sydney Airport Corporation Limited (SACL). The conditions are outlined as follows:
- Height Restrictions
- (a) The site at 25 – 31 WILSON STREET, BOTANY lies within an area defined in schedules of the Civil Aviation (Buildings Control) Regulations 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, I, Peter Bleasdale, as an authorised person of the Civil Aviation Safety Authority (CASA), under Instrument Number: CASA 229/11, and in my capacity as Airfield Design Manager, have no objection to the proposed development at 25 – 31 WILSON STREET, BOTANY to a height of 28.5 metres above Australian Height Datum (AHD).
 - (c) The approved height is inclusive of all lift over-runs, vents, chimneys, aerials, TV antennae, construction cranes etc.
 - (d) Should you wish to exceed 28.5 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.
 - (f) 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 (ie cranes) should be obtained prior to any commitment to construct.
 - (h) Information required by SACL prior to any approval is to include:

- (i) the location of any temporary structure or equipment, ie. construction cranes, planned to be used during construction relative to Mapping Grid of Australia 1994 (MGA94);
 - (ii) the swing circle of any temporary structure/equipment used during construction;
 - (iii) the maximum height, relative to Australian Height Datum (AHD), of any temporary structure or equipment ie. construction cranes, intended to be used in the erection of the proposed structure/activity;
 - (iv) the period of the proposed operation (ie. construction cranes) and desired operating hours for any temporary structures.
- (i) Any application for approval containing the above information, should be submitted to this Corporation 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.

For further information on Height Restrictions please contact me on (02) 9667-9246.

- (j) Under Section 186 of the Airports Act 1996, it is an offence not to give information to the Airport Operator that is relevant to a proposed "controlled activity" and is punishable by a fine of up to 50 penalty units.
- (k) The height of the prescribed airspace at the site is 51 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

- (l) The area in which the proposed development is located is in the vicinity of Sydney (KS) Airport.
- (m) To minimise the potential for bird habitation and roosting, the Proponent must ensure that non-bird attracting plant species are used in any landscaping design.
- (n) Any landscaping design must minimise the attractiveness for foraging birds, i.e. site is kept clean regularly, refuse bins are covered, and detention ponds are netted.
- (o) All trees to be planted shall not be capable of intruding into the Obstacle Limitation Surface when mature.
- (p)

Planning for Aircraft Noise and Public Safety Zones

- (q) 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 Air services Australia on 13 March 2009 (Sydney Airport 2029 ANEF).
- (r) 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.

12. The proposed development is to comply with the conditions provided by Sydney Water dated 28 May 2012. The conditions are outlined as follows:

Water

- (a) Preliminary investigation indicates that the existing system has adequate capacity to service the proposed development. The proposed development will require amplification and extensions from the existing water mains in the surrounding streets. A preliminary concept scheme plan, based on the proposed building heights and identifying the drinking water main sizes, is shown on the enclosed plan.
- (b) Detailed requirements will be provided at the section 73 application phase. The accredited Water Servicing Coordinator/Designer will need to ensure that the submitted design is sized and configured according to the Water Supply Code of Australia (Sydney Water Edition WSA 03- 2002). Evidence of Code compliance should be attached with the design.

Wastewater

- (c) The current wastewater system has sufficient capacity to service the proposed development.
- (d) The developer will be required to produce an overall wastewater scheme plan for the ultimate development. This can be in the format of a catchment plan indicating proposed extensions, connection points and flows (EP) to the existing system.
- (e) An accredited Hydraulic Designer will be engaged by the developer to ensure that the proposed wastewater infrastructure for this development will be sized & configured according to the Sewerage Code of Australia (Sydney Water Edition WSA 02-2002). Evidence of Code compliance should be attached with the design. Detailed servicing requirement will be provided at the section 73 phase after reviewing the proposed servicing scheme.

Sydney Water Servicing

- (f) Sydney Water will further assess the impact of any subsequent development when the developer applies for a Section 73 Certificate. This assessment will enable Sydney Water to specify any works required as a result of future development and to assess if amplification and/or changes to the system are applicable. The developer must fund any adjustments needed to Sydney Water infrastructure as a result of the development.
- (g) The developer should engage a Water Servicing Coordinator to get a Section 73 Certificate and manage the servicing aspects of the development. The Water Servicing Coordinator will ensure submitted infrastructure designs are sized and configured according to the Water Supply Code of Australia (Sydney Water Edition WSA 03-2002) and the Sewerage Code of Australia (Sydney Water Edition WSA 02-2002).
- (h) Sydney Water requests the Council to continue to instruct proponents to obtain a Section 73 Certificate from Sydney Water. Details are available from any Sydney Water Customer Centre on 13 20 92 or Sydney Water's website at www.svdnewwater.com.au.

Sydney Water e-planning

- (i) Sydney Water has created a new email address for planning authorities to use to submit statutory or strategic planning documents for review. This email address is urbanqrowthAsydneywater.com.au. The use of this email will help Sydney Water provide advice on planning projects faster, in line with current

planning reforms. It will also reduce the amount of printed material being produced. This email should be used for:

- (i) Section 62 consultations under the Environmental Planning and Assessment Act 1979
- (ii) consultations where Sydney Water is an adjoining land owner to a proposed development
- (iii) consultations and referrals required under any Environmental Planning Instrument
- (iv) draft LEPs, SEPPs or other planning controls, such as DCPs
- (v) any proposed development or rezoning that will be impacted by the operation of a Sydney Water Wastewater Treatment Plant
- (vi) any proposed planning reforms or other general planning or development inquiries

If you require any further information, please contact Ainsley Rotgans of the Urban Growth Branch on 02 8849 4004 or e-mail ainsley.rotgans@sydneywater.com.au

13. The applicant should have regard to the following matters provided by NSW Police - Botany Bay Local Area Command, dated 11 July 2012:
- (a) 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) AS4806.2006 needs to be implemented to receive, hold or process data for the identification of people involved in anti social behaviour or criminal behaviour. The system is obliged to conform with Federal, State or Territory Privacy and Surveillance Legislation.
 - (b) 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. 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).
 - (c) 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.
 - (d) 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. 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). 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. 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 development.

Notes:

- (i) It is crucial that the aforementioned cameras are installed as soon as power is available to the site.

- (ii) By angling fire egress inlet walls 45 degrees or more, opportunities for entrapment, loitering and vandalism can be reduced.
- (iii) 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 are isolated, unused and maintained poorly become a breeding ground for anti-social behaviour.
- (iv) 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.
- (v) 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.
- (vi) 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.
- (vii) Uneven building alignments, insert doorways and hidden entrances should be avoided. They can facilitate predatory crimes, thefts, malicious damage and other offences.
- (viii) 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.
- (ix) Clear street numbers 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 (\$11000) for the corporation. The numbers should be in contrasting colours to the building materials and be larger than 120mm.
- (x) Warning signs should be strategically posted around the buildings to warn intruders of what security treatments have been implemented to reduce opportunities for crime.
 - Warning, trespasser will be prosecuted.
 - Warning, these premises are under electronic surveillance.
- (xi) 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.
- (xii) 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.
- (xiii) A boom gate should be installed within the underground car park located immediately after the roller door entrance. This will hold residents in the vicinity of the roller door to ensure no unauthorised persons enter after

them. The boom gate will rise when the roller door is completely closed and allow the residents vehicle to move on.

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.

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

14. Prior to issue of Stage 1 Construction Certificate, A Soil and Water Management Plan (SWMP) 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 SWMP shall be kept on-site at all times and made available to Council Officers on request.
15. Prior to 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/PCA clearly demonstrating that the site is suitable for the proposed development. This shall be provided prior to the issuing of the Occupation Certificate.

Any conditions imposed on the SAS shall form part of this consent. In circumstances where the SAS conditions (if applicable) are not consistent with the consent, a s96 application pursuant to the Environmental Planning & Assessment Act 1979 shall be submitted to ensure that they form part of the consent conditions. The accredited site auditor shall provide Council with a copy of the Site Audit Report (SAR) and Statutory Site Audit Statement (SAS), confirming the suitability of the site for the proposed development prior to the issuing of the Occupation Certificate.
16. Prior to issue of Stage 1 Construction Certificate, A dilapidation report on public infrastructure (including Council and public utility infrastructure) adjoining the development site shall be prepared by a suitably qualified person and submitted to Council/PCA. The report shall include records and photographs of the following area that will be impacted by the development: -
 - (a) Pemberton Street
 - (b) Wilson Street
 - (c) Council's drainage assets in Wilson Street, Pemberton Street and the existing drainage easement along the northern boundary of the site
 - (d) All properties immediately adjoining the site

The applicant shall bear the cost of all restoration works to buildings/ structures and public infrastructure that been damaged during the course the construction. Any damage to buildings/structures, infrastructures, roads, lawns, trees, gardens and the like shall be fully rectified by the applicant/developer, at the applicant/developer's expense.

- 16A A dilapidation report of unit 2..... of 43-45 Wilson Street Botany, including a photographic survey, must be prepared in respect of the property known as Unit 2605 43-45 Wilson Street, Botany. A copy of the dilapidation report together with the accompanying

photographs shall be given to the above property owner/s, and a copy lodged with Certifying Authority prior the release of the Construction Certificate.

17. Prior to issue of Stage 1 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. 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.
18. Prior to issue of Stage 2 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 Energy Australia, Sydney Water and 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 and Council are to be the responsibility of the developer.

19. Prior to issue of Stage 2 Construction Certificate, the construction plans shall be revised to address the following: -
 - (a) All recommendations stated in the Internal Traffic Assessment Report, prepared by Thompson Stanbury Associates, Ref 12-028, dated Apr 2012 shall be incorporated into the construction plans.
 - (b) Minimum three (3) car wash bays shall be provided
 - (c) The columns that are located on the vehicular paths shall be relocated
 - (d) The aisle width adjacent to parking bay no. 111 in basement level shall be revised to comply with AS2890.1
 - (e) Bollards shall be installed at the shared spaces of the disabled parking bays to comply with AS2890.6.
 - (f) The number of disabled parking bays shall comply with BCA requirements
 - (g) The length of parking bay no. 1 in ground level shall be have minimum length of 5.4m to comply with AS2890.1
 - (h) The design of the shared vehicle access driveway between the proposed development and the townhouses east of the site shall be revised to address the following:-
 - (i) Garbage bins collection area shall not obstruct the shared vehicle access driveway, fire escape exits, vehicle entrance to the basement car parking area and the townhouses' garages east of the site.

20. Prior to issue of Stage 3 Construction Certificate, the construction plans shall be revised to address the following: -
- (a) Six (6) Adaptable housing units shall be designed and incorporated into the construction plans to comply with Adaptable Housing Class A, in accordance with Development Control Plan No. 31.
 - (b) The Communal Room located on Level 1 as indicated on Revised Level Part Plan - SK 120709-01 Issue A, prepared by Krikis Tayler Architects Pty Ltd and dated 9 July 2012 shall be included in into the construction plans.
 - (c) The design of the shared vehicle access driveway between the proposed development and the townhouses east of the site shall be revised to address the following:-
 - (i) Intercom system shall be provided at the vehicle entrance to the development. This is to ensure visitors can gain access to the visitor parking bays located within the basement car parking area.
 - (ii) Measures shall be implemented to ensure the shared vehicle access driveway, the fire escape exits, vehicle entrance to the basement car parking area and the townhouses' garages east of the site will not be obstructed by parking on driveway.
21. Prior to issue of Stage 3 Construction Certificate, the landscape plans shown on the plan by isScape and dated April 2012 shall be revised to address the following: -
- (a) A planting plan at 1:100 scale showing all plant locations, groupings and centres. There is to be a dense layered planting of trees, scrubs of varying height, accent plants and groundcovers in all landscaped areas. The plant schedule is to list plants by botanical name, include total numbers, spacings, pot sizes and staking. Specifications shall detail soil and mulch finishes, root barriers (if required), irrigation edging and landscape hardworks such as retaining walls. Include all areas to be paved, a schedule of finishes, edge treatments and selectional construction details. All fencing, privacy screening and the like – elevations and material shall be specified as well as other landscape and recreational elements – amenity furniture, pedestrian lighting and water features.
 - (b) The additional communal open space area on the roof of Building F that is nominated on the stamped plans. The area is to contain paving, balaustrades and planter boxes of ample area to allow mass planting (min 400-500mm deep) to allow the creation of small recreation spaces for use by residents. Appropriate waterproofing, drainage and landscape substructure will be required and are to be documented in the landscape plan.
 - (c) The landscape area surrounding the Pedestrian entry off New Street 2, between Blocks E and F and adjacent the communal room is to be revised to provide integrated usage and a more detailed design resolution and plant interest using flowering and foliage plants.
 - (d) The planting design is to be modified and is to incorporate species with more structured and architectural forms and that are decorate with feature foliage and flowers. (Eg: Agave, Cycas, Streliazia, etc with a reduced reliance on the hardy type natives. The following plants are considered unsuitable for the type of development: Kunzea, Correa, Dianella caerulea. Limited use of Lomandra Dodonaea, Poa, Dianella (use cultivar only)).

- (i) Species suitable for a containerised environment with imported soils shall be used in podium areas/planter boxes.
- (ii) Plants that will enhance the visual amenity of the space as well as its uses and enjoyment are to be used in communal spaces
- (iii) Plants that will enhance the outdoor private living area and provide screening shall be used private planter boxes.
- (iv) Trees are to be included within the dwelling frontages and plants that will enhance the streetscape and soften the development shall also be used.
- (v) The main communal open spaces shall incorporate trees of various varieties. Use appropriate for foliage colour, flower and decorate form. Select suitable species to ameliorate the building massing and provide an appropriate scaling for residents and users eg: Bauhinia, Magnolia, Crepe Myrtle, Native Frangipanni, Pyrus etc.
- (vi) The roof garden is to contain planters of generous dimensions. Plants can be kept low using succulent types and dwarf varieties suitable for high heat and windy conditions. Planter boxes are to be designed accordingly – waterproofing, drainage, soil substrate.
- (vii) Vertical/ green walls could be incorporated into the development proposal in effective and sustainable locations.
- (viii) Limit the use of palms to selected locations where space is constrained or a vertical element is required as an entry or visual statement. Palms should have a minimum trunk height of 3-4 metres for effect and are to be native.
- (ix) The planter box depths shown are insufficient for trees and depths are to be increased to 1 metre. This will be required in the frontages and the communal open space between buildings where trees and palms are necessary for scale and amenity. The communal open space must include trees.
- (x) The detailed design for all podium planters shall meet Landscape DCP 32.
- (xi) In communal open spaces soft landscaping is to be maximised and accessways/ dissecting pathways minimised. Trees shall be used extensively and be of an appropriate scale to complement the built form and impact comfort and amenity to communal areas and open spaces. Deep soil zones must include larger canopy trees. Consider avenue plantings and specimen tree entry features. Trees are to be predominately native, evergreen species using open canopy form evergreens or selected deciduous for solar penetration.
- (xii) Ensure setbacks are entirely permeable, deep soil zones available for canopy tree planting. OSD and infiltration trenches are not permitted in street setbacks/deep soil areas.
- (xiii) Indicate the location of any electrical kiosk and indicate how it is to be screened. Fire booster assemblies are to be housed within the building structure. Both utilities are not to be located within the setbacks to the property or at main entries.

The amended Landscape Plan is to be stamped by Council's Landscape Architect. This amended plan will supersede the previous landscape plan. The landscape 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.

22. Prior to issue of Stage 3 Construction Certificate, a public domain improvements plan shall be submitted for approval by Council's Landscape Architect. The Plan shall be undertaken by a suitably experienced Landscape Architect and shall include by not be limited to street tree planting, footpaths, street tree pit treatments and tree guards, street furniture, in ground landscaping, irrigation and lighting. Paving shall be in accordance with relevant DCP's for the site. Civil drawings shall include levels and detailed footpath construction sections in accordance with Council's Engineering Services requirements. The Plan shall include:
- (a) The public domain treatment to the frontage of Building E demonstrating integration with the public park design.
 - (b) Consideration of the position of electrical pillar in relation to public footpaths and inclusion of landscaping for their screening.
23. Prior to issue of Stage 2 Construction Certificate, design certification, prepared by a suitably qualified engineer shall be submitted to Principal Certifying Authority certifying the ramps, turning area and car parking area shown on the construction plans have been designed in accordance with AS 2890.1, AS2890.2 and AS2890.6.
24. Prior to issue of Stage 2 Construction Certificate, detailed construction plans in relation to the stormwater management and disposal system for the development shall be prepared by a suitably qualified civil engineer experienced in drainage design and submitted to **Council** and Principal Certifying Authority for approval. The layout of the stormwater drainage system shall be generally in accordance with the following stormwater management plans, prepared by Australian Consulting Engineers:
- Drawing No. D01, Rev A, dated 1 May 2012
 - Drawing No. D02, Rev C, dated 26 Apr 2012
 - Drawing No. D03, Rev C, dated 1 May 2012
 - Drawing No. D04, Rev C, dated 1 May 2012

In addition, the following issues shall be addressed: -

- (a) All stormwater runoff generated from the site (including discharge from the OSD system, surface runoff and runoff bypassing the OSD system) shall pass through Stormwater Quality Improvement Devices (SQID) (e.g. Gross Pollutant Trap (GPT)) capable of removing litter and sediment and meeting the stormwater pollution reduction targets stated in Botany Bay & Catchment Water Quality Improvement Plan. Details of the Stormwater Quality Improvement Devices shall be shown on stormwater management plan.
- (b) Pump-out system shall be provided to the basement car parking area in order to collect stormwater runoff from the driveway ramp. Subsoil drainage lines shall not be provided to the basement area if it is below to the groundwater table. The storage volume of the pump-out tank shall be designed with a minimum storage capacity equivalent to the runoff volume generated from of the area that draining into the tank for the 1 in 100 year ARI 2-hours duration storm event.

All drawings and specifications shall be prepared in accordance with Council's 'Guidelines for the Design of Stormwater Drainage Systems within City of Botany Bay', Australian Rainfall and Runoff (AR&R), AS 3500.3 and BCA. All drawings shall

correspond with the approved architectural plans. **Design certification from the engineer shall be submitted to Principal Certifying Authority.**

25. Prior to the issue of Stage 1 Construction Certificate 1, detailed Construction Traffic Management Plan for the pedestrian and traffic management of the site during construction shall be prepared and submitted to the satisfaction of the Principal Certifying Authority and Council for approval. The plan shall: -
- (a) be prepared by an RMS accredited qualified person.
 - (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) indicate the construction vehicle access point to the site be limited on Pemberton Street only.
 - (d) indicate the frequency of truck movements.
 - (e) ensure all traffic (including worker's vehicles) generated from the construction activities shall enter and leave the site in a forward direction.
 - (f) ensure vehicles associated with construction activities not permitted to travel on Wilson Street or Pemberton Street north of the site
26. Prior to the issue of Stage 1 Construction Certificate, detailed Construction Management Plan (CMP) shall be submitted to the satisfaction of the Principal Certifying Authority and Council for approval of the site works. The CMP shall address the following: -
- (a) All vehicles (including worker's vehicles) associated with construction activities shall enter and leave the site in a forward direction ONLY.
 - (b) All vehicles (including worker's vehicles) associated with the construction activities shall only be allowed to park within the site.
 - (c) Construction building materials shall be stored wholly within the site. However, the storage locations shall not obstruct the floodway, identified in "Flood Study- Amendments to Master Plan (Rev A), Parkgrove, Botany", prepared by KF Williams & Associates Pty Ltd., Reference No. KF 110745, dated 24 Sep 2012.
 - (d) Access to adjacent buildings and pedestrian and vehicle access fronting Anderson Street shall be maintained at all times. No closure of any road reserve will be permitted without Council approval.
 - (e) Under no circumstances (except emergency) shall any trucks be permitted to queue and wait on public places, public streets or any road related area (eg. footpath, nature strip, road shoulder, road reserve etc) prior to entering the site.
 - (f) Locations of site office, accommodation and the storage of major materials related to the project shall be within the site.
 - (g) Protection of adjoining properties, pedestrians, vehicles and public assets shall be implemented at all times.
 - (h) Location and extent of proposed builder's hoarding and Work Zones, if there is any, shall be shown on the plan.

- (i) Tree protection management measures for all protected and retained trees shall be implemented at all times.
27. Prior to the release of the Stage 1 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.
28. Prior to issue of Stage 2 Construction Certificate, Plans and specifications for the storage room for waste and recyclable materials shall be submitted to the Principal Certifying Authority with the application for Certificate. Storage of Waste and recycling shall meet the following requirements:
- (a) Waste and recycling for commercial users shall be in a separate room from the storage of waste and recycling for residential users;
 - (b) The rooms for the storage of garbage and recyclable materials shall be fully enclosed;
 - (c) Adequately ventilated and of a suitable size to contain compaction equipment;
 - (d) Constructed with a concrete floor, concrete or cement rendered walls coved to the floor;
 - (e) The floor shall be graded to an approved sewer connection incorporating a sump and galvanized grate cover or basket in accordance with the requirements of Sydney Water Corporation;
 - (f) Washing facilities shall be provided within close proximity to the garbage and recycling storage area.
29. The following requirements apply to telecommunication facilities in the building:
- (a) Appropriate access and space within the plant area of the building shall be provided for a minimum of three telecommunication carriers or other providers of broad-band access by ground or satellite delivery.
 - (b) Appropriate ducting and cabling shall be provided for a minimum of three telecommunication carriers or other providers for telecommunication access and broad-band cabling to each apartment of the building.
 - (c) The details of (i) and (ii) above shall be submitted for the approval of the certifying authority, prior to issue of the Stage 3 Construction Certificate No.3.
- 30.
- (a) Any lighting on the site shall be designed so as not to cause nuisance to other residences in the area or to motorists on nearby roads, and to ensure no adverse impact on the amenity of the surrounding area by light overspill.
 - (b) All lighting shall comply with AS4282-1997 Control of the obtrusive effects of outdoor lighting; and
 - (c) The installation of solar power to external space lighting. Details shall be submitted to the Principal Certifying Authority prior to the issue of the Stage 3 Construction Certificate.

31. Prior to issue of the Stage 3 Construction Certificate, the measures required in the Aircraft Noise Intrusion Report prepared by Day Design Pty Ltd dated 27th April 2012 shall be undertaken in accordance with the provisions of AS2021-2000: 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. Acoustic measures required are to be incorporated into the Construction Certificate plans.
32. Prior to the issue of a Construction Certificate, details addressing the following matters shall be submitted to the Principal Certifying Authority:
- (a) Storage shall be provided for each unit in accordance with the following:
 - (i) The proposal shall comply with the minimum storage requirements contained within Section F10 of Council's DCP No. 31 which are as follows:
 - Studio apartment = 6m²
 - 1 bedroom apartment = 8m²
 - 2 bedroom apartment = 10m²
 - 3 bedroom apartment = 12m²
 - (b) Adequate storage area is to be provided for each retail tenancy in accordance with DCP 31.
 - (c) A minimum of 50% of the storage requirements shall be provided within the unit, and the remainder shall be provided in the basement, in accordance with DCP No. 31;
 - (d) The storage areas shall have a minimum height of 1.5 metres in accordance with DCP 31;

CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE COMMENCEMENT OF ANY DEVELOPMENT OR WORK

33. 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.
34. 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 no works or occupancy shall be carried out in road reserve until permits have been granted from Council's engineers. Any works shown within Council's road reserve or other Council Lands on the development approval plans are indicative only and no approval for these works is given until this condition is satisfied.)
- (a) Permit to erect hoarding on or over a public place, including Council's property/road reserve
 - (b) Permit to construction works, place and/or storage building materials on footpaths, nature strips

- (c) Permit for roads and footways occupancy (long term/ short term)
- (d) Permit to construct vehicular crossings, footpaths, kerbs and gutters over road reserve
- (e) 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.
- (f) Permit to place skip/waste bin on footpath and/or nature strip
- (g) Permit to use any part of Council's road reserve or other Council lands
- (h) Permit to stand mobile cranes and/or other major plant on public roads and all road reserve area

(It should be noted that the issue of such permits may involve approval from RTA and NSW Police. In some cases, the above Permits may be refused and temporary road closures required instead which may lead to longer delays due to statutory advertisement requirements.)

- (i) Permit to establish "Works Zone" on public roads adjacent to the development site, including use of footpath area.

(Application(s) shall be submitted minimum one (1) month prior to the planned commencement of works on the development site. The application will be referred to the Council's Traffic Engineer for approval, which may impose special conditions that shall be strictly adhered to by the applicant(s))

Copy of the approved permits shall be submitted to the Principal Certifying Authority attesting this condition has been appropriately satisfied.

CONDITIONS WHICH MUST BE SATISFIED DURING WORKS RELATED TO THE DEVELOPMENT

- 35. During excavation and construction the management of potential and actual acid sulfate soils shall be conducted in accordance with the approved Acid Sulfate Soils Management Plan-1617 Botany Road, 9-17 Wilson Street, 25-33 Wilson Street and 8 Pemberton Street Botany dated 17 February 2006 (Report ID: CES21209-AUS-ASSMP) prepared by Consulting Earth Scientists.
- 36. During excavation and construction All management measures recommended and contained within the Soil and Water Management Plan (SWMP) 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.
- 37. During excavation and construction 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) Landcom (‘The Blue Book’); and
- (c) Protection of the Environment Operations Act 1997.

Where there is any conflict The Blue Book takes precedence.

Note: The International Erosion Control Association – Australasia (<http://www.austieca.com.au/>) lists consultant experts who can assist in ensuring compliance with this condition. Where Soil and Water Management Plan is required for larger projects it is recommended that this be produced by a member of the International Erosion Control Association – Australasia.

Note: The “Do it Right On Site,” can be down loaded free of charge from Council’s website and further information on sediment control can be obtained from www.ssroc.nsw.gov.au.

Note: A failure to comply with this condition may result in penalty infringement notices, prosecution, notices and orders under the Act and/or the Protection of the Environment Operations Act 1997 without any further warning. It is a criminal offence to cause, permit or allow pollution.

Note: Section 257 of the Protection of the Environment Operations Act 1997 provides inter alia that “the occupier of premises at or from which any pollution occurs is taken to have caused the pollution”

Warning: Irrespective of this condition any person occupying the site may be subject to proceedings under the Protection of the Environment Operations Act 1997 where pollution is caused, permitted or allowed as the result of their occupation of the land being developed.

- 38. During excavation and construction For any water from site dewatering to be permitted to go to stormwater, the water must meet ANZECC 000 Water Quality Guidelines for Fresh and Marine Water for the 95% protection trigger values for freshwater. 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 is acceptable to be released into council’s stormwater system.
- 39. During excavation and construction All materials excavated from the site (fill or natural) shall be classified in accordance with the NSW Department of Environment and Climate Change (DECC) Waste Classification Guidelines (2008) prior to being disposed of to a NSW approved landfill or to a recipient site.
- 40.
 - (a) The applicant shall conduct all demolition, excavation, 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 (e.g. concrete pumps) or equipment (e.g. 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) 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 /or other plant and equipment.
41. During excavation and construction and any associated deliveries activities, 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 made 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.
42. During excavation and construction and any associated deliveries 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.
43. During excavation and 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 and;
 - (c) Approved Construction Management Plan
44. The development is to be constructed to meet the requirements detailed in the approved acoustic report (Day Design Pty Ltd 27th April 2012) and the following construction noise requirements:
- (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:
 - a. 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:
 - a. 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 01:00pm
 - (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.
45. 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.
46. The construction of the premises shall not give rise to transmission of vibration at any affected premises that exceeds the vibration in buildings criteria outlined in the NSW EPA Environmental Noise Control Manual.
47. All vehicles transporting soil, sand or similar materials to or from the site shall cover their loads at all times.
48. To prevent contaminated soil being used onsite, all imported fill shall be certified VENM material and shall be validated in accordance with the Office of Environment and Heritage (OEH) approved guidelines to ensure that it is suitable for the proposed development. 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.
49. 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.
50. Toilet facilities are to be provided at or in the vicinity of the work site on which work involves:
- (a) Erection 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.
 - (c) The provisions of toilet facilities in accordance with this clause must be completed before any other work is commenced.
- 51. 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:
 - (a) stating that unauthorised entry to the work site is prohibited;
 - (b) 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;
 - (c) the Development Approval number;
 - (d) the name of the Principal Certifying Authority including an after hours contact telephone number; and
 - (e) any such sign is to be removed when the work has been completed.
- 52.
 - (a) All excavations and backfilling shall be executed safely and in accordance with appropriate professional standards; and
 - (b) All excavations shall be properly guarded and protected to prevent them from being dangerous to life or property; and,
 - (c) If the soil conditions require it:-
 - (i) retaining walls associated with the erection or demolition of a building or other approved methods of preventing movement of the soil must be provided and:-
 - (ii) adequate provision must be made for drainage.
 - (d) Existing structures and or services on this and adjoining properties are not endangered during any excavation or construction work associated with the development. The applicant is to provide details of any shoring, piercing, or underpinning prior to the commencement of any work. The construction shall not undermine, endanger or destabilise any adjacent structures.
 - (e) As the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) Protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) Where necessary, underpin the adjoining premises to prevent any such damage.

53.

- (a) 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. 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.
- (b) 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 except between garden beds and grassed areas.
- (c) Planter boxes constructed over a concrete slab shall be built in accordance with the following minimum details
 - (i) Ensure soil depths in accordance with Council's Landscape DCP.
 - (ii) The base of the planter must be screened to ensure drainage to piped internal drainage outlet of minimum diameter 90mm, with no low points elsewhere in the planter. There are to be no external weep holes. Turfed areas require a min 5% cross fall.
 - (iii) 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.
 - (iv) Planters are to be fully waterproofed and sealed internally with a proprietary sealing agent 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.
 - (v) Drainage cell must be supplied to the base and sides of the planter to minimise damage to the waterproof seal during backfilling and facilitate drainage. Apply a proprietary brand of filter fabric and backfill with an imported lightweight soil suitable for planter boxes compliant with AS4419 and AS3743. Install a drip irrigation including to lawns.
 - (vi) Planter boxes shall be finished externally with a suitable paint, render or tile to co-ordinate with the colour schemes and finishes of the building.
 - (vii) All paved pedestrian areas shall be finished in a decorate treatment, such as paving. Large areas of concrete are not permitted. Asphalt is not a suitable finish. Driveway crossovers shall be constructed of plain broom finished concrete. Public footpaths shall be in accordance with relevant DCP's for the site.

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

54. Prior to the issue of any Occupation Certificate any damage not shown in the dilapidation report submitted to Council/PCA before site works have commenced, will be assumed to have been caused by the site works undertaken (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.
55. Prior to the issue of any Occupation Certificate, **Two hundred and seventy-one (271)** for car parking off-street parking bays shall be provided to the development in accordance with the approved plans.
56. Prior to the issue of any Occupation Certificate, documentation from suitably qualified engineer shall be submitted to the Principal Certifying Authority certifying that the car parking area, turning area access ramps and driveways have been constructed generally in accordance with the approved construction plan(s) and comply with AS2890.1 and AS2890.6 requirements. The internal road network and parking area shall be clearly designated, sign posted and line marked. Signage and line marking shall comply with the current version of Australian Standards.
57. 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.
58. In order to ensure that the floodway and temporary flood storage area will be adequately maintained, Positive Covenant and Restriction on the Use of Land on the Title under Section 88B/88E(3) of the Conveyancing Act 1919 shall be created in favour of Council as the benefiting authority for the as-built floodway and temporary flood storage area. The wording of the terms of the Positive Covenant and Restriction on the Use of Land are available in Council. The relative location of the as-built overland flow path, in relation to the building footprint, shall be shown on a scale sketch, attached as an annexure to the plans/ forms. City of Botany Bay Council shall be the authority empowered to release, carry or modify the restriction. Proof of registration shall be submitted to the Principal Certifying Authority prior to the issue of Final Occupation Certificate.
59. Prior to the issue of any Occupation Certificate, the construction of the stormwater drainage system of the proposed development shall be completed generally in accordance with the approved stormwater management construction plan(s), Council's '*Guidelines for the Design of Stormwater Drainage Systems within City of Botany Bay*', Australian Rainfall & Runoff (AR&R), AS 3500 and BCA.

Documentation from a qualified civil engineer experienced in stormwater drainage design shall be submitted to the Principal Certifying Authority certifying that the stormwater drainage system has been constructed generally in accordance with the approved stormwater management construction plan(s) and accepted practice.

60. Prior to the issue of any Occupation Certificate, maintenance schedule of the stormwater drainage system (including on-site detention system, pump-out system and stormwater quality improvement devices) shall be prepared by a qualified engineer and submitted to Principal Certifying Authority. A copy of maintenance schedule shall also be submitted to Council/PCA for record purpose.
61. Prior to the issue of any Occupation Certificate, a Certificate of Survey from a Registered Surveyor shall be submitted to the Principal Certifying Authority to the effect that all reduced levels shown upon the approved plans, with relation to drainage, boundary and road reserve levels, have been strictly adhered to.
62. Prior to the issue of any Occupation Certificate, proof of registration of the Right of Carriageway for the shared vehicle access driveway between the proposed development and the townhouses east of the site shall be submitted to the Principal Certifying Authority.
63. Prior to issue of any Occupation Certificate the developer must submit to the Principal Certifying Authority an acoustic report to verify that the measures stated in the Aircraft Intrusion report referred to in Condition 33 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).
64. The name of the development, street numbers and unit numbers shall be clearly displayed with such numbers being in contrasting colour and adequate size and location for viewing from the footway and roadway. Details of street numbering shall be submitted to Council/PCA for approval prior to the release of the Occupation Certificate.
65. Prior to the issue of any Occupation Certificate, minimum 270 off-street car parking bays as defined in AS2890.2 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) **254 parking bays** shall be allocated to residents parking only. The allocation of parking bays shall be based on the following rate:
 - Studio/ 1-bedroom unit 1 space / unit
 - 2-bedroom /3-bedroom 2 spaces / unit
 - (b) **Sixteen (16)** off-street parking bays shall be made available at all times for visitors parking, with minimum three (3) parking bays to also be used as car wash bays.
 - (c) Minimum **six (6)** parking bays shall be dedicated to disabled parking
 - (d) Stacked parking spaces shall only be allocated to a single unit (2-bedroom /3-bedroom).

66. Prior to the issue of any Occupation Certificate landscaping shall be installed in accordance with the amended landscape plan only as stamped by Councils Landscape Architect.
67. Section 94 Contributions are required to be paid prior to the issue of the Occupation Certificate in accordance with the City of Botany Bay Section 94 Contributions Plan 2005-2010. The Section 94 Contribution of \$3,160,000.00 is required as follows:
- | | | |
|-----|--|----------------|
| (a) | Community Facilities: | \$292,268.40 |
| (b) | Administration | \$11,028.40 |
| (c) | Open Space and Recreation (outside Mascot Station) | \$2,253,933.20 |
| (d) | Drainage (Wilson / Pemberton Precinct) | \$257,224.00 |
| (e) | Transport Management (Wilson / Pemberton Precinct) | \$345,546.00 |

The total Section 94 Contribution of \$3,160,000.00 is to be paid to Council prior to the issue of the Occupation Certificate.

- 68.
- (a) Prior to use and occupation of the building an Occupation Certificate must be obtained under Section 109C(1)(c) and 109N of the Environmental Planning and Assessment Act, 1979. ***An occupation certificate shall be obtained for the works approved under DA-2017/71/3.***
(Amendment s4.55(1a) Da-2012/71/3)
- (b) Condition Nos. 5, 6, and 54 to 68 are pre-conditions prior to the issue of the Occupation Certificate.
- (c) ***Occupation of the extended balcony portion under DA-2012/71/3 to Unit 605 (Lot 97) shall not commence until exclusive use of the common area has been granted to the owners of Unit 605 by The Owners Corporation under Strata Plan No. 89302***
(Amendment s4.55(1a) Da-2012/71/3)

Reason for condition 68 (c): To ensure that the appropriate permission is granted to occupy the common property

OPERATIONAL CONDITIONS

69. 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 in accordance with the maintenance schedule submitted to Council/PCA 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.

70. All vehicles (including deliveries) shall enter and exit the premises to the public roads in a forward direction.
71. The landscaped areas on the property shall be installed and maintained in accordance with approved landscaped documents, the conditions of consent, Council's DCP and to Council's satisfaction at all times.
72. All parking areas 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.
73. The proposal shall comply with the City of Botany Bay's General Noise Criteria is as follows:
- (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). 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.
 - (b) 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.
- 'Offensive noise' as defined in the Protection of the Environment Operations Act 1997 and the Protection of the Environment Operations (Noise Control) Regulation 2000, (See advisory notes).
74. 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 businesses and ground floor common areas.
75. 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. 12/071 dated as 9 May 2012, *as amended by Section 96(1A) Application No Da-71/02 received by Council on 19 December 2013*, and ***as amended by s4.55(1a) Application No DA-2012/71/03 received by Council on 28 June 2018*** and that any alteration, variation, or extension to the use, for which approval has been given, would require further Approval from Council.

