

## **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 9 April 2019 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 - 26 March 2019.3

### **5 REPORTS – PLANNING PROPOSALS**

Nil

### **6 REPORTS – DEVELOPMENT APPLICATIONS**

6.1	DA-2018/344 - 12/637-645 Forest Road, Bexley. ....	15
6.2	DA-2018/48 - 88 Stoney Creek Road, Bexley .....	63
6.3	DA-17/1047 - 2 and 2A, 4 Bay Street, Botany.....	214
6.4	BDA-2014/45/A - 2-8 Sarah Street, Mascot .....	283
6.5	DA-2018/319 - 10-12 Sarah Street, Mascot .....	374
6.6	DA-2018/1169 3-5 Queen Street, Botany .....	501

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**

**9/04/2019**

Item No	4.1
Subject	<b>Minutes of the Bayside Local Planning Panel Meeting - 26 March 2019</b>
Report by	Fausto Sut, Manager Governance & Risk
File	SF18/2995

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### **Recommendation**

That the Bayside Local Planning Panel notes that the Minutes of the Bayside Local Planning Panel meeting held on 26 March 2019 have been confirmed as a true record of proceedings by the Chairperson of that meeting.

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### **Present**

Marcia Doheny, Chairperson and Independent Expert Member  
Robert Montgomery, Independent Expert Member  
Lindsey Dey, Independent Expert Member  
Patrick Ryan, Community Representative

### **Also Present**

Luis Melim, Manager Development Services  
Bruce Cooke, Coordinator Governance  
Christopher Mackay, Coordinator Development Assessment  
Fiona Prodromou, Senior Development Assessment Planner  
Petra Blumkaitis, Development Assessment Planner  
Julia Hunt, Development Assessment Planner  
Christopher Thompson, Development Engineer  
Anne Suann, Governance Officer

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The Chairperson opened the meeting in the Botany Town Hall Committee Room at 6.02 pm.

## **1 Acknowledgement of Traditional Owners**

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

## **2 Apologies**

There were no apologies received.

### **3 Disclosures of Interest**

There were no disclosures of interest.

### **4 Minutes of Previous Meetings**

#### **4.1 Minutes of the Bayside Local Planning Panel Meeting - 12 March 2019**

##### **Decision**

That the Bayside Local Planning Panel notes that the Minutes of the Bayside Local Planning Panel meeting held on 12 March 2019 have been confirmed as a true record of proceedings by the Chairperson of that meeting.

#### **4.2 Minutes of the Bayside Local Planning Panel Meeting - 19 March 2019**

##### **Decision**

That the Bayside Local Planning Panel notes that the Minutes of the Bayside Local Planning Panel meeting held on 19 March 2019 have been confirmed as a true record of proceedings by the Chairperson of that meeting.

### **5 Reports – Planning Proposals**

Nil

### **6 Reports – Development Applications**

#### **6.1 S82-2018/6 - 241 O'Riordan Street, Mascot - Installation of two (2) digital advertising signs**

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

The following people spoke:

- Mr Giovanni Cirillo, consulting town planner, spoke against the officer's recommendation and responded to the Panel's questions.
- Mr Kevin Malouf from El Media, applicant, spoke against the officer's recommendation and responded to the Panel's questions.

**Determination**

- 1 That Review of Determination of Development Application (S82-2018/6) of DA-2018/1069 for the installation of two digital signs confirms the refusal of the development application with additional reasons for refusal.
- 2 That pursuant to section 8.4 of the *Environmental Planning and Assessment Act 1979* the determination of DA-2018/1069 be refused for the following reasons:
  1. The proposed development, pursuant to the provisions of *Clause 3 of the State Environmental Planning Policy No 64 – Advertising and Signage*, is not consistent with the objectives of the SEPP as it is not compatible with the desired and future character of the precinct and results in visual advertising clutter and driver distraction.
  2. The proposed development, pursuant to the provisions of *Clause 17(3)(a) of the State Environmental Planning Policy No 64 – Advertising and Signage*, results in undesirable and unacceptable impacts on the streetscape.
  3. The proposed development is not consistent with the objectives of Sections 2 and 3 of the Transport Corridor Outdoor Advertising and Signage Guidelines 2017, in that it results in unacceptable visual clutter, reducing sign spacing, adverse impacts on the streetscape, and contributes to driver distraction in the immediate locality.
  4. The proposed development is not consistent with the requirements of Section 4 of the Transport Outdoor Advertising Signage Guidelines 2017, in that it fails the public benefit test by offering no public benefit.
  5. Pursuant to the provisions of *Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979*, it is considered that the proposed development is not consistent with the objectives of the Botany Bay Development Control Plan 2013 in that it is not sympathetic to the surrounding built form, does not appropriately address the local streetscape of the precinct, has an unacceptable impact on the streetscape, adds to visual advertising clutter and is not compatible with the desired future character of the precinct.
  6. Pursuant to the provisions of *Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979* the proposed development is likely to result in the following adverse environmental impacts:
    - a) Adds to visual advertising clutter;
    - b) Unsympathetic to the desired and future character of the precinct;
    - c) Results in reduced sign spacing due to too many signs in a visible sequence; and
    - d) Contributes to driver distraction in the immediate locality.
  7. The proposed development, pursuant to the provision of *Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979*, is not

considered suitable for the site in terms of the type of development as it is excessive in terms of size, results in undesirable and unacceptable impacts on the streetscape and adverse impact on the surrounding built environment.

8. Having regard to the issues raised in the submission 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 visual advertising clutter, streetscape appearance and sets an undesirable precedent within the area.
9. 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 and is likely to set an undesirable precedent.

Name	For	Against
Marcia Doheny	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Robert Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Lindsey Dey	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Patrick Ryan	<input checked="" type="checkbox"/>	<input type="checkbox"/>

#### Reason for the Panel's Determination

- The Panel adopts the reasons for refusal contained in the Council officer's report.
- The Panel also particularly notes the existing proliferation of signs in the area and considers that to add two more substantial signs in that location would be a poor outcome in terms of the streetscape.
- In addition, the Panel is concerned about the loss of three trees in an already harsh environment.

#### **6.2 DA-2016/325/E - 16-20 Princess Street, Brighton Le Sands - Modification to increase building height by 100mm, increase top of lift overrun by 500mm, and amend condition no. 83**

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

The following person spoke:

- Mr Alex Scionti, owner, spoke for the officer's recommendation and responded to the Panel's questions.

## Determination

That Development Application No DA-2016/325/E, being a Section 4.55(1A) application to amend Development Consent Number DA-2016/325, for the increase in height of the building by 100mm, the increase of the lift overrun by 500mm and modification of condition no. 83 at 16-20 Princess Street, Brighton Le Sands is APPROVED and the consent amended in the following manner:

### A. By amending Condition Nos. 2 and 83 to read:

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
Material Samples, Drawing No. A-0000	Architecture and Building Works	November 2016	
Basement 03, Drawing No. A-007, Issue F	Architecture and Building Works	19/12/2016	20/12/2016
Basement 02, Drawing No. A-008, Issue F	Architecture and Building Works	19/12/2016	20/12/2016
Basement 01, Drawing No. A-009, Issue F	Architecture and Building Works	19/12/2016	20/12/2016
Ground Floor Plan, Drawing No. A-010, Issue J	Architecture and Building Works	13/07/2017	20/12/2016
First Floor Plan, Drawing No. A-011, Issue H	Architecture and Building Works	13/07/2017	20/12/2016
Second Floor Plan, Drawing No. A-012, Issue H	Architecture and Building Works	13/07/2017	20/12/2016
Third Floor Plan, Drawing No. A-013, Issue H	Architecture and Building Works	13/07/2017	20/12/2016
Fourth Floor Plan, Drawing No. A-014, Issue H	Architecture and Building Works	13/07/2017	20/12/2016
Fifth Floor Plan, Drawing No. A-015, Issue H	Architecture and Building Works	13/07/2017	20/12/2016
Sixth Floor Plan, Drawing No. A-016, Issue H	Architecture and Building Works	13/07/2017	20/12/2016
Seventh Floor Plan, Drawing No. A-017, Issue H	Architecture and Building Works	13/07/2017	20/12/2016
Eighth Floor Plan, Drawing No. A-018, Issue H	Architecture and Building Works	13/07/2017	20/12/2016
<i>Elevation North West , Dwg no. A-032, Issue J</i>	<i>Architecture and Building Works</i>	<i>11/2/2019</i>	<i>13/2/2019</i>
<i>Elevation North East, Dwg no. A-031, Issue I</i>	<i>Architecture and Building Works</i>	<i>11/2/2019</i>	<i>13/2/2019</i>
<i>Elevation South East, Dwg no. A-034, Issue I</i>	<i>Architecture and Building Works</i>	<i>11/2/2019</i>	<i>13/2/2019</i>
<i>Elevation South West, Dwg no. A-033, Issue I</i>	<i>Architecture and Building Works</i>	<i>11/2/2019</i>	<i>13/2/2019</i>

<i>Roof/site plan, Dwg No. A-019, Issue J</i>	<i>Architecture and Building Works</i>	<i>11/2/2019</i>	<i>13/2/2019</i>
<i>Section , Dwg no. A-030, Issue H</i>	<i>Architecture and Building Works</i>	<i>11/2/2019</i>	<i>13/2/2019</i>

83. 41 off street basement car spaces shall be provided in accordance with the submitted plan and shall be line marked. The pavement of all car parking spaces, manoeuvring areas and internal driveways shall comply with Australian Standard AS3727 - guide to Residential Pavements.

**B. The addition of conditions 25A and 25B:**

- 25A. A structural engineer's certificate is required to be submitted stating that the extension to the lift overrun and the additional building height are structurally adequate.

- 25B. A Building Information Certificate for the lift overrun extension and also the excess building height is required to be obtained from Council.

<b>Name</b>	<b>For</b>	<b>Against</b>
Marcia Doheny	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Robert Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Lindsey Dey	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Patrick Ryan	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Reason for the Panel's Determination**

- The Panel is satisfied that the application is of minimal environmental impact, there being no impacts on view or solar access.
- The Panel is also satisfied that the proposed development is substantially the same development as the development that was approved before any modifications.
- The Panel adopts the reasons contained in the Council Officer's report.
- The Panel is satisfied that the application did not need to be notified and that no submissions were received.

**6.3 DA-2007/23/2/F - 30 - 32 Guess Avenue & 4 Lusty Street, Wolli Creek - Modification to the volume of rainwater tanks - WSUD requirements, BASIX and Condition 99.**

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

The following people spoke:

- Mr Edgard Zoghbi, Director, EZE Drainage, spoke for the officer's recommendation and responded to the Panel's questions.

**Determination**

- 1 The Panel is satisfied that the proposed development will be of minimal environmental impact and that it is substantially the same development as the development originally approved before any modifications.
- 2 The Panel notes that one submission was received relating to flooding.
- 3 That Application No. DA-2007/23/2/F, being a Section 4.55(1A) application to amend Development Consent Number 2007/23, for modifications to the volume of rainwater tanks - WSUD requirements, BASIX and Condition 99, at 30 - 32 Guess Avenue & 4 Lusty Street, Wollie Creek is APPROVED and the consent amended in the following manner:

**A. By Amending conditions 2, 6, 99 and 105 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
North Elevation A1020-A Revision B	Level 33 Architectural Division	-	11/10/2018
East Elevation A1021-A Revision B	Level 33 Architectural Division	-	11/10/2018
South Elevation A1022-A Revision B	Level 33 Architectural Division	-	11/10/2018

West Elevation A1023-A Revision B	Level 33 Architectural Division	-	11/10/2018
North Elevation A2022-B Revision B	Level 33 Architectural Division	-	11/10/2018
East Elevation A2023-B Revision B	Level 33 Architectural Division	-	11/10/2018
South Elevation A2024-B Revision B	Level 33 Architectural Division	-	11/10/2018
West Elevation A2025-B Revision B	Level 33 Architectural Division	-	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
<i>Stormwater Management Plans Job No 17061, issue C, DWG no. D1, D2, D3, D4, D5, D6, D7, D8, D9, D10, D11, D12, D13</i>	<i>EZE Hydraulic Engineers</i>	<i>January 2019</i>	<i>7 January 2019</i>
<i>Concept drainage plans Job No 17061, issue B, DWG no. D1, D2, D3, D4, D5</i>	<i>EZE Hydraulic Engineers</i>	<i>November 2018</i>	<i>27 November 2018</i>
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]

[Amendment F — Section 4.55(1A) amended on 26 March 2019]

6. *The development must be implemented and all BASIX commitments thereafter maintained in accordance with BASIX Certificate Number 214652M\_04 other than superseded by any further amended consent and BASIX certificate.*

**Note:** Clause 145(1)(a) 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: -

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

**Note:** Clause 154(3)(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]

[Amendment F — Section 4.55(1A) amended on 26 March 2019]

99. *Details of proposed paving including levels and drainage pits are to be submitted to and approved by Council as part of a civil works approval, prior to the commencement of any associated civil works on site.*

[Amendment F — Section 4.55(1A) amended on 26 March 2019]

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. The detailed stormwater design plans shall be designed in accordance with Rockdale Technical Specification Stormwater Management (with attention drawn to section 2.6.2), reflect the stormwater management plans listed under condition 2 and include the provision for a minimum rainwater tank(s) capacity of 50000 Litres, with a catchment of the roof area of the development,*

*connected for internal stormwater re-use within the development consisting of all toilets, clothes washers and any external taps/landscape irrigation.*

*A WSUD Strategy report and MUSIC model must be prepared and submitted 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 shall meet or exceed the targets as described in the "Botany Bay & Catchment Water Quality Improvement Plan" which was prepared by the Sydney Metropolitan Catchment Management Authority in April 2011.*

*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 F — Section 4.55(1A) amended on 26 March 2019]*

**B. Addition of the following conditions:**

- 141A. *A positive covenant(s) pursuant to the Conveyancing Act 1919 shall be created on the title of the lots that contain the stormwater rainwater tanks and pump-out system facilities to provide for the maintenance of the stormwater rainwater tanks and pump-out system facilities.*

*[Amendment F — Section 4.55(1A) amended on 26 March 2019]*

*Reason for additional condition 141A is:*

- *To reinforce detailed design requirements for stormwater management in accordance with Rockdale Technical Specification Stormwater Management.*
- 141B. *Prior to the issue of an Occupation Certificate, certification from a licenced plumber shall be provided certifying the installation of the required minimum capacity 50000L rainwater tank(s) 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 any external taps/landscape irrigation on the site. Additionally, all pump systems, including all associated electrical and control systems, shall be tested and inspected by a suitably qualified and experienced person. Records of testing shall be retained and provided to the certifying hydraulic engineer and/or Principal Certifier.*

*[Amendment F — Section 4.55(1A) amended on 26 March 2019]*

*Reason for additional condition 141B is:*

- *To ensure the internal stormwater re-use is appropriately installed in accordance with section 7.2.4 of the Rockdale Technical specification stormwater management and to ensure that ongoing maintenance is provided by the future owner's corporation for the stormwater systems.*

**C. That the objector be notified of the Bayside Local Planning Panel decision.**

<b>Name</b>	<b>For</b>	<b>Against</b>
Marcia Doheny	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Robert Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Lindsey Dey	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Patrick Ryan	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Reason for the Panel's Determination**

- The Panel adopts the reasons set out in the Council officer's report and, in addition, the Panel is satisfied that the proposed modification will not have any adverse environmental impacts and will comply with Council's engineering requirements.
- One submission was received in relation to flooding in the area. The Panel has received advice from Council engineering staff that the modification complies with its stormwater management and water re-use requirements and that it will not have any adverse impacts on flooding.