Luis Melim

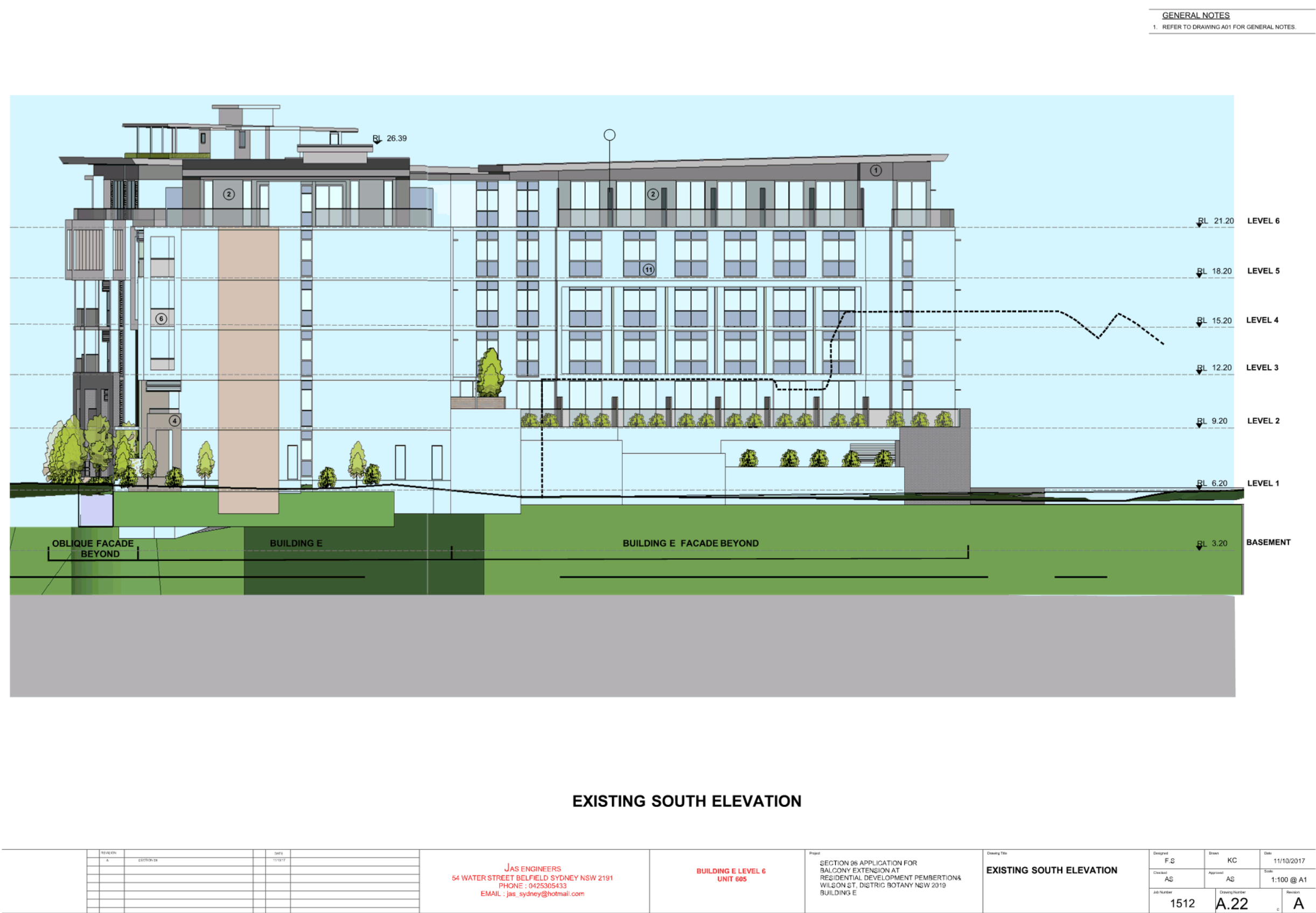
Manager of Development Services



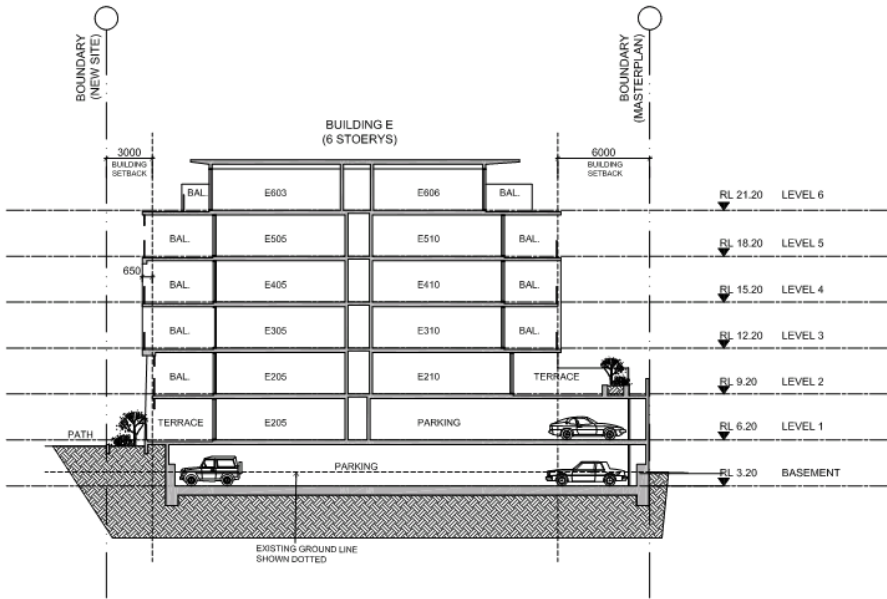


EXISTING EAST ELEVATION

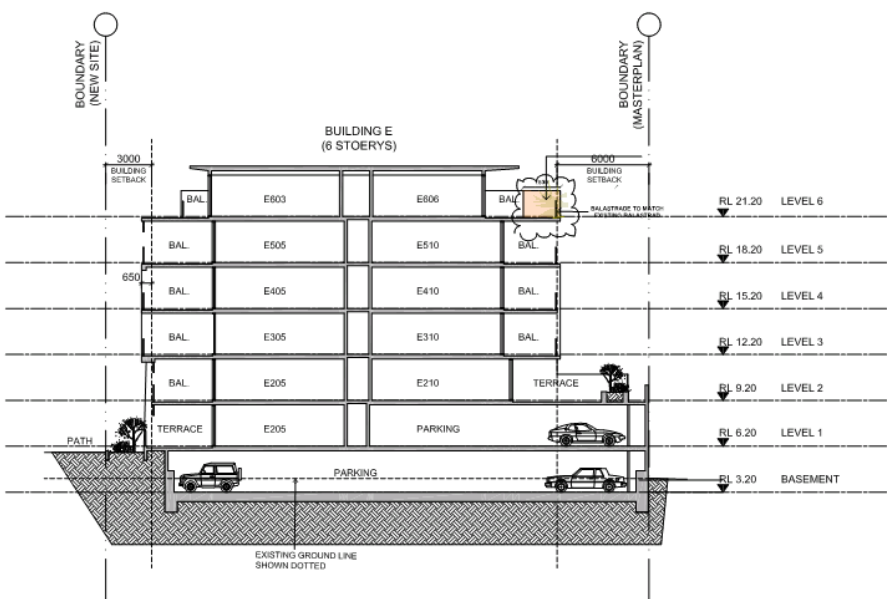
REVISION	SECTION	DATE	JAS ENGINEERS 54 WATER STREET BELFIELD SYDNEY NSW 2191 PHONE : 0425305433 EMAIL : jas_sydney@hotmail.com	BUILDING E LEVEL 6 UNIT 605	Project SECTION 86 APPLICATION FOR BALCONY EXTENSION AT RESIDENTIAL DEVELOPMENT PEMBERTON & WILSON ST, DISTRICT BOTANY NSW 2019 BUILDING E	Drawing Title EXISTING EAST ELEVATION	Designed	Drawn	Date
							F.S	KC	11/10/2017
							AS	AS	1:100 @ A1
							1512	A.23	A



GENERAL NOTES
1. REFER TO DRAWING A01 FOR GENERAL NOTES.

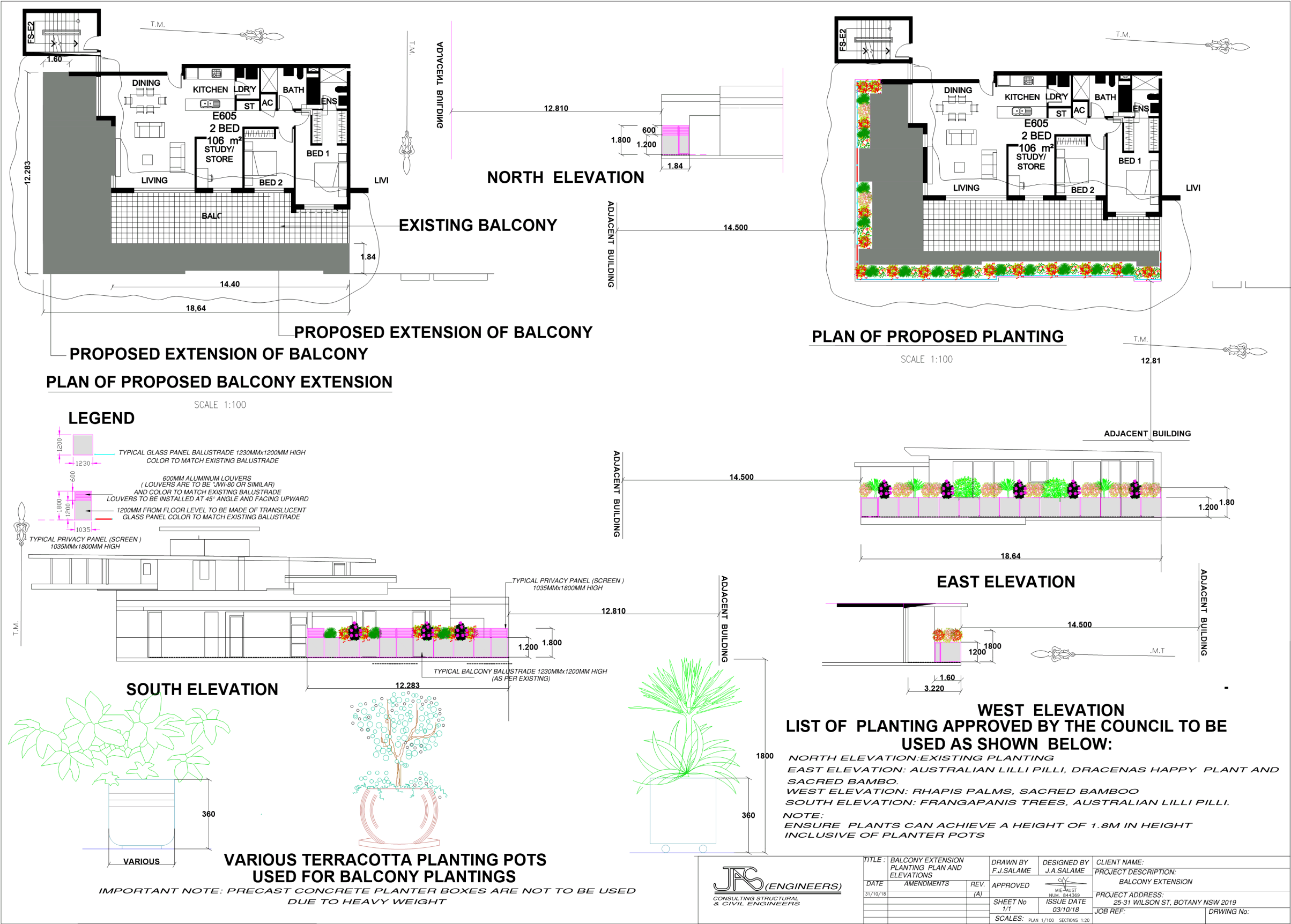


EXISTING SECTION



PROPOSED SECTION

SECTION	DESIGNED	DATE	JAS ENGINEERS 54 WATER STREET BELFIELD SYDNEY NSW 2191 PHONE : 0425305433 EMAIL : jas_sydney@hotmail.com	BUILDING E LEVEL 6 UNIT 605	Project	SECTION 06 APPLICATION FOR BALCONY EXTENSION AT RESIDENTIAL DEVELOPMENT PEMBERTON & WILSON ST, DISTRICT BOTANY NSW 2019 BUILDING E	Drawing Title	SECTION	DESIGNED	DRAWN	DATE	
	A	SECTION 06							11/12/17	F.D.	KC	12/11/2017
										CHECKED	APPROVED	SCALE
										AD	AD	1:200 @ A1
									JOB NUMBER	DRAWING NUMBER	REVISION	
									1512	A.26	05	





GENERAL NOTES
1. REFER TO DRAWING A01 FOR GENERAL NOTES.

PROPOSED FLOOR PLAN

REVISION		DATE	Project JAS ENGINEERS 54 WATER STREET BELFIELD SYDNEY NSW 2191 PHONE : 0425305433 EMAIL : jas_sydney@hotmail.com	BUILDING E LEVEL 6 UNIT 605	Project SECTION 96 APPLICATION FOR BALCONY EXTENSION AT RESIDENTIAL DEVELOPMENT PEMBERTON& WILSON ST, DISTRICT BOTANY NSW 2019 BUILDING E	Drawing Title LEVEL 6 PROPOSED FLOOR PLAN	Designed	Drawn	Date			
A		SECTION 96					F.S		KC		11/10/1017	
							Checked	Approved	Scale			
							AS		AS		1:200 @ A1	
							Job Number	Drawing Number		Revision		
							1512		A.21		07	



PROPOSED EAST ELEVATION

REVISION	DATE	JAS ENGINEERS 54 WATER STREET BELFIELD SYDNEY NSW 2191 PHONE : 0425305433 EMAIL : jas_sydney@hotmail.com	BUILDING E LEVEL 6 UNIT 605	Project SECTION 96 APPLICATION FOR BALCONY EXTENSION AT RESIDENTIAL DEVELOPMENT PEMBERTON& WILSON ST, DISTRIC BOTANY NSW 2019 BUILDING E	Drawing Title PROPOSED EAST ELEVATION	Designed	Drawn	Date
A	SECTION 96					11/10/2017		
						Checked	Approved	Scale
						AS	AS	1:100 @ A1
						Job Number	Drawing Number	Revision
						1512	A.25	A



PROPOSED SOUTH ELEVATION

REVISION		DATE	JAS ENGINEERS 54 WATER STREET BELFIELD, SYDNEY NSW 2191 PHONE : 0426305433 EMAIL : jas_sydney@hotmail.com	BUILDING E LEVEL 6 UNIT 605	Project SECTION 96 APPLICATION FOR BALCONY EXTENSION AT RESIDENTIAL DEVELOPMENT PEMBERTON& WILSON ST, DISTRICT BOTANY NSW 2019 BUILDING E	Drawing Title PROPOSED SOUTH ELEVATION	Designed F.B.	Drawn KC	Date 10/09/17
SECTION 96							Checked AS	Approved AS	Scale 1:100 @ A1
							Job Number 1512	Drawing Number A.24	Revision A

Bayside Local Planning Panel

13/11/2018

Item No	6.6
Application Type	Development Application
Application No	SF18/1791
Lodgement Date	02/08/2018
Property	DA-2018/1144 - 27 Hambly Street, Botany
Ward	Port Botany
Owner	Robert & Leonie Jolly
Applicant	Mr Paolo Festa
Proposal	Demolition of existing structures, subdivision of the existing lot into two Torrens title lots and construction of two semi-detached dwellings, one with a detached garage
No. of Submissions	Nil
Cost of Development	\$772,908.57
Report by	Michael McCabe, Director of City Futures

Officer Recommendation

1. That the Bayside Planning Panel support the variation to the FSR standard, as contained in Clause 4.4 – FSR of Botany Bay LEP 2013, in accordance with the request under clause 4.6 of BBLEP 2013 submitted by the applicant.
 2. That the development application DA-2018/1044 for the demolition of existing structures, subdivision of the existing lot into two Torrens title lots and construction of two semi-detached dwellings, one with a detached garage at 27 Hambly Street, Botany, be APPROVED pursuant to Section 4.16 of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report.
-

The map shows a grid of lots with numbers. A red rectangle highlights lot 27, which is located between Victoria Street and Queen Street, and between lots 13, 11, 9, 7, 5, 3, 1 to its north and lots 17, 21, 23, 25 to its south. Other lots are numbered: 25, 23, 21, 19, 17, 15 to the west of lot 27; 26, 28, 30, 32, 34 to the east of lot 27; 13, 15, 17, 19, 21, 23 to the west of lot 17; 20, 22, 24, 26, 28, 30 to the east of lot 17; 8, 10, 12, 14, 16, 18 to the west of lot 8; and 19, 21, 23, 25 to the east of lot 8. The map also shows 'RAILWAY ROAD' and 'RE1'.

- 1 Planning Assessment Report [↓](#)
- 2 Clause 4.6 Variation [↓](#)
- 3 Statement of Environmental Effects [↓](#)
- 4 Site Analysis Plan [↓](#)
- 5 Survey [↓](#)
- 6 Landscape Plan [↓](#)
- 7 Planting Schedule [↓](#)
- 8 Shadows Winter 9am [↓](#)
- 9 Shadows Winter 12pm [↓](#)
- 10 Shadows Winter 3pm [↓](#)
- 11 Schedule of Colours & Material [↓](#)
- 12 Roof Plan [↓](#)
- 13 Elevation Section A-A [↓](#)
- 14 Elevation Rear [↓](#)
- 15 Elevation Front [↓](#)
- 16 Elevation Detached Garage North & South [↓](#)
- 17 Elevation East West [↓](#)
- 18 Subdivision Plan [↓](#)

BAYSIDE COUNCIL

Planning Assessment Report

Application Details

Application Number:**Date of Receipt:** 2 August 2018**Property:** 27 Hambly Street, Botany**Owners:** Robert and Leonie Jolly**Applicant:** Mr Paolo Festa**Proposal:** Demolition of existing structures, subdivision of the existing lot into two Torrens title lots and construction of two semi-detached dwellings, one with a detached garage**Recommendation:** Approval**Value:** \$772,908.57**No. of submissions:** Nil**Author:** Fiona Prodromou - Senior Assessment Planner**Date of Report:** October 2018

Key Issues

The proposal seeks to modify the maximum 0.5:1 FSR standard permitted for the subject site. The proposal seeks an FSR of 0.66:1, this represents a variation of 16% and a surplus floor area of 89.6sq/m. The applicant has submitted a Clause 4.6 – Exception to Development Standard, key arguments for the proposed variation have been detailed within this report. The FSR variation is supported in this instance for the reasons outlined within this report.

The proposal was publicly notified from 6-22 August 2018. Nil submissions were received.

The proposed development is recommended for Approval subject to the conditions of consent attached to this planning report.

Recommendation

1. That the Bayside Planning Panel has considered the Clause 4.6 request to vary the FSR standard contained in Clause 4.4 of Botany Bay LEP 2013 and is satisfied that the variation will result in consistency with the objectives of the FSR standard 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 development application DA-2018/1144 for the demolition of existing structures, subdivision of the existing lot into two Torrens title lots and construction of two semi-detached dwellings, one with a detached garage at 27 Hambly Street, Botany be APPROVED pursuant to Section 4.16 of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report.

Background

History

2 August 2018
DA submitted to Council

6-22 August 2018
Public notification of proposal

Proposal

The proposal seeks to undertake the demolition of existing structures, subdivision of the existing lot into two Torrens title lots and construction of two semi detached dwellings, one with a detached garage fronting Victoria Street.

In more detail, each dwelling house as proposed, comprises as follows;

Ground Floor

Landscaped front setback to Hambly Street, with 1 x 3m wide driveway & single car garage to dwelling 1. Both dwellings comprise a front porch, guest bedroom, toilet, laundry, lounge and combined kitchen and family room. A rear patio with associated bbq area is proposed adjoining the family room. A lightwell is proposed adjoining the lounge room of Dwelling 2.

Rear landscaped private open space is provided to both dwellings, with a single car garage with vehicular access from Victoria Street provided to Dwelling 2. Both dwellings are provided with designated clothes drying and bin storage areas on site.

First Floor

Each dwelling comprises four bedrooms, main with ensuite, walk in robe and rear facing veranda with associated privacy screening. A bathroom and gallery are also provided at first floor.

Associated landscaping and stormwater works are also provided on site in conjunction with the proposed development. Plans further illustrate the provision of a retaining wall along the Victoria Street frontage with a 1.8m high colourbond and face brick fence along this boundary.



Front Façade facing Hambly Street



Eastern Façade facing Victoria Street

Site Location & Context

The subject site is a corner rectangular allotment with a frontage of 15.24m to Hambly Street and depth of 36.575 to Victoria Street. The site has a total area of 554.8sq/m and is legally identified as Lot 12, Sec F, DP 939785. The property is relatively flat and a sewer line runs across the rear of the property, approximately 2m in from the rear boundary.

The property is currently occupied by a two storey brick and weatherboard dwelling, with detached garage and awning structure to the rear of the site. Vehicular access to the site is via a single driveway from Hambly Street adjoining the western side boundary.

The submitted survey does not illustrate any trees within the boundaries of the subject site, however there are two small trees along the Victoria Street nature strip, one larger tree at the Hambly Street nature strip and one small tree within 25 Hambly Street, adjoining the western side fence, within the front setback of the site.



Aerial Site Context

To the east is Garnet Jackson Reserve, an expansive area of Public Recreation Space incorporating a playground. To the west is 25 Hambly Street, this property is a single storey detached dwelling with double garaging fronting the street.

To the south the site adjoins a single storey detached dwelling house, with a driveway which adjoins the rear boundary of the site.

Along the Victoria Street frontage of the site are two street trees and a power pole. The immediately surrounding area is residential in nature with a mix of single and two storey dwelling houses.

A recent approval (06/06/18) was granted upon 12 Hambly Street, for the demolition of existing buildings, construction of three dwellings and associated Torrens Title Subdivision into three lots. (DA-2017/1158).

The subject site is affected by class 5 Acid Sulfate Soils and is within the APA pipeline catchment.

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.4.15(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 Infrastructure 2007

According to Council's mapping system the subject site is located within the zone of influence of the Moomba to Sydney High Pressure Gas Pipeline.

As such the relevant provisions of the SEPP apply as follows:

Clause 55 - Development adjacent to corridor

(1) Before determining an application (or any application for modification of a consent) for development adjacent to a gas pipeline corridor, the consent authority must:

- (a) be satisfied that the potential safety risks or risks to the integrity of the pipeline that are associated with the development or modification to which the application relates have been identified, and*

Comment: The proposal was referred to the APA Group on 6 August 2018.

- (b) take those risks into consideration.*

Comment: The risks associated with the proposed redevelopment of the site have been taken into consideration and are deemed to be minimal.

(2) In this clause, gas pipeline corridor means any land:

- (a) Within the licence area of a gas pipeline licensed under the Pipelines Act 1967, or*
- (b) Within 20m (measured radially) of the centreline of any of the Moomba to Sydney Pipeline System*

Comment: The development is located approximately 170m from the Moomba – Sydney Ethane Pipeline, and therefore APA has no concerns regarding any direct impact on the pipeline or easement, as a result of the development and construction activity.

The proposed development is within the pipeline measure length (area of consequence), and Council's gas pipeline buffer area. However, APA has no concerns on this basis, given the development:

- (a) is not for a sensitive use under AS2885 ("use by members of the community who may be unable to protect themselves from the consequences of a pipeline failure")*

- (b) does not change the land use classification (under AS2855) from the current Residential (T1) classification.

Given the above, the proposal is consistent with the provisions of the SEPP.

State Environmental Planning Policy (BASIX) 2004

The applicant has submitted a BASIX Certificate for the proposed development. The Certificate number is 945896M. The commitments made result in reductions in energy and water consumption. The proposal satisfies the requirements of the SEPP.

Botany Bay Local Environmental Plan 2013

Botany Bay Local Environmental Plan 2013 has been considered in the assessment of the Development Application and the following information is provided:

Clause	Requirement	Proposal	Compliance
2.3 – Zone	R2 – Low Density Residential	<i>Semi-detached dwelling means a dwelling that is on its own lot of land and is attached to only one other dwelling</i>	Yes
2.6 – Subdivision	Consent required	Consent sought	Yes
2.7 – Demolition	Requires consent	Demolition sought	Yes
4.3 – Height of Buildings	8.5m	8m maximum to ridge	Yes
4.4 – FSR	0.5:1 (Area 3) (277.4sq/m GFA max)	0.66:1 367sq/m proposed GFA Surplus 89.6q/m (16%)	No - see discussion below
4.6 – Exception to Development Standards	(a) compliance is unreasonable or unnecessary in the circumstances of the case, and; (b) there are sufficient environmental planning grounds to justify contravening the standard.	Refer to discussion below	Yes – see discussion below
6.1 – Acid Sulfate Soils	Class 5 - Works within 500 metres of adjacent Class 1 - 4 land that is below 5m AHD & where water table is likely to be lowered below 1 metre	Nil works within 500m of class 1 – 4 land. Proposal is unlikely to lower water table by 1m	Yes
6.2 – Earthworks	Earthworks not to have detrimental impact	Minimal earthworks for footings proposed	Yes
6.3 – Stormwater Management	Minimise impacts of urban stormwater	Conditions to be imposed to ensure appropriately designed stormwater system	Yes – as conditioned

Clause 4.6 – Exception 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.

Consideration has been given to a number of Land & Environment Court judgements in the assessment of the application, which specifically relate to variations of development standards.

In *Wehbe v Pittwater Council* [2007] NSW LEC 827 (*Wehbe*), the Land and Environment Court set out 5 different ways in which an objection to a development standard may be well founded.

Consideration has also been given to the Land and Environment court judgement *Four2Five v Ashfield Council* [2015] NSWLEC 90 where it was established that justification was required in order to determine whether the development standard was unreasonable or unnecessary on grounds other than whether the development achieved the objectives of the development standard. Consideration is to be given to the particular site circumstances of the proposal.

Finally, consideration has further been given to *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, which seeks to ensure that the applicants request adequately addresses clause 4.6 and whether the proposed contravention is in the public interest.

Variation Sought

As previously discussed within this report, the subject site is permitted an FSR of 0.5:1 given its location in Area 3, which is equivalent to a maximum gross floor area of 277.4sq/m.

The proposal comprises a total gross floor area of 367sq/m for both proposed dwellings (D1 = 182sq/m & D2 = 185sq/m). This is a surplus of 89.6sq/m across the entire site and represents a variation of 16% and proposed FSR of 0.66:1.

Applicants Justification

A summary of the applicants key arguments supporting the additional FSR are as follows:

- *Precondition 1 - Consistency with zone objectives.*
 - *The resultant development will be for a pair of semi-detached dwellings which will replace an existing dwelling that has reached the end of its economic lifecycle. The two new dwellings will provide for the housing needs of the community within a low density residential environment. Additionally, the dwellings will provide housing choice which is to be encouraged. In these respects, the development will be compatible.*
- *Precondition 2 - Consistency with the objectives of the standard*
 - *The floor space ratio of any development is not readily translated into visual bulk and scale. The design of the proposed dwelling is such the bulk and scale are not perceived as incompatible with the streetscape with nearby observable development.*
 - *The two street facing facades are well articulated and a composite design technique relating to the choice of materials is implemented. The façades use a combination of articulation, rendered brickwork, face brickwork, Alucobond cladding, vertical fenestration and colourbond roof cladding to achieve an aesthetically pleasing and well modulated facade that will not be perceived as being excessively large or bulky.*

The façade is broken down into a number of individual elements which contributes to a successful integration into the streetscape. The roof has a low pitch to minimise visual and shadow impacts.

- *The building will be compatible with the built forms in the street such as other nearby two storey dwellings.*
 - *The areas of allotments in Hambly Street are variable. Over time this will result in buildings of various floor space ratios and various presentations to the street without any particular uniformity other than a general consistency. A recent example is No. 24 Hambly Street approved with an FSR of 0.7:1. In this context, the subject dwelling will achieve general consistency with the future character of the street*
 - *The proposal is otherwise highly compliant with building height, landscaped area, site coverage and other DCP controls. It cannot be reasonably said that the dwelling is an overdevelopment of the site.*
 - *The resulting residential amenity is acceptable and supportable in our opinion and results in a good example of suburban infill development.*
 - *For the above reasons I conclude that the development satisfies the objectives of the development standard.*
- *Precondition 3 - To a consider written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case*
 - *It is unnecessary to require strict compliance with the development standard as it is considered the development meets the qualitative objectives of the numerical standard. As demonstrated, the site is of a sufficient area and of a suitable shape to accommodate the development without detrimental impacts on the streetscape or the amenity of the adjoining properties.*
 - *It is unreasonable that a variation cannot be accommodated under these circumstances to permit an otherwise meritorious development.*
 - *As the proposed development can be achieved as demonstrated it is reasonable to apply flexibility and vary the standard.*
 - *For the above reasons strict compliance is unreasonable and unnecessary.*
 - *Precondition 4 – To consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court [or consent authority] finding that the matters required to be demonstrated have been adequately addressed*
 - *There is demonstrated capacity (as shown in the architectural plans) for the site to support the additional floor space ratio and to produce a high quality streetscape outcome.*
 - *The development may be achieved without unreasonable detrimental impacts on neighbouring properties through overlooking, overshadowing, view loss or stormwater nuisance.*
 - *A compliant development would have a similar streetscape and bulk and scale presentation to the street. The only difference would be slightly smaller proportioning that is not perceivable expect on any casual view.*
 - *Hambly Street and surrounding streets support buildings of varying building height and bulk and scale. The resulting building will be complementary to the scale and built form of neighbouring development through good design and landscaping.*
 - *For the above reasons, it is considered there are sufficient environmental planning grounds to justify a variation of the development standard for floor space ratio.*
 - *The proposal seeks a variation to a development standard that relates to the floor space ratio of the building to the site area for the purposes of controlling site density.*

It has been demonstrated through the particular site and streetscape characteristics and the good design of the proposal that the site can readily accommodate the proposed development which includes a variation to the floor space ratio control.

Discussion

The applicants request has adequately addressed the provisions of Clause 4.6(3)(a) and (b).

Following a review of the application, the FSR variation as revised is deemed appropriate for the following reasons:

- a) The FSR provisions of Clause 4.4A(3)(a) permit the following FSR standards for dwelling houses, within Area 3;
 - i. 0.80:1 on lots with a site area of 200sq/m - 251sq/m post subdivision.
 - ii. 0.75:1, on lots with a site area of 251-300sq/m post subdivision.

The proposal seeks to subdivide the property as follows and provide an FSR relative to each lot, to that which would otherwise be permitted by the aforementioned clause for a dwelling house;

- i. D1 = 246.6sq.m (0.73:1 across post subdivided lot)
- ii. D2 = 253.4sq/m (0.73:1 across post subdivided lot)

The proposal is for semi detached dwelling forms, whilst these are residential in nature, they are categorised as '*residential accommodation*' via the definitions of BBLEP 2013.

In essence the proposed semi detached dwellings are a type of dwelling house as they are capable of being occupied and owned independently of each other.

The overall bulk, scale, density and building typology proposed is akin to that which could otherwise be achieved via a proposed dwelling house form, which, simply by means of definition, would be eligible for a greater FSR than that for '*semi-detached dwellings*'.

Given the above, the FSR proposed is appropriate to the size of the proposed lot and the proposed variation is not unreasonable.

- b) Whilst the proposal exceeds the maximum density permitted on the subject site the resulting height, bulk, scale, setbacks, rhythm, mass and form of the development are entirely consistent with the future desired character of the area and typology of building forms which could otherwise be achieved within Area 3.

The development will retain an appropriate visual relationship with the surrounding area, which is undergoing transformation to incorporate a greater diversity of housing forms and types.

- c) The subject site is of sufficient orientation, shape, area and allotment width so as to accommodate the proposed development. Additionally, the scale and extent of the proposed additional density is not inconsistent with previous approvals within the context of the subject site. The FSR standard for semi-detached dwelling forms within the locality has previously been varied.
- d) The proposal is consistent with the objectives of Clause 4.4 - FSR, and does not result in adverse environmental effects upon the use or enjoyment of adjoining properties.
- e) The proposal is consistent with the objectives of the R2 – Low Density Residential zone in that the development provides an increase in housing stock in order to provide for the housing needs of the community within a low density residential environment.

- f) The layout of dwellings as designed ensures that solar access and natural ventilation is maximised and that internal amenity for future occupants is optimised.
- g) The development is located in an accessible location, with access to public transport nearby, public open spaces including Garnet Jackson Reserve to the east and Pagewood Public School which is within 745m of the site. The proposal is therefore in the public interest.

Given the above, the consent authority can be satisfied that the provisions of clause 4.6(4) have been achieved and that the clause 4.6 is well founded. The FSR standard in the circumstances of this case is considered to be unreasonable and unnecessary and the proposed variation is supported on the basis of the above by the assessing officer.

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

The following Development Control Plan is relevant to this application:

Botany Bay Development Control Plan 2013

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

Part 3A – Parking & Access			
Part	Control	Proposed	Complies
3A.2 – Parking Provision	C2 – Semi-detached dwellings = 1 space per dwelling	1 space per dwelling	Yes
3A.3.1 – Car Park Design	C26 - Min driveway width 3m	Min 3m width driveway to each proposed dwelling	Yes
Part 3E- Subdivision & Amalgamation			
Part	Control	Proposed	Complies
3E.2.2 - Residential Torrens Title	C1 - Proposed subdivision shall be consistent with the Desired Future Character of the area	Satisfactory	Yes – see discussion below
	C2 – Proposed subdivision must have characteristics similar to the prevailing subdivision pattern of lots fronting the same street, in terms of area, dimensions, shape and orientation	The proposed lots are rectangular in shape and have a minimum 6m frontage to Hambly Street. The area and dimensions of the proposed lots are similar to other	Yes – see discussion below.

		examples approved and existing within context of the site.	
	C3– Must be accompanied by conceptual building plan that demonstrates compliance with relevant building controls.	Building Plans for the new lots are proposed and have been submitted to Council.	Yes
	<p>C5 – Proposed lots must be of a size / dimension to enable siting / construction of dwelling & ancillary structures that:</p> <ul style="list-style-type: none"> i) Acknowledge site constraints ii) Address the street iii) Minimize impacts on adjoining properties including access to sunlight, daylight, privacy and views iv) Provide usable private open space v) Protect existing vegetation vi) Mitigate potential flood affectation and stormwater management requirements vii) Acknowledge contamination of the land viii) Protect heritage items. 	The proposed allotments are capable of accommodating dwellings & ancillary structures which acknowledge the requirements & constraints referred to in C5.	Yes
	C7 - All lots created shall have at least one (1) frontage to the street.	All proposed lots have a frontage to Hambly Street	Yes
3G – Stormwater Management			
Part	Control	Proposed	Complies
3G.2 – Stormwater Management	C2 Stormwater runoff generated from the development shall be collected & discharged in accordance with Council's Stormwater Management Technical Guidelines.	Council's Development Engineer raised no objections to the proposed management of stormwater on the site. Appropriate conditions of consent have been imposed to ensure appropriate management of stormwater from the site in accordance with Council's Stormwater Management Technical Guidelines.	
Part 3N – Waste Minimisation & Management			
Part	Control	Proposed	Complies
3N.2 – Demolition and Construction	C1 – Site waste management plan to be submitted	A WMP was provided to Council, which details construction waste to be generated. Conditions of consent are imposed to ensure waste generated during construction is stockpiled, managed and disposed of appropriately.	Yes

3N.3(3.2) – Residential Development	C2 - Waste / recycling areas must be located in a position convenient for users & waste collection personnel	Appropriate bin storage areas provided on site in convenient location with access close to the street.	Yes
Part 4A – Dwelling Houses			
Part	Control	Proposed	Complies
4A.2.3 – Local Character	C2 Development must comply with the relevant Desired Future Character Statements in Part 8 - Character Precincts.	Refer to Character and Streetscape discussion below.	Yes
4A.2.4 – Streetscape Presentation	C3 - Dwellings must reflect dominant roof lines and patterns of the existing streetscape. C4 - Buildings must address the street. C6 - Dwellings front door is to be readily apparent from the street.	Roof design & pitch consistent with dominant roof lines & streetscape	Yes
		Buildings address the street	Yes
		Front door readily apparent	Yes
4A.2.7 – Site Coverage	C2 - Maximum site coverage - Dwelling 1 = 65% lot - Dwelling 2 = 60% lot	Dwelling 1 = 49.4% Dwelling 2 = 54%	Yes
4A.2.8 – Building Setbacks	C1 – <u>Front</u> – min 6m or as per prevailing street setback	<i>Front</i> 6m setback consistent with streetscape.	Yes
	<u>Side</u> – 3m corner lot	Ground Floor 0.92m – 2.1m (dwelling 2 lightwell) <i>First Floor</i> 0.42m (bedrooms to dwelling 2) – 2.1m 0.92m – 1.4m	No – See discussion below
	<u>Rear</u> – 4m	<i>Rear</i> 11.1m – 12.1m	Yes
4A.2.9 – Landscaped Area	C2 – 15% (Dwelling 1 - 74sq/m / Dwelling 2 – 72sq/m) site area of each lot to be provided as landscaped area	Dwelling 1 = 98.4sq/m Dwelling 2 = 108sq/m	Yes
	C8 - Front setback landscaped and is not to contain paved areas other than driveways and entry paths. Paving is restricted to a maximum of 50% of the front setback area. C9 – 1 x 45L tree in front setback of each lot	Landscaping maximised in front setback of site, tree planting proposed.	Yes

4A.3.1 – Materials & Finishes	Materials, colours, details, finishes must be sympathetic to locality. New development to incorporate colour schemes that are consistent with the predominant colour schemes in the street.	Appropriate colours, finishes and materials with colour schemes sensitive to existing streetscape. (Greys, white, neutral beige colours)	Yes
4A.3.2– Roof Form	A variety of roof forms will be considered, provided that they relate appropriately to the architectural style of the proposed house and respect the scale and character of adjoining dwellings.	Appropriate pitched roof form consistent with character of residential area	Yes
4A.3.3. – Front / Side / Rear Fencing	Fences that are higher than 1 metre are not encouraged along residential frontages. Different materials and textures are required to break up the appearance of long fences or walls.	1m high front fence to Hambly Street proposed. East elevation to Victoria Street 1.8m height, face brick and colourbond enclosing private open space. Shrubs along eastern side of dwelling for the length of the dwelling. 1.8m High colourbond fencing proposed to rear and western side boundary.	Yes
4A.3.5 – Voids	C2 - Voids shall only be supported where increase amenity to primary living areas or circulation areas, and not unreasonably impact upon the amenity of adjoining properties. C3 - Voids are to connect related uses and spaces, and should not compromise the useability of spaces.	Voids limited to internal stairwells	Yes
4A.4.1 – Visual Privacy	C2 - Visual privacy for adjoining properties must be retained.	Appropriate privacy screens provided to first floor rear balconies	Yes
4A.4.3 – Solar Access	C1 - maintain 2 hours of solar access between 9am - 3pm on 21 June to habitable rooms & POS areas on site and to adjoining neighbours	Satisfactory – 2 hours midwinter retained	Yes – See discussion below.
4A.4.4 – Private Open Space	C1 - Each dwelling to comprise; (i) POS min area 36m ² ; (ii) At ground level with direct access to living areas (iii) Maximises solar access; (iv) Is visible from a living room door or window	All dwellings comprise rear, private open space areas of suitable area and dimension, adjoining primary living areas. Private open space areas receive sufficient sunlight in midwinter, are level and appropriately landscaped and screened.	Yes

	(v) Minimises overlooking from adjacent properties; (vi) Is generally level; (vii) Is oriented appropriately (viii) Is landscaped; (ix) Is located / screened to ensure privacy.	Dwelling 1 – 84.1sq/m Dwelling 2 – 55.4sq/m	
4A.4.5 – Safety & Security	Maximise passive surveillance of the street	Appropriate window openings and opportunities provided	Yes
4A.4.8 – Car Parking	C1 - Must comply with Part 3A Car Parking C10 – Garages & driveways not to dominate the street.	Appropriate car parking provided on site. Landscaping provided in front setback	Yes Yes

Non Compliance

4A.2.8 – Building Setbacks

The provisions of this clause require a side setback of 3m for new developments on corner allotments. The proposal illustrates side setbacks ranging from 0.92m – 2.1m at ground level and 0.42m – 2.1m to the first floor.

The proposed reduced setback is deemed satisfactory given the following;

- a) The reduced setback is not inconsistent with previously approved and established secondary street setbacks of other corner allotments within close proximity to the subject site. I.e. 26 Albert Street & 22 Hambly Street.
- b) The proposed design of the development does not result in adverse environmental impacts on site, nor to neighboring properties in terms of overshadowing, visual or aural privacy.
- c) The resultant building form is articulated and of appropriate mass and scale so as to provide a cohesive streetscape response within the established context of the site.
- d) The provision of a 3m setback to Victoria Street could preclude the site from redevelopment in the form proposed. Alternatively would result in an excessively narrow building form on proposed lot 2.

Given the above, the proposed secondary street setback is considered acceptable as the variation satisfies the objectives of this clause and objectives of the R2 Low Density zone.

3E.2.2 (C2) - Residential Torrens Title

Council generally considers the prevailing subdivision pattern to be the typical characteristic of up to ten allotments on either side of the subject site and corresponding number of allotments directly opposite the subject site.

Properties located in the surrounding streets do not usually form part of the streetscape character and are therefore not taken into consideration when determining the prevailing subdivision pattern.

As part of this development application, the site will be subdivided into two (2) individual allotments as follows:

Proposed Lot	Frontage	Area
700 (Dwelling 1)	7.62m	246.6sq/m
701 (Dwelling 2)	7.62m	253.4sq/m

An assessment of the existing / approved subdivision pattern within the locality has been undertaken below;

Address	Area	Frontage	Address	Area	Frontage
12 Hambly Street	228.89	8.9m	30 Albert Street	356.04	11.9m
12A Hambly Street	238.81	9.3m	34 Albert Street	424.05	12.8m
12B Hambly Street	201.17	11m	25 Albert Street	197.09	6.1m
2 Hambly Street	265.00	13.3m	23 Albert Street	206.26	6.1m
4 Hambly Street	354.10	5.5m	19 Albert Street	275.19	7.6m
6 Hambly Street	445.78	12.1m	7 Hambly Street	561.97	15.2m
8 Hambly Street	448.56	12.2m	9 Hambly Street	441.55	12.1m
10 Hambly Street	446.03	12.1m	11 Hambly Street	470.24	12.1m
24 Albert Street	422.01	12.1m	13 Hambly Street	446.55	12.1m
22 Albert Street	407.50	12.1m	15 Hambly Street	567.72	15.2m
20 Albert Street	407.34	12.1m	17 Hambly Street	289.16	7.5m
18 Albert Street	451.46	12.1m	19 Hambly Street	275.19	7.6m
11 Albert Street	397.62	12.1m	26 Hambly Street	557.00	15.2m
13 Albert Street	385.70	11.5m	24 Hambly Street	213.56	6.1m
15 Albert Street	423.70	12.8m	22 Hambly Street	333.84	9.1m
17 Albert Street	430.13	12.8m	20 Hambly Street	448.51	12.1m
26 Albert Street	365.76	12.1m	18 Hambly Street	447.19	12.1m
28 Albert Street	369.44	12.1m	16 Hambly Street	438.70	12.1m
			14 Hambly Street	557.00	15.2m

An assessment of the lot areas and frontage widths of properties within context of the site has been demonstrated above.

The above table illustrates a number of existing properties within close proximity to the site which comprise similar overall site areas and lot widths, to the proposed development.

The proposed subdivision is not inconsistent with existing subdivided properties in context of the site and the proposed subdivision is deemed to be satisfactory given;

- The proposed subdivision pattern is not dissimilar to lots which exist and have been previously subdivided within context of the site. The proposed subdivision is consistent with the existing and future subdivision pattern in the immediate vicinity of the subject site.
- The proposal is compatible with surrounding properties, the emerging 2-storey built form streetscape and the desired future character of the area.
- There are no adverse streetscape impacts as the widths of the proposed lots are in keeping with the widths of other lots within the immediate area.
- The lot size and width are consistent with the shape and size of other allotments within the Botany area. In addition to consistency with the subdivision pattern, it is also

important to consider the other subdivision objectives including demonstration that development for the site can comply with the relevant parts of BBDCP 2013.

- e) The proposed lots are capable of supporting dwelling houses which achieve compliance with relevant controls such as floor space ratio, building height, landscaping, setbacks, private open space, privacy, car parking, overshadowing and solar access. This is achieved without compromising on the quality of the design of the dwellings.
- f) The proposed layout of the lots does not contravene the desired future character of the Botany precinct. The lots retain and preserve the rectilinear pattern.
- g) The proposal will not result in adverse amenity impacts on neighbouring properties in terms of overshadowing, solar access and privacy.
- h) The subject site falls within a R2 zone, Torrens title subdivision is common in this area.

Given the above, the resultant subdivision is considered satisfactory with respect to the provisions and objectives of Botany Bay Local Environmental 2013 and Part 3E- Subdivision & Amalgamation of Botany Bay Development Control Plan 2013.

4A.2.4 – Streetscape Presentation

The proposed development provides a semi attached dwelling form with a pitched roof & parapet feature fronting Hambly Street. The facade of the development is appropriately articulated and incorporates numerous windows and a front porch to both dwellings at ground level to address the street.

The eastern side of the development to Victoria Street is appropriately setback at both levels and incorporates a lightwell and two angled bedroom windows at first floor. The variation in this façade provides articulation and visual interest.

Both dwellings are provided with independent vehicular access, dwelling 1 from Hambly Street and Dwelling 2 from Victoria Street. The provision of the second driveway to Dwelling 2 from Victoria Street enables the retention of the existing mature tree within the streetscape to Hambly Street and further the retention of the two small trees to Victoria Street.

A range of colours, materials and finishes are proposed, with grey, white and neutrals, including but not limited to face brick, alucobond panels, tiles, render and colourbond.

The proposal incorporates appropriate bulk and scale upon the subject site, despite a variation to the FSR control and incorporates appropriate landscaped areas on site which are consistent within the surrounding streetscape. The proposal as designed is complementary and consistent with the surrounding streetscape and satisfies the requirements of this clause.

4A.4.3 – Solar Access

Part 4A.4.3 of Botany Bay DCP 2013 states that a minimum of 2 hours of solar access should be achieved to habitable rooms and private open spaces of adjoining dwellings in midwinter.

Shadow diagrams submitted with the application illustrate that the proposal does not generate unreasonable overshadowing impacts onto neighbouring properties.

Neighbouring properties retain a minimum of 2 hours of solar access in midwinter as required by the provisions of this clause.

Part 8 – Botany Character Precinct

The site is located within the R2 – Low Density Residential zone of Botany. Proposed dwellings have been designed to address the street and are consistent with the existing and future desired streetscape character anticipated by the relevant planning controls.

Proposed dwellings are satisfactory with respect of bulk, scale, design and streetscape response as previously discussed in this report.

As such the proposal is suitable for the site and its design is consistent with the character of the Botany Precinct pursuant to Botany Bay Development Control Plan Part 8 Character Precincts.

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

Construction

Construction of the proposed development includes excavation and the construction of the development. Impacts can be minimized through the use of standard conditions of consent relating to hours of construction, noise, dust suppression traffic management and the like.

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

The subject site is of appropriate zoning, overall area, dimensions, topography and location so as to facilitate the proposed redevelopment of the site as sought by the applicant.

The subject site is not known to be affected by any natural hazards or site constraints that are likely to have a significant adverse impact on the proposed development.

On the basis of the aforementioned, the site is suitable for the proposed development.

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

In accordance with Part 2 of the Botany Bay DCP 2013 – Notification and Advertising, the application was publicly notified from 6-22 August 2018. Nil submissions were received.

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

The proposal is deemed to be in the public interest for the reasons previously discussed within this report.

Section 7.11 Contributions

The proposal has been conditioned to require the payment of 7.11 Contributions for the resultant increase in density on site i.e. \$20,000.00.

Schedule 1 – Conditions of Consent

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 is to be carried in accordance with the following plans and documentation listed below and endorsed with Council's stamp, except where amended by other conditions of this consent.

Drawing No.	Author	Date Received
Site Plan Dwg 02 Issue A	design basix build	2/08/2018
Ground Floor Plan Dwg 03 Issue A	design basix build	2/08/2018
First Floor Plan Dwg 04 Issue A	design basix build	2/08/2018
North Elevation (Hambly Street) Dwg 05 Issue A	design basix build	2/08/2018
South Elevation Dwg 07 Issue A	design basix build	2/08/2018
Section AA Drawing 07b Issue A	design basix build	2/08/2018
East / West Elevations Dwg 06 Issue A	design basix build	2/08/2018
Roof Plan Dwg 04a Issue A	design basix build	2/08/2018
Detached Garage Elevation North South Dwg 07a Issue A	design basix build	2/08/2018
Schedule Colours & Finishes	design basix build	2/08/2018
Subdivision Plan Dwg 01a Issue A	design basix build	2/08/2018
Landscape Plan Page 1 of 4 Issue A	Dawn CF Landscapes	2/08/2018
Landscape Plan Page 2 of 4 Issue A	Dawn CF Landscapes	2/08/2018
Landscape Plan Page 3 of 4 Issue A	Dawn CF Landscapes	2/08/2018
Landscape Plan Page 4 of 4 Issue A	Dawn CF Landscapes	2/08/2018

Reference Document(s)	Author	Date Received
Statement of Environmental Effects & Clause 4.6	Urbanesque Planning	2/08/2018
Site Waste Management Plan	Paolo Festa	2/08/2018
Quantity Surveyors Report	Property & Building Assessments Pty Ltd	2/08/2018
Survey	RGM Property Surveyors	2/08/2018
BASIX Certificate	Frys Energywise	2/08/2018
Site & Demolition Plan	design basix build	2/08/2018
Soil Erosion & Waste Management Plan	design basix build	2/08/2018

3. This Consent relates to land in Lot 12 Sec F DP 939785 and as such, building works must not encroach on to adjoining lands or other public places, except as otherwise permitted by this consent.
4. All new building work must be carried out in accordance with the provisions of the Building Code of Australia (BCA).
5. **A Construction Certificate must be obtained from Council or an Accredited Certifier prior to any building work commencing.**

6. This approval is not to be construed as permission to erect any structure on or near boundary contrary to the provisions of the Dividing Fences Act.
7. Balconies shall not be enclosed at any future time without prior development consent.
8. The materials and façade details approved under condition 2 and any other relevant condition of this consent shall not be altered or amended at the construction certificate stage without a prior S4.55 application and approval under the EP&A Act.
9. Mail boxes must be installed along the street frontage of the property boundary in accordance with Australia Post Guidelines. Prominent house numbers are to be displayed, with a minimum number size of 150 mm in height for each number and letter in the alphabet.
10. The development must be implemented and all BASIX commitments thereafter maintained in accordance with BASIX Certificate Number 945896M 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: -

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

Note: Clause 1548(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>.

11. This 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 person's intention to commence the erection of the building.

DEVELOPMENT SPECIFIC / ONGOING CONDITIONS

12. The stormwater drainage system (including all pits, pipes, absorption, detention structures, treatment devices, infiltration systems and rainwater tanks) shall be regularly cleaned, maintained and repaired to ensure the efficient operation of the system from time to time and at all times. The system shall be inspected after every

rainfall event to remove any blockage, silt, debris, sludge and the like in the system. All solid and liquid waste that is collected during maintenance shall be disposed of in a manner that complies with the appropriate Environmental Guidelines. The water from the rainwater tank should not be used for drinking, the rainwater tank shall be routinely desludged and all contents from the desludging process disposed. Solids shall be disposed to the waste disposal and desludged liquid shall be disposed to the sewer.

13. The use of mechanical plant including air conditioners, fans, compressors, condensers, freezers, swimming pool or spa pumps (whether commercial or domestic) or the like, shall not cause sound pressure levels in excess of the criteria given in the NSW Industrial Noise Policy - 2000.
14. 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.
15. The visible light reflectivity from building materials used on the façade of the building shall not exceed 20% and shall be designed so as not to result in glare that causes any nuisance or interference to any person or place. A statement demonstrating compliance with these requirements shall be submitted to the satisfaction of the Certifying Authority prior to the issue of a Construction Certificate for the relevant stage of works.
16. 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.
17. 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.
18. Landscaping
 - a) Rainwater tanks shall be connected to irrigation system as a water sensitive urban design strategy.
 - b) Frontage setback shall include the following:
 - i) One (1) Eucalyptus haemastoma (Scribbly Gum), or one (1) Banksia integrifolia (Coastal Banksia) shall be planted in deep soil area of Dwelling 1 front setback. Minimum pot size to be supplied shall be 100 Litres, with three (3) stakes.
 - ii) One (1) Banksia integrifolia (Coastal Banksia) shall be planted in deep soil of Dwelling 1 front setback. Minimum pot size to be supplied shall be 75 Litres, with three (3) stakes.
 - c) Each rear Courtyard shall include one (1) native or exotic tree to reach a minimum mature height of 4 meters. At least one tree to be located in each rear courtyard, to be supplied at a minimum pot size of 45 Litres
 - d) 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.

- e) Tree Retention Strategy
 - i) Trees to be retained and protected will comply with councils DCP guidelines and arborist officer recommendations.
 - ii) Trees to be retained should be fully protected from any damage throughout the build process. If the tree health has declined or has been damaged, the tree must be replaced prior to signoff.
 - iii) The public domain strategy is to retain the existing vegetation where possible, and any issues concerning existing trees be raised with the Tree Preservation Officer.
- f) Public Domain improvements

Landscape Public Domain Works to Victoria Street. One (1) Street tree as per Botany Street Tree Master Plan 2014 shall be *Cupaniopsis anacardiodes*, (Tuckeroo), to be supplied in a pot size not smaller than 100 litres, to council specifications as follow:

- i) Pot size supplied shall be not less than 100 Litre.
- ii) Trees supplied shall be healthy and vigorous, free of pest and disease, free from injuries.
- iii) A Dial Before You Dig enquiry is required prior to all tree planting.
- iv) The trees shall be planted in an area measuring 3 metres long by 1.5 metres wide, backfilled with imported soil/compost, water holding additive and fertiliser. Interface of tree pit and turf shall be with hardwood, 50mm x 150mm, edging set flush with adjoining kerb and path, provide pegs at both ends and centre of timber edge.
- v) Mulching – Mulched shall conform to AS4454 and free of deleterious extraneous matter such as soil, weeds, wood slivers, stones. Mulch shall be along all strip between kerb and footpath to a depth of 75mm, when plants are installed, clear of all plant stems, and rake to an even surface flush with the surrounding finished levels.
- vi) Stakes and Ties - Three stakes (3) of 50 x 50 x 2500mm of durable hardwood, straight, free from knots or twists, pointed at one end. Provide ties fixed securely to the stakes, 50mm hessian webbing installed around the stakes and stem in a figure of eight pattern and stapled to the stakes.
- g) 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.

- 19. The building is approved as a single dwelling on each site for use and occupation by a single family. It shall not be used for separate residential occupation or as separate residential flats. No plumbing fixtures, fittings, walls shall be deleted or added, doorways enclosed or any other changes made from the approved plans in Condition No. 1 of this consent without the prior Consent of the Council.

20. Trees

The following street trees along the frontages of the site are to be retained and protected with a tree protection zone at all times during the redevelopment of the site.

- a) Street tree *Eucalyptus botryoides* (Southern Mahogany) along Hambly Street.
- b) *Melaleuca armillaris* (Honey Bracelet Myrtle) along Victoria Street.

PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

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

21. For work costing \$25,000 or more, a Long Service Leave Levy shall be paid. For further information please contact the Long Service Payments Corporation on their Helpline 131 441.
22. Prior to the issue of any Construction Certificate, the following fees shall be paid:

Footpath Crossing Deposit	\$21,990.50
Development Control	\$3,000.00
Footpath Inspection Fee	\$150.00
Section 7.11 Contributions (refer below)	\$20,000.00 (see below)
Street Tree Maintenance Bond	\$9,000 (see below)

23. A Section 7.11 contribution of \$20,000 shall be paid to Council. The contribution is calculated according to the provisions contained within Council's adopted Former City of Botany Bay s7.11 Development Contributions Plan 2016 (Amendment 1) and having regard to the Ministerial Directive of 21 August 2012 (the \$20,000 cap). The amount to be paid is to be adjusted at the time of payment, in accordance with the review process contained Contributions Plan. The contribution is to be paid prior to the issue of the first Construction Certificate. The contributions are only used towards the provision or improvement of the amenities and services identified below.

Community Facilities	\$1,637.16
Recreation and Open Space	\$16,890.83
Transport Facilities	\$1,326.38
Administration	\$145.62

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

24. Prior to the issue of any Construction Certificate, the applicant shall lodge a Footpath Crossing Deposit of \$21,990.50 (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.
25. Prior to the issue of a Construction Certificate for the development, an application for Property Address Allocation and associated fee is required to be submitted to Council.

All new addresses will be allocated in accordance with AS/NZS 4819:2011 Rural and Urban Addressing Standard and Section 5.2 of the NSW Address Policy. The form is available for download at:

<https://www.bayside.nsw.gov.au/services/developmentconstruction/buildingoralteringproperty/commonlyusedforms>

Derivation and production of address data components are governed by the NSW Addressing User Manual to ensure consistency of application.

http://www.gnb.nsw.gov.au/data/assets/pdf_file/0007/199411/NSW_AUM_July2018_Final.pdf

26. Plans submitted with the Construction Certificate shall demonstrate compliance with the following prior to the issue of the Construction Certificate:
 - a) All vertical plumbing, other than roof water heads and down pipes, shall be concealed within the brickwork of the building.
 - b) All hot water and air conditioning systems/units located on the balcony of a dwelling shall be encased in a recessed box on the balcony with the lid/cover of the box designed to blend in with the building. All associated pipe work is to be concealed and utilities shall comply with relevant Australian Standards.
 - c) 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 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.
27. Prior to the issue of any Construction Certificate, at the proposed point of construction site entry, a full photographic survey showing the existing conditions of Council's infrastructure shall be submitted to Council and the Principal Certifying Authority. The survey shall detail the physical conditions and identify any existing damages to the road, kerb, gutter, footpath, driveways, street trees, street signs and any other Council assets fronting the property and extending to a distance of 20m from the development. Failure to do so will result in the applicant being liable for any construction related damages to these assets. Any damage to Council's infrastructure during the course of this development shall be restored at the applicant's cost.
28. Prior to the issue of any Construction Certificate, the applicant shall contact "Dial Before You Dig on 1100" to obtain a Service Diagram for, and adjacent to, the property. The sequence number obtained from "Dial Before You Dig" shall be forwarded to Principal Certifying Authority.

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.

29. The applicant shall confer with Ausgrid to determine if:

- installation of electricity conduits in the footway is required.
- satisfactory clearances to any existing overhead High Voltage mains will be affected.
- an electricity distribution substation is required.

Written confirmation of Ausgrid's requirements shall be obtained prior to issue Construction Certificate.

30. A Waste Management Plan prepared in accordance with Part 3N of Council's DCP 2013 shall be prepared and submitted to the satisfaction of the PCA, prior to the release of the Construction Certificate. The Waste Management Plan shall include the size and storage of bins, the collection point for the waste contractor recycling contractor, maintenance of the bins and the provision of recycling and composting facilities.

31. The applicant is to submit payment of a Street Tree Maintenance Bond of \$9,000.00. The duration of the Bond shall be limited to a period of 12 months after the issue of the Final Occupation Certificate, 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.

32. Details on the mechanical plant and equipment to be submitted to the Principal Certifying Authority prior to the release of the Construction Certificate. The report must:

- a) identify each item of plant and equipment;
- b) the following additional criteria adopted by Council:
 - i) The operation of all plant and equipment shall not give rise to an equivalent continuous (L_{Aeq}) sound pressure level at any point on any residential property greater than 5dB(A) above the existing background L_{A90} 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 L_{Aeq} 50dB(A) day time and L_{Aeq} 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 L_{Aeq} 65dB(A) day time/night time.
 - iv) 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.

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.

33. A dilapidation survey shall be undertaken of all properties and/or Council infrastructure, including but not limited to all footpaths, kerb and gutter, storm water inlet pits and road carriageway pavements in the vicinity which could be potentially affected by the construction of this development. Any damage caused to other properties during construction shall be rectified. A copy of the dilapidation survey and an insurance policy that covers the cost of any rectification works shall be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate. The insurance cover shall be a minimum of \$10 million.
34. 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. These devices shall be maintained in a serviceable condition at all times through the demolition; excavation and construction phases of the development and for a minimum one (1) month period after the completion of the development, where necessary.

35. A Construction Management Plan shall be submitted to, and approved by the Private Certifying Authority prior to the commencement of works. The Plan shall address, but not be limited to the following matters:
 - a) Proposed protection for Council and adjoining properties,
 - b) Proposed phases and order of construction works, expected method and duration of each construction phase,
 - c) Hours of work,
 - d) Contact details of site manager,
 - e) Proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process,
 - f) Traffic management, method of access, routes through Council area.
 - g) Proposed method of loading / unloading, excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site.
 - h) Noise and vibration management,
 - i) Waste management,
 - j) Erosion and sediment control,
 - k) Protection of trees to be retained.

A copy of the approved Construction Management Plan shall be submitted to Council.

36. A Traffic and Pedestrian Management Plan prepared by an RMS accredited consultant, shall be submitted to and approved by the Private Certifying Authority. The Plan shall 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 address, but not be limited to, the following matters:
 - a. Ingress and egress of construction vehicles to the site,
 - b. routing and control of construction vehicles,

- c. parking of employees vehicles,
- d. loading and unloading, including construction zones, for all construction vehicles,
- e. predicted traffic volumes, types and routes,
- f. pedestrian and traffic management methods,
- g. the hours of operation of the construction site,
- h. holding areas for demolition/excavation/construction delivery vehicles wanting to access the site'
- i. means of ensuring vehicular and pedestrian access to adjoining resident's properties and existing residents and visitors for the duration of the works.

The plan may need to be prepared in consultation with Council's Traffic Management section. A copy of the approved Plan shall be submitted to Council.

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.

- 37. Prior to the issue of any Construction Certificate, a geotechnical engineer shall determine the soil absorption rate (in **litres / second / m2 base area**) and the depth of the water table to satisfy the requirements of the Botany Bay DCP Stormwater Management Technical Guideline prior to design of the drainage system. A copy of the report shall be forwarded to Bayside Council prior to the issue of the Construction Certificate.
- 38. 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 assessment and approval. The detail drawings and specifications shall be prepared by a suitably qualified and experienced civil engineer and to be in accordance with Botany Bay Council Development Control Plan 'Stormwater Management Technical Guidelines', AS/NZS 3500 – Plumbing and Drainage Code and the BCA. All drawings shall correspond with the approved architectural plans.

The plans shall incorporate measures such as:

- a. the provision for two **separate** Onsite Stormwater Infiltration Systems designed to retain all 1 in 100 year storm events and satisfying all relevant Council and Australian Standards,
- b. Incorporate the absorption rate determined through geotechnical testing into the design of the infiltration system,
- c. Minimum capacity 3000L rainwater tanks shall be provided for each dwelling with a catchment of at least 75% of the roof area. The rainwater tanks shall service the toilets, clothes washers and any landscaping in accordance with the requirements of Sydney Water and AS/NZS 3500 – National Plumbing and Drainage Code. First flush device shall also be incorporated into the tank systems. Overflow from the rainwater tank shall connect to the proposed site drainage system.

All plans and documentation shall be certified by a suitably qualified engineer as specified in Botany DCP Part 10 Section 2.1.

39. Prior to the issue of any Construction Certificate, any part of the proposed building within 3m of the proposed absorption trench shall be constructed on a pier and beam foundation with piers extending no less than 300mm below the bottom of the tank or trench base. This requirement shall be reflected on the Construction Certificate plans and supporting documentation.
40. Prior to the issue of any Construction Certificate, all driveways/access ramps/vehicular crossings shall be designed to conform to the current Australian Standards AS 2890.1 and Council's Infrastructure Specifications. These include but are not limited to E01, E04, E07 and E16.

As part of this development, a new concrete driveway shall be constructed. Two new three (3) metre wide driveway laybacks shall be constructed as part of the new driveways. A minimum of one (1.0) metre of kerb and gutter either side of the driveway layback shall be replaced to enable the correct tie in with the existing kerb and gutter.

All redundant vehicular crossings shall be removed and replaced to fit the main footpath cross section.

If any applicant wants to retain an existing vehicular crossing an application still has to be submitted with the matter highlighted.

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

41. Prior to the issue of the Construction Certificate, the approved plans must be submitted to Sydney Water Tap inTM 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 inTM online service is available at:

<https://www.sydneywater.com.au/SW/plumbingbuildingdeveloping/building/sydneywaterapin/index.htm>

PRIOR TO THE COMMENCEMENT OF WORKS

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

42. Dewatering is not permitted on this site without NSW EPA approval.
43. 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.
 - iii) the Development Approval number;
 - iv) the name of the Principal Certifying Authority including an after hours contact telephone number; and
 - v) Any such sign is to be removed when the work has been completed.
44. Where demolition is proposed, the following shall be provided to Council at least forty-eight (48) hours prior to the commencement of demolition:

- 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.
45. Prior to the commencement of works, a plan (written and/or diagrammatic) shall be submitted and approved by the Certifying Authority, showing the storage location of construction building materials and plants and the method of access to the property. No storage of construction materials and plants to be allowed in road reserve area.
46. Prior to the commencement of works on site, in order to ensure that street trees referred to in this consent are protected during demolition and construction, and the health and structural stability ensured a Tree Protection Zone shall be established as follows.
- i) In accordance with AS4970-2009 protective fences consisting of chain wire mesh temporary fence panels with a height 1.8m shall be erected outside the drip line. The fence panels must be securely mounted and braced to prevent movement. The area within the fenced area is to be mulched with leaf mulch to a depth of 100mm and a weekly deep watering program undertaken.
 - ii) 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.
47. Prior to the commencement of works,
- a) The applicant shall submit to Council a full photographic survey showing the existing conditions of Council's infrastructure. The survey shall identify any existing damages to the road; kerb; gutter; footpath; driveways; street trees; street signs; and any other Council assets fronting the property and in the vicinity of the development. Failure to do so will result in the applicant being liable for any construction related damages to these assets. Any damage to Council's infrastructure during the course of this development shall be restored at the applicant's cost; and
 - b) The application must supply Bayside Council with a copy of the dilapidation report for the adjoining properties, which documents and photographs the condition of buildings and improvements. The report is to clearly depict any existing damage to the road; kerb; gutter; footpath; driveways; water supply; sewer works; street trees; street signs or any other Council assets in the vicinity of the development. The report must be submitted to Bayside Council prior to the issue of a Construction Certificate and will be made available by Bayside Council in any private dispute between the neighbours regarding damage arising from the site and construction works.
48. If an excavation associated with the proposal extends below the level of the base of the footings of a building on an adjoining allotment of land or the common boundary fence the person causing the excavation to be made:
- a) Must preserve and protect the building/ fence from damage; and,
 - b) If necessary, underpin and support such building in an approved manner;
 - c) Must at least be 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of the intention to do so to the owner of the adjoining allotment of land and, furnish particulars of the excavation to the owner of the building being erected or demolished;

- d) Existing structures and or services on this and adjoining properties are not endangered during any demolition excavation or construction work associated with the above project. The applicant is to provide details of any shoring, piercing, or underpinning prior to the commencement of any work. The construction shall not undermine, endanger or destabilise any adjacent structures.
 - e) If the soil conditions required it:
 - i) Retaining walls associated with the erection of a building (swimming pool) or other approved methods of preventing movement or other approved methods of preventing movement of the soil must be provided and
 - ii) Adequate provision must be made for drainage.
49. The PCA must be satisfied that: -
- a) In the case of work to be done by a licensee under the Home Building Act: -
 - i) Has been informed in writing of the licensee name and contractor licence number, and;
 - ii) Is satisfied that the licensee has complied with the requirements of Part 6 of the Home Building Act 1989; or,
 - b) In the case of work to be done by any other person: -
 - i) Has been informed in writing of the person's name and owner-builder permit number, or;
 - ii) Has been given a declaration signed by the owner of the land that states that the reasonable market cost of the labour and materials involved in the work is less than the amount prescribed for the purposes of the definition of *owner builder work* in Section 29 the Home Building Act 1989.
 - c) And is given appropriate information and declarations under paragraphs (a) and (b) whenever arrangements for the doing of the work are changed in such a manner as to render out of date any information or declaration previously given under either of those paragraphs.
50. 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.
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. Such fencing or other measures must be in place before the approved activity commences.

52. Building plans must be lodged through a Sydney Water Tap In Service for approval prior to commencement of works.
53. This Consent shall not preclude the demolisher from giving notice to other statutory authorities, such as Sydney Water Corporation, WorkCover, etc.
54. 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.
55. 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.
56. 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.
57. 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: -
Note - Any works shown within Council's road reserve or other Council Lands on the development approval plans are indicative only and no approval for these works is given until this condition is satisfied.
 - a) Permit to erect hoarding on or over a public place, including Council's property/road reserve
 - b) Permit to construction works, place and/or storage building materials on footpaths, nature strips
 - c) Permit for roads and footways occupancy (long term/ short term)
 - d) Permit to construct vehicular crossings, footpath, kerb and gutter over road reserve
 - e) Permit to open road reserve area, including roads, footpaths, nature strip, vehicular crossing or for any purpose whatsoever
 - f) Permit to place skip/waste bin on footpath and/or nature strip
 - g) Permit to use any part of Council's road reserve or other Council lands
58. The operation shall not give rise to offensive odour or other air impurities in contravention of the *Protection of the Environment Operations Act 1997*. The Principle contractor shall ensure that all practical means are applied to minimise dust and odour from the site. This includes:
 - a) Covering excavated areas and stockpiles;
 - b) The use of fine mists of hydrocarbon mitigating agents on impacted stockpiles or excavation areas;

- c) Maintenance of equipment and plant to minimise vehicle exhaust emissions;
 - d) Erection of dust screens on the boundary of the property and/or closer to potential dust sources;
 - e) All loads entering or leaving the site are to be covered
 - f) The use of water sprays to maintain dust suppression; and
 - g) Keeping excavated surfaces moist.
59. 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.
60. 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.
61. Consultation with Ausgrid is essential prior to commencement of work. Failure to notify Ausgrid may involve unnecessary expense in circumstances such as:
- i. where the point of connection and the meter board has been located in positions other than those selected by Ausgrid or
 - ii. where the erection of gates or fences has restricted access to metering equipment.
62. 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.
63. Prior to the commencement of any demolition work, a licensed demolisher who is registered with WorkCover NSW must prepare a Safe Work Method Statement to the satisfaction of the nominated Certifying Authority and a copy shall be sent to Bayside Council (if Council is not the Certifier). A copy of the SWMS shall be submitted to WorkCover NSW also.

The SWMS must be in compliance with AS2601:1991 – "Demolition of Structures" with the requirements of WorkCover NSW and conditions of the Development Approval and shall include provisions for:

- a) Enclosing and making the site safe; any temporary protective structures must comply with the "Guidelines for Temporary Protective Structures (April 2011)";
- b) Induction training for on-site personnel;
- c) Inspection and removal of asbestos; contamination and other hazardous materials (by appropriately licensed contractors);
- d) Dust control – dust emission must be minimised for the full height of the building. A minimum requirement is that perimeter scaffolding; combined with chain wire and shade cloth must be used; together with continuous water spray during the demolition process. Compressed air must not be used to blow dust from the site;
- e) Disconnection of gas and electrical supply;
- f) Fire fighting services on site are to be maintained at all times during demolition work. Access to fire services within the street must not be obstructed;
- g) No demolition activity shall cause damage to or adversely affect the safe access and egress of this building;

- h) Water.

DURING DEMOLITION / EXCAVATION / CONSTRUCTION

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

64. 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.
65. Hours of construction shall be confined to between 7.00am to 5.00pm Mondays to Fridays, inclusive, and between 8.00am to 1.00pm Saturdays with no work being carried out on Sundays and all public holidays. All possible steps should be taken to silence construction site equipment.
66. 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.
67. Inspections must be conducted by Council's Engineer at the following occasions:
 - a) Formwork inspection of driveway layback and adjacent kerb and gutter prior to laying of concrete,
 - b) Formwork inspection of Council's kerb and gutter prior to laying of concrete,
 - c) Formwork inspection of Council's footpath prior to laying of concrete,
 - d) Final inspection of driveway layback and adjacent kerb and gutter,
 - e) Final inspection of Council's kerb and gutter,
 - f) Final inspection of Council's footpath.
68. 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. The demolisher shall comply with the Australian Standard AS 2601-2001 "Demolition of Structures" and the requirements of the NSW WorkCover Authority.

No demolition materials shall be burnt or buried on the site.
69. All waste generated on site shall be disposed of in accordance with the approved Waste Management Plan.
70. Vibration
 - (a) 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.
 - (b) Vibration levels induced by the demolition activities must 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.
71. The upper noise level from the demolition operations measured over a period of 10 minutes must not exceed the background noise level by more than 10dB(A).
72. During demolition 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.

73. Stockpiles are not permitted to be stored on Council property (including the 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.
74. Building and demolition operations such as brick cutting, 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.
75. Stormwater from roof areas shall be linked via a temporary downpipe to an approved stormwater disposal system immediately after completion of the roof area.
76. 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.
77. 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).
78. Any material containing asbestos found on site during the demolition process the shall be removed and disposed of in accordance with:
 - a) WorkCover NSW requirements. An appropriately licensed asbestos removalist must complete all asbestos works if they consist of the removal of more than 10m² of bonded asbestos and/or any friable asbestos;
 - b) Protection of the Environment Operations Act 1997;
 - c) Protection of the Environment Operation (Waste) Regulation;
 - d) DECC Waste Classification Guidelines 2008; and
 - e) No demolition materials shall be burnt or buried on the site.