**6.4 SF19/471 - DA-2018/1177 - 1675 Botany Road, Botany - Demolition of existing structures, construction of new 2 x two storey semi-detached dwellings and associated Torrens Title subdivision**

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

The following person spoke:

- Mr Hassain Chalich, applicant, spoke for the officer's recommendation and responded to the Panel's questions.

**Determination**

- 1 That the Bayside Local Planning Panel is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) of Botany Bay Local Environmental Plan 2013 and that the proposed development is in the public interest as it is consistent with the objective of the FSR Standard and the objectives for the R2 Low Density Residential zone.
- 2 That the Bayside Local Planning Panel approves the demolition of existing structures, construction of new 2 x two storey semi-detached dwellings and associated Torrens Title subdivision.
- 3 That any objectors be notified of the determination made by the Bayside Local Planning Panel.

Name	For	Against
Marcia Doheny	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Robert Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Lindsey Dey	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Patrick Ryan	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Reasons for the Panel's Determination**

- The Panel adopts the reasons set out in the Council officer's report.
- In relation to the submission received regarding privacy, the Panel notes that Condition 8 has been included in the consent which requires the balconies at the first floor rear of both proposed town houses, which will face the properties to the rear, to be deleted. The condition also requires the remaining windows in the bedrooms on the first floor to have a sill height of 1.5 m. This will further ameliorate any privacy impacts.
- The Panel considers that the proposed development is an appropriate design response for the site and the locality.

The Chairperson closed the meeting at 6:52 pm.

Certified as true and correct.

Marcia Doheny  
**Chairperson**

## Bayside Local Planning Panel

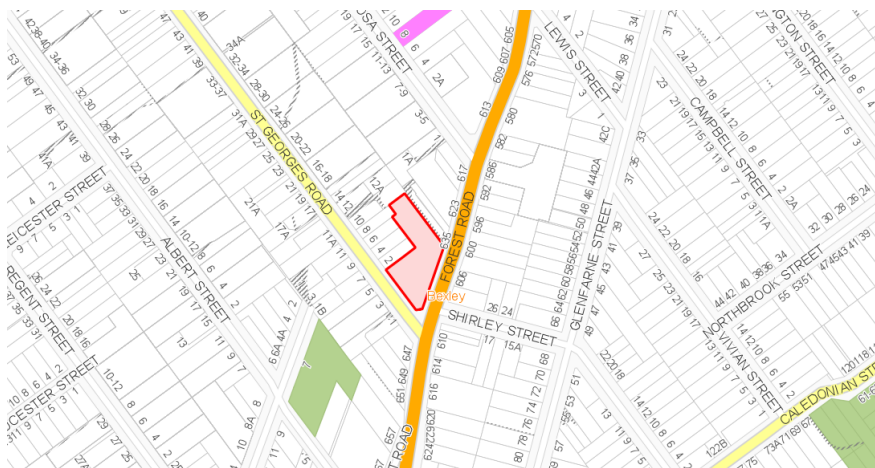
9/04/2019

Item No	<b>6.1</b>
Application Type	Development Application
Application No	DA-2018/344
Lodgement Date	07/12/2018
Property	<b>12/637-645 Forest Road, Bexley</b>
Ward	Botany Bay
Owner	Mr Alexander Boutenko
Applicant	Absolute Design & Construction
Proposal	Demolition of the existing pergola and construction of an enclosed sunroom and pergola to rooftop terrace.
No. of Submissions	Two (2)
Cost of Development	\$40,000.00
Report by	Michael McCabe, Director City Futures

## Officer Recommendation

- 1 That the panel considers the Clause 4.6 request to vary the floor space ratio (FSR) standard contained in Clause 4.4 of the RLEP 2011 and that it be satisfied that the variation will result in consistency with the objectives of the FSR standard contained in Clause 4.4 and the objectives of the R2 Low Density Residential zone and it is therefore in the public interest to vary the control.
- 2 The Development Application No. DA-2018/344, for the proposed demolition of the existing pergola and construction of an enclosed sunroom and pergola to rooftop terrace at 12/637-645 Forest Road, Bexley, is APPROVED, pursuant to Section 4.16(1) (a) of the Environmental Planning and Assessment Act 1979 and subject to conditions of consent attached to this report.
- 3 That objectors be advised of the Bayside Planning Panel's decision.

## Location Plan



**Attachments**

- 1 Planning Assessment Report [↓](#)
- 2 Clause 4.6 Submission [↓](#)
- 3 Statement of Environmental Effects [↓](#)
- 4 Site Plan [↓](#)
- 5 Shadow Plans [↓](#)
- 6 South & East Elevation & Section [↓](#)
- 7 North & West Elevation [↓](#)

# BAYSIDE COUNCIL

## Planning Assessment Report

### Application Details

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<b>Application Number:</b>	DA-2018/344
<b>Date of Receipt:</b>	7 December 2018
<b>Property:</b>	12 / 637 - 645 Forest Road, BEXLEY (Lot 12 SP 77480)
<b>Owner:</b>	Mr Alexander Boutenko
<b>Applicant:</b>	Absolute Design & Construction
<b>Proposal:</b>	Demolition of existing pergola and construction of an enclosed sunroom and pergola to roof top terrace
<b>Recommendation:</b>	Approved
<b>No. of submissions:</b>	Two (2)
<b>Author:</b>	Helen Lai
<b>Date of Report:</b>	19 March 2019

### Key Issues

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The key issues related to this application are:

- Strata Approval
- Floor Space Ratio
- Setting a precedence
- Streetscape
- Reducing Private Open Space

### Recommendation

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1. That the Panel considers the Clause 4.6 request to vary the floor space ratio (FSR) standard contained in Clause 4.4 of the RLEP 2011 and that it be satisfied that the variation will result in consistency with the objectives of the FSR standard contained in Clause 4.4 and the objectives of the R2 Low Density Residential zone and it is therefore in the public interest to vary the control.
2. That the Development Application No. DA-2018/344, for the proposed demolition of the existing pergola and construction of an enclosed sunroom and pergola to the rooftop terrace at 12/637-645 Forest Road, Bexley, be **APPROVED** pursuant to Section 4.16(1)(a) of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report.
3. That the applicant and objector(s) be advised of the Bayside Planning Panel's decision.

## Background

### History

Council's records show that the following applications were previously lodged for Unit 12:

- OA-2017/228 - Pergola approved for Unit 12/637-645 Forest Road, Bexley and information supplied by email on 19 December 2016.
- OA-2017/564 - Copy of building plans for Unit 12. Information supplied by email on 3 August 2017.

The following applications have previously been considered by Council in relation to the subject site:

- DA-1985/42 - Wholesale of TV antennas, approved 28 March 1985.
- DA-1997/299 - Warehousing, assembly and parking of acrylics, refused 21 January 1998.
- DA-1998/65 - Retail of acrylic products, approved 9 March 1998.
- DA-2004/858 - Mixed Use Development - Twenty-six (26) residential units, 208sq.m commercial floor space and basement car parking, approved 23 December 2004.
- DA-2004/858/A - Minor amendments incorporating driveway, basement carparking, addition of pergolas and planting on roof terraces, amend condition 19 to refer to Unit GO6 and provide fire egress adjacent to unit GO5, approved 11 May 2005.
- CC-2006/25 - Stage 1 - Stabilise the excavation of site and full remediation works, approved 13 July 2005.
- CC-2006/25/A - Mixed Use Development - 26 residential units. 2 shops, commercial units and basement car parking for 43 vehicles, approved 31 August 2005.
- DA-2004/858/B - Modification to internal layout of commercial Unit 2 and disabled access ramp, approved 5 July 2006.
- DA-2007/27 - Strata subdivision 28 lots, approved 31 August 2006.
- SC-2007/3 - Strata subdivision into 28 lots, approved 29 September 2006.
- DA-2007/79 - Shop 2 initial use as offices - approved 14 November 2006.
- CC-2007/56 - Shop 2 initial use as offices - approved 27 November 2006.
- DA-2007/146 - Initial use noise consultancy and associated signage, approved 27 November 2006.
- CC-2007/113 - Initial use noisy consultancy and associated signage, approved 27 November 2006.

### Proposal

Council is in receipt of a development application, DA-2018/344, at 12/637-345 Forest Road, Bexley, which seeks consent to carry out demolition of an existing pergola and construction of an enclosed sunroom and pergola to roof top terrace. The area of the proposal will be the same as the roof area of the existing pergola structure.

Specifically, the proposal consists of:

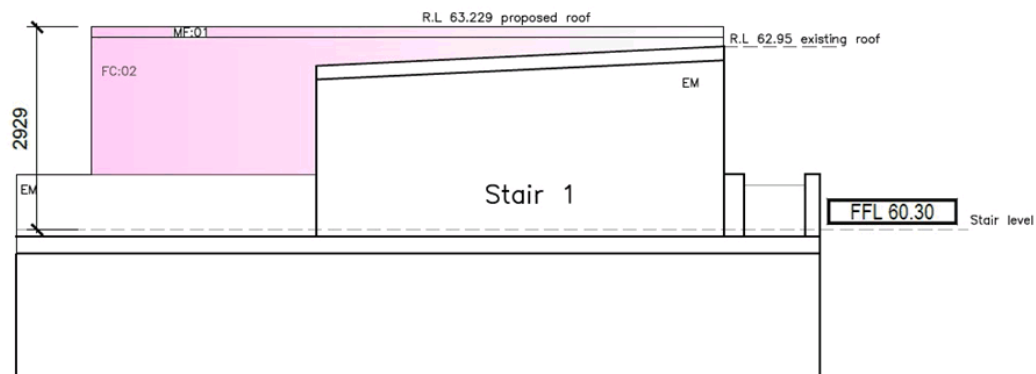
- Timber frame walls
- One (1) window and one (1) operable window on the eastern elevation
- One (1) bifold door on the southern elevation
- Timber frame roof with metal sheeting
- Area of sunroom approx. 27.2m<sup>2</sup>



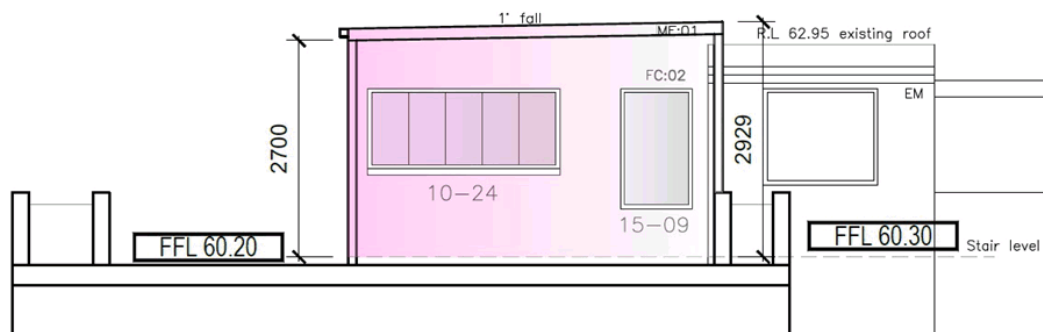
- Area of pergola approx. 14m<sup>2</sup>



**Figure 1 - Western Elevation**



**Figure 2 - Northern Elevation**



**Figure 3 - Eastern Elevation**

It should be noted that the size of the sunroom will be reduced by a condition imposed in the draft

Notice of Determination for a 900mm side setback to be provided on the western side of the sunroom to allow for maintenance of the planter boxes.

### Site location and context

The subject unit is known as Lot 12 SP 77480, 12/637-645 Forest Road, Bexley. The site is located on the western side of Forest Road with a secondary frontage to St Georges Road. The site is irregular in shape. The frontage to Forest Road is approximately 59.4m, a splay corner of 5.72m and the secondary frontage to St Georges Road is approximately 45.09m. The total site area is approximately 2703m<sup>2</sup>. The topography of the site is relatively flat.

Unit 12 comprises three (3) bedrooms with an internal area of approximately 103sq.m and existing balcony with a size of approximately 90sq.m at second floor level. The unit includes the roof terrace at third floor level with an area of approximately 105sq.m (which is the subject of this application). The roof terrace is accessed via the common stairwell, not via stairs located internally within the unit.

The site is located in the B1 - Neighbourhood Centre zone. The surrounding area is characterised by low and medium density residential dwellings to the rear and to the west, as well as, light industrial uses to the south-east. The immediate surrounding area includes a Hair Beauty Salon on the southern corner of Forest Road and St Georges Road, a BP Service Station located on the south-eastern corner of Forest Road and Shirley Street and single storey detached dwellings to the rear and along Forest Road.

The site is not a heritage item, however, is located in the vicinity of a heritage item.

The subject land is affected by Acid Sulfate Soils (ASS) Class 5, frontage to a State Road and Obstacle Limitation Surface (OLS).

## 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 No 65—Design Quality of Residential Apartment Development**

Consideration has been given to the relevant matters contained in SEPP 65. The proposal is not required to be considered by the Design Review Panel, and the applicant is satisfactory with regards to the nine (9) design quality principles contained in Schedule 1 of SEPP 65 as discussed below.

The table below includes an assessment of relevant matters from the Apartment Design Guide (ADG) and demonstrates that the proposal complies with the key objectives and design criteria of the ADG.