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.

79. 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.

Note: The Applicant may be liable to prosecution under the Environmental Planning and Assessment Act 1979 for a breach of an approval condition, or under the Protection of the Environment Operations Act 1997, if its employees, agents or sub-contractors allow sediment, including soil, excavated material, building materials, or other materials to be pumped, drained or allowed to flow to the street, stormwater pipes or waterways. The Applicant shall ensure that its employees, agents or sub-contractors understand and maintain sediment control measures.

80. 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.

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 Energy Australia, Sydney Water and 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 and Council are to be the responsibility of the developer.

81. All excavation 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;
- a) 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, piling, or underpinning prior to the commencement of any work. The construction shall not undermine, endanger or destabilise any adjacent structures.
 - b) Where the development involves excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - i. Protect and support the adjoining premises from possible damage from the excavation, and
 - ii. Where necessary, underpin the adjoining premises to prevent any such damage.
 - iii. 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;

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, piercing, or underpinning prior to the commencement of any work. The construction shall not undermine, endanger or de-stabilize any adjacent structures.

Where soil conditions require:

- a) 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, and
- b) 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 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 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).

83. The applicant shall conduct all construction and related deliveries wholly on site. If any use of Council's road reserve is required then separate applications are to be made at Council's Customer Services Centres.

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 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.

86. All absorption trench/modular drainage cell installations must be inspected prior to back filling and proceeding to subsequent stages of construction to the satisfaction of principal Certifying Authority.

Supporting evidence shall be issued by a professional Civil Engineer experienced in stormwater system design and construction. The maximesh screens and removable geotextile are to be installed in the absorption system prior to connection of the downpipes to ensure the effective performance of the system during construction and the long term viability of the system.

87. 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.

PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

88. An Occupation Certificate shall be obtained in relation to the approved works prior to any use or occupation of the building.
89. 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.
90. Prior to the issue of any Occupation Certificate, the applicant shall carry out the following works:
- a) On Hambly Street and Victoria Street, adjacent to development, reconstruct existing Kerb and Gutter for the full length property in accordance with Council Infrastructure Specifications, and
 - b) On Hambly Street and Victoria Street, adjacent to development, reconstruct existing Footpath for the full length of the property in accordance with Council Infrastructure Specifications.
91. 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 an Occupation Certificate the Principal Certifying Authority must:
- a) 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
 - b) 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.

92. Prior to the issue of any Occupation Certificate(s), inspection reports (formwork and final) for the works on the road reserve shall be obtained from Council's engineer and submitted to the Principal Certifying Authority attesting that this condition has been appropriately satisfied.
93. Prior to the issue of any Occupation Certificate(s), documentation from a practising civil engineer shall be submitted to the Principal Certifying Authority certifying that the stormwater drainage system has been constructed generally in accordance with the approved stormwater management construction plan(s) and all relevant standards.
94. The owner of the premises is required to comply with the following requirements when installing a rainwater tank:
 - a) The overflow from the rainwater tank shall be directed to the storm water system.
 - b) All plumbing work proposed for the installation and reuse of rainwater shall comply with the NSW Code of Practice: Plumbing and Drainage and be installed in accordance with Sydney Water "Guidelines for rainwater tanks on residential properties.
 - c) A first flush device shall be installed to reduce the amount of dust, bird faeces, leaves and other matter entering the rainwater tank.
95. Prior to the issue of an occupation certificate, certification from a licenced plumber shall be provided certifying the installation of the required minimum capacity 3000L rainwater tank(s) in each lot in accordance with the requirements of Sydney Water and AS/NZS 3500 – National Plumbing and Drainage Code. The rainwater tanks shall be certified as servicing the toilets, clothes washers and all landscaping on the site. First flush device shall be installed & overflow from the rainwater tank shall connect to the proposed site drainage system.
96. Prior to the issue of any Occupation Certificate(s), a restriction on Use of Land and Positive Covenant(s) shall be imposed on the development. The following covenants shall be imposed under Section 88(E) of the Conveyancing Act 1919 and lodged with the NSW Land and Property Information:
 - Positive Covenant and Restriction on Use of Land for OnSite Infiltration System. Refer to Appendix A of the Stormwater Management Technical Guidelines for suggested wording.
97. 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.

Damage to brick kerb and/or gutter and any other damage in the road reserve shall be repaired using brick kerb and gutter of a similar type and equal dimensions. All works shall be to Council's satisfaction at the applicant's expense. Repairs shall be completed prior to the issue of the Occupation Certificate.

Inspection reports (formwork and final) for works within 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.
98. 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.

99. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorized 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.

100. 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 use or occupation of the premises. 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.
101. A full width vehicular entry is to be constructed to service the properties. 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 private contractor. There are specific requirements for approval of private contractors.
102. Landscaping
 - 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) 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.
 - c) 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.
103. 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.
104. 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.

105. All plumbing work proposed for the installation and reuse of rainwater shall comply with the NSW Code of Practice: Plumbing and Drainage and be installed in accordance with Sydney Water "Guidelines for rainwater tanks on residential properties.

PRIOR TO THE ISSUE OF ANY SUBDIVISION CERTIFICATE

106. For compliance with the conditions of consent, a separate application must be made for a Subdivision Certificate. The application is to be accompanied by documentary evidence demonstrating compliance with all conditions of consent. Submission of a Subdivision Certificate Application shall be made to Bayside Council and accompanied by a linen plan with six (6) copies and appropriate fees.
107. Prior to the issue of the Subdivision Certificate, a Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained. Application must be made through an authorized Water Servicing Coordinator. Please refer to "Your Business" section of Sydney Water's website at www.sydneywater.com.au then the e-developer icon or telephone 13 20 92.
- a) Following application, a "Notice of Requirements" will detail water and sewer extensions to be built and charges to be paid. Please make early contact with the Coordinator, since building of water/sewer extensions can be time consuming and may impact on other services and including the building, driveway and/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.
108. Prior to the issue of the Subdivision Certificate, a Certificate of Survey from a Registered Surveyor shall be submitted to the satisfaction of Bayside Council showing all structures are wholly located within the property boundary.

EXTERNAL AUTHORITIES

109. The following conditions imposed by **Ausgrid** are as follows:
- a) 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).
 - b) In general, works to be considered by Ausgrid include, but are not limited to, the following:
 - i. Changes in electrical load requirements
 - ii. Changes to Ausgrids infrastructure (ie. asset relocations, decommissioning substations etc.)
 - iii. Works affecting Ausgrids easements, leases and/ or right of ways
 - iv. Changing the gradients of any roads or paths
 - v. Changing the level of roads or foot paths
 - vi. Widening or narrowing of roads
 - vii. Closing roads or laneways to vehicles
 - viii. In all cases Ausgrid is to have 24 hour access to all its assets

- c) 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. Ausgrids Network Standard
 - iii. Ausgrids Electrical Safety Rules
- d) 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 and maintenance of Ausgrid's network.

110. The following conditions imposed by **Sydney Water** are as follows:

- a) The approved plans must be submitted to the Sydney Water [Tap in™](#) online service to determine whether the development will affect any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met.
- b) *The Sydney Water [Tap in™](#) online self-service replaces our Quick Check Agents as of 30 November 2015.*
- c) The [Tap in™](#) service provides 24/7 access to a range of services, including:
 - i. building plan approvals
 - ii. connection and disconnection approvals
 - iii. diagrams
 - iv. trade waste approvals
 - v. pressure information
 - vi. water meter installations
 - vii. pressure boosting and pump approvals
 - viii. changes to an existing service or asset, e.g. relocating or moving an asset.
- d) A Section 73 Compliance Certificate under the *Sydney Water Act 1994* must be obtained from Sydney Water. It is recommended that applicants apply early for the certificate, as there may be water and sewer pipes to be built and this can take some time. This can also impact on other services and building, driveway or landscape design. Application must be made through an authorised Water Servicing Coordinator. For help either visit www.sydneywater.com.au > Plumbing, building and developing > Developing > Land development or telephone 13 20 92.



General Manager
City of Botany Bay Council
141 Coward Street
MASCOT NSW 2020

31 July 2018

**CLAUSE 4.6 VARIATION – FLOOR SPACE RATIO
CLAUSE 4.4 BOTANY BAY LOCAL ENVIRONMENTAL PLAN 2013
PROPOSED DEMOLITION OF EXISTING DWELLING AND CONSTRUCTION OF SEMI-DETACHED
DWELLINGS WITH TORRENS TITLE SUBDIVISION
27 HAMBLY STREET BOTANY**

BACKGROUND

This Clause 4.6 variation is a written request to vary a development standard to support a development application for the construction of a pair of semi-detached dwellings at No. **27 Hambly Street Botany**.

The subject site has an area of 554.8m² and the applicable floor space ratio applying to the land under Clause 4.4A(3) of the Botany Bay Local Environmental Plan 2013 (the LEP) is 0.5:1 as the proposed development is for semi-detached dwellings.

The proposal has a floor space ratio of 0.646:1. This equates to a variance of 0.146:1 or 81m². As a percentage, the variance is 29.2%. The variation is justifiable on the basis of compatibility with neighbourhood character.

The floor space ratios under Clause 4.4A(3) of the LEP are identified as development standards which require a variation under Clause 4.6 of the LEP to enable the granting of consent to the development application.

PURPOSE OF CLAUSE 4.6

The Standard Instrument LEP contains its own variations clause (Clause 4.6) to allow the variation of development standards. Clause 4.6 of the Standard Instrument is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

There is recent judicial guidance on how variations under Clause 4.6 of the Standard Instrument should be assessed. These cases are taken into consideration in this request for variation.

OBJECTIVES OF CLAUSE 4.6

The objectives of Clause 4.6 are as follows:-

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CLAUSE 4.6 VARIATION

- (a) *To provide an appropriate degree of flexibility in applying certain development standards to particular development, and*
- (b) *To achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

ONUS ON APPLICANT

Clause 4.6(3) provides that:-

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.*

JUSTIFICATION OF PROPOSED VARIANCE

There is jurisdictional guidance available on how variations under Clause 4.6 of the Standard Instrument should be assessed in *Samadi v Council of the City of Sydney [2014] NSWLEC 1199*.

Paragraph 27 of the judgement states:-

Clause 4.6 of LEP 2013 imposes four preconditions on the Court in exercising the power to grant consent to the proposed development. The first precondition (and not necessarily in the order in cl 4.6) requires the Court to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)). The second precondition requires the Court to be satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)). The third precondition requires the Court to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)). The fourth precondition requires the Court to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).

Precondition 1 - Consistency with zone objectives

The land is located in the R2 – Low Density Residential zone. The objectives of the R2 zone are:-

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage development that promotes walking and cycling.*

CLAUSE 4.6 VARIATION

Comments

The site may be developed as proposed with consistency with the zone objectives. The development will satisfy the zone objectives for the following reasons:-

- The resultant development will be for a pair of semi-detached dwellings which will replace an existing dwelling that has reached the end of its economic lifecycle. The two new dwellings will provide for the housing needs of the community within a low density residential environment. Additionally, the dwellings will provide housing choice which is to be encouraged. In these respects, the development will be compatible with the first objective.
- The second objective is not relevant as the application is for a residential purpose.
- In relation to the third objective, the proposal neither promotes nor denies the available opportunities for walking and cycling. In this respect the proposal is neutral.

The proposal is considered to satisfy the zone objectives.

Precondition 2 - Consistency with the objectives of the standard

The objectives of Clause 4.4 are articulated at Clause 4.4A(1):-

(1) The objectives of this clause are as follows:

- (a) to ensure that the bulk and scale of development is compatible with the character of the locality,*
- (b) to promote good residential amenity.*

The objectives are concerned with ensuring compatible bulk and scale and to promote residential amenity.

With these objectives in mind, I make the following observations:-

- The floor space ratio of any development is not readily translated into visual bulk and scale. The design of the proposed dwelling is such the bulk and scale are not perceived as incompatible with the streetscape with nearby observable development.
- The two street facing facades are well articulated and a composite design technique relating to the choice of materials is implemented. The façades use a combination of articulation, rendered brickwork, face brickwork, Alucobond cladding, vertical fenestration and colourbond roof cladding to achieve an aesthetically pleasing and well-modulated faced that will not be perceived as being excessively large or bulky. The faced is broken down into a number of individual elements which contributes to a successful integration into the streetscape. The roof has a low pitch to minimise visual and shadow impacts.
- The building will be compatible with the built forms in the street such as other nearby two storey dwellings. (Refer to Figures 1, 2 and 3).
- The areas of allotments in Hambly Street are variable. Over time this will result in buildings of various floor space ratios and various presentations to the street without any particular uniformity other than a general consistency. A recent example is No. 24 Hambly Street approved with an FSR of 0.7:1. In this context, the subject dwelling will achieve general consistency with the future character of the street.

CLAUSE 4.6 VARIATION

- The proposal is otherwise highly compliant with building height, landscaped area, site coverage and other DCP controls. It cannot be reasonably said that the dwelling is an overdevelopment of the site.
- The resulting residential amenity is acceptable and supportable in our opinion and results in a good example of suburban infill development.
- For the above reasons I conclude that the development satisfies the objectives of the development standard.



Figure 1: Nos. 12 and 12A Hambly Street (FSR – 0.65:1).



Figure 2: Nos. 25 Hambly Street two doors from the subject site.

Precondition 3 - To a consider written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

It is unnecessary to require strict compliance with the development standard as it is considered the development meets the qualitative objectives of the numerical standard. As demonstrated, the site is of a sufficient area and of a suitable shape to accommodate the development without detrimental impacts on the streetscape or the amenity of the adjoining properties.

CLAUSE 4.6 VARIATION

It is unreasonable that a variation cannot be accommodated under these circumstances to permit an otherwise meritorious development.

As the proposed development can be achieved as demonstrated it is reasonable to apply flexibility and vary the standard.

For the above reasons strict compliance is unreasonable and unnecessary.



Figure 3: Nos. 17-19 Hambly Street.

Precondition 4 – To consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court [or consent authority] finding that the matters required to be demonstrated have been adequately addressed

The primary issue in this development application is whether there are sufficient environmental planning grounds to allow the variation to the development standard to permit the granting of consent to the application.

In this regard I note the following:-

- There is demonstrated capacity (as shown in the architectural plans) for the site to support the additional floor space ratio and to produce a high quality streetscape outcome.
- The development may be achieved without unreasonable detrimental impacts on neighbouring properties through overlooking, overshadowing, view loss or stormwater nuisance.
- A compliant development would have a similar streetscape and bulk and scale presentation to the street. The only difference would be slightly smaller proportioning that is not perceivable except on any casual view.
- Hambly Street and surrounding streets support buildings of varying building height and bulk and scale. The resulting building will be complementary to the scale and built form of neighbouring development through good design and landscaping.

CLAUSE 4.6 VARIATION

For the above reasons, it is considered there are sufficient environmental planning grounds to justify a variation of the development standard for floor space ratio.

In the recent 'Four2Five' judgement (*Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90), Pearson C outlined in her judgement that a Clause 4.6 variation requires identification of grounds that are particular to the circumstances to the proposed development. That is to say that simply meeting the objectives of the development standard is insufficient justification of a Clause 4.6 variation.

However, it should be noted that a Judge of the Court, and later the Court of Appeal, upheld the Four2Five decision but expressly noted that the Commissioner's decision on that point (that she was not "satisfied" because something more specific to the site was required) was simply a discretionary (subjective) opinion which was a matter for her alone to decide. It does not mean that Clause 4.6 variations can only ever be allowed where there is some special or particular feature of the site that justifies the non-compliance. Whether there are "sufficient environmental planning grounds to justify contravening the development standard" is something that can be assessed on a case by case basis and is for the consent authority to determine for itself.

The recent appeal of *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 is to be considered. In this case the Council appealed against the original decision, raising very technical legal arguments about whether each and every item of clause 4.6 of the LEP had been meticulously considered and complied with (both in terms of the applicant's written document itself, and in the Commissioner's assessment of it). In February of this year the Chief Judge of the Court dismissed the appeal, finding no fault in the Commissioner's approval of the large variations to the height and FSR controls.

While the judgment did not directly overturn the *Four2Five v Ashfield* decision an important issue emerged. The Chief Judge noted that one of the consent authority's obligations is to be satisfied that "the applicant's written request has adequately addressed ...that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case ...and that there are sufficient environmental planning grounds to justify contravening the development standard." He held that this means:

"the Commissioner did not have to be satisfied directly that compliance with each development standard is unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the applicant's written request has adequately addressed the matter in subclause (3)(a) that compliance with each development standard is unreasonable or unnecessary".

Accordingly, in regards to the proposed development at No. 27 Hambly Street Mascot, (to avoid repetition), for all of the preceding reasons it has been demonstrated that there are sufficient environmental planning grounds to justify a variation to the development standard and Council may be satisfied that this Clause 4.6 variation has adequately addressed the matter in subclause (3)(a).

Lastly, in the *Wehbe* judgment (*Wehbe v Pittwater Council* [2007] NSWLEC 827), Preston CJ expressed the view that there are 5 different ways in which a SEPP 1 Objection may be well founded and that approval of the Objection may be consistent with the aims of the policy. These 5 questions may be usefully applied to the consideration of Clause 4.6 variations:-

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

Comment: Yes. Refer to comments under 'Precondition 2' above which discusses the achievement of the objectives of the standard.

CLAUSE 4.6 VARIATION

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

Comment: It is considered that the purpose of the standard is relevant but the purpose is satisfied.

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

Comment: Compliance does not defeat the underlying object of the control however compliance would prevent the approval of an otherwise supportable development. Development standards are not intended to be applied in an absolute manner.

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;

Comment: Not applicable although there is evidence of appropriate flexibility being permitted by Council.

5. the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

Comment: The development standard is applicable to and appropriate to the zone.

CONCLUSION

The proposal seeks a variation to a development standard that relates to the floor space ratio of the building to the site area for the purposes of controlling site density. The development standard is strictly numerical in nature and fails to take into consideration the qualitative aspects of the development or of the particular circumstances of a site or streetscape that contribute to the planning grounds to allow a reasonable variation.

Clause 4.6 allows such an examination to occur and permit variations when there are particular circumstances and sufficient planning grounds to do so.

It has been demonstrated through the particular site and streetscape characteristics and the good design of the proposal that the site can readily accommodate the proposed development which includes a variation to the floor space ratio control.

Therefore, I request that council support the variation on the basis that there are sufficient environmental planning grounds to justify a variation to the development standard.



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STATEMENT OF ENVIRONMENTAL EFFECTS

*PROPOSED DEMOLITION OF EXISTING STRUCTURES
AND CONSTRUCT SEMI-DETACHED DWELLINGS AND
TORRENS TITLE SUBDIVISION*

LOT 12 IN SECTION F IN DP 939785

No. 27 HAMBLY STREET BOTANY

FOR

SLD PTY LTD

July 2018

STATEMENT OF ENVIRONMENTAL EFFECTS

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STATEMENT OF ENVIRONMENTAL EFFECTS

1.0 INTRODUCTION

This Statement of Environmental Effects accompanies details prepared by Design Basix Build, Sheets DA 01a to 07a and associated supporting documentation such as landscape plans and shadow diagrams dated 20 June 2018 to detail the proposed demolition of existing site structures and the construction of a pair of semi-detached dwellings with Torrens Title subdivision on land at **No. 27 Hambly Street Botany**.

This Statement reviews the proposed development by assessing the relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979, (as amended) including:

- *Botany Bay Local Environmental Plan 2013*
- *Botany Bay Development Control Plan 2013*

As a result of the assessment it is concluded that the application addresses the controls satisfactorily and that the granting of consent to the application is justified.

2.0 PROPERTY DESCRIPTION

The subject allotment is described as **No. 27 Hambly Street Botany**, being Lot 12 (Section F) within Deposited Plan 939785 ("the site") and is zoned R2 Low Density Residential under the provisions of the Botany Bay Local Environmental Plan 2013.

The site is within the Class 5 Acid Sulfate Area. This will be discussed further within this report.

The site is not noted as being affected by the Sydney Airport noise exposure forecast.

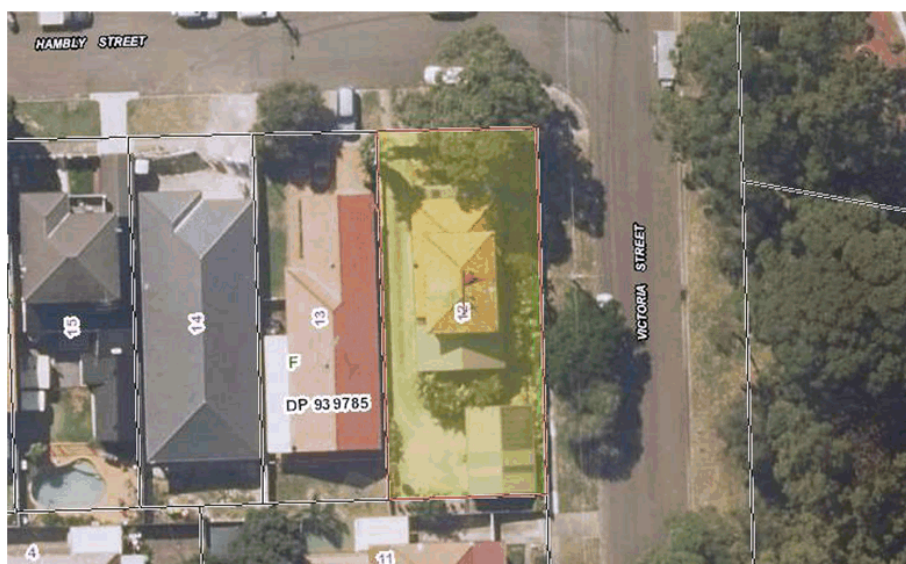


Figure 1: The subject site (Lot 2, Section F, DP 939785), shown by yellow highlighting.

STATEMENT OF ENVIRONMENTAL EFFECTS

3.0 SITE DESCRIPTION

The subject site is located on the southern side of Hambly Street on the corner of Hambly Street and Victoria Streets Botany. The site is opposite land zoned RE1 – Public Recreation which is known as Garnet Jackson Reserve.

The site is rectangular in shape and has a frontage of 15.24m to Hambly Street, eastern and western side boundaries of 36.575m, and a rear boundary of 9.325m. The total site area is 554.80m².

The site is currently occupied by a two storey brick and weatherboard residence with a tiled roof. A concrete driveway runs along the western boundary giving access to a single storey fibro garage in the rear yard. The internal levels are lower than Victoria Street and consequently, there is no driveway access available from Victoria Street.

The site does not support any significant vegetation. There is one street tree located on council land in Hambly Street and two street trees in Victoria Street. One of the trees in Victoria Street appears to be dead. Refer to Figures 5 and 6.



Figure 2: Front elevation of the existing dwelling on the subject site as viewed from Hambly Street.



Figure 3: Photograph of the side elevation of the existing dwelling of the subject site from Victoria Street.

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Figure 4: View of Garnet Jackson Reserve from the subject site.



Figure 5: The subject site as viewed from the corner diagonally opposite.



Figure 6: Relationship of subject site with the adjoining dwelling at No. 13 Victoria Street to the south.

STATEMENT OF ENVIRONMENTAL EFFECTS

4.0 SURROUNDING ENVIRONMENT

Botany is located in the south-eastern suburbs of Sydney, within the Bayside Council area. It is approximately 11km south of the Sydney Central Business District. Botany is situated on the northern side of Botany Bay, east of Sydney Airport.

The area surrounding the site is represented by a mix of development comprising mostly single and two storey residences, with the area exhibiting a wide range of architectural styles and finishes.

The adjoining property to the west is No. 25 Hambly Street which a single storey dwelling with a detached brick garage at the front. Refer to Figure 8. The adjoining property to the south is No. 13 Victoria Street which is also a single storey dwelling. Refer to Figure 6.



Figure 7: Aerial view of the wider locality. (Source: www.maps.six.nsw.gov.au)



Figure 8: Adjoining dwelling to the west at No. 25 Hambly Street.

STATEMENT OF ENVIRONMENTAL EFFECTS

5.0 PROPOSED DEVELOPMENT

As detailed within the accompanying architectural plans it is proposed to demolish all site structures and to construct a new pair of two storey semi-detached dwellings with subsequent Torrens Title subdivision. As detailed in the accompanying architectural plans, the proposed development will comprise the following works:

Dwelling 1

Ground Floor

- Single integrated garage; lounge room; guest room; powder room; laundry; open plan kitchen and family room; rear patio.

First Floor

- Four bedrooms (master with ensuite and walk-in-robe); bathroom; gallery; rear verandah adjoining master bedroom.

Dwelling 2

Ground Floor

- Single detached garage with access from Victoria Street; lounge room; guest room; powder room; laundry; open plan kitchen and family room; rear patio.

First Floor

- Four bedrooms (master with ensuite and walk-in-robe); bathroom; gallery; rear verandah adjoining master bedroom.

External Works

- The significant tree on the nature strip in Hambly Street will be retained. This is achieved by providing a separate detached garage for dwelling 2 which is accessible from Victoria Street.
- The site will be provided with a new landscape treatment on completion of the development.

The proposed development will be compatible with the general height and scale of dwellings in the locality and therefore considered to be compatible with the character of the local area. The materials, built form and colours and finishes of the development will complement the character of the local area as well. The development indices for the site are as follows:-

Site area:	554.8m ²
Permissible floor space ratio:	0.5:1 or 277.4m ²
Proposed floor space ratio:	0.646:1 or 358.79m ²
Required landscaped area: (Sites > 450m ²)	40% or 221.92m ²
Proposed landscaped area:	41% or 227.68m ²

STATEMENT OF ENVIRONMENTAL EFFECTS

6.0 ZONING AND DEVELOPMENT CONTROLS

6.1 Botany Bay Local Environmental Plan 2013

The site is zoned R2 Low Density Residential under the provisions of the Botany Bay Local Environmental Plan 2013.

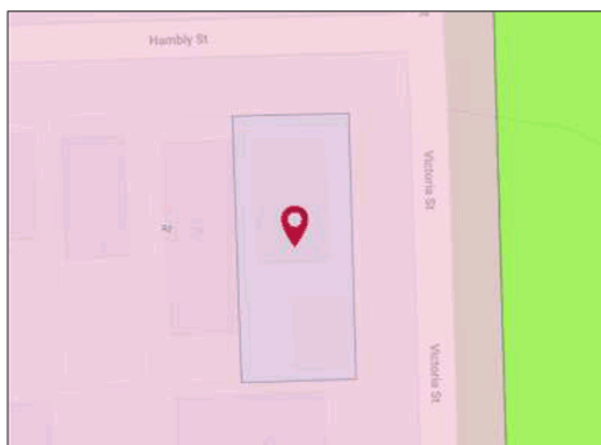


Figure 9: Land zoning map identifies the subject site as being located within the R2 Zone.

Permissibility

The proposed semi-detached dwellings are permissible in the R2 zone with the consent of Council. The subsequent subdivision of the land is also permissible with consent.

Zone Objectives

The development of and use of the land for residential purposes within the R2 Low Density Zone is consistent with the zone objectives, which are:-

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage development that promotes walking and cycling.*

It is considered that the proposed semi-detached dwellings will be consistent with the zone objectives for the following reasons:-

- The proposal will provide housing choice in a low density residential environment.
- The development will complement the existing attached and detached style housing within the locality.

The below table provides an assessment under the relevant development standards and provisions contained within the Botany Bay Local Environmental Plan 2013.

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CONTROL	PROPOSED	COMPLIANCE
Clause 2.6 Subdivision Land to which this Plan applies may be subdivided, but only with development consent.	The application seeks development consent for subdivision of the completed semi-detached dwellings. There is no minimum lot size specified in the LEP for the subdivision.	Noted
Part 4 Principal development standards		
Clause 4.3 – 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. The maximum height of buildings for this site is 8.5m. The dictionary supplement to the LEP notes building height to be:- <i>“building height (or height of building) means the vertical distance between ground level (existing) and 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.”</i>	The proposed building height at the highest point is 7.66m.	Complies
Clause 4.4 - Floor Space Ratio 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. The FSR maps indicate the site has a FSR of 1:1 however this is subject to Clause 4.4A.	The floor space ratio for the land is mapped as being 1:1 however this is amended by the operation of Clause 4.4A below.	Refer to Clause 4.4A
Clause 4.4A(3)(d) - Exceptions to floor space ratio for residential accommodation (d) The maximum floor space ratio for all other development for the purpose of residential accommodation is 0.5:1.	The proposed floor space ratio is 0.646:1. This is a variance of 0.146:1 or 81m ² . As a percentage the variance is 29.2%. The variation is justifiable on the basis of compatibility with neighbourhood character and is supported by a Clause 4.6 variation.	No Clause 4.6 variation submitted.
6.1 Acid sulfate soils The land is identified as having Class 5 acid sulfate soils.	The soil classification will not have a bearing on the development as there is no excavation of the type specified in the control.	Complies

There are no further clauses in the Botany LEP 2013 applicable to the proposal.

STATEMENT OF ENVIRONMENTAL EFFECTS

6.2 Botany Bay Development Control Plan 2013

The proposal has been assessed against the following principles:

DEVELOPMENT CONTROL	PROPOSED	COMPLIANCE
Part 3A – Car parking Semi detached dwellings require 1 space per dwelling.	One space per dwelling provided in single garages.	Complies
Part 3C – Access and mobility Encourage visitor access to the dwelling	No mandatory provisions applicable.	Noted
Part 3E – Subdivision and Amalgamation Proposed subdivision or amalgamation must have characteristics similar to the prevailing subdivision pattern of lots fronting the same street, in terms of area, dimensions, shape and orientation. All lots created shall have at least one (1) frontage to the street.	Torrens title subdivision consistent with prevailing subdivision pattern. Both lots will have a street frontage.	Complies
Part 3G – Stormwater management Development shall not be carried out on or for any lands unless satisfactory arrangements have been made with and approved by Council to carry out stormwater drainage works. Stormwater runoff generated from the development site shall be collected and discharged in accordance with Council's Part 10 - Stormwater Management Technical Guidelines. All requirements contained in the Council's Part 10 - Stormwater Management Technical Guidelines (including submission requirements, design and construction, etc) shall be fully complied with.	A stormwater management plan prepared by Smart Structures Australia has been prepared and is submitted with the application. The design provides for an on-site absorption system for both dwellings due to a fall to the street not being available.	Complies
Part 3H – Sustainable Design For all proposed residential development where BASIX applies, the development application or Complying Development Certificate is to be accompanied by a BASIX (Building Sustainability Index) Certificate	The application is accompanied by two valid BASIX certificates and the relevant commitments are shown on the architectural plans.	Complies
Part 3J – Development affecting operations at Sydney Airport Where the building site is classified as "acceptable" under Table 2.1 of AS2021-2015,	The ANEF map reveals that the site is outside of the relevant noise contours.	N/A

STATEMENT OF ENVIRONMENTAL EFFECTS		
DEVELOPMENT CONTROL	PROPOSED	COMPLIANCE
development may take place subject to Council consent, there being no need, in the case of building construction, to provide protection specifically against aircraft noise.	No further information in the form of an acoustic report is required.	
<p>Part 3L – Landscaping and tree management</p> <p>A Landscape Plan is to be submitted for new dwellings.</p> <p>Existing trees including street trees must be preserved. The arrangement of buildings, secondary dwellings, pods, car parks, driveways, ancillary building and paved vehicle/other circulation spaces must consider existing trees and incorporate them into the site layout.</p>	<p>A landscape plan has been prepared by Dawn of Landscapes and forms part of the submitted plans. It is considered that the plan shows sufficient information for assessment.</p> <p>Architectural Plan 03 also shows the private open space areas and landscape areas.</p>	Complies
<p>Part 3N – Waste minimisation and management</p> <p>A Site Waste Minimisation and Management Plan in accordance with Part 1 – Model Site Waste Minimisation and Management Plan (refer to Part 3N.4 - Appendices) must be submitted for Development Application involving:</p> <p>(i) Demolition (ii) New development; and (iii) Alterations and additions affecting more than 20m² of floor area.</p>	A site waste minimization and management plan has been prepared and is submitted with the application.	Complies
<p>Part 4A.2.2 – Site Analysis</p> <p>A Site Analysis Plan shall be submitted with all Development Applications to Council.</p>	A site analysis plan is provided at Sheet 01 of the architectural set. The plan shows the site levels and the location of adjoining buildings, windows and external features such as trees. The plan meets the requirements of a site analysis.	Complies
<p>Part 4A.2.3 – Local Character</p> <p>Development must be designed to respond to the opportunities and constraints identified in the Site Analysis.</p> <p>Development must comply with the relevant Desired Future Character Statements in Part 8 - Character Precincts.</p>	It is considered that the design of the dwellings responds to the site analysis and is a good example of new infill development in the local context in Hambly Street.	Complies
<p>Part 4A.2.4 – Streetscape Presentation</p> <p>New dwellings must be designed to reflect the relevant Desired Future Character Statement in Part 8 - Character Precincts and are to reinforce the architectural features and identity which</p>	The built form of the development is that of a pair of semi-detached dwellings which is common to the area and	Complies The design of the

STATEMENT OF ENVIRONMENTAL EFFECTS

DEVELOPMENT CONTROL	PROPOSED	COMPLIANCE
<p>contributes to its character. Applicants must address the design principles outlined in the statement.</p> <p>Development must be designed to reinforce and maintain the existing character of the streetscape.</p> <p>Development must reflect dominant roof lines and patterns of the existing streetscape (refer to Figure 3).</p> <p>Note: Contemporary architectural design solutions are encouraged, however designs will need to demonstrate that they will not lead to a replacement or diminution of a street's existing character. Council encourages diversity in housing designs provided that development outcomes complement the existing character of the suburb.</p> <p>Buildings must appropriately address the street. Buildings that are intrusive or inconsistent with the established development pattern will not be permitted.</p> <p>Developments on sites with two or more frontages should address both frontages</p> <p>The entrance to a dwelling must be readily apparent from the street.</p> <p>Dwelling houses are to have windows to the street from a habitable room to encourage passive surveillance.</p> <p>Skylights are to be flush with the roof surface and located to the rear of a building.</p> <p>A street number for the property is to be clearly identifiable from the street.</p> <p>Development must retain characteristic design features prevalent in houses in the street including: verandas, front gables, window awnings, bay windows, face brickwork or stone details.</p> <p>New windows must be in keeping with the scale and proportion of the original windows. Windows on a first floor extension are to be aligned with those on the ground floor. Note: Larger expanses of glass are allowed to the rear of buildings where there is less impact on the streetscape, provided the privacy of adjoining dwellings is maintained.</p>	<p>reinforces the established residential character.</p> <p>The dwellings have a contemporary façade treatment which is encouraged by the character statement and compatible with other recently approved modern dwellings visible in the locality.</p> <p>The façade treatment incorporates a parapet feature behind which is a low pitched roof form in order to keep the building height in compliance.</p> <p>The dwellings appropriately address the street with compliant setbacks and soft landscaping in the front setback area. Each dwelling will have a separate sense of identity while at the same time appearing as a larger single dwelling when viewed from Hambly Street. This is due to the fact that the front façade contains only one garage (Dwelling 1). The garage for Dwelling 2 has been appropriately located on the Victoria Street frontage in order to retain the significant street tree in front of Dwelling 2 in Hambly Street.</p> <p>Nonetheless, both dwelling's entrances are clearly visible from the street and will have separate paths to the front door. A low-level fence may be introduced to separate the two front gardens.</p> <p>Both dwellings have multiple windows facing the street which allow passive surveillance. This applies to both elevations.</p> <p>Windows in the street elevation to Hambly Street have a vertical form which is more reflective of the character established by older, original dwellings remaining in the street. This feature also applies to most of the windows facing Victoria Street for the same reasons.</p> <p>A combination of highlight windows and frosted glazing are carefully used to control privacy and overlooking issues to neighbouring properties.</p> <p>External finishes use a composite technique to add visual interest. The finishes are painted cement render, face</p>	<p>development is considered to be reflective of the desired future character of the Botany precinct which is in a recognised state of change.</p>

STATEMENT OF ENVIRONMENTAL EFFECTS

DEVELOPMENT CONTROL	PROPOSED	COMPLIANCE
<p>Painting, rendering and bagging of existing face brickwork must be consistent with the existing character of the street.</p> <p>New extensions must be consistent with existing materials.</p> <p>Dormer roofs must be consistent with the style of the existing dwelling.</p>	<p>brick and Alucobond. Some feature decorative elements are introduced on the rear upper first floor elevation. Both choice of brick and render colouring will be subdued and compatible with the finishes evident in Hambly Street. Refer to the schedule of external finishes.</p> <p>No dormer windows or skylights are used in the design of the building.</p>	
<p>Part 4A.2.5 – Height</p> <p>The maximum height of buildings must be in accordance with the Height of Buildings Map and Clause 4.3 of the Botany Bay Local Environmental Plan 2013.</p> <p>New buildings are to consider & respond to the predominant & characteristic height & storeys of buildings within the neighbourhood; and consider the topography & shape of the site.</p>	<p>The maximum building height of the proposal is 7.66m which is less than the LEP development standard of 8.5m.</p>	Complies
<p>Part 4A.2.6 – Floor Space Ratio</p> <p>The maximum FSR of development must comply with the Floor Space Ratio Map and Clause 4.4 and 4.4A of the Botany Bay Local Environmental Plan 2013.</p>	<p>The specified floor space ratio is 0.5:1. The proposed floor space ratio is 0.646:1. While non-compliant it is considered there is good cause for flexibility as the resultant development is compatible with the character and bulk and scale of similar development in the local area.</p> <p>A Clause 4.6 variation has been prepared and is submitted with the application.</p>	Complies
<p>Part 4A.2.7 – Site Coverage</p> <p>The maximum site coverage for a site >300m² is 50% of the lot.</p> <p>Site coverage is the proportion of a site area covered by buildings.</p> <p>The following are not included for the purpose of calculating site coverage:</p> <ul style="list-style-type: none"> (i) any basement, (ii) any part of an awning that is outside the outer walls of a building and that adjoins the street frontage or other site boundary, (iii) any eaves, (iv) unenclosed balconies, decks, pergolas & the like. 	<p>The proposed site coverage is 49.83% of the lot area. The very slight non-compliance is attributable to the necessary location of the garage for Dwelling 2 as a detached structure at the rear of the site. The variation may be reasonably supported for the reason that the garage location facing Victoria Street ensures the retention of the significant street tree in Hambly Street.</p>	<p>No Acceptable minor variation requested on the basis of retention of the significant street tree in Hambly Street and location of garage in the Victoria Street elevation.</p>
<p>Part 4A.2.8 – Building Setbacks</p> <p>For sites with a lot width of 12.5m or above, the following setbacks apply:</p>		

STATEMENT OF ENVIRONMENTAL EFFECTS

DEVELOPMENT CONTROL	PROPOSED	COMPLIANCE
Minimum front setbacks - Comply with the prevailing street setback or 6m	6m to main front wall which is also the prevailing street setback.	Complies
Minimum side setbacks = 900mm up to 2 floors	920mm on both sides (2 storeys). The eastern elevation provides for a projection of 2 bedroom windows for architectural relief at first floor level. This is a positive articulation element and may be supported by Council. The relevant windows will be fixed and be of fire rated glass blocks. No BCA or amenity issues are raised.	Complies except for wall articulation on first floor of Victoria Street elevation. Considered supportable.
Minimum rear setback = 6m	13.5m to closest rear wall.	Complies
New developments on corner lots are to provide a minimum secondary street setback of 3m.	Semi-detached dwellings cannot be reasonably designed with a 3m setback to Victoria Street. Semi-detached dwellings are a permissible form of development which are best achieved by centralizing the building envelope. The design follows this philosophy and produces a better built form and streetscape outcome than a compliant design. This principle has been observed in the recent development at 12 Hambly Street (corner Albert Street). The visual impact of the eastern elevation is tempered by:- <ul style="list-style-type: none"> • The site being lower than the level of the street and footpath of Victoria Street. • A relatively short building length of 15.5m. • The elevation facing public open space at a distance. There are no neighbouring residential premises affected by the eastern elevation. • The elevation is to be provided with screen planting to soften the appearance when viewed from Victoria Street. Refer to landscape plan. For the preceding reasons, it is considered that the eastern elevation produces a supportable visual design outcome when viewed from Victoria Street.	

STATEMENT OF ENVIRONMENTAL EFFECTS

DEVELOPMENT CONTROL	PROPOSED	COMPLIANCE
<p>Part 4A.2.9 – Landscaped Area</p> <p>The minimum landscaped area for a site >450 m² is 40%</p> <p>Any building, ancillary structure such as swimming pools, garages, sheds and cabanas, secondary dwellings, retaining/masonry walls and driveways must be sited to retain and protect existing trees, including street trees and trees on adjoining properties</p> <p>The front setback is to be fully landscaped with trees and shrubs and is not to contain paved areas other than driveways and entry paths. Paving is restricted to a maximum of 50% of the front setback area.</p> <p>The front setback area must contain at least one tree for frontages up to 11.5 metres in width and 2 trees for frontages greater than this and properties located on corner blocks.</p>	<p>The proposed landscaped area is 41% of the lot area.</p> <p>No existing trees on the site are affected by the proposed development. Care has been taken in the design to protect and retain the significant eucalypt on the nature strip in Hambly Street. The garage for Dwelling 2 is located in Victoria Street for this reason.</p> <p>The front setback area is fully landscaped and has more landscaped area than would be available if two driveways were present. The front setback area exceeds 50% and two trees are provided.</p> <p>The front setback area will support two trees as indicated in the submitted landscaped plan.</p>	<p>Complies</p> <p>Complies</p> <p>Complies</p>
<p>Part 4A.3.1 – Materials and Finishes</p> <p>A Schedule of Finishes and a detailed Colour Scheme for the building facade must accompany all Development Applications involving building works.</p> <p>Materials, colours, architectural details and finishes must be sympathetic to the surrounding locality.</p> <p>New development must incorporate colour schemes that are consistent with the predominant colour schemes in the street. No expansive use of white, light or primary colours which dominate the streetscape are permitted.</p>	<p>A schedule of materials and finishes is submitted with the application. External finishes use a composite technique to add visual interest. The finishes are painted cement render, face brick and Alcobond. Some feature decorative elements are introduced on the rear upper first floor elevation. Both choice of brick and render colouring will be subdued and compatible with the finishes evident in Hambly Street. No primary colours will be used.</p> <p>Refer to the schedule of external finishes.</p>	<p>Complies</p>
<p>Part 4A.3.2 – Roofs and Attics/Dormers</p> <p>Where roof forms in a street are predominantly pitched, then any proposed roof should provide a similar roof form and pitch. Roof pitches are to be between 22.5 degrees and 40 degrees.</p> <p>Flat or skillion roof forms may be located to the rear of a development site provided it is not a corner location and does not detract from the streetscape</p> <p>A variety of roof forms will be considered, provided that they relate appropriately to the architectural style of the proposed house and</p>	<p>The proposal incorporates a low pitched roof in recognition of the pitched roof forms in the locality.</p> <p>No flat or skillion roofs are proposed except for the garage roof facing Victoria Street. This is appropriate to reduce height and bulk given the location of the garage in close proximity to the street.</p> <p>It is considered that the chosen roof forms relate appropriately to the building's architecture and respect the</p>	<p>Complies</p> <p>Complies</p> <p>Complies</p>

STATEMENT OF ENVIRONMENTAL EFFECTS

DEVELOPMENT CONTROL	PROPOSED	COMPLIANCE
<p>respect the scale and character of adjoining dwellings.</p> <p>Pitched roofs must have a minimum eave overhang of 450mm (excluding gutters).</p> <p>Attics must be contained wholly within the roof form to the front elevation, excluding minor elements such as dormer windows.</p>	<p>scale and character of adjoining dwellings. The roof forms reduce the apparent bulk and scale of the development.</p> <p>The dwellings both have at least 450mm eaves overhang. This is not considered necessary for the garage which does not require shading to any windows.</p> <p>No attics are proposed in the development.</p>	<p>Complies</p> <p>N/A</p>
<p>4A.3.3 – Fences</p> <p>Front fences are to compliment the period or architectural style of the existing dwelling house.</p> <p>Fences (or returns) that are higher than 1 metre are not encouraged along residential frontages but may be constructed to a maximum of 1.2 metres provided the top 600mm of the fence is 50% transparent or open style to allow for passive surveillance.</p> <p>Different materials and textures are required to break up the appearance of long fences or walls.</p>	<p>Minimal fencing is proposed in the front elevation. The fencing includes a letter box for each dwelling (refer to front elevation).</p> <p>The fence is between 1m and 1.2m high due to the site slope. This is considered supportable due to the low amount of fencing proposed.</p> <p>The side elevation will have a combination of brick and colourbond fencing not more than 1.8m in height.</p>	<p>Complies with intent of control</p>
<p>Part 4A.4.1 – Visual Privacy</p> <p>The privacy needs of residents should be considered in designing a new dwelling or alterations and additions to a dwelling. Windows are to be located so they do not provide direct or close views into the windows of other dwellings, particularly those of living areas.</p> <p>Visual privacy for adjoining properties must be maximized by:</p> <ol style="list-style-type: none"> Using windows which are narrow, or glazing which is translucent or obscured; Ensuring that windows do not face directly on to the windows, balconies or courtyards of adjoining dwellings; Screening opposing windows, balconies and courtyards; and Increasing sill heights to 1.5 metres above floor level. <p>First floor balconies are only permitted when adjacent to a bedroom.</p>	<p>The side elevations use a combination of privacy screens, highlight windows and/or obscure glazing to achieve a satisfactory level of privacy to No. 25 Hambly Street and 13 Victoria Street.</p> <p>The rear upper balconies serve only bedrooms and are not intended for extended use. Nonetheless, privacy screens have been incorporated to the balconies.</p> <p>The rear balconies comply with the DCP design criteria for first floor balconies.</p>	<p>Complies</p>

STATEMENT OF ENVIRONMENTAL EFFECTS		
DEVELOPMENT CONTROL	PROPOSED	COMPLIANCE
<p>First floor balconies are only permitted at the rear of the dwelling if wholly located over the ground floor, providing the above requirements above are met.</p> <p>Balconies are to be designed to minimise overlooking to other properties.</p>		
<p>Part 4A.4.2 – Acoustic Privacy</p> <p>Dwellings close to high noise sources such as busy roads, railway lines and airports should be designed to locate noise sensitive rooms and secluded private open spaces away from noise sources and be protected by appropriate noise shielding techniques.</p>	<p>The development site is not in close proximity to noise sources such as busy roads.</p> <p>The land is situated outside the Sydney Airport ANEF contours and no acoustic report is required for the application.</p>	Complies
<p>Part 4A.4.3 – Solar Access</p> <p>Buildings (including alterations/additions/extensions) are to be designed and sited to maintain approximately 2 hours of solar access between 9am and 3pm on 21 June to windows in living areas (family rooms, rumpus, lounge and kitchens) and to 50% of the primary private open space areas of both the subject site and adjoining properties.</p> <p>For development adjoining a semi-detached dwelling, first floor additions may need to be setback in order to provide adequate solar access to the living areas within the adjoining dwellings and their principal open space areas.</p>	<p>Due to the favourable orientation of the site (with the long side boundary on a north/south axis), solar access and shadows are evenly distributed throughout the day during the winter solstice.</p> <p>Solar access to Dwelling 1 is optimal while solar access to Dwelling 2 is lesser although approximately 2 hours sun is achieved to the POS and living rooms.</p> <p>Solar access to the adjoining properties' private open space and windows are not obstructed from midday onwards during the winter solstice.</p>	Complies
<p>Part 4A.4.4 – Private Open Space</p> <p>Each dwelling is to have a private open space that:</p> <p>(i) Has at least one area with a minimum area of 36m²;</p> <p>(ii) Is located at ground level with direct access to the internal living areas of the dwelling;</p> <p>(iii) Maximises solar access;</p> <p>(iv) Is visible from a living room door or window of the subject development;</p> <p>(v) Minimises overlooking from adjacent properties; (vi) Is generally level;</p>	<p>Dwelling 1: 84.1sqm Dwelling 2: 55.4sqm</p> <p>Both dwellings comply.</p> <p>2 hours mid-winter achieved.</p> <p>Both dwellings comply.</p> <p>Noted. Some overlooking from No. 13 Victoria Street but ameliorated by screen planting along the rear boundary.</p>	<p>Complies Complies</p> <p>Complies</p> <p>Complies</p> <p>Complies</p>
27 Hambly Street Botany		Page 17

STATEMENT OF ENVIRONMENTAL EFFECTS

DEVELOPMENT CONTROL	PROPOSED	COMPLIANCE
(vii) Is oriented to provide for optimal year round use;	Noted.	Complies
(viii) Is appropriately landscaped; and	Noted. Refer to landscape plan.	Complies
(ix) Is located or screened to ensure privacy;	Screen planting is provided as necessary.	Complies
For terraces and decks to be included in calculations of areas for private open space, these must be of a usable size (minimum 10m ²) with one length or width dimension being a minimum of 2 metres, and be accessible from a communal or living area of the dwelling. Areas within setbacks are not to be included as private open space unless they have a minimum width of 3 metres.	Noted. The rear patios have not been (nor need to be) included in the calculation of the POS. Noted. Such areas have not been calculated in the POS area.	
Part 4A.4.5 – Safety and Security Dwellings must be designed to encourage passive surveillance of the street and comply with Part 3I - Crime Prevention, Safety and Security.	Both dwellings have windows facing Hambly Street for passive surveillance of persons approaching the dwelling.	Complies
Part 4A.4.6 – Excavation Buildings must not dominate or detract from the natural landform. The siting of buildings should relate to the site's natural context and topographical features.	The existing site levels are such that the building platform is already lower than Victoria Street. The site requires minimal additional excavation and fill to accommodate the building footprint.	Complies
Part 4A.4.7 – Vehicle Access Driveways within a property shall have a minimum width of 3 metres. Note: An additional clearance of 300mm is required (for each side) if the driveway is located adjacent to a solid structure (i.e. masonry wall). The width of the vehicular crossing over the Council's road reserve shall be a minimum of 3 metres for a single garage and a maximum of 5.5 metres for a double garage at the property boundary and at 90° to the kerb. Driveways must be designed to comply with AS2890.1 (also refer to Part 3A - Car Parking). Vehicular crossings shall be sited so that existing street trees, bus stops, bus zones, power lines and other services are not affected. Internal driveways characterised by large expanses of concrete are not permitted.	The driveway to the garage in Victoria Street is 3.48m wide. The driveway to Dwelling 1 is less than 3m but governed by the width of the existing driveway externally. The Victoria Street crossing will be compliant however the existing crossing to Hambly Street is non-compliant in width. This may be addressed through a condition of consent if required by Council. Noted. Noted. Poles and street trees are not impacted. Noted.	Complies No, however may be conditioned. Condition if required.

STATEMENT OF ENVIRONMENTAL EFFECTS

DEVELOPMENT CONTROL	PROPOSED	COMPLIANCE
<p>Suitable driveway materials include paving and other textures or coloured surfaces to add visual interest.</p> <p>The number of vehicle crossings is to be limited to one (1) per allotment.</p> <p>Vehicular crossings shall be sited so as minimise any reduction in on-street kerb side parking.</p> <p>The alignment of driveways should where possible, create visual interest and avoid the creation of a "gun barrel" effect.</p> <p>Applications for new dwellings will be conditioned to require the construction or reconstruction of the kerb and gutter, footpath (including pram ramp) and the vehicular crossing along the full site frontage. Costs of such work will be the responsibility of the owner of the development site. For corner lots, if footpath and/or kerb and gutter on are in good condition it may be required that only one street frontage is constructed or reconstructed.</p> <p>The location of vehicular crossings shall not be located within 6 metres from the tangent point of the kerb return (refer to AS289.01 - Figure 3.1)</p>	<p>Two crossings are requested as the development is for semi-detached dwellings. Additionally, a second crossing is required in the Victoria Street frontage in order to retain the significant street in Hambly Street.</p> <p>Noted.</p> <p>Both vehicular crossings are compliant.</p>	<p>Supportable for semi-detached dwellings and considering corner lot.</p> <p>Condition</p> <p>Complies</p>
<p>Part 4A.4.8 – Car Parking</p> <p>Development must comply with Part 3A - Car Parking.</p> <p>The provision of car parking must reasonably satisfy the needs of current and future residents, but recognise the need to balance car parking access and provision with design, heritage, landscape and streetscape objectives.</p> <p>Car parking is to be located at the rear of the site with access from a rear lane. If rear lane access is not possible, parking must be provided behind the front building alignment. For existing and new dwellings, a garage or carport in order of priority must be:</p> <p>(i) Located at the rear of the site with access from a rear lane;</p> <p>(ii) At the rear of the site with access from the street frontage;</p> <p>(iii) Located at the side of the dwelling house, at least 1 metre behind the front building alignment and 5.5 metres from the front boundary; or</p> <p>(iv) Located at the side of the dwelling house, at least 1 metre behind the front building</p>	<p>Car parking provided meets the requirements of Part 3A of the DCP.</p> <p>The site does not have rear lane access.</p>	<p>Complies</p> <p>N/A</p>

STATEMENT OF ENVIRONMENTAL EFFECTS		
DEVELOPMENT CONTROL	PROPOSED	COMPLIANCE
alignment. Note: Refer to Part 4A.6 - Ancillary Development for buildings on rear or side lanes.		
Car parking structures must be located and designed to:	The garage for Dwelling 1 is appropriately integrated into the design of the dwelling.	Complies
(i) Comply with AS2890.1 and		
(ii) Conveniently and safely serve all users; (iii) Enable efficient use of car spaces, including adequate manoeuvrability for vehicles between the site and the street;	For reasons of tree retention, Dwelling 2 will have a detached garage accessible from Victoria Street. Being a single garage with a low roof, the structure will not dominate the dwelling or the streetscape.	Complies
(iv) Not dominate or detract from the appearance of the existing dwelling or new development and the streetscape;		
(v) Be compatible in scale, form, materials and finishes with the associated dwelling;	The garage will be compatible with the dwelling in terms of materials and finishes.	Complies
(vi) Not reduce availability of kerbside parking;		
(vii) Retain any significant trees; and		
(viii) Have minimal impact on existing fences and garden areas that contribute to the setting of the associated dwelling and the character of the streetscape.	The location of the garage will retain the significant street tree in Hambly Street.	Complies
	Parking demand in Victoria Street is low and there is no unreasonable reduction in kerbside parking.	Satisfactory on merit

7.0 MATTERS FOR CONSIDERATION UNDER CLAUSE 4.15 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979

7.1 The provisions of any environmental planning instrument

The proposal is subject to the provisions of the SEPP BASIX and the Botany Bay Local Environmental Plan 2013 and the relevant supporting Council policies. It is considered that the provisions of this environmental planning instrument have been satisfactorily addressed within this report and that the proposal achieves compliance with its provisions.

There are no other environmental planning instruments applying to the site.

7.2 Any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority

There are no draft environmental planning instruments applying to the site.

7.3 Any development control plan

The development has been designed to comply with the requirements of Council's Development Control Plan as far as is reasonably possible.

STATEMENT OF ENVIRONMENTAL EFFECTS

It is considered that the proposed design respects the desired character objectives for the Botany area as outlined within the DCP, in that it reinforces the existing residential character of the area and is compatible with the existing uses in the vicinity.

Variances to the DCP controls have been identified in the DCP table and planning justification has been provided. The side setback for corner lots represents the control that has the most potential to impact on the orderly development of the land. In our opinion, the control does not support the orderly development of semi-detached dwellings. The development must be positioned centrally within the site to produce a balanced and aesthetically pleasing planning outcome. The setback control is not compatible with this desired outcome and flexibility is requested.

It is considered that the proposal is otherwise highly compliant with the objectives and development controls outlined within the Botany Development Control Plan. Accordingly, it is considered that the application should be supported by Council.

It is noted that section 4.15(3A) of the Environmental Planning and Assessment Act 1979 requires the consent authority to be 'flexible' and allow 'reasonable alternative solutions' in applying DCP provisions with which a development application does not comply. Accordingly, we request that the variance relating to the side setback to the eastern boundary be favourably determined.

We also request that Council applies considered flexibility where the application seeks variances to any other numerical development controls as adequate justification has been provided within this Statement.

7.4 Any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4

No voluntary planning agreements are relevant to this application.

7.5 Any matter prescribed by the regulations that apply to the land to which the development relates

No matters of relevance are raised in regard to the proposed development.

7.6 The likely impacts of that development, including environmental impacts on both the natural and built environments, and the social and economic impacts in the locality.

It is considered that the proposal, which seeks approval for the demolition of existing structures and the construction of a pair of semi-detached dwellings and subsequent Torrens title subdivision is reasonable and therefore supportable.

The development will maintain a favourable bulk and scale relationship with other development in the vicinity. It is considered that the resultant development is compatible with and will complement the character of the area as described in this report. The proposal will provide housing choice to the locality whilst respecting the low density residential scale and character of the locality.

The proposal is considered to be well designed having regard to the relevant provisions of Council's LEP, DCP and Policies.

STATEMENT OF ENVIRONMENTAL EFFECTS

7.7 The suitability of the site for the development

The subject land is zoned R2 Low Density Residential under the Botany Bay Local Environmental Plan 2013 and is considered to be of a suitable size and shape for the proposed development. The subject site does not exhibit any significant constraint to the proposed works.

7.8 Submissions made in accordance with this Act or the regulations

This is a matter for Council in the consideration of this proposal.

7.9 The public interest

The proposal will not unreasonably impact upon the environment, the character of the locality or upon the amenity of adjoining properties and is therefore the granting of development consent is considered not to be contrary to the public interest.

8.0 CONCLUSION

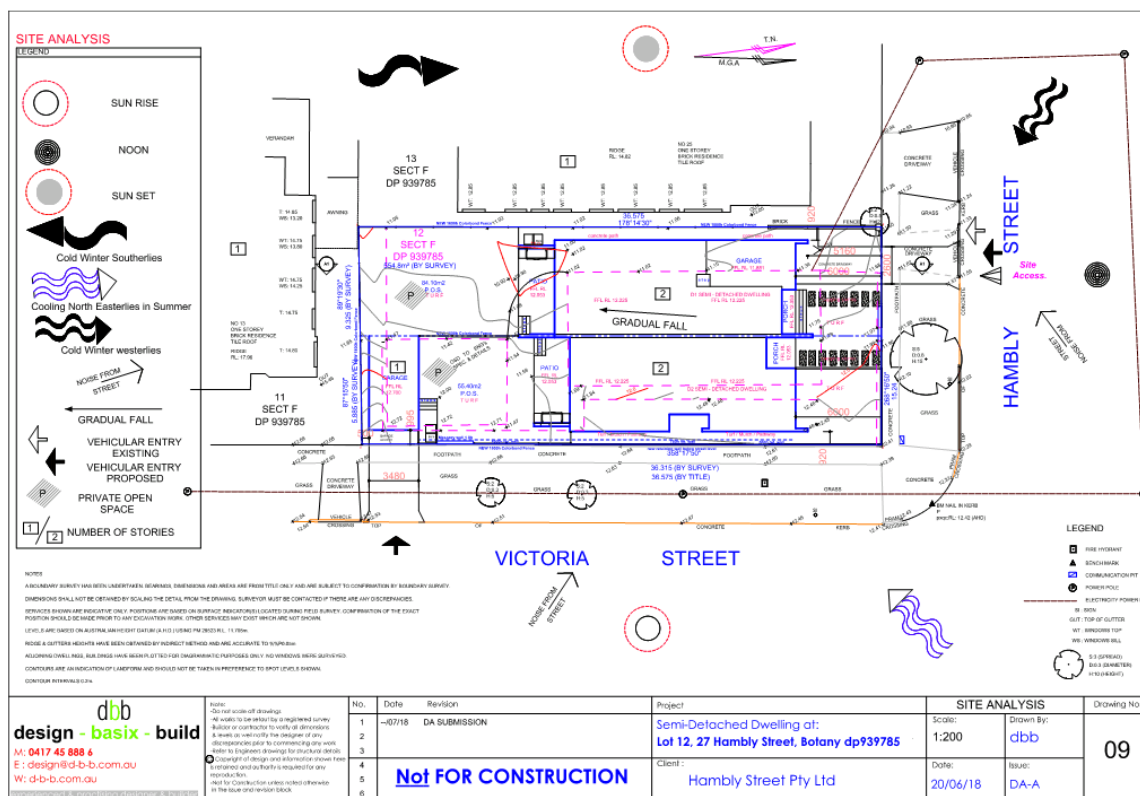
The principal objective of this development is to provide for the demolition of existing structures and the construction of a pair of semi-detached dwellings and subsequent Torrens title subdivision at **No. 27 Hambly Street Botany** which will satisfy the stated objectives of Council's Development Controls.

By maintaining our neighbours amenity and by complementing the existing style and character of the dwelling and the wider streetscape, the stated objectives of the Botany Bay Development Control Plan have been satisfied.

As the proposed development will not have any significant impact on the environment, scenic quality of the area or the amenity of the adjoining allotments, the issue of Development Consent under the delegation of Council is requested.



Eugene Sarich
Urbanesque Planning Pty Ltd







FENCING NOTE :
REPLACEMENT OF ALL BOUNDARY FENCING EXCEPT NORTHERN BOUNDARY FENCE WHICH IS TO BE RETAINED.
A NEW 1.8M FENCE IS TO BE ERECTED ALONG THE BOUNDARIES AT FULL COST TO THE DEVELOPER. THE FENCE IS TO BE SHEET METAL.
THE MATERIALS AND COLORS TO BE CONFIRMED WITH ADJOINING PROPERTY OWNERS.
FENCING FORWARD OF BUILDING LINE NO HIGHER THAN 1M

MAINTENANCE :
Maintain all landscape areas to ensure plant health and occupant safety for a period of 12 months beginning from date of practical completion to the satisfaction of council.
Maintenance will include but not limited to the following activities, mowing, edging, pruning and the dressing of turf areas and all plants to be fed slow release fertilizer according to manufacturer's recommendations.
regular ongoing observation and maintenance is required.

TRENCHES ADJACENT TO TREES
NOTE : PIPES INSTALLED IN MANUALLY EXCAVATED TRENCHES WORK TO BE SUPERVISED BY ARBORIST AQF3. NO TREE ROOTS OVER 25MM DIA. ARE TO BE CUT DAMAGED. TREE ROOTS UNDER 25MM DIA. ARE TO BE CUT CLEANLY & NOT TORN OR RIPPED BY MACHINERY

LANDSCAPING NOTES AND SPECIFICATIONS
EXCAVATIONS
Any services shown on the plan have been indicated by location. Further services may be present prior to any construction or excavation on site the relevant authorities should be contacted for possible location of all further underground services and details of all services.
GARDEN BED/MULCH
The topsoil to all garden bed areas shall be 1 part site topsoil and two parts organic compost thoroughly mixed together prior to placing into position.
Where site topsoil is not suitable specified topsoil meeting the requirements of AS4451-1988 shall be used. Topsoil depth to all garden bed areas to be garden min. 100mm deep.
Mulch consisting of pine bark is to be spread over all planter beds to a depth of 100 mm. Reduce depth of mulch around base of plants to form "watering disc" to facilitate watering.
GARDEN EDGING
All garden edging as detailed by GP on the plan is to be constructed using either masonry concrete or brick laid over 100mm layer mortar. extruded bricks shall not be used.
PLANT MATERIAL
All plants to be healthy and well developed without being root bound and disease free.
PROPOSED TREES
All trees planted shall be to be at least 200mm wider and at least 200mm denser than the model size. All trees are to be double staked and secured with tension ties in figure eight arrangement.
Apply 150mm layer of topsoil to all turf areas laid over deep soil. Prior to laying turf, contractor to ensure all exposed areas are correctly graded with no surface depressions or other irregularities. Large stones or building debris, surf used for the site shall be cultivated in place. Unless specified otherwise, turf shall be laid flush with adjacent finished surface levels.
EXISTING TREES
Unless specified otherwise existing trees which are to be retained are to be protected for the duration of the construction period. Install a 1 m high temporary protective fence at a distance of 3 m around the base of the tree or group of trees. The protective fencing shall be constructed using chainlinking. The area to be protected is to be marked with a 100mm layer of organic mulch made up of fine bark or similar. Regularly high cut grass to be cut down regularly. Do not use or remove any material from the protected area. Do not dig, drill, or cut into the ground within the protected area. It is absolutely necessary to cut tree roots to obtain Council approval. Do not carry out any tree work until all Council approvals have been obtained in order to minimise root damage. any excavation work occurring near an existing tree is to be retained shall be carried out under the supervision of a qualified arborist.
Prior to the occupation of the buildings all existing trees to be retained are dead or dying limbs, carried out (only with Council approval) to ensure safety of future occupants.
PAVING
All paved areas including driveways and pathways are to have a wearing concrete finish. All pavement surfaces to comply with the requirements of AS3601.1 1992 Slip resistance of pedestrian surfaces.
STANDARDS
All materials and standards of workmanship used on this project is to comply with the latest revision of the relevant Australian Standards.
DISCREPANCIES
Should there be any discrepancies on the drawings and/or on site, landscape contractor to notify the superintendent for resolution prior to the commencement of the works. Where the situation is not readily resolved on site, the superintendent is to notify the architect/drawee immediately for resolution.
IRRIGATION
Provide one headsprinkler in the front and rear yard or the installed automatic/triplex water system at owner's choice.

PLANT SCHEDULE

ID	Lat in Name	Common Name	Quantity	Scheduled Size	Spread	Height
ACS-15	Acmena smithii 'Minor'	Lillypilly	15	15H	1000	20000
BSE-4	Banksia serrata	Old Man Banksia	4	5LT	2500	4000
CIC-4	Callistemon citrinus	Crimson Bottlebrush	4	5LT	2500	2000
EL	BANKSIA INTEGRIFOLIA	BANKSIA COAST	1	75lt	22000	20000
GA-1	Gahnia aspera	Saw Sedge	8	tube	700	700
LT	Lomandra 'Tanika'	Dwarf Lomandra	4	5lt	700	700
WF	Westringia fruticosa	Coastal Rosemary	13	5lt	1500	1500

GE - TIMBER TREATED PINE LAWN/GARDEN EDGING

LAWN:- KIKUYA WITH SHIRLEYS NO. 17 FERTILISER

LANDSCAPE DETAILS

HEALTHY 30L TREES AS PER PLANT SCHEDULE WITH SINGLE LEADER AND PROPORTIONATE CROWN. PLACE CENTRAL AND PLANT IN PLANTING HOLE. TOP OF ROOTBALL TO FINISH FLUSH WITH ADJACENT SURFACE.

IF TREE PLANTING IN LAWN PROVIDE 150mm DEEP SPACE OUT EDGE AROUND PLANT BETWEEN TURF AND MULCH.

RP BASE AND BODIES OF PLANTING HOLE TO 150mm.

SOIL PREPARATION AS PER GENERAL NOTES.

2 HARDWOOD STAKES 80 X 80 X 1800 MM AT EDGE OF ROOTBALL WITH 50MM HERBARIAN TIES IN FIGURE 8 SHAPED AND STAPLED TO STAKES AS SHOWN.

30mm HERBARIAN TIES IN FIGURE 8 PATTERN AROUND TREE STANDARDS STAPLED TO STAKES.

30mm MULCH. 150mm GRAZED PRESHOWN MULCH. REDUCE COVER AROUND BASE OF PLANT CLOSE OF STEM TO GRASS WATERING DISK.

MAKE PLANTING HOLE APPROX. THREE TIMES OF ROOTBALL. BACKFILL WITH PREMIUM ORGANIC GARDENING. LIGHTLY TAMP AND WATER WELL.

1000mm x 1000mm (TYP)

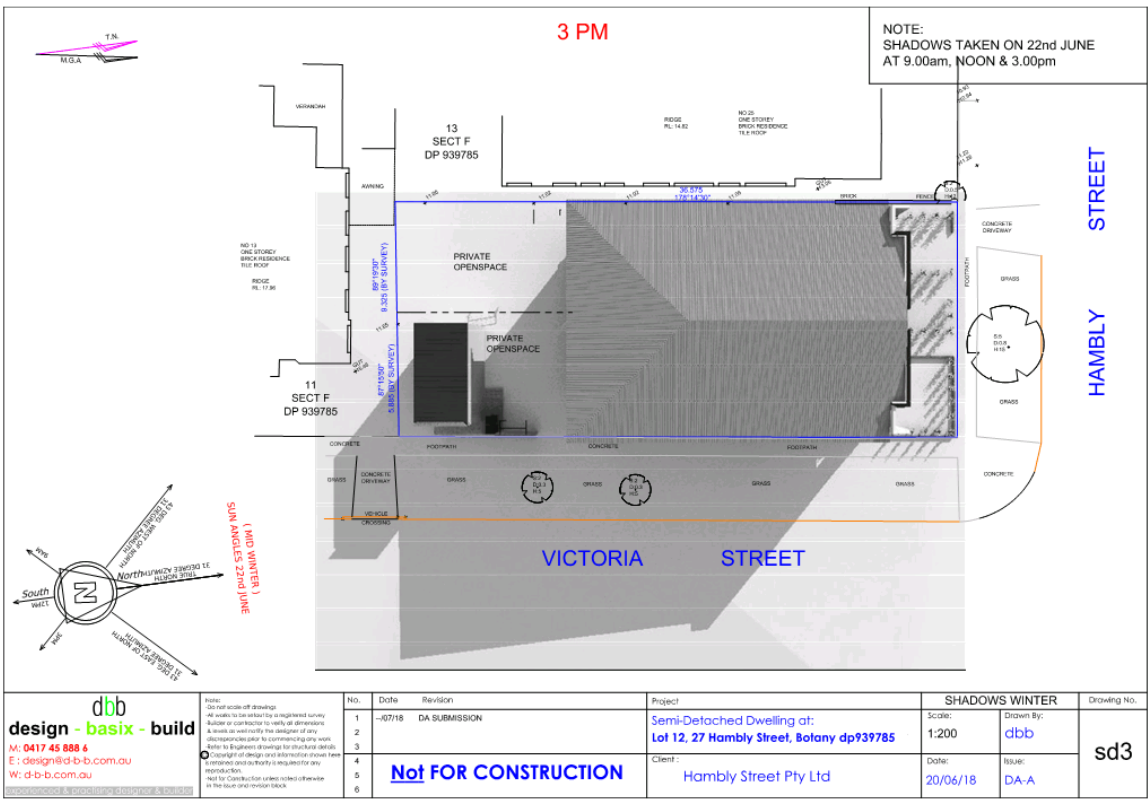
1 TREE PLANTING ON GRADE SCALE 1:50

ISSUE DESCRIPTION DATE
A DA LODGEMENT 30/7/18

LANDSCAPING PLAN AND DETAILS
CERTIFICATE IN GARDEN DESIGN WHITE
DAWN OF LANDSCAPES
LANDSCAPE PLAN
For : Homby Street Pty Ltd
27 Homby Street, Botany dp939785
DWG NO. : 1017-481-818
DATE : 28/10/18
SCALE : 1:50
DRAWN BY : JSS/ART
CHECKED BY : JSS/ART







Colour board

design-basix-build

Project: 27 Hambly St, Botany

Project No: DA-A

Applicant: dbb (design-basix-build)

Ref: Colours-01

Garage door
Alucobond White
Or similar



External Feature Walls / Parapet
Alucobond Panels
Anthracite Grey



Front Porch Floor Tiling



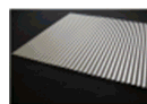
Columns / Parapets / Walls
Dulux Whisper White or
Dulux Lexicon Quarter