Clause	Objective	Design Criteria	Comments	Complies
<b>Part 4 – Designing the Building</b>				
<b>4B Natural Ventilation</b>	All habitable rooms are naturally ventilated	The building's orientation maximises capture and use of prevailing breezes for natural ventilation in habitable rooms.	There are no proposed changes to the layout of Unit 12. The proposed sunroom is located on the second level of Unit 12 and accessed via the common stairs. Unit 12 on Level 2 will continue to receive adequate cross-ventilation to habitable rooms with bedroom and living room windows to the west and south.	Yes.
<b>4D Apartment size and layout</b>	The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity.	<p>A fourth bedroom and further additional bedrooms increase the minimal internal area by 12m<sup>2</sup> each.</p> <p>4 bedroom = 102m<sup>2</sup></p>	<p>The proposed sunroom has been included in the calculation of internal area as the sunroom can be enclosed and has potential for future infill.</p> <p>Notwithstanding, Unit 12 has an existing internal area of approximately 103sq.m, therefore, complies for a 4 bedroom apartment.</p>	Yes.

<b>4E Private open space and balconies</b>	Apartments provide appropriately sized private open space and balconies to enhance residential amenity.	All apartments are required to have primary balconies as follows:  3+ bedroom apartments = 12m <sup>2</sup>	Unit 12 has access to more than 12m <sup>2</sup> including the 90sq.m balcony on the first floor level of the apartment and the rooftop terrace that will have a size of 44.6sq.m if this application is approved.	Yes.
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The design quality principles considered in the assessment of the proposal are found to be satisfactory.

The proposed development is consistent with the desired future character of the area. The development will improve the amenity of Unit 12 for the current occupants and future residents. The nature and scale of the development is minor in nature. The development will not add significant bulk and scale to the overall building and the proposed colours, materials and finishes will be consistent with the existing building as conditioned in the Notice of Determination to ensure the development presents appropriately to streetscape. The proposed development will replace the existing pergola, however, be reduced further in size by way of condition for a 900mm side setback to be provided on the south-western side to allow maintenance of the existing planter beds and the ceiling height to be lowered to 2.5m to better match the height of the existing stairwell roof.

The proposed development will not compromise use of the planter boxes for landscaping. An additional 900mm side setback on the south-western side will ensure ongoing maintenance of the planter boxes can be carried out.

The proposed development is considered to have performed adequately in respect to the objectives and design criteria contained within the ADG. The proposed sunroom and pergola is considered an appropriate development.

#### Rockdale Local Environmental Plan 2011

Relevant clauses	Compliance with objectives	Compliance with standard/provision
2.3 Zone B1 Neighbourhood Centre	Yes	Yes - see discussion
4.3 Height of buildings	Yes	Yes - see discussion
4.4 Floor space ratio	Yes	Yes - see discussion
4.6 Exceptions to development standards	Yes	Yes - see discussion
5.10 Heritage conservation	Yes	Yes - see discussion
6.3 On or near 20 ANEF (2033) contour	Yes	Yes - see discussion
6.4 Airspace operations	Yes	Yes - see discussion

### 2.3 Zone B1 Neighbourhood Centre

The subject site is zoned B1- Neighbourhood Centre under the provisions of Rockdale Local Environmental Plan 2011 (RLEP 2011). The proposal is for the construction of an enclosed sunroom and pergola to the rooftop terrace of Unit 12 ancillary to the mixed use development. The proposal constitutes a permissible development only with development consent. The objectives of the zone are:

- To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.
- To ensure that development within the zone does not detract from the economic viability of the commercial centres in Zone B2 Local Centre and Zone B4 Mixed Use within Rockdale.
- To ensure that the nature, scale and type of development is compatible with adjacent residential development.

The proposed development is consistent with the objectives of the zone.

### 4.3 Height of buildings

The maximum height shown for the land on the Height of Buildings Map is 13m.

The height of the proposed sunroom is 2.92m. The overall building height will be increased from 12.1m to 12.4m as a result of the proposed development. A condition is imposed in the draft Notice of Determination for the building height of the proposed sunroom to be lowered to 2.7m (top of the roof) and the internal ceiling height lowered to 2.5m to ensure the overall building is retained at 12.1m.

The proposal does not exceed the maximum height permissible.

### 4.4 Floor space ratio

The maximum FSR shown for the land on the Floor Space Ratio Map is 1:1.

The proposed gross floor area has been calculated as follows:

Approved GFA = 2754.98m<sup>2</sup> (1.92% variation)

Proposed enclosed sunroom = 27.2m<sup>2</sup> (22.7m<sup>2</sup> following proposed condition to provide a 900mm side setback)

Total GFA = 2782.18m<sup>2</sup>

Site Area = 2703m<sup>2</sup>

Proposed FSR = 1.03:1 (2.93% variation)

The mixed use development on site was originally approved with an FSR of 1.02:1 and a Clause 4.6 was submitted by the applicant to vary the FSR which was accepted. The proposed development for an enclosed sunroom increases the approved GFA by 27.2m<sup>2</sup> which will result in an FSR of 1.03:1.

A Clause 4.6 was submitted by the applicant and the variation is supported for the reasons discussed in the assessment of Clause 4.6 below.

### 4.6 Exceptions to development standards

Clause 4.6 allows a variation to a development standard subject to a written request by the applicant justifying the variation by demonstrating:

- (3)
- (a) *that compliance with the standard is unreasonable and unnecessary in the circumstances of the case, and*
  - (b) *that there are sufficient environmental planning grounds to justify the variation.*

In considering the applicant's submission, the consent authority must be satisfied that:

- (4)
- (a) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3)*
  - (b) *the proposed development will be in the public interest because it is consistent with the objectives of a 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*
  - (b) *the public benefit of maintaining the development standard*
  - (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

#### **Proposed variation to 'FSR'**

The applicant seeks variation to Clause 4.4(2) Floor Space Ratio, which states:

- (2) *The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.*

The proposal is for the demolition of an existing pergola and construction of an enclosed sunroom and pergola to the roof top terrace of Unit 12. The maximum floor space ratio for the land on the Floor Space Ratio Map is 1:1. The proposed development seeks an FSR of 1.03:1. The following table demonstrates the calculated gross floor area and floor space ratio for the proposed development.

	<b>Proposed</b>
<b>Total Gross Floor Area (GFA)</b>	2754.98m <sup>2</sup>
<b>Site Area</b>	2703m <sup>2</sup>
<b>Floor Space Ratio</b>	1.03:1
<b>Variation to Standard</b>	2.93%

#### **Objectives of 'FSR' Clause 4.4**

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

### Applicant's Submission

The applicant has provided a Clause 4.6 variation to the floor space ratio development standard which provides justification for the exceedance.

- *The overall height and bulk of the proposal is keeping with the existing awning structure and will not adversely impact on the adjoining buildings.*
- *The increase in FSR of 2.93% is minimal and well within the 10% variance threshold.*
- *There are no perceptible amenity impacts on neighbours from this proposal. Viewed in perspective and from the street, the nature and extent of this non-compliance is barely visible. The existing roof top awning is replaced with the sunroom, so the overall bulk and size of the roof top coverage has not increased by a significant amount.*
- *All three (3) objectives for FSR have been met: Objective (a) the overall bulk, scale and appearance of the proposal will not impact or differ from the existing buildings scale and bulk. Objective (b) is achieved because there is no change, real or perceived, affecting the amenity of neighbours. Objective (c) is achieved because there is no perceptible change in this regard and orientation of the existing dwellings ensure no additional loss of views, privacy or overshadowing will be felt to adjoining premises. Nothing adverse to the public interest can be meaningfully be suggested. Views in perspective, the nature and extent of this non-compliance is trivial.*

### Consideration of FSR Variation

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

1. Demonstrates why compliance with the development standard is unnecessary or unreasonable including use of the *Wehbe* test; and
2. Includes sufficient environmental planning grounds to justify contravening the development standard.

Consideration may therefore be given to the merits of the request.

### Assessment Comments

#### **4.6(3)(a) compliance with the development standard is unreasonable or unnecessary**

Officer's comments:

The applicant requested a variation to floor space ratio and a Clause 4.6 was submitted. Strict compliance with the development standard is considered unreasonable or unnecessary as the proposed development will be of minimal impact on the use or enjoyment of adjoining properties. The proposed bulk and scale of the development is minor and will not significantly increase the overall bulk and scale of the building. The proposed development will maintain an appropriate visual relationship and streetscape with the existing character of the area. The structure is located on the rooftop and set back from the street as such, will not be easily visible from the street or appear as a dominant feature of the building specifically following compliance with recommended conditions to reduce the height and

increase the setback to allow maintenance of the planter box. The proposal complies with the maximum height and will have minimal impacts on the use or enjoyment of adjoining properties. Neither will the development result in the generation of increased vehicular traffic. Compliance with development standard related to FSR within the locality is unreasonable and unnecessary in this circumstance as the objectives of the standard and the zone are achieved notwithstanding non-compliance with the standard.

**4.6(3)(b) there are sufficient environmental planning grounds to justify contravening the development standard**

Officer's comments:

There are sufficient environmental planning grounds to support the variation. The numerical variation to the FSR will not materially change the streetscape. The proposal maintains an appropriate visual relationship with the neighbouring properties and the existing and future character of the area. Consideration has been given to private open space, landscaping, visual privacy, setbacks and solar access requirements as a result of exceeding the maximum FSR which the proposal complies with. The proposal satisfies the objectives of Clause 4.4.

**4.6(a)(i) the applicant's request has adequately addressed the matter required to be demonstrated by subclause (3)**

The applicant's written submission adequately deals with the requirements of Clause 4.6 in accordance with the principles established in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118. Particularly, the applicant's submission demonstrates why compliance with the development standard is unnecessary or unreasonable including use of the Wehbe test and includes sufficient environmental planning grounds to justify contravening the development standard.

**4.6(4)(a)(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out**

Officer's comments:

The proposed variation to the floor space ratio standard will be in the public interest as it is consistent with the objectives of the B1 - Neighbourhood Centre zone. The nature, scale and type of development proposed is compatible with adjacent residential developments and does not detract from the economic viability of the commercial centres in Zone B2 Local Centre and Zone B4 Mixed Use within Rockdale. The development has been designed to achieve a high level of internal amenity, as well as retaining amenity to the adjoining properties in regard to solar access and privacy. In this regard, it is considered that the proposal is consistent with the objectives of zone and FSR standard, despite the numerical variation.

**(5)(a) the consent authority must also consider whether contravention of the development standard raises any matter of significance for State of Regional environmental planning, and**

Officer's comments:

The proposed variation to the FSR development standard will not result in any matters of significance



for State or regional environmental planning.

**(5)(b) the public benefit of maintaining the development standard**

Officer's comments:

The above justification demonstrates that the proposed FSR satisfies the objectives of the standard. It is considered that the variation does not raise any matters of public interest that has not already been addressed in Part S4.15(1)(d) of this report. There will be minimal impact on views or streetscape associated with the FSR variation.

Given that the proposal is consistent with the desired future character for the area as specified in the LEP and DCP, and that there are no adverse or unreasonable impacts to adjoining properties, it is considered that there are no public interest matters which would prevent a variation to the FSR control.

**(5)(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.**

The proposal does not exceed the maximum 10% variation to the FSR standard, as such, concurrence of the Secretary is not required.

**Summary**

The request to vary the RLEP FSR control pursuant to Clause 4.6 has been assessed in accordance with the provisions of Clause 4.6 and relevant principles established by the Chief Judge in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*.

The proposal and Council's assessment has concluded that compliance with the FSR 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. The applicant's Clause 4.6 variation is well-founded and the variation minor. Furthermore, the applicant's Clause 4.6 has demonstrated satisfaction of at least one of the five (5) different ways in which an objection to a development standard may be well-founded as set out in *Wehbe v Pittwater Council [2007] NSW LEC 827 (Wehbe)*. On this basis, it is recommended that the development standard relating to the maximum FSR for the site pursuant to Clause 4.4 of the Rockdale Local Environmental Plan 2011 be varied in the circumstances as discussed above.

**5.10 Heritage conservation**

The proposed development is not a heritage item, however, is located in the vicinity of heritage items No. 127 - Street plantings on Forest Road and No. 135 - Milk Depot Group (Art Deco Style Commercial Buildings) at 623 Forest Road. Therefore, the proposal requires consent in accordance with Clause 5.10 of RLEP 2011.

The proposed development is located on the rooftop and setback a reasonable distance from the heritage items. The proposed development is simple in design and will have minimal impact on the integrity or character of the heritage item. The qualities that make the heritage item and its setting significant will not be diminished.

**6.3 On or near 20 ANEF (2033) contour**

The development is on land that is not located near the Sydney (Kingsford-Smith) Airport, however the land is located on or near the 20 ANEF (2033) contour. The proposed development may result in an increase in the number of people affected by aircraft and in accordance with this clause, the proposed development requires noise mitigation measures.

A condition has been imposed in the draft Notice of Determination requiring an Acoustic Report to be submitted to the Principal Certifying Authority prepared by a qualified practicing acoustic engineer and demonstrate compliance with *AS2021: Acoustics - Aircraft Noise Intrusion*.

#### **6.4 Airspace operations**

The proposed development is affected by the Obstacle Limitation Surface (OLS) which is set at 70-80 metres to Australian Height Datum (AHD). The proposed height of the sunroom is 2.92 metres (RL63.229m to AHD) but will be lowered to 2.7m by way of condition. The overall building height will be as existing 12.1m (RL62.95m to AHD) and replace the existing pergola structure with a similar area and height. It is considered that the proposed development will have minimal adverse impact on the OLS and hence is acceptable with regards to 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:

<b>Relevant clauses</b>	<b>Compliance with objectives</b>	<b>Compliance with standard/provision</b>
4.1.1 Views and Vista	Yes	Yes - see discussion
4.1.2 Heritage Conservation - Vicinity of Heritage Item	Yes	Yes
4.2 Streetscape and Site Context - General	Yes	Yes - see discussion
4.3.1 Open Space and Landscape Design - Residential Flat Buildings	Yes	Yes
4.3.2 Private Open Space - Residential Flat Building/Shoptop housing	Yes	Yes - see discussion
4.4.2 Solar Access - Residential Flat Buildings and Shop Top Housing	Yes	Yes
4.4.3 Natural Lighting and Ventilation - Residential	Yes	Yes
4.4.5 Visual privacy	Yes	Yes - see discussion
4.5.2 Social Equity - Equitable Access	Yes	Yes
5.2 RFB Front Setback	Yes	Yes
5.2 RFB - Side Setbacks	Yes	Yes

#### **4.1.1 Views and Vista**

The siting of the proposed sunroom and pergola will have minimal adverse impacts on the surrounding views presently enjoyed by adjacent residents.