Austral Bricks
Dynasty Brushed Leather



Colorbond – Custom-Orb
Surfmist



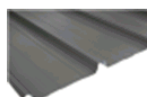
Aluminium Windows
Colorbond Silver

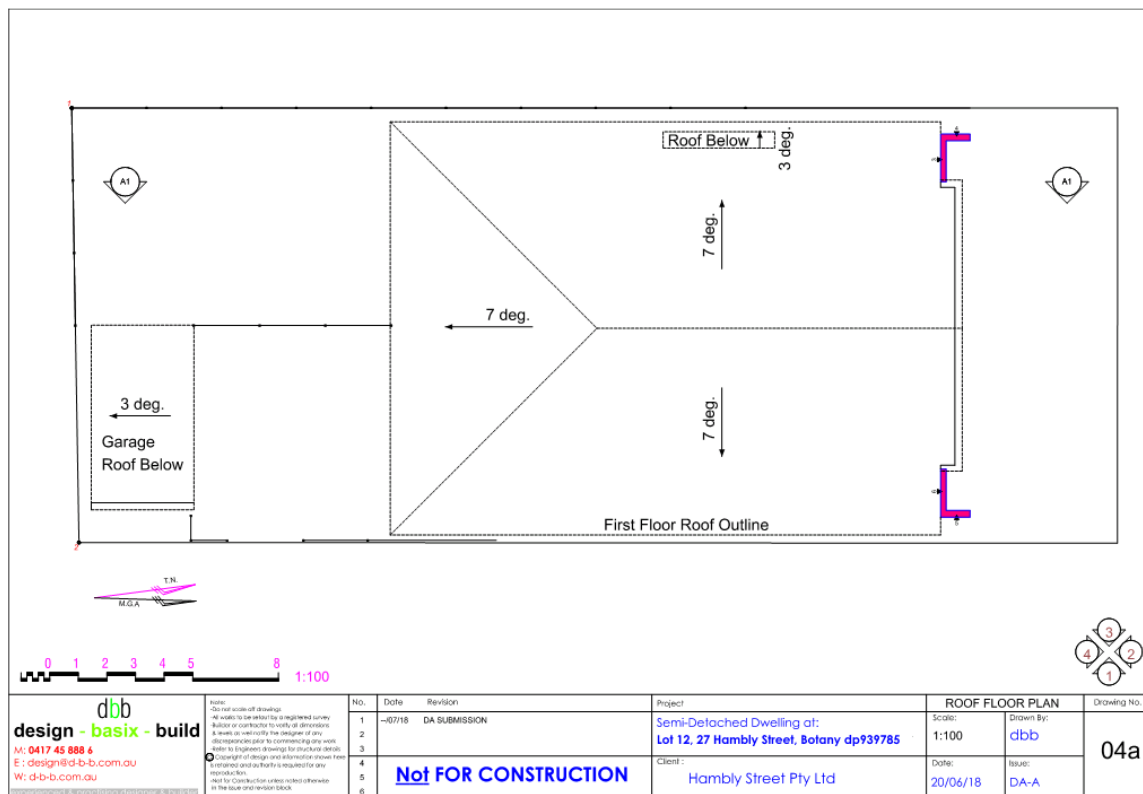


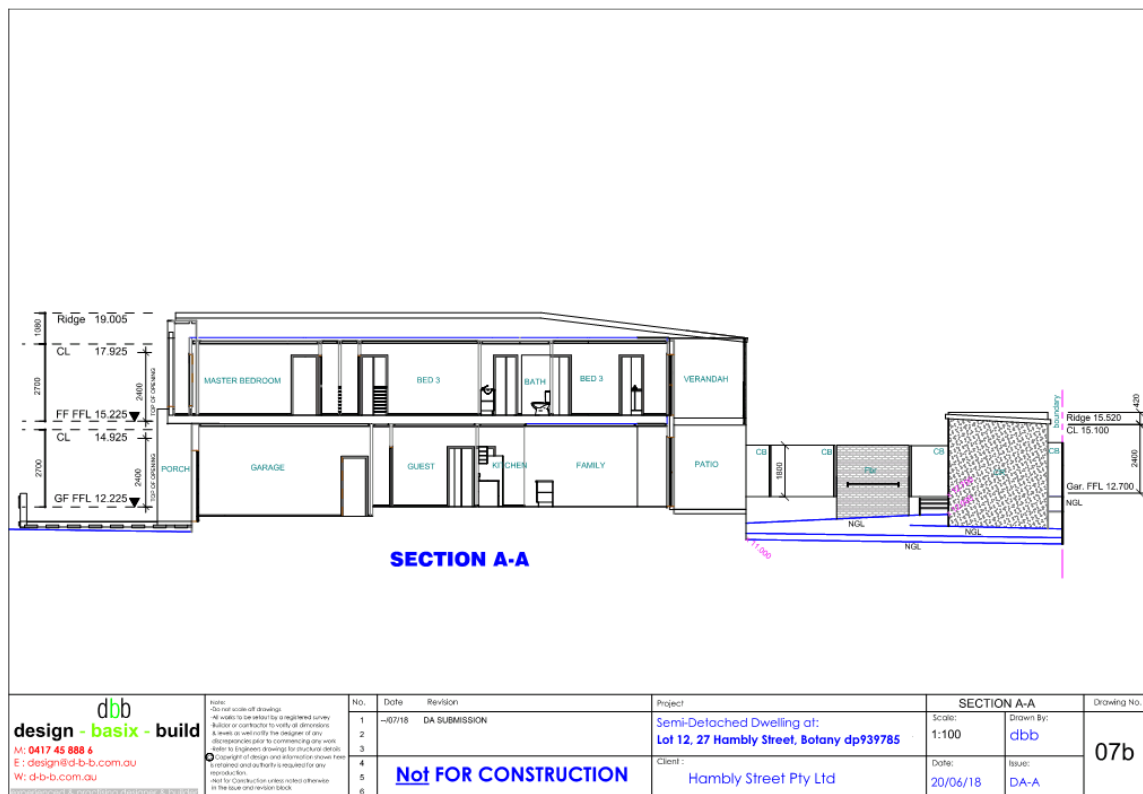
Fascia (Surfmist)
Gutter (Surfmist)

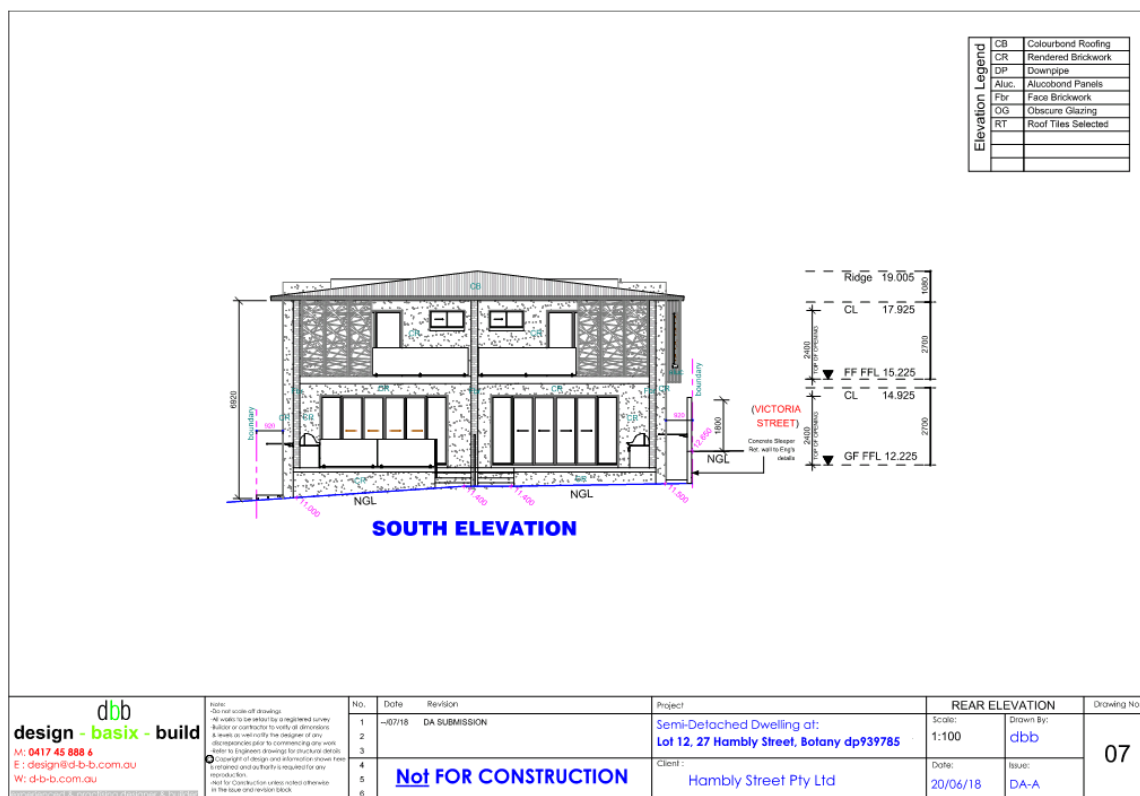


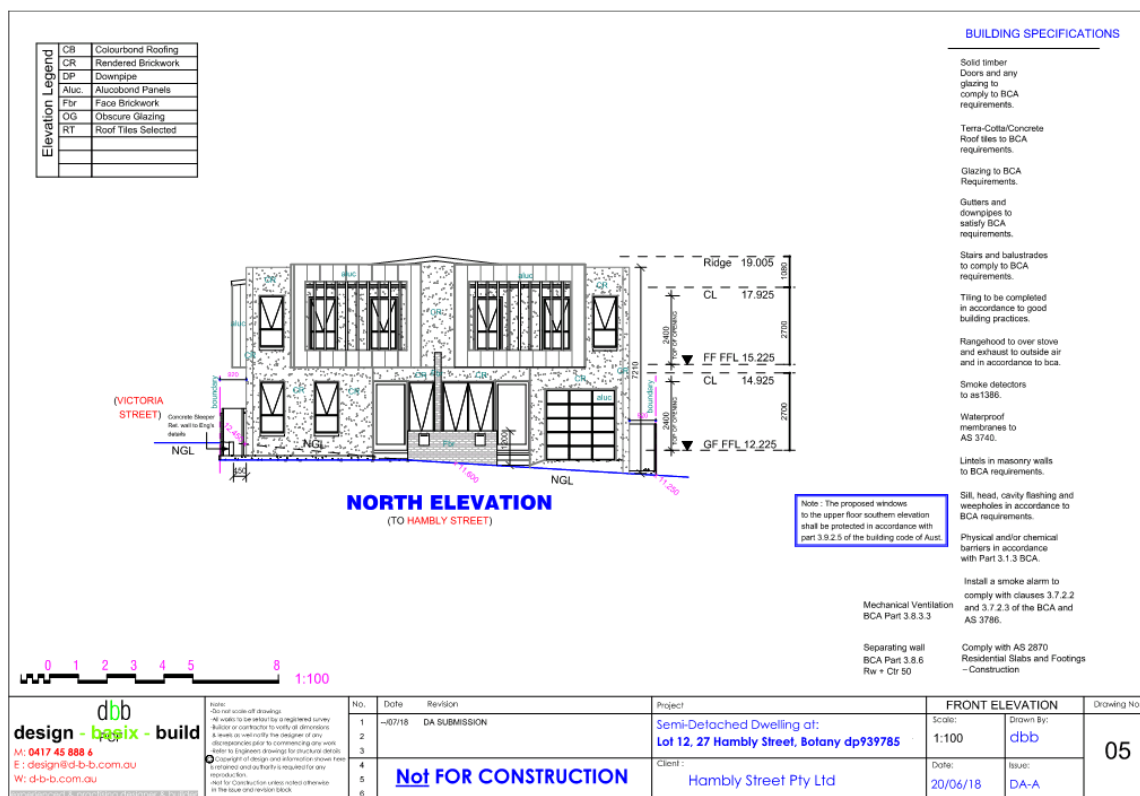
Colorbond – Custom-Orb
Roof Sheetting Ironstone

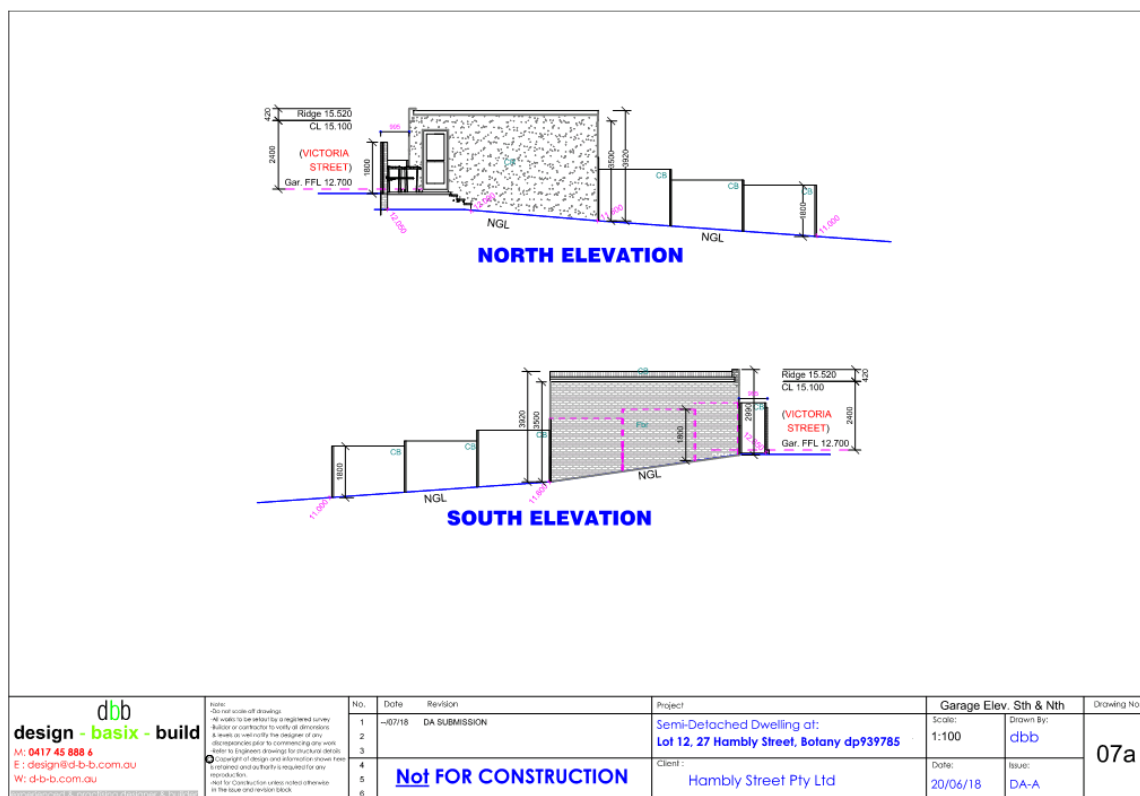


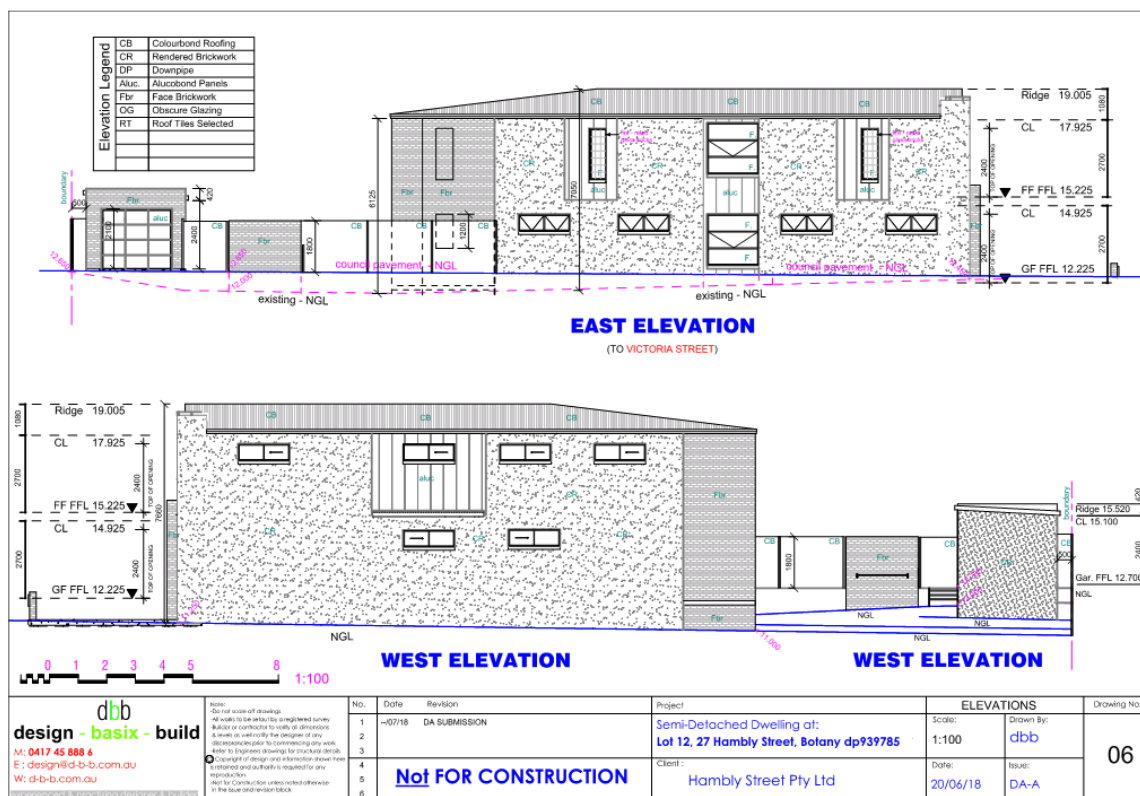


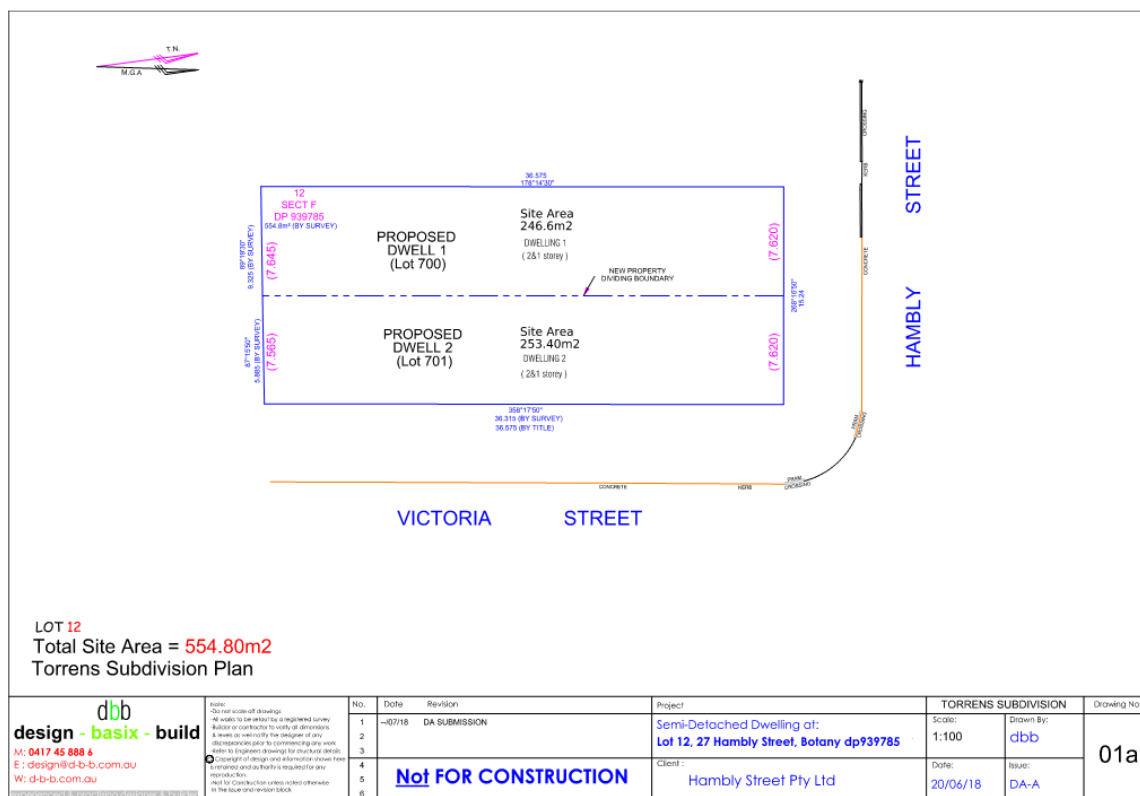












Bayside Local Planning Panel

13/11/2018

Item No	6.7
Application Type	Modification Application
Application No	DA-2007/23/2/E
Lodgement Date	11/10/2018
Property	DA-2007/23/2/E - 30-32 Guess Avenue & 4 Lusty Street Wolli Creek
Ward	Mascot
Owner	Mr Eddy Haddad
Applicant	Mr Eddy Haddad
Proposal	Modification to change materials and finishes of external facades.
No. of Submissions	Nil
Cost of Development	Nil
Report by	Michael McCabe, Director of City Futures

Officer Recommendation

That Development Application No. DA-2007/23/2/E, being a Section 4.55(1A) application to amend Development Consent Number DA-2007/23, for modifications to the materials and finishes of external facades at 30 - 32 Guess Avenue & 4 Lusty Street, Wolli Creek be **APPROVED** and the consent amended in the following manner:

- A. By amending conditions 2 & 3 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
Site / Roof Plan DA1.01	Jones Sonter	July 2008	6 February 2009
Basement Plan DA2.101	Jones Sonter	March 2008	6 February 2009
Ground Floor Plan DA2.102	Jones Sonter	March 2008	6 February 2009
Level 1 Plan DA2.103	Jones Sonter	March 2008	6 February 2009
Level 2 Plan DA2.104	Jones Sonter	March 2008	6 February 2009
Level 3 - 6 Plan DA2.105	Jones Sonter	March 2008	6 February 2009

Level 7 Plan DA2.106	Jones Sonter	March 2008	6 February 2009
Sections A-A and B-B DA4.101	Jones Sonter	March 2008	6 February 2009
Section C-C DA4.102	Jones Sonter	March 2008	6 February 2009
<i>North Elevation A1020-A Revision B</i>	<i>Level 33 Architectural Division</i>	-	11/10/2018
<i>East Elevation A1021-A Revision B</i>	<i>Level 33 Architectural Division</i>	-	11/10/2018
<i>South Elevation A1022-A Revision B</i>	<i>Level 33 Architectural Division</i>	-	11/10/2018
<i>West Elevation A1023-A Revision B</i>	<i>Level 33 Architectural Division</i>	-	11/10/2018
<i>North Elevation A2022-B Revision B</i>	<i>Level 33 Architectural Division</i>	-	11/10/2018
<i>East Elevation A2023-B Revision B</i>	<i>Level 33 Architectural Division</i>	-	11/10/2018
<i>South Elevation A2024-B Revision B</i>	<i>Level 33 Architectural Division</i>	-	11/10/2018
<i>West Elevation A2025-B Revision B</i>	<i>Level 33 Architectural Division</i>	-	11/10/2018
Unit Layouts Building A & Unit Layouts Building A Penthouse Level DA3.101, DA3.105	Jones Sonter	January 2009	6 February 2009
Unit Layouts Building A & Unit Layouts Building A Penthouse Level DA3.101, DA3.105	Jones Sonter	January 2009	6 February 2009
Unit Layouts Building B - sheet 1-3 to sheet 3-3, DA3.102, DA3.103, DA3.104	Jones Sonter	January 2009	6 February 2009
Unit Layouts Building B penthouse level DA3.106	Jones Sonter	January 2009	6 February 2009
Drainage plans HDA01/P1, HDA02/P1, HDA03/P1, HDA04/P1, HDA05/P1, HDA06/P1HDA07/P1HDA08/P1,HDA09/P1	Whipps-Wood Consulting	August 2008	10 October 2008,
Landscape plans DA-LI	CAB Consulting Pty Ltd	5 February 2009	6 February 2009
Pedestrian & vehicle access plan (basement) Rev A	Dyldam	-	13/12/2013
Pedestrian & vehicle access plan (ground floor) Rev A	Dyldam	-	13/12/2013
Pedestrian & vehicle access plan (level 1) Rev A	Dyldam	-	13/12/2013

Pedestrian & vehicle access plan (level 2) Rev A	Dyldam	-	13/12/2013
Pedestrian & vehicle access plan (level 3 - 6) Rev A	Dyldam	-	13/12/2013
Pedestrian & vehicle access plan (level 7) Rev A	Dyldam	-	13/12/2013
Staged Landscape Works Plan	CAB Consulting Pty Ltd	September 2013	13/12/2013
Construction management plan phase 1 Rev A	Dyldam	-	27/09/2013
Construction management plan phase 2 Rev A	Dyldam	-	27/09/2013
Construction management plan phase 2 (basement) Rev A	Dyldam	-	27/09/2013
Subdivision staging and section plan Rev D	Dyldam	11/09/13	27/09/2013

[Amendment A— Section 96(1A) amended on 3 November 2009]

[Amendment B — Section 96(2) amended on 17 May 2012]

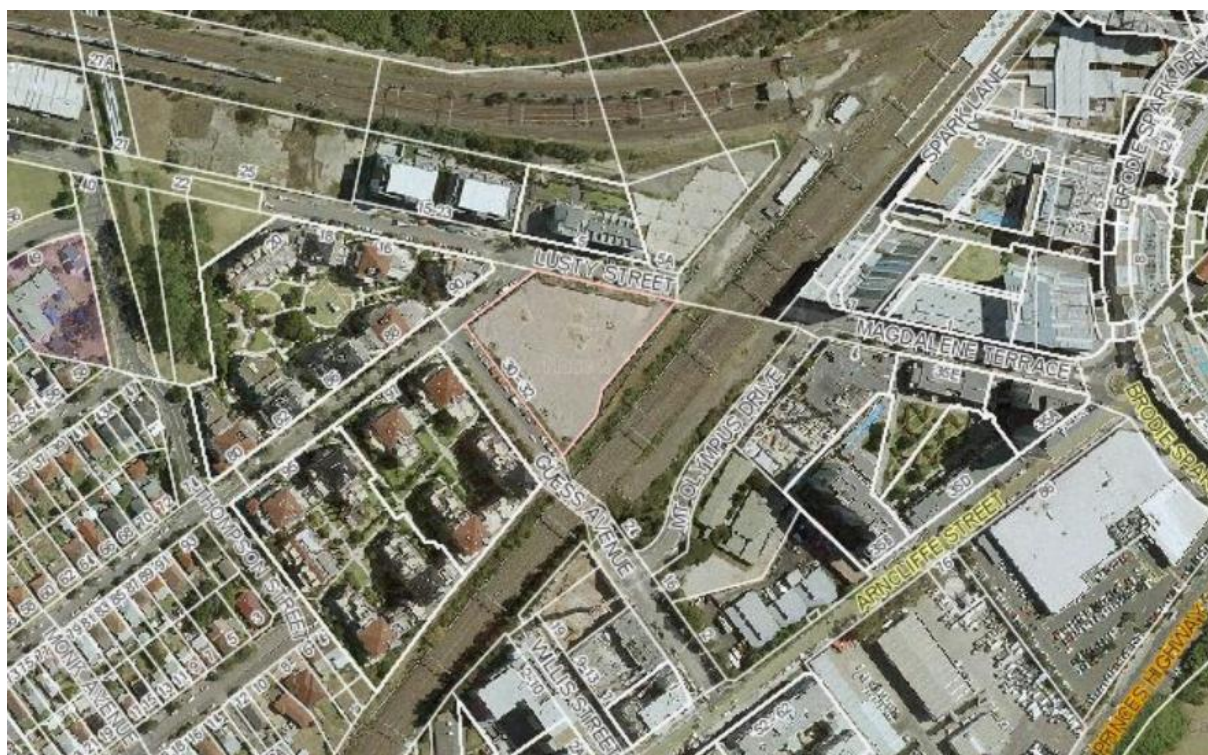
[Amendment D — Section 96(1A) amended on 8 January 2014]

[Amendment E — Section 4.55(1A) amended on 13 November 2018]

3. The development must be implemented substantially in accordance with the Finishes & Sample board A1080, prepared by Level 33 Architectural Division.

[Amendment E — Section 4.55(1A) amended on 13 November 2018]

Location Plan



Attachments

- 1 Planning Assessment Report [↓](#)
- 2 Colours As Approved [↓](#)
- 3 A2024 B South Elevation [↓](#)
- 4 A2023 B East Elevation [↓](#)
- 5 A2022 B North Elevation [↓](#)
- 6 A1020 A North Elevation [↓](#)
- 7 A1023 A West Elevation [↓](#)
- 8 A1022 A South Elevation [↓](#)
- 9 A1021 A East Elevation [↓](#)
- 10 DA Consent [↓](#)
- 11 A2025 B West Elevation [↓](#)
- 12 Statement of Environmental Effects [↓](#)

BAYSIDE COUNCIL

Section 4.55(1A) – Planning Assessment Report

APPLICATION DETAILS

Application Number: DA-2007/23/2/E
 Date of Receipt: 11-Oct-2018
 Property: 30 - 32 Guess Avenue & 4 Lusty Street, WOLLI CREEK NSW 2205
 Lot 2 DP 802148, Lot 1 DP 802148, Lot 1 DP 1007505
 Owner: NR Wolli Creek Pty Ltd
 Applicant: Mr Eddy Haddad (Level 33)
 Proposal: Modification to change materials and finishes of external facades
 Recommendation: Approval
 No. of submissions: Nil
 Author: Fiona Prodromou – Senior Assessment Planner
 Date of Report: 18-Oct-2018

KEY ISSUES

The proposal seeks to modify the previously approved materials and finishes of the external façade of the development, which is yet to be constructed on site.

Plans appear to indicate a minor change to the size of certain windows to facades, yet the location of these windows has not altered and the minor modification to the size of these windows would not result in adverse privacy impacts on site, nor to neighbouring properties.

RECOMMENDATION

That Development Application No 2007/23/2/E, being a Section 4.55(1A) application to amend Development Consent Number 2007/23, for modifications to the materials and finishes of external facades at 30 - 32 Guess Avenue & 4 Lusty Street, WOLLI CREEK NSW 2205 be **APPROVED** and the consent amended in the following manner:

- A. By amending conditions 2 & 3 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.*

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Sections A-A and B-B DA4.101	Jones Sonter	March 2008	6 February 2009
Section C-C DA4.102	Jones Sonter	March 2008	6 February 2009
<i>North Elevation A1020-A Revision B</i>	<i>Level 33 Architectural Division</i>	-	11/10/2018
<i>East Elevation A1021-A Revision B</i>	<i>Level 33 Architectural Division</i>	-	11/10/2018
<i>South Elevation A1022-A Revision B</i>	<i>Level 33 Architectural Division</i>	-	11/10/2018
<i>West Elevation A1023-A Revision B</i>	<i>Level 33 Architectural Division</i>	-	11/10/2018
<i>North Elevation A2022-B Revision B</i>	<i>Level 33 Architectural Division</i>	-	11/10/2018
<i>East Elevation A2023-B Revision B</i>	<i>Level 33 Architectural Division</i>	-	11/10/2018
<i>South Elevation A2024-B Revision B</i>	<i>Level 33 Architectural Division</i>	-	11/10/2018
<i>West Elevation A2025-B Revision B</i>	<i>Level 33 Architectural Division</i>	-	11/10/2018
Unit Layouts Building A & Unit Layouts Building A Penthouse Level DA3.101, DA3.105	Jones Sonter	January 2009	6 February 2009
Unit Layouts Building A & Unit Layouts Building A Penthouse Level DA3.101, DA3.105	Jones Sonter	January 2009	6 February 2009
Unit Layouts Building B - sheet 1-3 to sheet 3-3, DA3.102, DA3.103, DA3.104	Jones Sonter	January 2009	6 February 2009
Unit Layouts Building B penthouse level DA3.106	Jones Sonter	January 2009	6 February 2009
Drainage plans HDA01/P1, HDA02/P1, HDA03/P1, HDA04/P1, HDA05/P1, HDA06/P1HDA07/P1HDA08/P1,HDA09/P1	Whipps-Wood Consulting	August 2008	10 October 2008,
Landscape plans DA-LI	CAB Consulting Pty Ltd	5 February 2009	6 February 2009
Pedestrian & vehicle access plan (basement) Rev A	Dyldam	-	13/12/2013
Pedestrian & vehicle access plan (ground floor) Rev A	Dyldam	-	13/12/2013
Pedestrian & vehicle access plan (level 1) Rev A	Dyldam	-	13/12/2013

Pedestrian & vehicle access plan (level 2) Rev A	Dyldam	-	13/12/2013
Pedestrian & vehicle access plan (level 3 - 6) Rev A	Dyldam	-	13/12/2013
Pedestrian & vehicle access plan (level 7) Rev A	Dyldam	-	13/12/2013
Staged Landscape Works Plan	CAB Consulting Pty Ltd	September 2013	13/12/2013
Construction management plan phase 1 Rev A	Dyldam	-	27/09/2013
Construction management plan phase 2 Rev A	Dyldam	-	27/09/2013
Construction management plan phase 2 (basement) Rev A	Dyldam	-	27/09/2013
Subdivision staging and section plan Rev D	Dyldam	11/09/13	27/09/2013

[Amendment A— Section 96(1A) amended on 3 November 2009]

[Amendment B — Section 96(2) amended on 17 May 2012]

[Amendment D — Section 96(1A) amended on 8 January 2014]

[Amendment E — Section 4.55(1A) amended on 13 November 2018]

3. The development must be implemented substantially in accordance with the Finishes & Sample board A1080, prepared by Level 33 Architectural Division.

[Amendment E — Section 4.55(1A) amended on 13 November 2018]

BACKGROUND

Stage 1 DA – 2007/23/1 Approved 13/12/2006
Concept development proposal comprising 2 x 8 storey residential buildings containing 145 apartments, basement & part ground floor car parking with capacity for 185 vehicles

S.96(2) Application Approved 27/03/2009
Modifications to Stage 1 consent including changes to the proposed unit mix, modification to building footprints and configuration of the above ground and basement levels, increase the number of units from 145 to 176, deletion of the pool and other related changes.

Stage 2 DA-2007/23/2 Approved 27/03/2009
Construction of 2 x 8 storey residential flat buildings containing a total of 176 units, basement and above ground car parking with capacity for 217 vehicles and associated landscape works

S.96 Modification to Stage 2 Approved 03/11/2009
Internal modification to the layout of the units to create additional toilet.

S96 Application Approved 29/05/2012
Modifications to approved residential flat building including changes to unit mix, unit sizes, parking allocation and building façade.

S96 Application Approved 05/06/2013
Modification to Condition 73

S96 Application Approved 08/01/2018
Modifications to conditions to enable staging of DA-2007/23/2 into two stages - Stage 1 – Car parking and Block A comprising 73 units and Stage 2 - Block B comprising 103 units

S4.55(1A) Application submitted to Council 11/10/2018
Modification to change materials and finishes of external facades

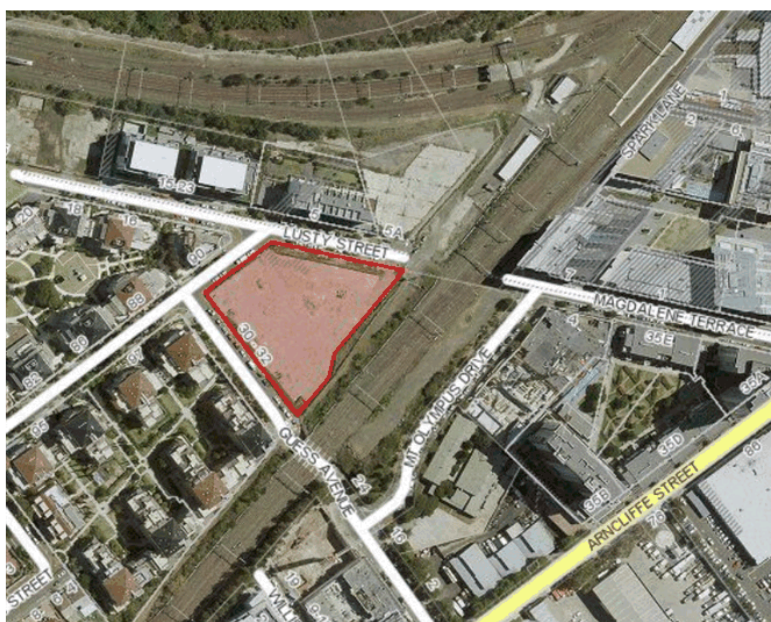
PROPOSAL

The proposal as modified seeks to alter the previously approved colours, materials and finishes of the external facades of the development.

Plans further indicate minor modifications to the size of certain external windows on the external facades of buildings, yet these remain in their previously approved locations.

SITE LOCATION AND CONTEXT

The subject site is an irregularly shaped allotment with a frontage to three local streets, being Lusty & Bonar Streets and Guess Avenue. The site has a frontage of 76.8m to Lusty Street, 48m to Bonar Street, 89.5m to Guess Ave and combined irregular frontage of 104.5m to the Illawarra Railway Line. The property has a total site area of over 3255sq.m and is zoned R4 high density residential.



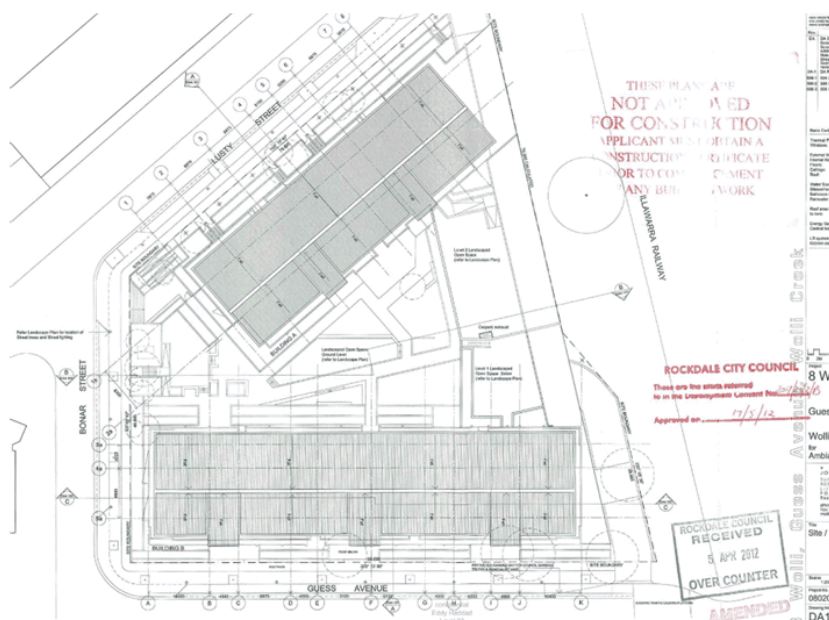
Aerial Context

The property is located in a high density residential area, surrounded by residential flat buildings 7 – 9 storeys in overall height and the railway line to the east of the site.



Existing High Density Residential Streetscape & Context

Construction is currently underway to erect the previously approved development. The configuration of the development is illustrated within the below approved site plan, detailing two building forms. Building A fronting Lusty Street, Building B fronting Guess Avenue. The development incorporates landscaped communal podium areas along the railway line and centrally on 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.

S4.55 (1A) Modification

Section 4.55(1A) of the Environmental Planning & Assessment Act 1979 states:

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 a development consent if:

a) It is satisfied that the proposed modification is of minimal environmental impact, and

Comment: The proposal is minor in its overall nature and as discussed within this report is of minimal environmental impact.

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

Comment: In determining whether the proposal is 'substantially the same development' consideration has been given to the Land & Environment Court Case 'Moto Projects No.2 Pty Limited v North Sydney Council [1999] NSWLEC 280', which at paragraphs 55 and 56, Commissioner Bignold described the process for consideration of a proposed modification of development as follows:

"55. 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 approved development."

The proposal as modified does not propose modifications other than to the previously approved external façade treatments.

Given the aforementioned the proposal as modified remains is essentially and materially the same as the approved development. As such, the proposal as modified is substantially the same development.

c) it has notified the application in accordance with:

*(i) the regulations, if the regulations so require, or
(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 application was notified for a period of 14 days, from 16-30 October 2018, in accordance with the provisions of Council's DCP 2011.

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: Nil submissions were received, issues raised have been addressed later in this report.

S4.55(3) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT

S4.55(3) of the Environmental Planning and Assessment Act 1979 states:

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. The following is an assessment of the proposed development under the provisions of Section 4.15(1) of the Environmental and Planning Assessment Act.

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 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 as modified was not referred to the Design Review Panel given the minor nature and scope of changes proposed. Notwithstanding, an assessment has been undertaken below of the proposal as modified in relation to the relevant principles of the SEPP.

b. The design quality of the residential flat building when evaluated in accordance with the design quality principles.

The design quality principles relevant to the proposal as modified have been considered below.

Principle 9 – Aesthetics

The proposal seeks to modify the previously approved colours, finishes and treatments of external facades of the development as follows;

<i>Approved</i>	<i>Proposed</i>
Limited Vertical Gardens	Dulux lexicon quarter in paint finish
Concrete sun shade screen paint finish – yellow	Dulux accord in paint finish
Pre-cast concrete wall wave pattern	Dulux charcoal fusion in paint finish
Pre-cast concrete wall wave pattern, blue	Dulux black in paint finish
Pre-cast concrete wall wave pattern, red	Face brick wall
Pre-cast concrete wall broken ribbed pattern	Glass balustrade
Pre-cast concrete wall stone pattern	Sun shading louvres
	Sun hood (Block B only)

Finishes as approved and proposed are illustrated in the photomontages below;

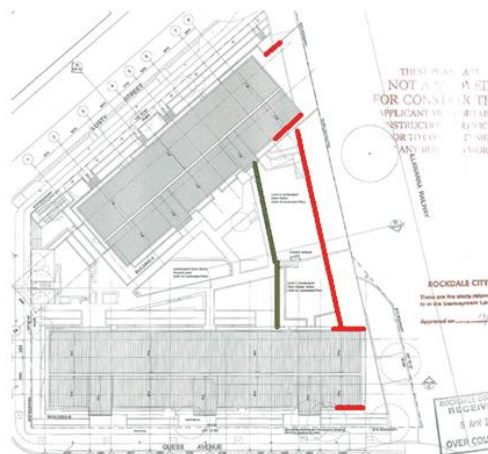


Colours & Finishes as Approved




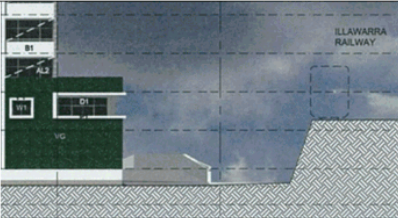


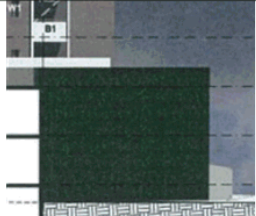
Colours & Finishes as Proposed

Approved plans illustrate the provision of vertical gardens to certain areas of the lower portion of the overall development i.e. ground to level 2. These vertical gardens are limited in extent and located upon external building and podium facades in the following locations identified on the site plan in red and below;



Red = Green wall to be deleted / Green = Green wall to be retained.

The specific green walls proposed to be modified are as follows:

Location	Plan Image
Northern elevation of Building B facing into the site and adjoining the railway corridor. Ground and first floor.	
South west elevation of Building B, fronting Lusty Street, adjoining railway line, ground & first floor.	
Carpark Podium wall fronting Illawarra Railway Line.	
Lusty Street elevation adjoining car park entry and railway line.	
South elevation of Building A adjoining railway line and facing into the site	

The proposal seeks to replace the approved vertical garden locations with a "dulux charcoal fusion in paint finish". The locations of the vertical gardens are limited in nature and extent upon buildings A & B, with the majority of the green wall located on the external façade of the podium fronting the railway line and into the site. The green wall identified in 'green' in the image above and fronting into the site adjoining communal areas is to be retained.

The proposed removal of the green walls with a material & finish which is more economical and resilient is not considered to be unreasonable. The modification as proposed would further minimise maintenance costs onto future residents of the development.

The proposal further incorporates changes from pre cast wave pattern concrete walls with face brick upon building elevations. The provision of face brick to external facades of buildings in this location is

considered more appropriate, given that face brick is a predominant material type within surrounding existing buildings.

Colours, materials and finishes as proposed provide a sleek, modern, durable and low maintenance update to the approved development and are considered to be satisfactory.

The proposal as modified retains an appropriate aesthetic and visual appearance within the existing high density residential area and thus satisfies this principle.

c. The Apartment Design Guide / Residential Flat Design Code

The original development was assessed against the Residential Flat Design Code.

The proposal as modified does not result in changes to the previously approved building envelope, height, mass or scale. Changes as proposed ensure the modified proposal remains satisfactory with the overall aims and intentions of these guidelines.

Rockdale Local Environmental Plan 2011 (RLEP 2011)

2.3 Zone

The subject site is zoned R4 - High Density Residential under the provisions of Rockdale Local Environmental Plan 2011 (RLEP 2011). The proposal as modified is defined as a residential flat building which constitutes a permissible development only with development consent. The proposal as modified remains consistent with the objectives of the zone.

4.3 - Height of buildings

A maximum 28m height limit applies to the subject site. The proposal as modified does not alter the previously approved height of the development and remains consistent with the objectives of this clause.

4.4 - FSR

A maximum 2.2:1 FSR applies to the subject site. The proposal as modified does not alter the previously approved density of the development and remains consistent with the objectives of this clause.

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 proposal as modified remains consistent with the relevant provisions of Rockdale DCP 2011.

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

The provisions of the regulations had been considered in the assessment of this development proposal where relevant to this S4.55 application.

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

Potential impacts of the proposal as modified have been considered in the assessment of this application.

S4.15(1)(c) – Suitability of the site

The relevant matters pertaining to the suitability of the site for the development were considered in the assessment of the original proposal. The suitability of the site has not altered since the original assessment and there are no further matters or constraints which have been identified, that would otherwise render the site unsuitable for the proposal as modified. The site is suitable for the proposal as modified.

S4.15(1)(d) – Public Submissions

The proposal as modified has been notified in accordance with the provisions of Rockdale DCP 2011 and nil submissions were received.

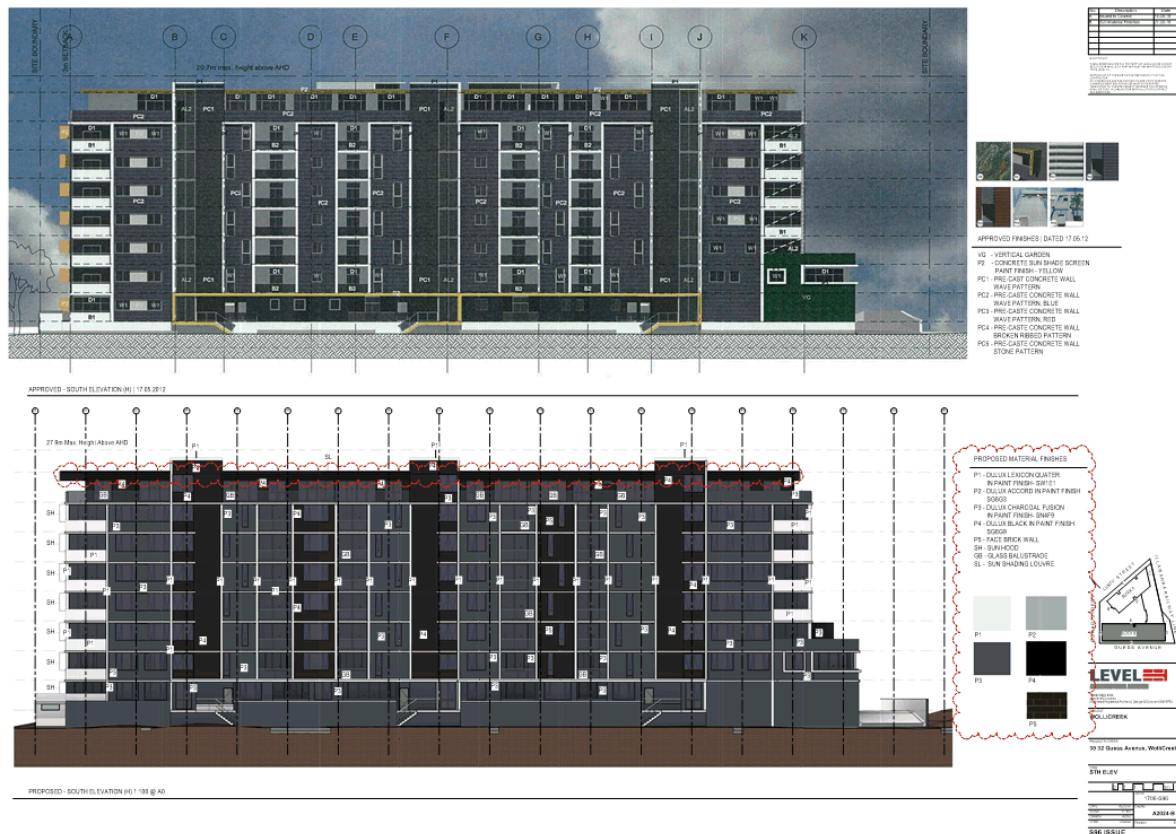
S4.15(1)(e) – Public Interest

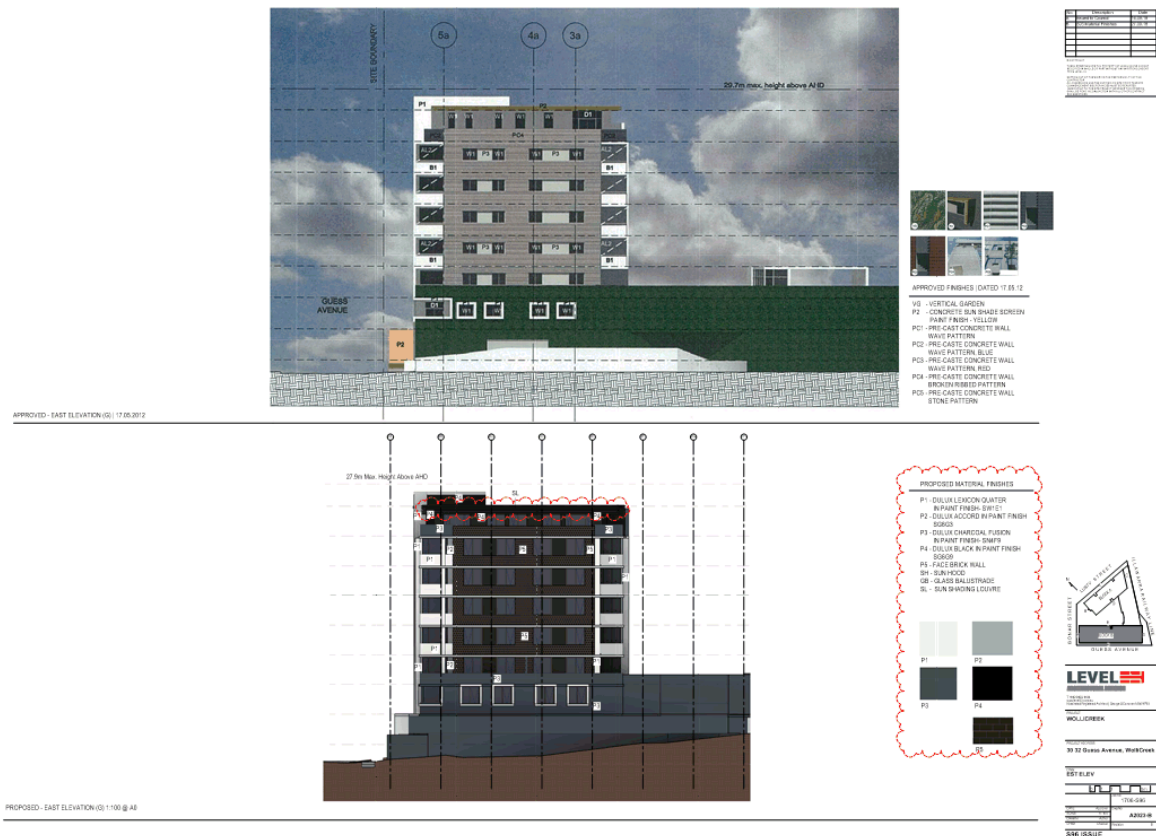
The proposal as modified has been assessed against the relevant planning policies applying to the site having regard to the objectives of the controls. As demonstrated in the assessment of the proposal as modified, the revised proposal remains compliant with relevant planning instruments and does not create adverse impacts on site, nor to surrounding properties. The proposal as modified is deemed to be in the public interest.

S7.11 - Contribution towards provision or improvement of amenities or services

Nil additional Section 7.11 Contributions are payable as a result of the proposal as modified.













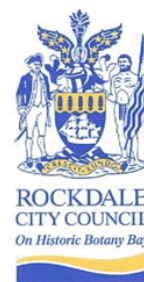




NOTICE OF DETERMINATION

Section 96 of Environmental Planning and Assessment Act, 1979

Approval Date	8 January 2014
Authority	Delegated Authority
Reference	DA-2007/23/2/D
Contact	Fiona Prodromou 9562 1672



Dyldam Developments Pty Ltd
Level One 74 Macquarie St
PARRAMATTA NSW 2150

Property: 30 - 32 Guess Avenue & 4 Lusty Street, WOLLI CREEK NSW 2205
Lot 2 DP 802148, Lot 1 DP 802148, Lot 1 DP 1007505

Proposal: Stage 2 DA - Construction of 2 x 8 storey residential flat buildings containing a total of 176 units, basement and above ground carparking with capacity for 217 vehicles and associated landscape works

Your application to modify Development Consent No. DA-2007/23/2 dated 27 March 2009 was considered under Section 96(1A) of the Environmental Planning and Assessment Act 1979 and is approved subject to the following conditions:

GENERAL CONDITIONS

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

1. The term of this consent is limited to a period of **three** (3) years from the date of approval. The consent will lapse if the development does not commence within this time.
2. The development must be implemented substantially in accordance with the plans listed below, the application form and on any supporting information received with the application, except as may be amended in red on the attached plans and by the following conditions.

Architectural plans drawn by Jones Sonter, project No. 080201, and received by Council on 6 February 2009 as follows:

Site/Roof plan - numbered DA1.101, dated July 2008,
Basement Floor plan –numbered DA2.101, dated March 2008,
Ground Level Floor Plan – numbered DA2.102, dated March 2008,
Level 1 Floor Plan – numbered DA2.103, dated March 2008,
Level 2 Floor Plan – numbered DA2.104, dated March 2008,

2 Bryant Street Rockdale NSW 2216 Australia
PO Box 21 Rockdale NSW 2216 Australia
Tel 02 9562 1666 Fax 02 9562 1777 Email rcc@rockdale.nsw.gov.au
DX 25308 Rockdale www.rockdale.nsw.gov.au
ABN 66 139 730 052

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Level 3-6 Floor Plan- numbered DA2.105, dated March 2008,
Level 7 Floor Plan – numbered DA2.106; dated March 2008,
Sections A-A and B-B – numbered DA4.101, dated March 2008,
Section C-C – numbered DA4.102, dated March 2008,
North & South Elevations Building B - numbered DA5.101, dated March 2008,
Bonar Street Elevation – numbered DA5.102, dated March 2008,
East Elevation/South Elevation Building A – numbered DA5.103, dated March 2008,
Unit Layouts Building A & Unit Layouts Building A Penthouse Level – numbered
DA3.101, DA3.105, dated January 2009
Unit Layouts Building B - sheet 1-3 to sheet 3-3, numbered DA3.102, DA3.103, DA
3.104, dated January 2009
Unit Layouts Building B penthouse level – numbered DA3.106, dated January 2009.
Drainage plans numbered HDA01/P1, HDA02/P1, HDA03/P1, HDA04/P1, HDA05/P1,
HDA06/P1HDA07/P1HDA08/P1,HDA09/P1, drawn by Whipps-Wood Consulting,
dated August 2008, and received by Council on 10 October 2008,
Landscape plans numbered DA-LI, drawn by CAB Consulting Pty Ltd, dated 5
February 2009 and received by Council on 6 February 2009.
*Pedestrian & vehicle access plan (basement) Rev A, drawn by Dyldam, and received
by Council on 13/12/2013.*
*Pedestrian & vehicle access plan (ground floor) Rev A, drawn by Dyldam, and
received by Council on 13/12/2013.*
*Pedestrian & vehicle access plan (level 1) Rev A, drawn by Dyldam, and received by
Council on 13/12/2013.*
*Pedestrian & vehicle access plan (level 2) Rev A, drawn by Dyldam, and received by
Council on 13/12/2013.*
*Pedestrian & vehicle access plan (level 3 - 6) Rev A, drawn by Dyldam, and received
by Council on 13/12/2013.*
*Pedestrian & vehicle access plan (level 7) Rev A, drawn by Dyldam, and received by
Council on 13/12/2013.*
*Staged Landscape Works Plan dated September 2013 drawn by CAB Consulting Pty
Ltd and received by Council on 13/12/2013.*
*Construction management plan phase 1 Rev A drawn by Dyldam and received by
Council on 27/09/2013.*
*Construction management plan phase 2 Rev A drawn by Dyldam and received by
Council on 27/09/2013.*
*Construction management plan phase 2 (basement) Rev A drawn by Dyldam and
received by Council on 27/09/2013.*
*Subdivision staging and section plan Rev D, dated 11/09/13, drawn by Dyldam and
received by Council on 27/09/2013.*
[Amendment A – Section 96(1A) amended on 3 November 2009]

DA-2007/23/2/D

[Amendment B – Section 96(2) amended on 17 May 2012]

[Amendment D – Section 96(1A) amended on 8 January 2014]

3. The development must be implemented substantially in accordance with the Finishes sample board, prepared by Jones Sonter, dated October 2008.
4. All new building work must be carried out in accordance with the provisions of the Building Code of Australia (BCA).
5. **A Construction Certificate must be obtained from Council or an Accredited Certifier prior to any building work commencing.**
6. The development must be implemented and all BASIX commitments thereafter maintained in accordance with BASIX Certificate Number 214652M_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>.

[Amendment B – S96(2) amended on 17 May 2012]

7. A separate development application shall be submitted for any proposed strata subdivision.
8. 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.
9. 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.
10. Mail boxes must be installed along the street frontage of the property boundary in accordance with Australia Post Guidelines. Prominent house numbers are to be displayed, with a minimum number size of 150 mm in height for each number and letter in the alphabet.
11. The building located on the northern part of the site shall be known as 4 Lusty Street and the building located on the southern part of the site shall be known as 30-32 Guess Avenue.
12. A Geotechnical report shall be submitted to Council prior to commencement of works to confirm if the proposed development shall fall within the provisions of Section 91 – Integrated Development of the Environmental Planning and Assessment Act 1979. Should the proposed development trigger the provisions of Section 91, concurrence from the Department of Water and Energy shall be required prior to the issue of construction certificate.

DA-2007/23/2/D

13. No demolition works are to be commenced prior to payment of the footpath crossing deposit and purchase and display of Council's Soil and Water Management Warning Sign.
14. All demolition work to be carried out in accordance with Council's Code for the Demolition and Erection of Buildings Code and with the requirements of the WorkCover Authority of NSW.
15. The Stage 2 development shall be consistent with the Stage 1 development (DA-2007/23/1) approved by Council on 16 December 2006 as amended by any subsequent Section 96 application approved by Council.
16. A weather protection/shelter is to be provided to all mailbox points or alternatively, mail box points are to be located in a covered area attached to or within the building, in accordance with Council's Residential Amenity Improvement Strategy (RAIS) requirements.
17. The development shall incorporate the commitments made within the report titled 'Security Services Brief 09.3816', dated 9 February 2009, prepared by VOS Group Pty Limited and received by Council on 19 February 2009.
18. The site shall be managed in accordance with the commitments made within the report titled 'Waste Management Plan' dated October 2008, prepared by Jones Sonter Architecture and Urbanism and received by Council on 13 October 2008.

NSW POLICE CONDITIONS

The following conditions are specific to the NSW Police requirements:

19. Monitored CCTV facilities shall be implemented throughout the development. Areas of focus include the basement car park (including entry and exits), main entry areas to the development and garbage/storage areas. Details to be provided prior to the issue of the Construction Certificate.
20. Security mirrors shall be installed within corridors and on blind corners to enable users to see around blind corners.
21. Lighting shall be designed to the Australian and New Zealand Lighting Standards. Australian and New Zealand Lighting Standard (AS1158.1) – Pedestrian, requires lighting engineers and designers to consider crime risk and fear when selecting lamps and lighting levels.
22. The walls and ceilings of the car park areas shall be composed of a light material. This will assist in reducing power consumption in order to comply with the Australian and New Zealand Standards – Lighting (AS1158).
23. A street sign shall be prominently displayed at the front of the development to comply with Local Government Act, 1993, Section 124, Order No. 8.
24. Signage shall be erected at entry/exit points and throughout the development to assist users and warn intruders they may be prosecuted.
25. Directional signage shall be erected within the car park to assist users of these areas.
26. Intercom facilities shall be incorporated into entry/exit points to enable residents to communicate and identify with people prior to admitting them to the development.

DA-2007/23/2/D

27. Auxiliary lockset shall be incorporated into the design of each of the entry/exit points to enable emergency services to access the development in emergencies.
28. Security doors shall be fitted to the main vehicle entry/exit point to restrict unauthorised access to the car park areas.

DEVELOPMENT SPECIFIC CONDITIONS

The following conditions are specific to the Development Application proposal:

29. 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.
30. Vehicles shall not be parked, stored or displayed on the public footpath at any time.
31. 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.
32. 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.
33. 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.
34. Temporary dewatering of the site to construct the subsurface structure is not permitted.
35. Residential loading and unloading shall take place from the service vehicle parking area on the ground floor car park, except where the service vehicle size exceeds the nominated vehicle height restriction and vehicle length restriction.
36. Remediation and validation works shall be carried out in accordance with the "Stage 1 and Stage 2 Environmental Site Assessment Report" prepared by Coffey Geosciences Pty Ltd dated 11 July 2006, received by Council on 14 July 2006.
37. Bicycle parking facilities shall be designed in accordance with AS2890.3:1993.
38. The off-street parking areas associated with the subject development shall be designed strictly in accordance with AS2890.1:1993.
39. Internal height clearance shall be designed throughout the car park and access driveway in accordance with AS2890.1:1993.
40. Commercial vehicle facilities shall be designed strictly in accordance with AS2890.2:2002.
41. 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.
42. Hot and cold water hose cocks shall be installed to the garbage room.

DA-2007/23/2/D

43. Services or utility systems shall not be located in the garbage room.
44. All vertical plumbing, other than roofwater heads and downpipes, shall be concealed within the brickwork of the building.
45. Balustrades shall be constructed from a solid/opaque material to a minimum height of 1000mm.
The top of the balustrade shall be a minimum height of 1200mm.
46. 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.
47. All hot water systems/units which are located on the balcony of a dwelling/unit must be encased in a recessed box on the balcony with the lid/cover of the box designed to blend in with the building. All associated pipe work is to be concealed.
48. The proposed development shall contain a maximum of 176 residential units with the following composition:

Unit Size	Number of Units	Minimum Unit Size
Studio	18	38.5m ²
1 bedroom	7	50-63.4m ²
2 bedroom	145	80-121m ²
3 bedroom	6	124m ²

Where offices, studies etc, are proposed these must be designed in a way that the rooms clearly can not be used as, or converted for use as, an additional bedroom unless they meet the relevant room size requirements above. (Please refer to page 104 of Council's DCP 2011 for the exact minimum unit size for a particular unit type).

[Amendment B –S96(2) amended on 17 May 2012]

49. A minimum of 15% of the site shall be retained as deep soil.
50. Provide permanently illuminated exit signs on or near existing exit doors and directional signs in corridors, stairways and the like indicating exits in accordance with Part E4.5 and E4.6 of the Building Code of Australia and AS/NZS 2293.1:1998.
51. A system of emergency lighting shall be provided in the building within the stairway, corridors and other necessary areas and be installed in accordance with the requirements of Part E4.2 and E4.4 of the Building Code of Australia and AS/NZS 2293.1:1998.
52. The electrical meter box located in the existing required exit(s) shall be enclosed in accordance with the relevant provisions of Part D2.7 of the Building Code of Australia.
53. The entry doorways to each flat shall be provided with self-closing -/60/30 fire door and frame (60/60/60) complying with AS/NZS 1905.1:1997.
54. A system of fire and smoke alarms and/or detection system (as applicable) shall be provided throughout the building.

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55. Hose reels shall be provided in accordance with the relevant provisions of Part E1.4 of the Building Code of Australia and AS 2441:1988. Details of the location shall be submitted for approval prior to installation.
56. Hydrants shall be provided in accordance with the relevant provisions of Part E1.3 of the Building Code of Australia and AS 2419:1994 and certify the installation on completion.
57. A minimum soil depth of 300mm is required for turfed areas on podiums or roof-tops or any other concrete slab, including the soil above stormwater drainage tanks.
58. A minimum soil depth of 500mm is required for planted areas (other than turf) on podiums or roof-tops or any other concrete slab. An automatic irrigation system is to be installed in all mass planted areas.
59. 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.
60. A fully automated irrigation system, in accordance with any requirements by Sydney Water, shall be installed and maintained to ensure adequate water is provided to the podium/roofing landscaping.
61. All pavements shall comply with AS/NZ 4586:1999 standards Class W (low) for slip resistance on both private and Council property.
62. All existing trees located within the site may be removed.
63. Any soil disposed of off-site shall be classified in accordance with the procedures in the NSW Environment Protection Authority's Environmental Guidelines: Assessment, Classification & Management of Liquid & Non-Liquid Wastes (1999).
64. Given the site's location next to the rail corridor, drainage from the development must be adequately disposed of/managed and not to be discharged into the corridor unless prior approval has been obtained from RailCorp.
65. Any proposed fencing shall be the subject of a separate Development Application. The proposed fencing shall not restrict surveillance opportunities and should be constructed of optically permeable materials.
66. All lighting shall be designed in accordance with the Australian and New Zealand Lighting Standard 1158.1. Pedestrian pathways, car parks and other related areas shall be appropriately lit to ensure safety.

PRIOR TO ISSUE OF THE CONSTRUCTION CERTIFICATE

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

67. *A Footpath Reserve Restoration Deposit of \$59,892.00 shall be paid to Council prior to the issue of the Stage 1 construction certificate. 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. 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.*

[Amendment D – S96(1A) amended on 8 January 2014]

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68. A footpath inspection fee of \$384.75 shall be paid to Council with lodgement of the Stage 1 Construction Certificate with Council, or by the PCA when submitting the copy to Council.

[Amendment D – S96(1A) amended 8 January 2014]

69. A fee is payable to Council for a Soil and Water Management Sign (811) of \$12.40. 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.

70. 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.

71. An application for Boundary levels shall be made to Council's Customer Service Centre prior to issue of the Construction Certificate for Block A and/or Block B. All boundary works, egress paths, driveways and fences shall comply with this level.
A fee of \$690.00 is payable to Council for the determination of boundary levels. If payment is made after the end of the financial year, the amount shall be adjusted in accordance with Council's adopted fees and charges.

[Amendment D – S96(1) amended 8 January 2014]

72. The connection of stormwater drainage pipes to the existing kerb inlet pit in Bonar Street must be inspected by Council prior to backfilling. A payment of \$214.55 is required prior to the issue of the Construction Certificate of Stage 1 for inspection of the connection and/or alteration to the Council pipeline. If payment is made after the end of the financial year the amount is to be adjusted in accordance with Council's adopted fees and charges. Where the inspection is unsatisfactory, each additional inspection will incur an extra charge.

[Amendment D – S96(1A) amended 8 January 2014]

73. A Section 94 contribution of \$930 186.08 shall be paid to Council for Stage 1. 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 a construction certificate for Block A 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	\$ 2 190.03
Community Services	\$ 2 345.73
Library Services	\$ 31 694.34
Wolli Creek Regional Open Space Fund	\$ 58 725.23
Wolli Creek City Wide Open Space Fund	\$ 92 882.83
Wolli Creek Local Open Space Fund	\$ 290 552.87
Wolli Creek Local Streetscape Fund	\$ 69 865.85

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Wolli Creek City Wide Town Centre & Streetscape Fund	\$ 10 438.91
Wolli Crk Rds Traffic Mgt Residential	\$ 184 116.30
Wolli Creek Flood Mitigation and Stormwater	\$ 123 807.01
Wolli Creek Pedestrian and Cyclist Facilities	\$ 41 467.09
Wolli Creek Administration & Management	\$ 22 099.89

Copies of Council's Section 94 Contribution Plans may be inspected at Council's Customer Service Centre, Administration Building, 2 Bryant Street, Rockdale.

A Section 94 contribution of \$1 269 284.72 shall be paid to Council for Stage 2. 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 a construction certificate for Block B 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	\$ 2 988.27
Community Services	\$ 3 200.76
Library Services	\$ 43 248.54
Wolli Creek Regional Open Space Fund	\$ 80 133.37
Wolli Creek City Wide Open Space Fund	\$ 126 743.32
Wolli Creek Local Open Space Fund	\$ 396 473.80
Wolli Creek Local Streetscape Fund	\$ 95 335.39
Wolli Creek City Wide Town Centre & Streetscape Fund	\$ 14 244.36
Wolli Crk Rds Traffic Mgt Residential	\$ 251 235.88
Wolli Creek Flood Mitigation and Stormwater	\$ 168 940.69
Wolli Creek Pedestrian and Cyclist Facilities	\$ 56 583.92
Wolli Creek Administration & Management	\$ 30 156.42

Copies of Council's Section 94 Contribution Plans may be inspected at Council's Customer Service Centre, Administration Building, 2 Bryant Street, Rockdale.

[Amendment D – S96(1A) amended 8 January 2014]

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74. *If Council is appointed as the Principal Certifying Authority (PCA) then structural engineer's details shall be submitted prior to the issue of each Construction Certificate; such structural drawings shall be certified by the Structural Engineer that the design complies with the relevant S.A.A. Codes for the following:*
- i) the footings of the proposed structure;*
 - ii) the footings of the slab-on-ground (having due regard to the possible differential settlement of the cut and fill areas);*
 - iii) all reinforced concrete floor slabs;*
 - iv) all reinforced concrete stairs;*
 - v) the piers to natural ground or rock, detailing the size and position of the piers;*
 - vi) the proposed retaining wall;*
 - vii) the work required to stabilise the excavation;*
 - viii) all structural steel work.*
- [Amendment D – S96(1A) amended on 8 January 2014]*
75. *Prior to the issue of the Construction Certificate for Stage 1 a certificate from a practicing Structural Engineer, registered with NPER, shall be submitted to Council stating that the subsurface structural components located on the boundary of the public road, including but not limited to the slabs, walls and columns, have been designed in accordance with all SAA Codes for the design loading from truck and vehicle loads.*
- [Amendment D – S96(1) amended 8 January 2014]*
76. 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.
77. All building materials shall be flood resistant, or flood compatible to a height of 500mm above the 1% AEP flood, or flow level. All internal electrical switches, power points or similar utilities liable to flood damage shall be set at a minimum of 500mm above the 1% AEP flood, or flow level. Details shall be provided and approved prior to the issue of a construction certificate.
78. A suitable qualified engineer is to certify that the structure can withstand the forces of floodwater, scour, debris and buoyancy in a 1% AEP flood event and a PMF event.
79. The building shall be constructed of a masonry or brick wall construction with select finishes as per the approved schedule of finishes. This requirement shall be reflected on the Construction Certificate plans and supporting documentation.
80. *A system of fire and smoke alarms and/or detection system (as applicable) shall be provided throughout the buildings. Details shall be submitted for assessment and approval prior to application for a Construction Certificate for Block A and/or Block B.*
- [Amendment D – S96(1A) amended 8 January 2014]*
81. A list of the proposed and existing essential services to be installed in the building shall be submitted to Council in accordance with the relevant requirements.

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82. Compliance with Council's Development Control Plan (DCP) 28 - Requirements for Access shall be demonstrated with each future stage of the development. Four (4) adaptable units shall be provided with access to and within the units in accordance with the relevant Australian Standards. Access for persons with a disability shall be provided between these adaptable units and their allocated carparking spaces and all communal open space areas in accordance with the relevant standards. The allocated parking spaces shall be located in close proximity to the access points of the building (e.g. the lifts).

The adaptable units shall be distributed as uniformly as possible throughout the development.

Note: Please note that compliance with this condition requires the relevant unit(s) to be constructed to comply with all the essential (Type C) requirements of AS4299.

Note: Compliance with Council's Development Control Plan (DCP) 28 - Requirements for Access and the Building Code of Australia does not necessarily guarantee that the development meets the full requirements of the Disability Discrimination Act (DDA) 1992. It is the responsibility of the applicant to make the necessary enquiries to ensure that all aspects of the DDA legislation are met.

83. A minimum of one (1) visitors car space to be provided for people with disabilities. The car spaces shall be in the vicinity to lifts. The car spaces shall have minimum dimensions of 3 x 5.5 metres 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.
84. The applicant shall confer with Energy Australia to determine if an electricity distribution substation is required. Written confirmation of Energy Australia's requirements shall be obtained prior to issue Construction Certificate.
85. *The applicant shall confer with Energy Australia to determine if installation of electricity conduits in the footway is required. Written confirmation of Energy Australia's requirements shall be obtained prior to the issue of a Construction Certificate for Stage 1.*

[Amendment D- S96(1A) amended 8 January 2014]

86. *The applicant shall confer with Energy Australia to determine if satisfactory clearances to any existing overhead High Voltage mains will be affected. Written confirmation of Energy Australia's requirements shall be obtained prior to issue Construction Certificate for Block A and/or Block B.*

[Amendment D – S96(1A) amended 8 January 2014]

87. *All low voltage street mains in that section of the street/s adjacent to the development shall be placed underground. This shall include any associated services and the installation of underground supplied street lighting columns where necessary. The applicant shall confer with Energy Australia to determine Energy Australia requirements. Written confirmation of Energy Australia's requirements shall be obtained prior to issue Construction Certificate for Stage 1.*

[Amendment D – S96(1A) amended 8 January 2014]

88. Prior to the issue of the Construction Certificate a permit shall be obtained from Council pursuant to Section 138 of the Roads Act 1993.

Details shall be submitted to Council for assessment and approval in relation to the following:

- a. Realignment of the kerb at the intersection of Guess Avenue / Bonar Street and intersection of Bonar Street / Lusty Street in accordance with the approved landscape plan;
 - b. Construction of indented parking bays with kerb blisters on Lusty Street, and indented parking on Bonar Street and Guess Avenue, in accordance with the approved landscape plan;
 - c. Landscaping of the road reserve areas around the parking bays in Guess Avenue, Bonar Street and Lusty Street, and within the kerb blisters on Lusty Street, in accordance with the approved landscape plan;
 - d. Construction of a new kerb inlet pit in Bonar Street to replace the existing pit, and construct new drainage pits in Guess Avenue/Lusty Street, as required;
 - e. Construction of dish drains adjacent to parking bays on Guess Avenue, Lusty Street and Bonar Street, as required;
 - f. Installation of raised pavement markers (RPMs) along the road centreline of Guess Avenue between the existing raised platform and the roundabout at the intersection of Guess Avenue and Mount Olympus Boulevard.
 - g. Installation of an 11.5m garbage truck parking zone on Guess Avenue adjacent to the vehicular entrance, subject to the approval of the Rockdale Traffic Committee.
89. 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.
90. *The subsurface structure shall be designed with a waterproof retention system (ie tanking and waterproofing) with adequate provision for future fluctuation of the water table. The subsurface structure is required to be designed with consideration of uplift due to water pressure and "flotation" (buoyancy) effects. Subsoil drainage around the subsurface structure must allow free movement of groundwater around the structure, but must not be connected to the internal drainage system. The design of subsurface structure, tanking and waterproofing, and subsoil drainage shall be undertaken by a suitably experienced Chartered Professional Engineer(s). Design details and construction specifications shall be included in the documentation accompanying the Construction Certificate for Stage 1.*
- [Amendment D – S96(1A) amended 8 January 2014]*
91. *Prior to the issue of the Construction Certificate for Stage 1 a Water Sensitive Urban Design (WSUD) report shall be submitted to the Certifying Authority for approval. The WSUD report shall detail the measures incorporated into the design of the stormwater management system and other building elements to:*
- *Facilitate water re-use;*

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- Maintain groundwater quality;
- Minimise at source generation of pollutants; and
- Treat and convey flows through the site.