The development as proposed is located on the uppermost level, therefore, will not be directly visible from the street when viewed from a distance or in close proximity. Neither will the structure be a dominant feature of the skyline with a lowered building height to 2.7m. The addition of a sunroom to the rooftop of the existing building will not obstruct any significant views to, from and across the site or from adjoining balconies and terraces given that all other rooftop pergolas are open in form which still allows access to surrounding views.

Notwithstanding, a condition has been included in the draft Notice of Determination for a 900mm side setback to be provided on the south-western side which will further reduce views of the development from Forest Road and St Georges Road and ensure the planter bed can be maintained.



**Figure 1 - View of Unit 12 rooftop terrace from south of Forest Road.**



**Figure 2 - View of Unit 12 rooftop terrace from west of St Georges Road.**

#### 4.2 Streetscape and Site Context - General

The proposal is located in a B1 - Neighbourhood Centre Zone. The immediate context is characterised by a range of low to medium density residential developments and light industrial uses of varying heights, scale and intensity.

The proposed development is minor in nature and is consistent with the desired and future character of the area in terms of height, bulk and scale, and is generally appropriate in this context.

The sunroom is setback a reasonable distance from the street (10.46m from Forest Road and 5.63m from St. Georges Road) with an additional 900mm side setback on the south-western side to further reduce visibility of the structure from the street. The existing streetscape will be retained. The proposed materials, colours and finishes will be consistent with the existing building.

The overall building height at 12.1m complies with the required height requirements. There are no other changes proposed to the building facade. The building will continue to have balconies and terraces fronting Forest Road and St. Georges Road to provide casual surveillance. Existing commercial uses and landscaping on ground level is provided.

The building's main entrance is retained on ground level accessed from Forest Road and a second entrance from St. Georges Road.

Existing fences, landscaping, and other features are sited to clearly define public, semi public and private spaces.

#### 4.3.2 Private Open Space - Residential Flat Building/Shoptop housing

Private open space for Unit 12 is provided on two levels. The private open space on level 1 of the unit is accessed from the main living room. The second private open space area on level 2 (rooftop) is accessed via internal stairs. Sufficient private open space will continue to be provided with more than the minimum 12sq.m required for an apartment with three (3) or more bedrooms.

#### 4.4.5 Visual privacy

There are existing privacy impacts to adjoining properties as planter boxes installed have not been properly maintained to provide proper screening.

However, the sunroom is setback a reasonable distance from adjoining terraces. There is only one (1) window and one (1) stackable window on the north-east elevation. The stackable door is facing Forest Road as such, will not be directly facing any adjoining terraces.

A condition is imposed in the draft Notice of Determination for the planter boxes to be regularly maintained by the owners of Unit 12.

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

Clauses 92-94 of the Regulations outline the matters to be considered in the assessment of a development application. Clause 92 requires the consent authority to consider the provisions of AS 2601:1991 - *Demolition of Structures* when demolition of a building is involved. In this regard a condition of consent is proposed to ensure compliance with the standard.

Council's building surveyor has assessed the proposed development and imposed conditions of

consent including a Construction Certificate to be obtained.

All relevant provisions of the Regulations have been taken into account in the assessment of this proposal.

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

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

##### **Setting a precedence**

There are existing examples of pergolas already built on the rooftop of adjoining units and Unit 7 has enclosed their balcony. In this regard, there is already a precedence set by adjoining properties for other units to construct / enclose their pergolas.

The design of the proposed development is considered acceptable. Further lowering of the building height and a 900mm side setback from the south-western side will further reduce visibility of the structure from the street. Conditions imposed in the draft Notice of Determination will ensure materials, colours and finishes used are consistent with the existing building.

The development will improve the amenity to Unit 12 whilst retaining amenity to adjoining properties in regard to solar access and privacy. Further justification of the proposed development provided in this report demonstrate the proposed development will not set a poor precedence and is supported in this regard.

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

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

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

The development has been notified in accordance with the provisions of Rockdale DCP 2011. The development application was notified for a fourteen (14) day period from 13 December 2018 to 11 January 2019. One (1) submission was received. The issues raised in the submission are discussed below:

##### **Issue 1: Strata Approval**

Comment: Concerns were raised from the Strata Body Corporate (Homeworld Realty) about the legality of the owner's consent provided by Unit 12 to lodge the development application. An email received from Secretary of Executive Committee on 2 February 2019 explains that an original submission was approved by the committee for a similar development to be lodged to Council and a decision by Council would then be presented to the Body Corporate for consideration. A strata letter was attached to the DA submission from the Strata Manager, however, this DA was never lodged with Council.

The DA has now been submitted which is the subject of this development application. The applicant and Strata Body Corporate is to be advised of the Bayside Planning Panel's decision. However, it is

understood that the Body Corporate has held an Annual General Meeting on 2 February 2019 in consideration of this development again and has accepted the proposal subject to their own conditions being satisfied by the owner of Unit 12.

Issue 2: Wind

Comment: Concerns were raised by the Strata Body Corporate regarding the structural adequacy of the sunroom to withstand strong winds. The Strata Body Corporate requested an engineer's report to be submitted to Council. A condition has been included in the draft Notice of Determination requiring compliance with the BCA. However, this is now a matter for the applicant / owner of Unit 12 to satisfy the Body Corporate as part of their conditions of approval from Strata.

issue 3: Access to building for construction

Comment: Concerns were raised with regard to the method of construction. The applicant is responsible for undertaking the correct procedures for obtaining approval to use cranes or Council's footpath where required (conditions included in the Draft Notice of Determination as well as a Construction Certificate to be obtained). It is understood that the applicant and owner of Unit 12 must also satisfy separate conditions by the Body Corporate which includes the transport of all construction materials, equipment and debris in a manner reasonably directed by the Owners Corporation.

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

The proposed development is considered satisfactory having regard to the objectives and requirements of Rockdale Local Environmental Plan 2011 and Development Control Plan 2011. Impacts on adjoining properties have been considered and addressed. As such it is considered that the proposed development is in the public interest.

**S7.11 Contribution towards provision or improvement of amenities or services**

Section 7.11 Contribution does not apply given that the existing apartment is already three (3) bedroom and there are no applicable rate for a three (3) bedroom or more in the Rockdale Contributions Plan 2004.

*Civil Aviation Act, 1988*

The site is within an area that is subject to the Civil Aviation (Building Controls) Regulations 1988 made under the *Civil Aviation Act, 1988*.

**Civil Aviation (Building Control) Regulations 1988**

The Regulations require a separate approval from the Civil Aviation Safety Authority if a building or structure exceeds a prescribed height limit.

Section 5 Prohibition of the construction of buildings of more than 50 feet in height in specified areas

The proposed development is affected by the 15.24m Building Height Civil Aviation Regulations, however the proposed building height of the sunroom at 2.7m and overall building height of 12.1m will have minimal impact upon the height requirement in the regulations.

**Schedule 1 - Draft Conditions of consent**

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### General Conditions

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

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

Plan/Dwg No.	Drawn by	Dated	Received by Council
Site Plan / A100 of A104	Absolute Design & Construction	7 December 2018	22 January 2019
Floor Plan / A101 of A104	Absolute Design & Construction	7 December 2018	22 January 2019
Elevation / A102 of A104	Absolute Design & Construction	7 December 2018	22 January 2019
Elevation / A103 of A104	Absolute Design & Construction	7 December 2018	22 January 2019

3. All new building work must be carried out in accordance with the provisions of the Building Code of Australia (BCA).
4. **A Construction Certificate must be obtained from Council or an Accredited Certifier prior to any building work commencing.**
5. The proposed sunroom shall not be used for any commercial, industrial or business purposes without prior development consent.
6. The proposed pergola shall not be enclosed at any future time without prior development consent.
7. This approval is not to be construed as permission to erect any structure on or near a boundary contrary to the provisions of the Dividing Fences Act.

### Development specific conditions

The following conditions are specific to the Development Application proposal.

8. Colours and textures of materials used for the proposed sunroom and pergola shall be compatible with the existing building.
9. The plans submitted with the Construction Certificate must comply with the following requirements:
  - (a) The building height of the proposed sunroom shall be lowered to maximum 2.7m and the internal ceiling height lowered to maximum 2.5m and minimum of 2.4m to comply with the Building Code of Australia (BCA).
  - (b) A 900mm setback from the existing planter box on the south-western side of the proposed sunroom shall be provided.



10. Planter boxes along the northern, north-eastern, south-eastern and south-western edge of the rooftop terrace shall be regularly maintained by the owners of Unit 12.

### **Prior to issue of the construction certificate**

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

11. The following fees shall be paid to Council prior to the issue of a Construction Certificate. If payment is made after the end of the financial year, the amount shall be adjusted in accordance with Council's adopted fees and charges.
  - i. A Footpath Reserve Restoration Deposit of \$1,716.00. This is to cover repair of any damages, or other works to be done by Council. This includes construction, removal, or repair as required to: kerb and guttering, existing or new driveways; paved areas and concrete footpaths. The deposit may be lodged with Council in the form of a Bank Guarantee (Any proposed Bank Guarantee must not have an expiry date). The deposit will not be returned by Council until works are completed and all damage is restored and all specified works are completed by Council.
  - ii. An environmental enforcement fee of 0.25% of the cost of the works.
  - iii. A Soil and Water Management Sign of \$19.00.
12. 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.
13. Prior to Construction Certificate, an Acoustic 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 Consultant). The Acoustic Report must demonstrate that the materials proposed to be used in construction of the rooftop level will ensure compliance with *AS2021:2015 Acoustics - Aircraft Noise Intrusion*.

The plans submitted with the Construction Certificate must demonstrate compliance with the recommendations contained within the acoustic report.

### **Prior to commencement of works**

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

14. 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.
15. 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.
16. 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.

### **During demolition / excavation / construction**

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

- 17. 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.
- 18. Hours of construction shall be confined to between 7 am and 6.30 pm Mondays to Fridays, inclusive, and between 8 am and 3.30 pm Saturdays with no work being carried out on Sundays and all public holidays.
- 19. 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.
- 20. All waste generated on site shall be disposed of in accordance with the submitted Waste Management Plan.
- 21. 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. 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.
- 22. All demolition work shall be carried out in accordance with AS2601 – 2001: The Demolition of Structures and with the requirements of the WorkCover Authority of NSW.
- 23. The following conditions are necessary to ensure minimal impacts during construction:
  - i. Building, demolition and construction works not to cause stormwater pollution and being carried out in accordance with Section 2.8 of Council's Stormwater Pollution Control Code 1993. Pollutants such as concrete slurry, clay and soil shall not be washed from vehicles onto roadways, footways or into the stormwater system. Drains, gutters, roadways and access ways shall be maintained free of sediment. Where required, gutters and roadways shall be swept regularly to maintain them free from sediment.
  - ii. Stormwater from roof areas shall be linked via a temporary downpipe to an approved stormwater disposal system immediately after completion of the roof area.
  - iii. 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.

- iv. 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.
- v. Any noise generated during construction of the development shall not exceed limits specified in any relevant noise management policy prepared pursuant to the Protection of the Environment Operations Act, 1997 or exceed approved noise limits for the site.

### **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.

- 24. An Occupation Certificate shall be obtained in relation to the approved works prior to any use or occupation of the building.
- 25. Where Council's park/reserve is damaged as a result of building work or vehicular building traffic, this area shall be restored by Council at the applicant's expense. Repairs shall be completed prior to the issue of the Occupation Certificate.

### **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. *Dial Before You Dig*

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

- c. All asbestos fibre demolition material and asbestos dust shall be handled, stored and removed in accordance with the relevant legislation and guidelines including:
  - Work Health and Safety Act 2011
  - Work Health and Safety Regulation 2011
  - Code of Practice for the Safe Removal of Asbestos [NOHSC: 2002 (2005)]
  - Code of Practice for the Management and Control of Asbestos in Workplaces [NOHSC: 2018 (2005)]
  - Protection of the Environment Operations (Waste) Regulation 2005

All work procedures shall be devised to minimise the release of dust and fibres. A checklist of safety precautions when working with asbestos is available in Health & Safety Guidelines prepared by the WorkCover Authority of NSW. Collection, storage and transportation is subject to the Protection of the Environment Operations (Waste)

Regulation 2005.

- d. Hazardous and/or intractable wastes arising from the demolition process shall be removed and disposed of in accordance with the requirements of the relevant statutory authorities (NSW WorkCover Authority and the NSW Environment Protection Authority), together with the relevant regulations, including:
  - Work Health and Safety Act 2011
  - Work Health and Safety Regulation 2011
  - Protection of the Environment Operations (Waste) Regulation 2005.
- e. Demolition and construction shall minimise the emission of excessive noise and prevent "offensive noise" as defined in the Protection of the Environment Operations Act 1997. Noise reduction measures shall include, but are not limited to the following strategies:
  - choosing quiet equipment
  - choosing alternatives to noisy activities
  - relocating noise sources away from affected neighbours
  - educating staff and contractors about quiet work practices
  - informing neighbours of potentially noise activities in advance
  - equipment, such as de-watering pumps, that are needed to operate on any evening or night between the hours of 8 p.m. and 7 a.m. or on any Sunday or Public Holiday, shall not cause a noise nuisance to neighbours of adjoining or nearby residences. Where the emitted noise exceeds 5 dB(A) [LAeq(15m)] above the background sound level [LA90] at the most affected point on the nearest residential boundary at any time previously stated, the equipment shall be acoustically insulated, isolated or otherwise enclosed so as to achieve the sound level objective.
- f. The removal, cleaning and disposal of lead-based paint shall conform with the requirements of the NSW Environment Protection Authority's guideline - "Lead Alert - Painting Your Home".
- g. All site works shall comply with the occupational health and safety requirements of the NSW WorkCover Authority.
- h. In the event of any inconsistency between conditions of this approval and the drawings/documents referred to in condition 2, the conditions of this approval prevail.

22-02-19



### Clause 4.6 Variance

**For:** Bayside Council  
**Re:** 12/637-645 Forest Road, Bexley- DA2018/344

LEP Clause 4.6 Submission - Floor Space Ratio

1. What is the name of the environmental planning instrument that applies to the land?  
[Rockdale LEP 2011](#)

2. What is the zoning of the land?  
[The land Zoning is B1](#)

3. What are the objectives of the zone?

[Objectives of zone](#)

- To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.
- To ensure that development within the zone does not detract from the economic viability of the commercial centres in Zone B2 Local Centre and Zone B4 Mixed Use within Rockdale.
- To ensure that the nature, scale and type of development is compatible with adjacent residential development.