[Amendment D – S96(1A) amended 8 January 2014]

92. A Flood Management Report is required to be submitted to Council for assessment prior to the issue of the Construction Certificate for Stage 1 of the development. The Flood Management Report shall be consistent with the Stage 1 approval and incorporate the recommendations of the Flood Effects Report prepared by Steve Paul and Partners dated 4 July 2006, and detail the following:
- The minimum habitable floor level and entry to below ground car parks to be set at 3.7 m AHD.
 - Flood gauges shall be installed at all vehicular and major pedestrian exits from the site to alert residents/visitors. Flood gauge details and flood warning system details are to be included in the report.
 - Evacuation management procedures for residents and visitors.
 - Evacuation management for residents and visitors shall be based on vertical evacuation for all events.
 - Evacuation management for residents and visitors shall not be dependent upon the State Emergency Services (SES).
 - Evacuation management procedures shall prevent and discourage residents from accessing the garage and trying to rescue vehicles.

Evacuation management procedures shall be published on coloured laminated warning sheets that are permanently fixed to community notice boards and the inside of a laundry and/or kitchen cupboard door that alerts residents to the potential danger and advises them what they should and should not do in a flood. Evacuation management procedures shall include a reference to Council's website for more information on flooding.

[Amendment D – S96(1A) amended 8 January 2014]

93. Prior to the issue of the Construction Certificate for Stage 1 a Construction Traffic Management Plan shall be submitted to Council for approval.

[Amendment D – S96(1A) amended 8 January 2014]

94. All exposed planter wall finishes are to be either a "textured blockwork" or "pre-cast block with textured finish", details of which are to be provided to Council and subject to approval by Council's landscape architects prior to the issue of Construction Certificate.
95. Seating within communal open space is to include seats with back supports and hand rests, details of which are to be provided to Council and subject to approval by Council's landscape architects prior to the issue of the Construction Certificates for Block A and/or Block B.

[Amendment D – S96(1A) – amended on 8 January 2014]

96. An automatic drip irrigation system is to be installed throughout all the mass planted areas and courtyard turfed areas.

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97. *Details of the proposed hydroponic system is to be provided for approval by Council's landscape architects prior to the issue of the Construction Certificates for Block A and/or Block B.*
[Amendment D – S96(1A) amended on 8 January 2014]
98. All mulched street tree plantings are to be edged with durable timber edging set flush with surrounding turf kerb edges, minimum size to be 1500 X 1500mm.
99. *Details of proposed paving including levels and drainage pits are to be provided to Council and subject to approval by Council's landscape architect prior to the issue of the Construction Certificates for Block A and/or Block B.*
[Amendment D – S96(1A) amended on 8 January 2014]
100. The contaminated site shall be remediated in accordance with 'State Environmental Planning Policy No 55 Remediation of Land' (SEPP55) prior to the issue of a Construction Certificate. A Site Remedial Action Plan (SRAP) prepared by a suitably qualified and experienced Contaminated Land Consultant, shall be submitted to Council being the Regulatory Authority for the management of contaminated land. It is preferable that the plan be prepared by the same consultant who assessed the site for contamination.
101. An accredited auditor under the Contaminated Land Management Act 1997 shall review the detailed site assessment report and remedial action plan. The accredited auditor shall provide a copy of the Site Audit Report and Site Audit Statement to Council being the Regulatory Authority for the management of contaminated land prior to the issuing of the Construction Certificate.
102. *A detailed site contamination assessment report prepared by a suitably qualified and experienced consultant shall be submitted to Council being the Regulatory Authority for the management of contaminated land prior to the issuing of Construction Certificate for Stage 1.*
[Amendment D – S96(1A) amended 8 January 2014]
103. *Stormwater management requirements for the development site, including the final discharge/end connection point, must comply with Councils Technical Specification – Stormwater Management.*
[Amendment D – S96(1A) amended 8 January 2014]
104. *Dedicated car wash bays are required. A tap shall be provided. A sign shall be fixed saying 'Car Wash Bay'. The runoff shall be directed and treated as per Councils Technical Specification – Stormwater Management. Details shall be provided with the plans accompanying the Construction Certificate.*
[Amendment D – S96(1A) amended 8 January 2014]
105. *Prior to the issue of the Construction Certificate for each stage of construction, detailed drainage design plans for the management of stormwater are to be submitted to Council or an Accredited Certifier for assessment and approval. Design certification, in the form specified in Council's Technical Specification – Stormwater Management and drainage design calculations are to be submitted with the plans. Council's Technical Specification – Stormwater Management sets out the minimum documentation requirements for detailed design plans.*

[Amendment D – S96(1A) amended on 8 January 2014]

PRIOR TO COMMENCEMENT OF WORKS

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

106. 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.
107. 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.

The controls are to be designed and installed in accordance with the Soil and Water Management for Urban Development Guidelines produced by the Southern Sydney Regional Organisation of Councils. Copies of the guidelines are available from Council.
108. A Soil and Water Management Plan shall be prepared in accordance with Soil and Water Management for Urban Development Guidelines produced by the Southern Sydney Region Organisation of Councils. A copy of the plan must be submitted to Council. 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.

Sediment control devices shall not be located beneath the driplines of trees, which are to be retained.
109. 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.
110. 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.
111. A Site Health & Safety Plan shall be prepared prior to the commencement of remediation works by a person competent to do so. All works shall be carried out in accordance with this plan. This plan shall include:
 - hazard identification and control
 - site security

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- personal protective equipment
 - work zones and decontamination procedures
 - contingency plans and incident reporting
 - environmental monitoring.
112. 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.
113. The site shall be secured by a 1500 mm (minimum) high temporary fence for the duration of the work. Gates shall be provided at the opening points.
114. 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,
- a hoarding or fence shall be erected between the work site and the public place.
- When necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.
- Any such hoarding, fence or awning is to be removed when the work has been completed.
- The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.
115. Toilet facilities are to be provided, at or in the vicinity of the work site, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site and the toilet facilities must be designed and installed in accordance with the provisions of clause 781 of the Environmental Planning and Assessment Regulation 1994, and be installed before any other work is commenced.
116. Consultation with Energy Australia is essential prior to commencement of work. Failure to notify Energy Australia 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 Energy Australia or
 - ii) where the erection of gates or fences has restricted access to metering equipment.
117. Where clearances to any existing overhead High Voltage mains are affected, the builder shall make arrangements with Energy Australia for any necessary modification to the electrical network in question. These works shall be at the applicant's expense.
- Energy Australia'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 Energy Australia.

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118. A copy of the plan of consolidation must be provided to the Principal Certifying Authority and Council prior to the commencement of works.

DURING DEMOLITION / EXCAVATION / CONSTRUCTION

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

119. 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.
120. Hours of any demolition or construction works 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.
121. For Class 2, 3 and 4 structures, the building works are to be inspected during construction, by the principal certifying authority (or other suitably qualified person on behalf of the principal certifying authority) to monitor compliance with Council's approval and the relevant standards of construction encompassing the following stages:
- i) after excavation for, and before the placement of, any footing, and
 - ii) prior to covering waterproofing in any wet areas, for a minimum of 10% of rooms with wet areas within a building, and
 - iii) prior to covering any stormwater drainage connections, and
 - iv) after the building work has been completed and prior to any occupation certificate being issued in relation to the building.

Documentary evidence of compliance with Council's approval and relevant standards of construction is to be obtained prior to proceeding to the subsequent stages of construction and copies of the documentary evidence are to be maintained by the principal certifying authority and be made available to Council officers upon request.

122. 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.
123. 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.
124. All waste generated on site shall be disposed of in accordance with the submitted Waste Management Plan.
125. 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.

126. 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.

127. Any new information discovered during remediation, demolition or construction works which has the potential to alter previous conclusions about site contamination, shall be notified to Council being the Regulatory Authority for the management of contaminated land.
128. Wind blown dust from stockpile and construction activities shall be minimised by one or more of the following methods:
- i) spraying water in dry windy weather
 - ii) cover stockpiles
 - iii) fabric fences
129. 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.

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130. 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.
131. The existing structures shall be demolished and removed from the site prior to works commencing. All demolition work shall be carried out in accordance with Council's Demolition and Erection of Buildings Code, with AS2601 – 2001: The Demolition of Structures and with the requirements of the WorkCover Authority of NSW.
132. All the recommendations contained in the Acid Sulfate Soil Management Plan prepared by Hayes Environmental Consulting Pty Ltd dated 01 August 2008 (Ref: EP558 AB) and received by Council on 10 October 2008 shall be adopted and implemented.
133. 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.
134. 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.
135. All disturbed areas shall be stabilised against erosion within 14 days of completion, and prior to removal of sediment controls.

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136. Stormwater from roof areas shall be linked via a temporary downpipe to an approved stormwater disposal system immediately after completion of the roof area.
137. Demolition 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.
- Note:** The Applicant may be liable to prosecution under the Environmental Planning and Assessment Act 1979 for a breach of an approval condition, or under the Protection of the Environment Operations Act 1997, if its employees, agents or sub-contractors allow sediment, including soil, excavated material, building materials, or other materials to be pumped, drained or allowed to flow to the street, stormwater pipes or waterways. The Applicant shall ensure that its employees, agents or sub-contractors understand and maintain sediment control measures.
138. 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.
- Note:** The Applicant may be liable to prosecution under the Environmental Planning and Assessment Act 1979 for a breach of an approval condition, or under the Protection of the Environment Operations Act 1997, if its employees, agents or sub-contractors allow sediment, including soil, excavated material, building materials, or other materials to be pumped, drained or allowed to flow to the street, stormwater pipes or waterways. The Applicant shall ensure that its employees, agents or sub-contractors understand and maintain sediment control measures.
139. Demolishers are required to confine access to building and demolition sites to no more than two 3m driveways, and provide a footpath protection pad over Council's footpath at these points (see attached detail). 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 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.
140. 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

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sign must be displayed throughout construction. A copy of the sign is available from Council.

141. Trees located within adjoining properties or Council's nature strip shall not be removed or pruned without the written consent of Council in the form of a Permit issued under Council's Tree Preservation Order.

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.

142. *An Occupation Certificate shall be obtained for each stage, as shown in the Staging Diagram, in relation to the approved works prior to any use or occupation of the building.*
[Amendment D – S96(1A) amended on 8 January 2014]
143. Appropriate 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.
144. 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.
145. *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 refund of the Footpath Reserve Restoration Deposit.*
[Amendment D – S96(1A) amended on 8 January 2014]
146. 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.
147. The approved recommendations from the Flood Management Report shall be implemented prior to occupation.
148. 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
149. 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.
150. The underground placement of all low voltage street mains in that section of the street/s adjacent to the development, and associated services and the installation of underground supplied street lighting columns, shall be carried out at the applicant's expense. The works shall be completed and Energy Australia's requirements shall be met prior to issue of the Occupation Certificate.

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151. Where an electricity substation is required by Energy Australia, a final film survey plan shall be endorsed with an area having the required dimensions as agreed with Energy Australia over the location of the proposed electricity distribution substation site. The substation must be located within the boundary of the development site, or within the building, subject to compliance with the BCA. The substation site shall be dedicated to Council as public roadway, or as otherwise agreed with Energy Australia. Energy Australia's requirements shall be met prior to release of the issue of the Occupation Certificate.
152. All overhead telecommunications cables adjacent to the Guess Avenue, Bonar Street and Lusty Street frontages shall be relocated underground in accordance with DCP 62 and the requirements of the telecommunication authority.
153. 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".
154. 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.
155. The width of the vehicular entrances shall be in accordance with the dimensions shown on the approved plans.
156. The gate for the basement shall be located in order to permit the queueing of two (2) vehicles when waiting to enter the basement garage.
157. A minimum of two hundred and ten (210) off-street car spaces shall be provided and allocated as follows, shall be sealed and linemarked to Council's satisfaction and shall be reflected in any subsequent strata subdivision of the development. The pavement of all car parking spaces, manoeuvring areas and internal driveways shall comply with Australian Standard AS3727 – Guide to Residential Pavements:

Studio, 1 and 2 bedroom units	1 space per dwelling	170 spaces
Visitor parking	1 space per 5 dwellings	36 spaces
Car wash bays	1 wash bay per 60 dwellings	3 wash bays
Service vehicles	-	1 service bay
TOTAL		210

All common property spaces shall be labelled as visitor or car wash spaces on any strata plan."

[Amendment B – S96(2) amended on 17 May 2012]

158. 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

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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.

159. *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 first Occupation Certificate.*

[Amendment D – S96(1A) amended on 7 January 2014]

160. *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 prior to the issue of an Occupation Certificate for each Block.*

[Amendment D – S96(1A) amended on 8 January 2014]

161. *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 an Occupation Certificate for each Block.*

[Amendment D – S96(1A) amended on 8 January 2014]

162. *The noise reduction measures specified in the acoustics report titled 'Guess Avenue Apartments, Wolli Creek Acoustical Assessment' and prepared by Heggies Pty Ltd dated 16 September 2008 (Ref: Report 10-7017-R1) 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 for each Block. If Council is not the PCA, a copy shall be submitted to Council concurrently.*

[Amendment D – S96(1A) amended on 8 January 2014]

163. *A certificate is to be provided to Council that all wet areas have been effectively waterproofed (prior to tiling) in accordance with AS3740 and the product manufacturer's recommendations prior to the issue of an Occupation Certificate for each Block.*

[Amendment D – S96(1A) amended on 8 January 2014]

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164. 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, Landscape Works Staging Plan and documentation prior to the issue of an Occupation Certificate for each Block.

[Amendment D – S96(1A) amended on 8 January 2014]

165. After completion of the remedial works, a copy of the Validation Report shall be submitted to Council being the Regulatory Authority for the management of contaminated land, prior to the issue of the first Occupation Certificate. The Validation Report shall be prepared in accordance with the NSW Environment Protection Authority's (EPA) guidelines, Consultants Reporting on Contaminated Sites, and shall:
- describe and document all works performed;
 - include results of validation testing and monitoring;
 - include validation results of any fill imported on to the site;
 - show how all agreed cleanup criteria and relevant regulations have been complied with; and
 - include clear justification as to the suitability of the site for the proposed use and the potential for off-site migration of any residual contaminants.

[Amendment D – S96(1A) amended 8 January 2014]

166. An accredited auditor under the Contaminated Land Management Act 1997 shall review the Validation Report prepared by the contaminated land consultant and issue a Site Audit Statement. The accredited auditor shall provide Council being the Regulatory Authority for the management of contaminated land, with a copy of the Site Audit Report and Site Audit Statement, prior to issue of the first Occupation Certificate.

[Amendment D – S96(1A) amended 8 January 2014]

167. A Site Audit Statement (SAS) shall be submitted to Council being the Regulatory Authority for the management of contaminated land, prior to the issue of the first Occupation Certificate, clearly demonstrating that the site is suitable for the intended use. Conditions imposed on the SAS shall form part of this consent. In circumstances where the SAS conditions (if applicable) are not consistent with the consent, the consent shall prevail to the extent of inconsistency and a S96 application pursuant to the Environmental Planning & Assessment Act 1979 will be required.

[Amendment D – S96(1A) amended 8 January 2014]

168. 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.
169. A certificate from a Registered Surveyor shall be provided to the Principal Certifying Authority (PCA) certifying that the habitable/commercial floor level is constructed to the levels identified in the Flood Management Report. A copy of the certificate shall be provided to Council where Council is not the Principal Certifying Authority.
170. A certificate from a Registered Surveyor shall be provided to the Principal Certifying Authority certifying that the garage floor/parking level is protected to the levels

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identified in the Flood Management Report. A copy of the certificate shall be provided to Council where Council is not the Principal Certifying Authority.

171. *Prior to occupation of each stage of the development a Chartered Professional Engineer shall certify that the stormwater system has been constructed in accordance with the approved plans and as required by Council's DCP 78 - Stormwater Management Technical Specification – Stormwater Management. The certificate shall be in the form specified in DCP 78 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.*

[Amendment D – S96(1A) amended 8 January 2014]

172. The underground garage shall be floodproofed to a minimum of 500mm above the 1% Annual Exceedance Probability flood level. The levels shall be certified by a registered surveyor prior to construction of the driveway or other openings.
173. The development shall comply with Council's DCP 66 – Management of Flood Risk, and the Planning Considerations and Development Controls listed in the Flood Advice letter issued by Council on 30 August 2004.
174. 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
175. The outside finished ground level shall be constructed a minimum of 250mm below the habitable floor level for the whole building perimeter.
176. The owner of the premises shall inform Sydney Water that a Rainwater tank has been installed in accordance with applicable requirements of Sydney Water.
177. The overflow from the rainwater tank shall be directed to the storm water system.
178. All plumbing work proposed for the installation and reuse of rainwater shall comply with the NSW Code of Practice: Plumbing and Drainage and be installed in accordance with Sydney Water "Guidelines for rainwater tanks on residential properties.
179. A first flush device shall be installed to reduce the amount of dust, bird faeces, leaves and other matter entering the rainwater tank.

INTEGRATED DEVELOPMENT/EXTERNAL AUTHORITIES

The following conditions have been imposed in accordance with Section 91A of the Environmental Planning and Assessment Act, 1979.

180. **Sydney Airport Corporation Limited**

Sydney Airport Corporation Limited (SACL) has approved the maximum height of the proposed building at 29.7 metres above Australian Height Datum (AHD). This height is inclusive of all lift over-runs, vents, chimneys, aerials, TV antennae and construction cranes etc. No permanent or temporary structure may exceed this height without

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further approval from Sydney Airport Corporation Limited.

Note: Under Section 186 of the Airports Act 1996, it is an offence not to give information to the Airport Operator that is 'relevant to a proposed "controlled activity" and is punishable by a fine of up to 50 penalty units.

For further information on Height Restrictions please contact SACL on 9667 9217.

181. RailCorp Conditions

All excavation and construction works are to be undertaken in accordance with the methodology detailed in the Geotechnical Report prepared by Jeffery and Katauskas Pty Ltd, dated 7 October 2008 and the Structural Report prepared by Partridge Partners dated 30 January 2009, in addition to the following RailCorp requirement that:

- No anchors to cross the boundary into RailCorp's land and that any anchors are to be restrained entirely within the subject development site.
- The applicant is to provide RailCorp of a detailed survey prepared by a Registered Surveyor indicating the location of all rock anchors along the boundary with the RailCorp's land within 2 weeks of installation.
- Any dewatering should be closely monitored to prevent drawdown of groundwater outside the subject development site.

182. *A Construction Certificate for Stage 1 shall not be issued until the measures detailed in the above Jeffery and Katauskas Pty Ltd and Partridge Partners reports have been incorporated into the construction drawings and specifications. Prior to the commencement of works the Principal Certifying Authority shall provide verification to RailCorp that this condition has been complied with.*

[Amendment D – S96(1A) amended 8 January 2014]

183. The applicant shall provide an accurate survey locating the development with respect to the rail boundary and rail infrastructure. This work is to be undertaken by a registered surveyor and provided to RailCorp for endorsement prior to the issue of an Occupancy Certificate.

184. Prior to the issuing of a Construction Certificate the applicant shall request a service searches from RailCorp, to establish the existence and location of any RailCorp services and structures in close proximity to the site.

185. *Prior to the commencement of works and prior to the issue of an Occupation Certificate for Block A and/or Block B, a joint inspection of the rail infrastructure and property in the vicinity of the project is to be carried out by representatives from RailCorp and the applicant. These dilapidation surveys will establish the extent of any existing damage and enable any deterioration during construction to be observed. The submission of a detailed dilapidation report will be required unless otherwise notified by RailCorp.*

[Amendment D – S96(1A) amended 8 January 2014]

186. The development must be designed and constructed so that supporting elements comply with the redundancy requirements or the minimum collision loads specified in Australian Standard AS5100.

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187. *Prior to the issue of a Construction Certificate for Stage 1 the applicant is to provide RailCorp with a report from a qualified structural engineer demonstrating that the structural design of the development satisfies the requirements of AS5100. The Principal Certifying Authority shall not issue the Construction Certificate until it has received written confirmation from RailCorp that it has received this report and the Principal Certifying Authority has also confirmed that the measures recommended in engineers report have been indicated on the Construction Drawings.*
[Amendment D – S96(1A) amended 8 January 2014]
188. The applicant shall obtain RailCorp's approval prior to the installation of any hoarding or scaffolding along the common boundary with the rail corridor.
189. *An acoustic assessment is to be submitted to Council prior to the issue of a Construction Certificate for Block A and/or Block B demonstrating how the proposed development will comply with the Department of Planning's Road and Rail Guidelines. A Construction Certificate must not be issued until the measures recommended in the Acoustic Report have been incorporated into the design.*
[Amendment D – Section 96(1A) amended 8 January 2014]
190. *Prior to the issuing of a Construction Certificate for Stage 1 the applicant is to procure a report on the Electrolysis Risk to the development from stray currents, and the measures that will be taken to control that risk. The applicant is advised to consult an Electrolysis expert. A Construction Certificate must not be issued until the measures recommended in the Electrolysis report have been incorporated into the design.*
[Amendment D – S96(1A) amended 8 January 2014]
191. As large-scale excavation is involved, the applicant is required to put in place a vibration monitoring system to monitor vibration levels on the adjoining rail corridor for the duration of the works. The plan shall meet RailCorp's requirements and be submitted to RailCorp for review prior to the commencement of works.
192. *Given the possible likelihood of objects being thrown onto the rail corridor from balconies, the applicant is required to install adequate measures or to enclose balconies that are within 20m of the rail corridor. The measures to be utilized are to be endorsed by RailCorp prior to the issuing of a Construction Certificate for Block A and/or Block B.*
[Amendment D – S96(1A) amended 8 January 2014]
193. The applicant is required to install mechanisms that limit the opening of windows or provide awning windows to prevent the throwing of objects onto the rail corridor. The measures to be utilized are to be endorsed by RailCorp prior to the issuing of a Construction Certificate.
194. The applicant must submit any proposals to RailCorp for the use of lights, signs and reflective materials, whether permanent or temporary, in the proximity of the RailCorp's facilities prior to commencing work.
195. A Risk Assessment/Management Plan and detailed Safe Work Method Statements (SWMS) for the proposed demolition, excavation and construction works are to be submitted to RailCorp for review and comment prior to the works commencing on site. It should be noted that RailCorp's representative may impose conditions on the

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methods to be used and require the provision of on-site Safe Working supervision for certain aspects of the works.

196. The applicant is required to submit to RailCorp for its endorsement a plan showing all craneage and other aerial operations for the development. The applicant is advised that no loads are to be carried over RailCorp's land.
197. Where a condition of consent requires RailCorp's endorsement the Principal Certifying Authority shall not issue a Construction Certificate or Occupancy Certificate, as the case may be, until written confirmation has been received from RailCorp that the particular condition has been complied with.

ROADS ACT

198. Demolition or 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 Construction Zone signs by the RTA.

Permit application forms should be lodged at Council's Customer Service Centre allowing sufficient time for evaluation. An information package is available on request.

199. The following works will be required to be undertaken in the road reserve at the applicant's expense:
 - a. construction of a 1.5 metre wide concrete footpath along the Guess Avenue, Bonar Street and Lusty Street frontages of the development site;
 - b. construction of a new concrete vehicular entrance on Guess Avenue (for the resident / visitor car park);
 - c. construction of a new concrete vehicular entrance on Lusty Street (for the resident car park);
 - d. removal of the existing concrete vehicular entrance/s, and/or kerb laybacks which will no longer be required.
200. In addition to the works in the road reserve listed above, the following modification and/or improvement works to the road and drainage in Guess Avenue, Bonar Street and Lusty Street will be required to be undertaken at the applicant's expense:
 - a. Realign the kerb at the intersection of Guess Avenue / Bonar Street and intersection of Bonar Street / Lusty Street in accordance with the approved landscape plan;
 - b. Construct indented parking bays with kerb blisters on Lusty Street, and indented parking on Bonar Street and guess Avenue, in accordance with the approved landscape plan;

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- c. Landscape the road reserve areas around the parking bays in Guess Avenue, Bonar Street and Lusty Street, and within the kerb blisters on Lusty Street, in accordance with the approved landscape plan;
- d. Construct a new kerb inlet pit in Bonar Street to replace the existing pit, and construct new drainage pits in Guess Avenue/Lusty Street, as required;
- e. Construct dish drains adjacent to parking bays on Guess Avenue, Lusty Street and Bonar Street, as required;
- f. Install raised pavement markers (RPMs) along the road centreline of Guess Avenue between the existing raised platform and the roundabout at the intersection of Guess Avenue and Mount Olympus Boulevard.
- g. Install an 11.5m garbage truck parking zone on Guess Avenue adjacent to the vehicular entrance, subject to the approval of the Rockdale Traffic Committee.

Note: Detailed plans for the works specified above are required to be submitted to Council for assessment and approval pursuant to *Section 138 of the Roads Act 1993*. Please contact Council for further direction on the detailed design of the works.

- 201. 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 on 9562 1670. 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.
- 202. 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.
- 203. Following completion of concrete works in the footpath reserve area, the balance of the area between the property boundary and the kerb over the full frontage of the proposed development shall be turfed with either buffalo or couch (**not kikuyu**), and landscaped with street trees in accordance with the Landscape Plan.
- 204. The existing overhead utility installations (including but not limited to overhead electricity, SRA supply and telecommunication cabling) along the Guess Avenue, Bonar Street and Lusty Street frontages shall be relocated underground for the full length of the development at the full cost of the applicant. All street lighting shall be replaced with street light poles approved by Energy Australia. The requirements and conditions of the utility authorities shall be obtained and submitted to Council prior to the issue of the first Construction Certificate. All undergrounding and installations shall be completed in accordance with the requirements and conditions of the relevant utility authority prior to the issue of the first Occupation Certificate.
- 205. All service diversions required to be relocated as part of the road works in Guess Avenue, Bonar Street and Lusty Street shall be undertaken at the full cost of the applicant.

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DEVELOPMENT CONSENT ADVICE

- a. You are advised to consult with your utility providers (i.e. Energy Aust, Telstra etc) in order to fully understand **their** requirements **before** commencement of any work.
- b. If Council is appointed as the Principal Certifying Authority (PCA), a fee shall be paid before a Construction Certificate is issued. 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. 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.
- c. If Council is the Principal Certifying Authority for the development, a drainage inspection fee shall be paid prior to the issue of the Construction Certificate. If payment is made after the end of the financial year, the amount shall be adjusted in accordance with Council's adopted fees and charges.

NB: This fee does not include a confined space entry into the on-site detention tank. Where a confined space entry is required, an additional fee of \$375.35 is payable. A confined space entry will be required where:

- a) Information provided in the works-as-executed drawing and engineering certification is inconclusive as to the compliance of the system with the approved plans; and/or
 - b) Visual inspection from outside the tank is inconclusive as to the compliance of the system with the approved plans.
- d. All asbestos fibre demolition material and asbestos dust shall be handled, stored and removed in accordance with the relevant legislation and guidelines including:
 - Occupational Health and Safety Act 2000
 - Occupational Health and Safety Regulation 2001
 - Occupational Health and Safety Amendment (Chrysotile Asbestos) Regulation 2003
 - Code of Practice for the Safe Removal of Asbestos [NOHSC: 2002 (2005)]
 - Code of Practice for the Management and Control of Asbestos in Workplaces [NOHSC: 2018 (2005)]
 - Protection of the Environment Operations (Waste) Regulation 1996

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 1996.
 - e. Hazardous and/or intractable wastes arising from the demolition process shall be removed and disposed of in accordance with the requirements of the relevant statutory authorities (NSW WorkCover Authority and the NSW Environment Protection Authority), together with the relevant regulations, namely:
 - Occupational Health and Safety Act 2000
 - Occupational Health and Safety Regulation 2001

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- f. Demolition operations shall be undertaken in a manner which minimises the emission of excessive noise and prevents "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
- g. The water from the rainwater tank should not be used for drinking, Sydney Water shall be advised of the installation of the rainwater tank.

NSW POLICE ADVICE

- h. There are no surveillance opportunities from the car park or corridors into the fire exit stairways. Viewing ports fitted with robax style glazing should be considered to enable people to view into and out of the stairways reducing concealment opportunities.
- i. The provision of facilities (lockable racks) to secure bicycles also increases the effort required to commit crime.
- j. It is recommended that sufficient lighting be installed at the courtyard and terrace areas of the development to enhance safety. In addition all paths, such as walkways throughout the development should be equipped with adequate lighting (as per Australian and New Zealand Standards) to assist with way finding and safety.
- k. A graffiti management plan should be incorporated into the maintenance plan for the development. Research has shown that the most effective strategy for reducing graffiti offences is the quick removal of such material, generally within a forty-eight hour period.
- l. 'Residents only' access to underground parking through the interior of buildings can reduce opportunities for theft from vehicles, motor vehicle theft and entrapment.
- m. 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(1A) amended 3 November 2009]

ADDITIONAL INFORMATION

- To confirm the date upon which this consent becomes effective, refer to Section 83 of the Environmental Planning and Assessment Act, 1979. Generally the consent becomes effective from the determination date shown on the front of this notice. However if unsure applicants should rely on their own enquiries.
- To confirm the likelihood of consent lapsing, refer to Section 95 of the Act. Generally consent lapses if the development is not commenced within five years of the date of

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approval. However if a lesser period is stated in the conditions of consent, the lesser period applies. If unsure applicants should rely on their own enquiries.

- Section 82A allows Council to reconsider your proposal. Should you wish to have the matter reconsidered you should make an application under that section with the appropriate fee.
- Under Section 97 of the Act applicants who are dissatisfied with the outcome of a consent authority have a right of appeal to the Land and Environment Court. This right must be exercised within 12 months from the date of this notice. The Court's Office is situated at Level 1, 225 Macquarie Street, Sydney (Telephone 9228 8388), and the appropriate form of appeal is available from the Clerk of your Local Court.

Should you have any further queries please contact Fiona Prodromou on 9562 1672 .


Luis Melim

Manager - Development Services





3 October 2018

Our Ref: 18-260 AK

General Manager

Bayside Council
PO Box 21,
Rockdale, NSW, 2216

RE: S4.55(1A) MODIFICATION APPLICATION TO IN RELATION TO 30-32 GUESS AVENUE, WOLLI CREEK

This report has been prepared for 30-32 Guess Avenue, Wolli Creek Land PL by City Plan Strategy and Development Pty Ltd to accompany an application under Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 (the Act).

1. THE APPROVED DEVELOPMENT

Consent No 2007/23/2 was granted by Bayside Council on 27 March 2009 for:-

Construction of 2 x 8 storey residential flat buildings containing a total of 176 units, basement and above ground carparking with capacity for 217 vehicles and associated landscape works.

The consent applies to land in Lot 100 DP 1176066, known as 30-32 Guess Avenue, Wolli Creek.

Since the granting of this consent the following relevant applications have been approved by Council on the subject site:

- DA-2007/23/2/A: Section 4.55 modification for the internal modification to the layout of the units to create additional bathrooms.
- DA-2007/23/2/B: Section 4.55 modification to the approved residential flat building including changes to unit mix, unit sizes, parking allocation and building façade.
- DA-2007/23/2/C: Section 4.55 modification to amend condition 73.
- DA-2007/23/2/D: Section 4.55 modification to conditions to enable staging, including:
 - Stage 1: Carparking and Block A comprising 73 units; and
 - Stage 2: Block B comprising 103 units.

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M:\PROJECTS\CP2018\18-260 30-32 GUESS AVE, WOLLI CREEK (S4.55)5. FINAL\031018.DOCM

2. SUPPORTING DOCUMENTATION

This application has been prepared with regard to the architectural drawings prepared by Level 33 which accompany this application and are provided at Appendix 1.

3. PROPOSED MODIFICATION

The application seeks to modify the approved material finishes for all elevations (Block A and Block B), including:

Table 1: Approved and proposed finishes

	Approved Finishes	Proposed Finishes
1.	Vertical garden	Dulux lexicon quarter in paint finish
2.	Concrete sun shade screen paint finish - yellow	Dulux accord in paint finish
3.	Pre-cast concrete wall wave pattern	Dulux charcoal fusion in paint finish
4.	Pre-caste concrete wall wave pattern, blue	Dulux black in paint finish
5.	Pre-caste concrete wall wave pattern, red	Face brick wall
6.	Pre-caste concrete wall broken ribbed pattern	Glass balustrade
7.	Pre-caste concrete wall stone pattern	Sun shading louvres
8.		Sun hood (Block B only)

To give effect to these modifications, this application seeks to modify the following conditions of consent.

Table 2: Modifications to conditions

Condition	Proposed Modification
2	The proposal seeks to modify this condition to include the amended elevations provided with this application.
3	It is proposed to amend condition 3, to reflect the modified materials and finishes. Example wording has been provided below.

"The development must be implemented substantially in accordance with the materials and finishes noted on the architectural plans, prepared by Level 33, dated 27 September 2018."
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4. MATTERS FOR CONSIDERATION UNDER SECTION 4.55

4.1 Overview

Section 4.55 of the Environmental Planning and Assessment Act, 1979 (the Act) confers on a consent authority the power and discretion to modify a consent granted under the Act.

The relevant provisions of the Act state:

"Modification of consents

(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, and*
- 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) under this section, and*
- c) it has notified the application in accordance with:*
 - i. the regulations, if the regulations so require, or*
 - ii. a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and*
- 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.*

Subsections 4.55 (3) states as follows;

(3) 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.

The matters prescribed under Section 4.55 are addressed below.

4.2 Minimal Environmental Impact (Section 4.55(1A)(a))

The subject Section 4.55 application comprises minor modifications to the approved built form which improves the presentation of the development.

It is proposed to replace the approved vertical garden with a "dulux charcoal fusion in paint finish". The vertical garden provides only minimal benefits to the locality as it faces towards the Illawarra Railway Line, the cul-de-sac at the end of Lusty Street and part of Guess Avenue (adjacent to the Railway Bridge). These are not prominent locations and have limited visibility from the public domain. Given the size of the approved vertical garden there is also a significant expense associated with its ongoing maintenance, which would be a significant burden on future owners and is not justified on a development of this scale.

It is proposed to replace the pre-cast concrete wall with wave pattern with a dulux paint finish. "Face brick walls" are also proposed along every elevation. The new materials are robust, durable, contemporary and will ensure the materials and finishes are consistent with surrounding streetscape and the prevailing architectural style in the immediate vicinity.

The modifications do not alter the intensity, bulk, scale or function of the development. Therefore, the proposal has minimal environmental impact.

4.3 Substantially the Same Development (Section 4.55(1A)(b))

As stated, the proposed modifications do not seek to change the nature and substance of the approved development in any way.

No adverse impacts such as visual massing or shadowing will be created by the proposed modifications.

We therefore consider that the development (as modified) will remain substantially the same as the development that was originally approved.

4.4 Section 4.15(1) Considerations (Section 4.55(3))

The environmental assessment matters relevant to the proposed modified development under Section 4.15(1) (a), (b), (c), (d) and (e) of the Act are addressed below.

■ Environmental planning controls

The principal planning controls applying to the development are contained in:

- Rockdale Local Environmental Plan 2011; and
- Rockdale Development Control Plan 2011.

Since there are no substantive changes to the development proposed, the modified proposal remains consistent with the relevant provisions of those controls as detailed in the original application and as subsequently assessed by Council in granting the consent.

- **Environmental impacts and site suitability**

There is nothing with respect to the modifications that would result in any environmental impact or affect the suitability of the site for the development as approved or as proposed to be modified.

- **The public interest**

No public interest issues arise as a consequence of the proposed modifications. Council's intentions in imposing conditions to preserve the public interest are not affected, since the proposed modifications continue to give effect to those general intentions, simply in a more practical and achievable way.

5. CONCLUSION

The proposed modification relates to minor modifications to the development which, through the detailed design and construction phases, have been identified as items which are required to be addressed to improve the presentation and functionality of the development. We therefore consider that the proposed modified development is substantially the same as that approved in DA-2007/23/2.

The impacts of the modifications are negligible and the development will remain consistent with the approved application. The combined changes, being amendments which maintain the integrity of the approved development and the intent of the conditions, will have no identifiable environmental impacts. Accordingly, the modifications are within the ambit of Section 4.55(1A) of the Act.

Further, the assessment of the modified proposal pursuant to the relevant Section 4.15(1) evaluation criteria does not alter the assessment undertaken in the SEE and Council's assessment of the original development application. We see no reason therefore why the modifications should not be approved.

Should you require any further clarification or information in respect to this application, please contact the undersigned on (02) 8270 3500.

Yours Sincerely,



Stephen Kerr
Executive Director