4. What is the development standard being varied?

[Floor Space Ratio](#)

5. Under what clause is the development standard listed in the environmental planning instrument?

[Clause 4.4](#)

6. What are the objectives of the development standard?

[\(1\) The objectives of this clause are as follows:](#)

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

7. What is the numeric value of the development standard in the environmental planning instrument?

[Required FSR for Zone B1 is 1:1](#)

22-02-19

8. What is proposed numeric value of the development standard in your development application?

Floor Space Ratio			
Current Floor Space Ratio	Maximum Floor Space Ratio under RLEP2011	Proposed Floor Space Ratio	Percentage Variation
1.01:1	1:1	1.03:1	2.93%

9. What is the percentage variation (between your proposal and the environmental planning instrument)?

Percentage Variation of 2.93%.

10. Exceptions to development standards

(1) The objectives of this clause are as follows:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

11. How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

In *Wehbe v Pittwater Council* [2007] NSWLEC827 (Wehbe), Preston CJ identified five ways in which an applicant might establish that compliance with a development standard is unreasonable or unnecessary. While *Wehbe* related to objections pursuant to State Environmental Planning Policy No. 1 – Development Standards (SEPP 1), the analysis can be of assistance to variations made under clause 4.6 because subclause 4.6(3)(a) uses the same language as clause 6 of SEPP 1

*Test 1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard:*

The proposed sunroom is to replace an existing awning structure on the roof that is not in a structurally sound condition. The overall height and bulk of the proposal is keeping with the existing awning structure and will not adversely impact on the adjoining buildings. There are quite a few roof top terraces with large awning structures to other Units of the Building. The increase in FSR of 2.93% is minimal and well within the 10% variance threshold.

There are no perceptible amenity impacts on neighbours from this proposal. Viewed in perspective and from the street, the nature and extent of this non-compliance is barely visible. The existing roof top awning is replaced with the sunroom, so the overall bulk and size of the roof top coverage has not increased by a significant amount.

*Test 2. The underlying object or purpose of the standard is not relevant to the development and compliance is unnecessary:*

Not applicable.

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

Not applicable.

*Test 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:*

Not applicable.

22-02-19

*Test 5. The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone:*  
Not applicable.

12. Are there sufficient environmental planning grounds to justify contravening the development standard?

All 3 objectives are met;

**Objective (a)**

The overall bulk, scale and appearance of the proposal will not impact or differ from the existing buildings scale and bulk; and

**Objective (b)**

Is achieved because there is no change, real or perceived, affecting the amenity of neighbours; and

**Objective (c)**

Is achieved because there is no perceptible change in this regard and orientation of the existing dwellings ensure no additional loss of views, privacy or overshadowing will be felt to adjoining premises.

ii) Nothing adverse to the public interest can meaningfully be suggested.

iii) Viewed in perspective, the nature & extent of this non-compliance is trivial.

**Conclusion:**

The assessment above demonstrates that compliance with the maximum floorspace ratio development standard contained in Clause 4.4 of RLEP 2011 is unreasonable and unnecessary in the circumstances of the case and that the justification is well founded on environmental planning grounds.

The proposed variation of the 'maximum FSR' development standard does not result in an over development of the site or any adverse impacts on the public domain.

Consistent with the aim of Clause 4.6 to provide an appropriate degree of flexibility to achieve better outcomes for and from development, a departure from the FSR development standard is considered appropriate in these circumstances. Despite the numerical non-compliance with the 'maximum FSR' development standard, the proposed development is considered to satisfy the objectives of the development standard.

On this basis, the Clause 4.6 variation is considered well founded and should be supported.

Yours sincerely,

**George Lagoudakis**  
**Director**

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**Statement Of Environmental Effects**

**Unit 12/637 Forest Rd Bexley**

**December 2018**

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**GLOSSARY OF TERMS**

Term	Description
<b>Council</b>	Bayside Council
<b>EP&amp;A Act</b>	Environmental Planning and Assessment Act 1979
<b>FSR</b>	Floor space ratio
<b>LGA</b>	Local Government Area
<b>RDCP 2011</b>	Rockdale Development Control Plan 2011
<b>RLEP 2011</b>	Rockdale Local Environmental Plan 2011

## EXECUTIVE SUMMARY

This Statement of Environmental Effects (SEE) has been prepared in support of a Development Application (DA) under Part 4 of the Environmental Planning and Assessment (EP&A) Act 1979 for the conversion of an apartment rooftop terrace into a sunroom at 12/637-645 Forest Road, Bexley NSW 2207 ('the site').

The DA has been prepared in accordance with the EP&A Act 1979 and the Environmental Planning and Assessment (EP&A) Regulation 2000.

This SEE addresses the relevant heads of consideration listed under section 79C of the EP&A Act 1979 and provides an assessment of the relevant environmental planning instruments (EPIs) and the development control plan (DCP) that applies to the proposal, including the Rockdale Local Environmental Plan 2011 (RLEP 2011) and Rockdale Development Control Plan 2015 (RDCP 2011).

The proposal is consistent with the broad objectives of RLEP 2011. The proposed dwelling alterations and extension are permissible within the B1 Neighbourhood Centre zone applying to the site and is consistent with the objectives of the B1 Neighbourhood Centre zone.

An assessment of the potential environmental impacts of the development concludes that the proposal will not give rise to unacceptable impacts in terms of amenity, traffic and parking, noise, odour or other environmental impacts.

Based on the assessment undertaken, approval of the DA is sought.

## 1.0 INTRODUCTION

Absolute Design has been engaged by Mr Alexander Boutenko to prepare this Statement of Environmental Effects (SEE) in support of a Development Application (DA) for a dwelling extension at 12/637-645 Forest Road, Bexley (Application Premise). The SEE has been prepared in support of the proposed development and is found to be generally consistent with the provisions of the relevant policies and plans.

Consent is sought for the following items under this DA:

- Dwelling extension, involving the conversion of an apartment rooftop terrace into a sunroom.
- Construction of a pergola

The DA is not classified as 'integrated development' under Section 91 of the *Environmental Planning and Assessment Act 1979* (EP&A Act 1979).

The purpose of this SEE is to:

- Describe the site to which the application applies and its context;
- Describe the proposed development;
- Describe the legislative framework against which the application is to be assessed and determined; and
- Provide an assessment of the environmental impacts in accordance with the Section 79C of the EP&A Act 1979.

This DA is accompanied by the following documents:

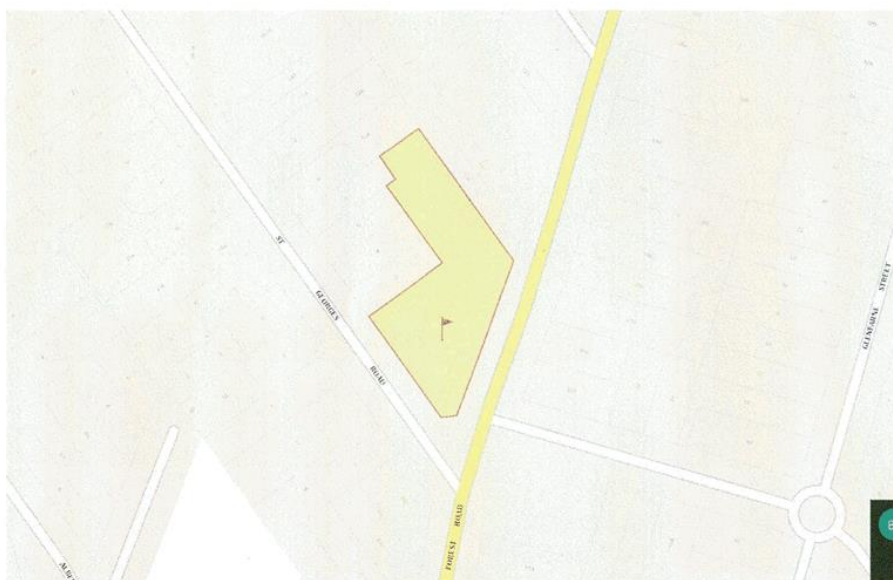
Plan/Document	Author	Date
Architectural Plans	Absolute Design	December 2018

## 2.0 SITE ANALYSIS

### 2.1 Site Location and Context

The Application Premise is located at 12/637-645 Forest Road, Bexley, within Bayside Council, and formerly part of the LGA of Rockdale City Council. The Application Premise is located approximately 2.3 kilometres from Rockdale town centre and approximately 15 kilometres from the Sydney CBD. The Application Site is legally described as Section 12 on Strata Plan 77480. The Application Premise has a total area of 341m<sup>2</sup> on a land parcel with a total area of 2698.53m<sup>2</sup>.

The Application Site is located on the third and fourth levels of a mixed-use apartment block, which contain commercial premises on the street level on Forest Road. The surrounding area of the Application Site contains a range of local shops, apartment blocks and single to double storey detached residential dwellings.



**Figure 1 – Subject site location map**

Source: Six Maps, 2017



**Figure 2 – Subject site aerial map**

*Source: Six Maps, 2017*

## 2.2 Existing Site Conditions

- **Views:** the site has access to views towards the Sydney CBD and Botany Bay.
- **Existing vegetation:** there is no significant vegetation on site.
- **Adjoining land uses:** adjoining lands are used for residential and commercial uses.
- **Vehicular access:** the Application Premise is served via a basement car park accessible from St Georges Road.

## 2.3 Planning History of Subject Site

Research conducted with the Bayside Council ePlanning portal reveals that no applications are associated with the Application Site.

## 2.4 The Locality and surrounding developments

The Application Premise is located on the corner of Forest Road and St Georges Road. The locality is predominantly characterised by low to mid density residential dwellings, of which single storey detached houses, and town houses are most common. Developments along Forest Road include a range of local shops, offices, automotive workshops, and houses.



### 3.0 THE PROPOSAL

This Development Application seeks the approval for:

- Construction of a sunroom on the rooftop terrace and attached pergola

Drawings by Absolute Design illustrate the development scheme below:

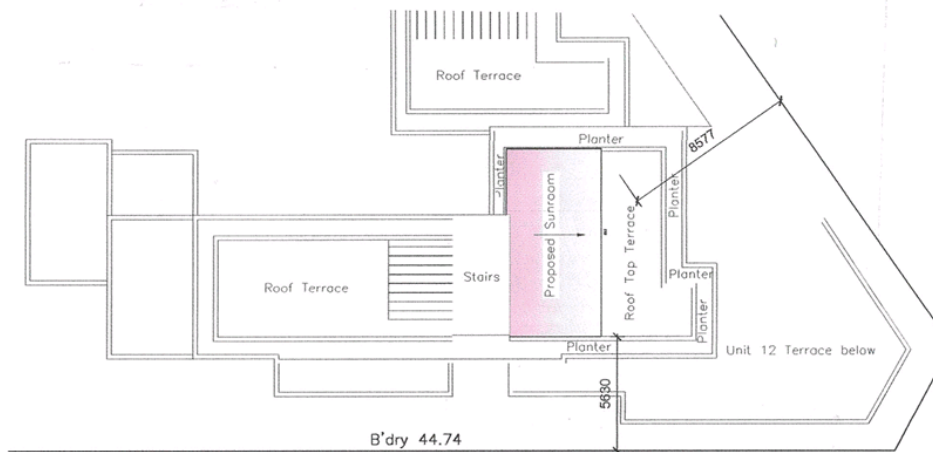


Figure 3 – Site plan of unit 12

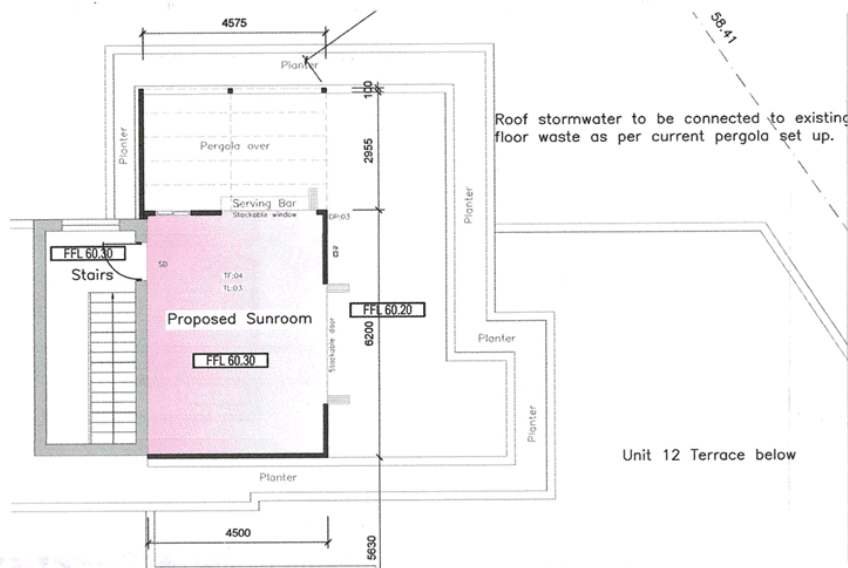


Figure 4 - Proposed changes to Unit 12

#### 4.0 LEGISLATIVE FRAMEWORK AND ENVIRONMENTAL ASSESSMENT

This Chapter identifies the applicable plans and policies to the site and proposed development, followed by an environmental assessment in accordance with the Section 79C of the Environmental Planning and Assessment Act 1979 which requires to take following matters into consideration:

- (a) *the provision of:*
  - (i) *any environmental planning instrument, and*
  - (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified the consent authority, and*
  - (iii) *any development control plan, and*
  - (iiia) *any planning agreement that has been entered into under section 93F, or any draft planning agreement that a development has offered to enter into under section 93F, and*
  - (iv) *the regulations, and*
  - (v) *any coastal zone management plan,**that apply to the land to which the development application relates.*
- (b) *the likely impacts of the development, including environmental impacts on both the natural and built environment, and social and economic impacts in the locality.*
- (c) *the suitability of the site for the development,*
- (d) *any public submissions,*
- (e) *the public interest.*

#### 4.1 Legislative Framework

The applicable planning controls that need to be addressed are:

- Rockdale Local Environmental Plan 2011; and
- Rockdale Development Control Plan 2011.

#### 4.2 Rockdale Local Environmental Plan 2011

The proposal is satisfactory with respect to the relevant provisions of the Rockdale Local Environmental Plan 2011 (RLEP 2011). The following sections provide assessments of the proposal against the RLEP 2011.

#### Part 1 Preliminary

##### 1.2 Aims of Plan

The particular aims of this Plan are as follows:

- (a) *to provide a vibrant area in which Rockdale residents can live, work and play,*
- (b) *to conserve the environmental heritage of Rockdale,*
- (c) *to maintain and improve residential amenity and encourage a diversity of housing to meet the needs of Rockdale residents,*
- (d) *to promote economic activity within Rockdale through the facilitation of commercial, employment-generating and tourism opportunities,*



- (e) to provide high quality open space and a range of recreational facilities to meet the demands of Rockdale and its visitors,*
- (f) to promote and enhance Rockdale's foreshores,*
- (g) to encourage residential and employment densities around transport nodes in order to provide sustainable transport options,*
- (h) to minimise impacts on land subject to environmental hazards, particularly flooding.*

The proposal complies with aforementioned objectives. The proposal maintains the residential amenity of the neighbourhood and provides an opportunity to diversify the housing stock within the Rockdale LGA. The development does not change the existing building footprint and does not introduce new activities incongruous with the pre-existing use of the neighbourhood. No adverse amenity impacts, including overlooking, overshadowing or encroachment on privacy, arise from the development.

#### **1.4 Definitions**

According to RLEP 2011, the proposed development is identified as a 'dwelling,' which is defined as: *A room or suite of rooms occupied or used or so constructed as to be capable of being occupied or used as a separate domicile.*

This dwelling is located within a 'residential flat building' which means:

*A building containing 3 or more dwellings, but does not include an attached dwelling or multi dwelling housing.*

### **Part 2 Permitted or prohibited development**

#### **2.3 Zone objectives and Land Use Table**

Under the RLEP 2011, the subject site is located within a B1 Neighbourhood Centre.

The objectives of the **B1 Neighbourhood Centre** are:

- To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.*
- *To ensure that development within the zone does not detract from the economic viability of the commercial centres in Zone B2 Local Centre and Zone B4 Mixed Use within Rockdale.*
- *To ensure that the nature, scale and type of development is compatible with adjacent residential development.*

The proposal satisfies the intent of the above objectives as follows:

- The proposal is a residential development that will support the retail, business and community uses of the neighbourhood
- The scale and type of dwelling extension will not introduce adverse impacts on the amenity of adjacent residential developments

According to Clause 3 under Zone B1 Neighbourhood Centre of RLEP 2011, the following land uses are permitted with consent:

*Boarding houses; Building identification signs; Business identification signs; Business premises; Child care centres; Commercial premises; Community facilities; Exhibition homes; Medical centres; Neighbourhood shops; Plant nurseries; Respite day care centres; **Shop top housing**; Shops; Any other development not specified in item 2 or 4*

The development is for an extension to a dwelling classified as 'shop top housing,' thus the development is permitted with consent.

#### **Part 4 Principal development standards**

##### **4.3 Height of buildings**

The subject land is in a building height control area of 13m. Under this DA, no changes to the existing building height are proposed.

##### **4.4 Floor space ratio**

Under the RLEP 2011, the floor space ratio control for the subject land is 1:1. The proposed development does not seek to increase the floor space of the subject land. The existing floor area for the site is approx 2,630sqm. The proposed Sunroom is 27.9sqm. Thus the proposed FSR will be 0.98:1.

#### **Part 5 Miscellaneous provisions**

##### **5.10 Heritage conservation**

The Clause 5.10 seeks to conserve the environmental heritage of Bayside Council, including heritage items, conservation areas, archaeological sites and Aboriginal objects and places of heritage significance.

The subject site is not identified as a heritage-listed item under RLEP 2011. The site is not a known archaeological site or Aboriginal place of heritage significance, or known to contain Aboriginal objects of heritage significance.

The subject site is in proximity to heritage item I127 – street plantings on Forest Road, between St Georges Road and Waratah Street as well as two doors down from heritage item I135 – Milk Depot Group (Art Deco style commercial buildings) at 623 Forest Road. However, the development will not generate any effect on these items.

##### **4.3 Rockdale Development Control Plan 2011**

This section provides an assessment of the proposal against relevant provisions of the Rockdale Development Control Plan 2011.

#### **Part 4 General Principles for Development**

### 4.3 Landscape Planning and Design

#### 4.3.2 Private Open Space

Control	Assessment	Compliance
<p>Each dwelling must be provided with a minimum private open space area as specified in the (following):</p> <p>Residential Flat Building/Shop top Housing</p> <ul style="list-style-type: none"> <li>Minimum Private Open Space Required – as per recommended external area for the relevant apartment type set out in Part 3 of the Residential Flat Design Code</li> <li>Required Dimensions – Minimum Depth of 2m</li> </ul>	<p>The Residential Flat Design Code recommends private open space provision in the form of a balcony, with the capacity to fit a dining table and four chairs for larger apartments; and a minimum depth of 2m. The rooftop terrace of the unit can accommodate a dining table and four chairs. The minimum depth of terrace is approximately 3m and the maximum depth of the terrace is approximately 7.8 metres.</p>	Complies
<p>Private open space areas are to act as extensions of indoor living areas</p>	<p>Private open space area is directly connected to, and adjoins the indoor living areas of the first level of unit 12. The private open space on the second level of unit 12 will act as an extension to the proposed sunroom.</p>	Complies
<p>For residential flat building and shop top housing, private open space is to be provided for each dwelling in the form of balconies, roof terraces or in the case of ground floor units, courtyards. The primary private open space of each unit must</p>	<p>Private open space is provided through the provision of roof terraces on both levels of the unit. The private open space on level 1 of the unit directly adjoins and is directly connected to the indoor living area; the second private open space area is located on the</p>	Complies

directly connect to the living area.	rooftop, and is accessible by internal stairs.	
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#### 4.4 Sustainable Building Design

##### 4.4.2 Solar Access

Control	Assessment	Compliance
<p>Development must be designed and sited to minimise the extent of shadows it casts on:</p> <ul style="list-style-type: none"> <li>▪ Private and communal open space within the development;</li> <li>▪ Private and communal open space of adjoining dwellings;</li> <li>▪ Public open space such as parkland and bushland reserves;</li> <li>▪ Solar collectors of adjoining development; and</li> <li>▪ Habitable rooms within the development and in adjoining developments.</li> </ul>	<p>The proposed development will create minimal impact in relation to overshadowing, due to its small footprint, location on the roof top and its removal of a pre-existing structure. The proposed sunroom addition will have an approximate depth of 4.5 and a width of 6.2m. The proposed development is situated at the rear of the roof top terrace, where there are no habitable spaces on which overshadow. Furthermore, the proposed development will replace the pre-existing pergola, which has a greater site coverage than the proposed sunroom. Thus, negligible overshadowing effects are introduced by this proposal.</p>	Complies
<p>Building form, separation and plan layout facilitates good solar access to internal and external living spaces.</p>	<p>The proposed sunroom will be the only habitable space located on the roof top. Its narrow depth will facilitate good solar access to both the internal and external spaces of the rooftop.</p>	Complies

Buildings must be sited to reduce overshadowing on adjoining properties by increasing setbacks, staggering of design, variations in roof form and/or reducing building bulk and height.	The proposed sunroom is sited at the rear of the roof top terrace, and thus will not affect solar access to the street. The sunroom will replace the pre-existing pergola, which has a greater site coverage. Therefore, it can be argued that solar access to adjoining properties is increased with this development.	Complies
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#### 4.4.3 Natural Lighting and Ventilation

Control	Assessment	Compliance
Buildings must comply with the following minimum ceiling heights to facilitate adequate natural lighting and ventilation:  Residential – minimum height <ul style="list-style-type: none"> <li>Habitable space: 2.7m</li> <li>Non-habitable space: 2.4m</li> </ul>	The proposed sunroom, as a habitable space, retains the same height of the existing apartment dwelling, which meets the minimum height requirement of 2.7m.	Complies
Buildings must be designed to maximise opportunities for cross flow ventilation by providing clear breeze paths and shallow building depths. The maximum internal plan depth of a residential apartment should be 18m from glass line to glass line. Developments that propose greater than 18m must demonstrate how satisfactory daylight and natural ventilation is achieved.	The proposed sunroom addition will have an approximate depth of 4.5 and a width of 6.2m. The sunroom will be serviced by bifold windows across the eastern elevation, and bifold doors across its south elevation width. Thus, the building will achieve satisfactory daylight and natural ventilation.	Complies
Windows that can open and which are designed to provide	The sunroom will be serviced by bifold windows across the eastern elevation, and bifold	Complies



controlled air flow must be installed.	doors across its south elevation width. These windows can open and will provide controlled air flow.	
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## Part 5 Building Types

### 5.2 Residential Flat Buildings

#### Apartment Size

Control	Assessment	Compliance
Buildings are to be designed in accordance with the following apartment size standards as recommended by the Residential Flat Design Code: <i>Three Bedroom</i> <ul style="list-style-type: none"> <li>internal area 124 sqm</li> <li>external area 24 sqm</li> </ul>	12/637-645 Forest Road Bexley comprises a 3 bedroom apartment that will have an internal area of 219 sqm under this proposal, exceeding the minimum requirement of 124 sqm. The subject site has an external site area exceeding the control of 24 square metres.	Complies
The apartment must meet the following minimum room size requirement: d. The size of all other habitable rooms must be a minimum 6.5m <sup>2</sup> in area with a minimum dimension of 2.4m <sup>2</sup> .	The proposed sunroom has an area of 27.9sq with a minimum dimension of 4.5m.	Complies

### 4.4 Environmental Planning and Assessment Regulation 2000

#### Division 7A Smoke Alarm

According to Building Code of Australia, a Class 2 building is 'a building containing 2 or more sole-occupancy units each being a separate building.'

Pursuant to Clause 186A (4):

*The owner of a dwelling within a class 2 building or, that is a class 4 part of a building, must ensure that the dwelling is equipped with smoke alarms that are located, on or near the ceiling:*

- (a) in any storey of the dwelling containing bedrooms—in every corridor or hallway associated with a bedroom, and if there is no such corridor or hallway associated with a bedroom, between each part of the dwelling containing the bedroom and the remainder of the dwelling, and*
- (b) in any other storey of the dwelling not containing bedrooms.*

The proposed development is part of a Class 2 building and thus Division 7A applies to the proposal. The development will involve the installation of appropriate smoke alarms.

#### **4.5 The likely impacts of the development**

The proposal seeks a dwelling extension, involving the conversion of an existing rooftop terrace into a habitable room, and the construction of a new pergola. The proposal will not result in a change of operation of the site as a residential dwelling.

Due to the nature and scale of the extension, the proposal will generate negligible environmental impacts on adjoining developments and the surrounding area. The extension to the dwelling will provide a positive economic outcome by providing housing in an established residential neighbourhood in close proximity to a neighbourhood centre, and diversifies the housing stock of Rockdale LGA. No adverse social or economic impacts will be generated from the development, and is such considered for approval.

#### **4.6 The Site Suitability**

The site is suitable for the proposed development given:

- The dwelling extension does not seek to increase the existing building footprint, as it involves the conversion of an existing apartment terrace into a habitable room.
- The use of the site for the purpose of dwelling extension is permissible in the RLEP 2011 and is consistent with the relevant objectives of the B1 Neighbourhood Centre zone.
- The site is well located within an established residential and neighbourhood centre with public transport and services, and thus the continuous use of the site for residential purposes is appropriate in the local context.
- Adequate infrastructure, including water, storm water drainage and sewage facilities, are available on site for the proposed development.

#### **4.7 The Public Interest**

The proposed development is considered to be in the public interest as it will:

- Provide additional habitable spaces to meet growing housing demands in Sydney Metropolitan Area; and
- The proposal remains within the residential use without introducing sensitive uses to the neighbourhood.

## 5.0 Conclusion

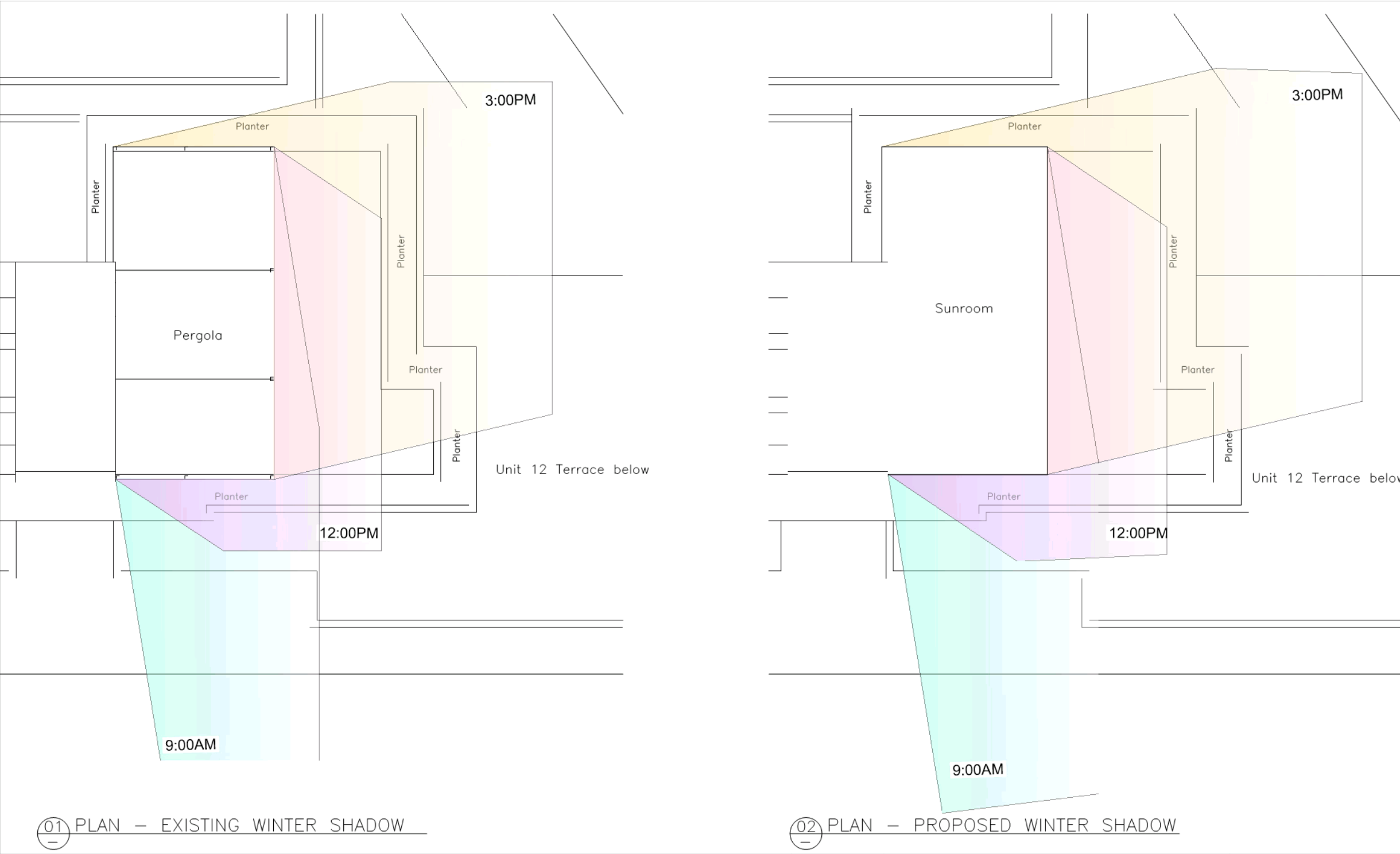
The Statement of Environmental Effects (SEE) has been prepared to consider the environmental, social and economic impacts of the conversion of a rooftop apartment terrace into a sunroom, and the construction of a new pergola at 12/637-645 Forest Road, Bexley. The report has addressed the applicable policies and plans, and has provided an environmental assessment in accordance with the Section 79C of the Environmental Planning and Assessment Act 1979.

The application proposes a permissible development within the subject site zone. The development seeks to extend a residential apartment dwelling through the construction of a sunroom. The application does not propose any changes to the existing building footprint or height. The proposal has taken appropriate considerations of amenity impacts, which ensures the development will minimise any adverse impacts on surrounding neighbourhood.

In conclusion, given the positive benefits of the proposal and compliance of relevant policies and plan, we conclude that the proposed development is worthy of approval by Bayside Council.



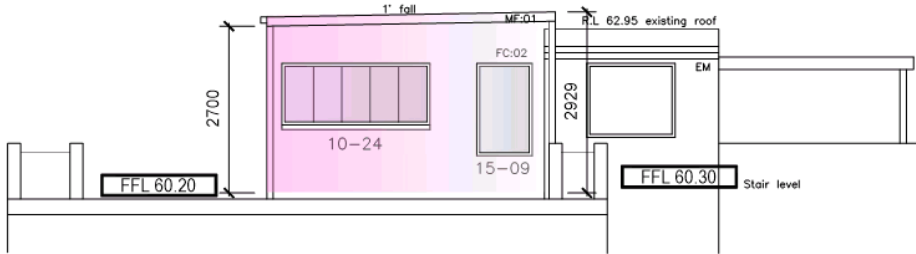




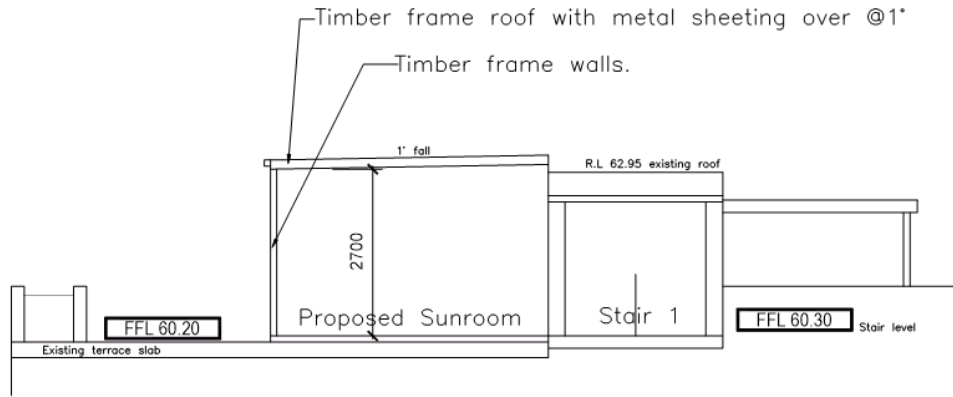
<b>Important Note:</b> Refer to written specification & schedules for further details of material finishes and installation. Refer to Structural Engineers separate documentation & any other documentation for specialist information. Services & structural information shown in Architectural documents indicative only. Comply with applicable Australian Standards & BCA. All setbacks to be confirmed on site.		<b>Cladding &amp; Finishes:</b> AL-01 Aluminium framed window AL-02 Aluminium sheeting (Alucobond) or similar BK-01 Brick Common BK-02 Brick Face BL-01 Reinforced concrete blockwork CA-01 Carpet, colour tbc CO-01 Concrete, structural slab CO-02 Concrete, off form CO-03 Concrete, steel trowel finish CO-04 Concrete, polished topping CO-05 Concrete slab, dark oxide, steel trowel finish (garage) CO-06 Concrete, dark oxide, broomed finish (driveway)		CO-07 Concrete, pool coping DP-01 Down pipe, concealed DP-02 Downpipe, Colourbond DP-03 Downpipe, PVC FB-03 Metal balustrade FB-04 Metal gate FB-05 Colourbond fence FC-01 6mm FC sheet, point finish FC-02 12mm FC sheet, point finish GB-01 Glass balustrade, toughened GB-02 Glass balustrade, toughened (pool) GL-01 Clear toughened glass GL-02 Obscure toughened glass GL-03 Clear toughened glass screen, frameless GL-04 Clear toughened glass mirror IN-01 Insulation, under slab IN-02 Insulation, ceiling-thermal IN-03 Insulation, rigid foam (living areas, balcony over) IN-04 Insulation, wall acoustic IN-05 Insulation, bulk-frame walls		JF-01 Joinery finish, Type 1,2,3 etc JT-01 Control joint JT-02 Silicone joint LV-01 Metal louvre, fixed, colour tbc LV-02 Metal louvre, adjustable, colour tbc MF-01 Metal Profiled sheeting, roofing, colour tbc MF-02 Metal finish, external, painted MF-03 Powdercoat finish, trim MF-04 Box gutter PL-01 13mm plasterboard, paint finish PL-02 13mm moisture resistant plasterboard, paint PL-03 Plywood substrate RN-01 Cement render, paint finish RF-01 Concrete roof tiles, style & colour tbc SC-01 Steel column SF-01 Stone, stair treads SF-02 Stone slab, Marble(kitchen) SF-03 Stone slab, vanities etc SF-04 Sandstone, solid block SF-05 Sandstone, cladding SF-06 Sandstone, steps		SF-08 Stone slab, Travertine(wetbar, fireplace) SK-01 Skylight, Velux or similar TF-01 Timber, hardwood door, solid core TF-02 Timber, plywood door, hollow core TF-03 Timber, joinery, select veneer TF-04 Timber flooring, sub structure TF-05 Timber flooring, solid timber planks TF-06 Timber flooring, floating floor TL-01 Floor tiles, natural stone, honed TL-02 Floor tiles, natural stone, sandblasted TL-03 Floor tiles, glazed porcelain or ceramic TL-04 Wall tiles, natural stone, honed TL-05 Wall tiles, glazed porcelain or ceramic TL-06 Pool tiles, mosaic 50x50 or similar TL-07 Pool tiles, wet edge, large format TL-08 Sandstone pavers TP-01 Cementitious topping TR-01 Timber skirting WP-01 Waterproof membrane, under slab WP-02 Waterproof membrane, under balconies, decks WP-03 Waterproof membrane, planters WP-04 Waterproof membrane, under pool tiles		<b>LEGEND Basic:</b> COS Check dimension on site. ANGL Approx Natural Ground level from Survey. ELND Existing landscape to be retained. EM Existing Masonry walls to be retained. ER Existing Roof to be retained. EP Existing Paving to be retained. FFL Finished floor level. FCL Finished ceiling level.	 <b>ABSOLUTE DESIGN &amp; CONSTRUCTION</b> a. 18 Smith St Bexley, NSW 2207 p. 0412 002 683 e. absolutedesign@optusnet.com.au w. www.absolutedesign.com.au Do not scale from drawings, all discrepancies to be brought to the attention of the Designer for clarification. This drawing is copyright & the property of the author. It must not be copied or used without the expressed authority of the Designer.	<b>Client:</b> Mr Alex Boutenko  <b>Project:</b> Bexley Terrace Unit 12/637 Forest Rd Bexley NSW 2207  <b>Drawn:</b> G.L.  <b>Checked:</b> G.L.  <b>Date Print:</b> 7/12/2018  <b>Scale:</b> 1:100 @ A3	<b>Drawing Title:</b> Plan: Site  <b>Project No:</b> 298  <b>Drawing No:</b> A104 of A104  <b>Revision:</b> S2  <b>Status:</b> Sketch Stage  <b>Not for Construction</b>
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03 ELEVATION - SOUTH



04 ELEVATION - EAST



05 ELEVATION - SECTION

<b>Important Note:</b> Refer to written specification & schedules for further details of material finishes and installation. Refer to Structural Engineers separate documentation & any other documentation for specialist information. Services & structural information shown in Architectural documents indicative only. Comply with applicable Australian Standards & BCA. All setbacks to be confirmed on site.		<b>Cladding &amp; Finishes:</b> AL-01 Aluminium framed window AL-02 Aluminium sheeting (Alucobond) or similar BK-01 Brick Common BK-02 Brick Face BL-01 Reinforced concrete blockwork CA-01 Carpet, colour tbc CO-01 Concrete, structural slab CO-02 Concrete, off form CO-03 Concrete, steel trowel finish CO-04 Concrete, polished topping CO-05 Concrete slab, dark oxide, steel trowel finish (garage) CO-06 Concrete, dark oxide, broomed finish (driveway)		<b>CO-07</b> Concrete, pool coping <b>DP-01</b> Down pipe, concealed <b>DP-02</b> Downpipe, Colourbond <b>DP-03</b> Downpipe, PVC <b>FB-03</b> Metal balustrade <b>FB-04</b> Metal gate <b>FB-05</b> Colourbond fence <b>FC-01</b> 6mm FC sheet, point finish <b>FC-02</b> 12mm FC sheet, point finish <b>GB-01</b> Glass balustrade, toughened <b>GB-02</b> Glass balustrade, toughened (pool) <b>GL-01</b> Clear toughened glass <b>GL-02</b> Obscure toughened glass <b>GL-03</b> Clear toughened glass screen, frameless <b>GL-04</b> Clear toughened glass mirror <b>IN-01</b> Insulation, under slab <b>IN-02</b> Insulation, ceiling-thermal <b>IN-03</b> Insulation, rigid foam (living areas, balcony over) <b>IN-04</b> Insulation, wall acoustic <b>IN-05</b> Insulation, bulk-frame walls		<b>JF-01</b> Joinery finish, Type 1,2,3 etc <b>JT-01</b> Control joint <b>JT-02</b> Silicone joint <b>LV-01</b> Metal louvre, fixed, colour tbc <b>LV-02</b> Metal louvre, adjustable, colour tbc <b>MF-01</b> Metal Profiled sheeting, roofing, colour tbc <b>MF-02</b> Metal finish, external, painted <b>MF-03</b> Powdercoat finish, trim <b>MF-04</b> Box gutter <b>PL-01</b> 13mm plasterboard, point finish <b>PL-02</b> 13mm moisture resistant plasterboard, point <b>PL-03</b> Plywood substrate <b>RH-01</b> Cement render, paint finish <b>RF-01</b> Concrete roof tiles, style & colour tbc <b>SC-01</b> Steel column <b>SF-01</b> Stone, stair treads <b>SF-02</b> Stone slab, Marble(kitchen) <b>SF-03</b> Stone slab, vanities etc <b>SF-04</b> Sandstone, solid block <b>SF-05</b> Sandstone, cladding <b>SF-06</b> Sandstone, steps		<b>SF-08</b> Stone slab, Travertine(wetbar, fireplace) <b>SK-01</b> Skylight, Velux or similar <b>TF-01</b> Timber, hardwood door, solid core <b>TF-02</b> Timber, plywood door, Hollow core <b>TF-03</b> Timber, select veneer <b>TF-04</b> Timber, flooring, sub structure <b>TF-05</b> Timber flooring, solid timber planks <b>TF-06</b> Timber flooring, floating floor <b>TL-01</b> Floor tiles, natural stone, honed <b>TL-02</b> Floor tiles, glazed porcelain or ceramic <b>TL-03</b> Wall tiles, natural stone, honed <b>TL-04</b> Wall tiles, glazed porcelain or ceramic <b>TL-05</b> Pool tiles, mosaic 50x50 or similar <b>TL-06</b> Pool tiles, edge, large format <b>TL-08</b> Sandstone pavers <b>TP-01</b> Cementitious topping <b>TP-02</b> Timber skirting <b>WP-01</b> Waterproof membrane, under slab <b>WP-02</b> Waterproof membrane, under balconies, decks <b>WP-03</b> Waterproof membrane, under planters <b>WP-04</b> Waterproof membrane, under pool tiles		<b>LEGEND Basic:</b> COS Check dimension on site. ANGL Approx Natural Ground level from Survey. ELND Existing landscape to be retained. EM Existing Masonry walls to be retained. ER Existing Roof to be retained. EP Existing Paving to be retained. FFL Finished floor level. FCL Finished ceiling level.		 <b>ABSOLUTE DESIGN &amp; CONSTRUCTION</b> a. 18 Smith St Bexley, NSW 2207 p. 0412 002 683 e. absolutedesign@optusnet.com.au w. www.absolutedesign.com.au Do not scale from drawings, all discrepancies to be brought to the attention of the Designer for clarification. This drawing is copyright & the property of the author. It must not be copied or used without the expressed authority of the Designer.		<b>Client:</b> <b>Mr Alex Boutenko</b>  <b>Project:</b> <b>Bexley Terrace</b> Unit 12/637 Forest Rd Bexley NSW 2207  <b>Drawn:</b> G.L.  <b>Checked:</b> G.L.  <b>Date Print:</b> 7/12/2018		<b>Drawing Title:</b> <b>Plan: Site</b>  <b>Project No:</b> <b>298</b>  <b>Drawing No:</b> <b>A103 of A104</b>  <b>Revision:</b> <b>S2</b>  <b>Status:</b> <b>Sketch Stage</b>  <b>Not for Construction</b>	
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**Bayside Local Planning Panel**

**9/04/2019**

Item No	<b>6.2</b>
Application Type	Development Application
Application No	DA-2018/48
Lodgement Date	15/03/2018
Property	<b>88 Stoney Creek Road, Bexley</b>
Ward	Bexley
Owner	AKJ Group Pty Limited
Applicant	Architecture Becka & Associates
Proposal	Demolition of existing structures and construction of a four (4) storey shop-top housing development comprising 10 residential units, one (1) commercial tenancy and basement car parking.
No. of Submissions	Four (4)
Cost of Development	\$2,118,956.22
Report by	Michael McCabe, Director City Futures

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**Officer Recommendation**

- 1 That the development application DA-2018/48 for the demolition of existing structures and construction of a four (4) storey shop-top housing development comprising 10 residential units, one (1) commercial tenancy and basement car parking, 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.
  - 2 That the objectors be advised of the Bayside Local Planning Panel's decision.
-



## Location Plan



## Attachments

- 1 Planning Assessment Report [↓](#)
- 2 Design Verification Statement [↓](#)
- 3 Statement of Environmental Effects [↓](#)
- 4 Basement Plan [↓](#)
- 5 Sections [↓](#)
- 6 Site & Roof Plan [↓](#)
- 7 Ground Floor Plan [↓](#)
- 8 Elevations North South & Internal Elevations [↓](#)
- 9 Elevations- East.West [↓](#)
- 10 Adjoining Sites Massing Diagrams [↓](#)
- 11 Shadow Diagrams Winter Solstice [↓](#)
- 12 Shadow Diagrams Summer Solstice [↓](#)
- 13 Shadow Diagrams Equinox [↓](#)
- 14 Shadow Diagrams 3D and Elevations [↓](#)
- 15 Revised Photomontage [↓](#)
- 16 Landscape Plan Specifications [↓](#)
- 17 Landscape Ground & First Floor [↓](#)
- 18 GFA Calculation Plan [↓](#)
- 19 Lift Specification [↓](#)
- 20 Design Review Panel Minutes [↓](#)

# BAYSIDE COUNCIL

## Planning Assessment Report

### Application Details

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<b>Application Number:</b>	DA-2018/48
<b>Date of Receipt:</b>	14 March 2018
<b>Property:</b>	88 Stoney Creek Road, BEXLEY (Lot 14 DP 913489)
<b>Owner:</b>	AKJ Group Pty Limited
<b>Applicant:</b>	Architecture Becka & Associates
<b>Proposal:</b>	Demolition of existing structures and construction of a four (4) storey shop-top housing development comprising 10 residential units, one (1) commercial tenancy and basement car parking
<b>Recommendation:</b>	Approved
<b>No. of submissions:</b>	Four (4)
<b>Author:</b>	Fiona Prodromou
<b>Date of Report:</b>	27 March 2019

### Key Issues

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The isolation of 86 Stoney Creek Road was considered in the assessment of this application. The applicant addressed the relevant Land & Environment Court Planning Principles in relation to Site Isolation as established in *Karavellas v Sutherland Shire Council* [2004] NSWLEC 251 and *Melissa Grech V Auburn Council* (2004) NSWLEC40. These principles were also considered in the assessment of this application.

The proposal complies with the height and FSR standards for the site.

Whilst the subject site does not adhere to the minimum 18m frontage requirement as required by Rockdale DCP 2011, i.e. 15.24m frontage, the proposal has been designed to respond to the constraints and opportunities of the site and satisfies the objectives of the frontage requirement of clause 4.1.9 - Lot size and Site Consolidation - Mixed use .

A total of four (4) submissions have been received in relation to the proposed development. The issues raised have been addressed in the Planning Assessment Report.

The proposal is recommended for Approval subject to conditions of consent.

### Recommendation

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1. That the development application DA-2018/48 for the demolition of existing structures and construction of a four (4) storey shop-top housing development comprising 10 residential units,

one (1) commercial tenancy and basement car parking, 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.

2. That the objectors be advised of the Bayside Local Planning Panel's decision.

## Background

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### History

DA-1997/236 Approved 12 September 1997

Proposed use of premises as a retailer outlet - building materials, specialising in windows and doors.

DA-2018/48 Submitted to Council 14 March 2018

Demolition of existing structures and construction of a four (4) storey shop-top housing development comprising 10 residential units, one (1) commercial tenancy and basement car parking

21 March - 16 April 2018

Public Notification

### Proposal

The proposal seeks to undertake the demolition of existing structures on site and construct a four (4) storey mixed use development comprising basement car park, 1 x commercial premises at ground level and 10 residential units with associated private and communal open spaces at levels above. The proposal comprises as follows;

#### Basement

- 11 car parking spaces (including 2 accessible spaces)
- 9 residential storage rooms
- lift / stair access
- 3 motorbike / 1 bicycle space

#### Ground Floor

- Vehicular access adjoining western side boundary of site.
- 77.5sq/m retail premises with kitchenette and accessible bathroom facilities.
- Fire booster / hydrant incorporated into commercial frontage
- Independent residential pedestrian access via 1m wide walkway adjoining commercial premises
- Fire isolated pathway adjoining eastern boundary
- Loading bay directly behind retail premises
- Associated lift / stair pedestrian access
- Garbage room with ventilation tower adjoining
- Cleaners store room
- Rainwater tank adjoining western boundary within rear of site
- 1 x motorbike & 1 x bicycle space
- Rear communal landscaped area with associated planting, paving, seating and the like
- 5 car spaces (1 x accessible / commercial, 2 retail, 2 visitor with 1 visitor doubling as a car wash bay)

#### First Floor

- Masonry & glass awning structure along frontage of site
- Central atrium communal open space area incorporating planting and seating



- Four (4) residential units (2 x 2 bed adaptable / 1 x studio / 1 x 3 bed)
- Balcony of dwelling 1 faces into the site and is screened with a 1.4m high planter edge and 400mm high white laminated glass above. This results in a 1.8m high screen between the POS of this unit and the central COS area for the development.
- Access via lift / fire rated stairs and communal walkway with glass balustrade

#### Second Floor

- Access via lift / fire rated stairs and communal walkway with glass balustrade
- Four (4) residential units (2 x 2 bed maisonette units / 1 x 1 bed / 1 x 2 bed)

#### Third Floor

- Second bedroom to units 5 & 6 and associated study
- 1 x 2 bed unit & 1 x studio

The proposal comprises a range of landscape and stormwater works on site, along with excavation in order to construct the proposed basement level. Communal areas on site incorporate a range of planting including ground covers, shrubs and trees with associated bench seating.



### **Site location and context**

The subject site is a rectangular shaped allotment with a frontage of 15.24m to Stoney Creek Road, a classified road and overall site area of 768.7sq/m as per the submitted survey. The subject site is relatively flat and is currently occupied by a single storey commercial building with double wide metal carport within the rear of the site adjoining the rear boundary. An existing driveway is located adjoining the eastern common boundary with 86 Stoney Creek Road.



*Aerial Context*



*Zone Extract*

The subject site is located within a small pocket of B1 - Neighbourhood Centre zoned land, which comprises a total of 6 properties fronting Stoney Creek Road. The site is adjoined by B1 zoned properties to the east and west and R2 - Low Density Residential properties to the north, adjoining the

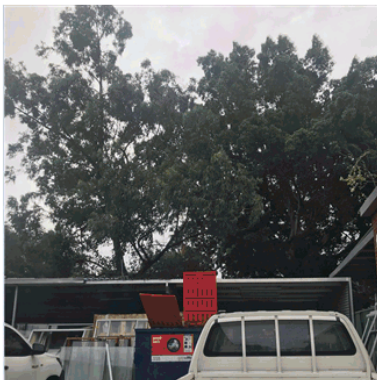
rear boundary. To the south the site fronts Stoney Creek Road, which is a classified RMS road. Opposite the site further to the south is an R2 low density residential area, with Bexley Oval, which is a heritage item as per RLEP 2011.

To the rear, the site shares a direct common rear boundary with 79 and 81 Abercorn Street. These properties comprise as follows and are illustrated below;

- 79 Abercorn Street, comprises a single storey semi detached dwelling house
- 81 Abercorn Street comprises a single storey detached dwelling house.



A range of attached and detached dwellings exist within Abercorn Street. The three properties located at 77, 79 and 81 Abercorn Street comprise mature established trees within their rear private open spaces. Trees within rear residential properties as viewed from within the rear of the subject site are illustrated below.



To the east the site adjoins 86 Stoney Creek Road, this property comprises a single storey commercial building which encompass the entire site. This property is currently utilized for vehicle repairs. To the west the site is adjoined by 90 Stoney Creek Road, which comprises a single storey commercial building fronting Stoney Creek Road and a two storey dwelling behind. The rear private open space of this site comprises a swimming pool, this is illustrated above. Further to the west are a range of commercial properties, some of which comprise first floor and / or dwellings to the rear.

The subject site is affected by;

- 15.24m Building Height Civil Aviation Regulations
- Class 5 Acid Sulfate Soils
- 51 Obstacle Limitation Surface

## Statutory Considerations

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### *Environmental Planning and Assessment Act, 1979*

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

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

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

The following Environmental Planning Instruments are relevant to this application:

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

The application is accompanied by Multi Dwelling BASIX Certificate No. 8815878M\_02 dated Friday 9 March 2018. The Certificate demonstrates the proposal satisfies the relevant water; thermal comfort and energy commitments as required by the SEPP BASIX. These commitments are also demonstrated on the accompanying architectural plans. Subject to compliance with the commitments contained therein, the provisions of this Clause are satisfied.

##### **State Environmental Planning Policy (Infrastructure) 2007**

###### Clause 101 - Development with frontage to a Classified Road

The subject site comprises a frontage to a classified road i.e. Stoney Creek 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 involves access to and from the site via Stoney Creek Road along a new vehicular access way adjoining the western side boundary.

Accordingly, the proposal was referred to the Roads & Maritime Service (RMS). The authority has responded granting approval for the development subject to several conditions of consent, which have been imposed on the draft Notice of Determination. The application is consistent with the provisions of the SEPP and is acceptable in this regard.

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

The subject site is located on Stoney Creek Road, however the provisions of this clause require acoustic consideration to proposed dwellings whereby the road carried in excess of 40,000 vehicles per day annual average daily traffic AADT. In accordance with information from the RMS, Stoney Creek Road does not carry this traffic and as such an assessment is not required.

Notwithstanding the above, noise impacts from Stoney Creek Road are substantial and as such consideration of the future acoustic amenity of residential dwellings is prudent. As such the applicant submitted an Acoustic Report prepared by Koikas Acoustics, dated 20th March 2019, which considered the impact of road noise.

The report concluded that the building can be sufficiently insulated against existing external sources of noise in the area such as road traffic through the use of recommended glazing systems, roof and

external wall system.

Given the above the proposal will be conditioned to ensure the recommendations of the report are incorporated into construction. The proposal satisfies the requirements of this clause.

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

In accordance with clause 28(2) of this policy, the consent authority must take into consideration the following:

*a. The advice of the Design Review Panel (DRP)*

The proposal was referred to the Design Review Panel on 13 April 2018 for consideration. The Panel inspected the site; reviewed the documentation and met with representatives of the Applicant. The Panel was generally supportive of the proposal, subject to recommended changes being implemented and considered further by Council.

*b. The design quality of the development when evaluated in accordance with the design quality principles.*

The design quality principles have been considered in the assessment of the proposal and are found to be satisfactory as indicated below.

Principle 1 – Context and Neighborhood Character

*The Panel recognizes that this proposal is the first in the B1 zone to take up the opportunity for an increased level of development. In doing so, it will set a number of parameters that will influence the design on adjacent sites in the future. It proposes an internal courtyard that is addressed by built form both to the front and rear of the lot. This pattern of development is considered to be appropriate in the locality, however, further testing of this form should be undertaken for the whole precinct to demonstrate its appropriateness for adjacent sites.*

Comment: The applicant has undertaken a massing study which took into consideration the redevelopment potential of the adjoining B1 zoned lots to the east and west of the site. The study identified that a similar U shaped building typology would be possible on neighbouring B1 zoned sites with a minimum 12m rear building setback to the low density zone to the rear. This form is akin to the proposed development and would ensure appropriate amenity on site and to neighbouring properties. Compliant height and FSR is achievable as is parking, solar access, communal open space and deep soil provision. It is evident that the pattern of development as proposed in this instance is achievable on lots within this B1 zoned pocket and the overall nature of the proposal is appropriate.

It is acknowledged that the proposed development is the first within a row of established small scale commercial / industrial properties to be redeveloped, however it is reiterated that the site zoned B1 - Neighborhood Centre and benefits from a height standard of 13m and FSR standard of 1:1. The proposal provides a minimum 12m rear setback to neighbouring R2 low density zoned properties, which is considered sufficient in order to provide a reasonable separation and transition to these neighbouring sites.

The overall footprint, recessed nature of the top level to Stoney Creek Road, rear setback, design and

style of the proposal are not inconsistent with the applicable planning controls and future desired character for properties within the small B1 zoned pocket. The proposal provides an appropriate separation and interface with the R2 zone to the rear and will assist in the revitalization of the small scale local centre. The proposal further does not generate adverse impacts on site or to neighbouring properties.

The proposal in its current form is supported by the DRP and deemed appropriate with respect of context and neighborhood character. The proposal is satisfactory with regards to this principle.

#### Principle 2 – Built Form and Scale

*The Panel is generally supportive of the built form and scale in setting an appropriate precedent for redevelopment of the B1 zone. The proposal should do more to improve the activation of the street frontage. For example:*

- the extent of active frontage is not maximized and should be greater;
- the driveway is wider than necessary;
- the planter box and associated landscape provides a visual barrier into the shopfront;

*There are also opportunities to increase the amount of glazing to the retail along the driveway to improve overlooking of entry spaces and the general retail exposure. The building will require fire hydrant boosters and residential mail boxes which do not appear to be shown in any detail.*

Comment: Modifications to the scheme have occurred in order to resolve the issues raised above by the DRP. Whilst the frontage of the site is limited in extent, the architect has designed the shopfront to maximise its address to the public domain. Plans illustrate that the glazing to the shopfront is clear which will enable a visual connection between the commercial premises and the public domain. It is noted that the landscaped planter previously proposed has since been deleted. Hydrants and boosters as required have been incorporated into the building envelope and shall be screened with doors to match the finishes of the development.

The double wide driveway (5.5m) has been designed to comply with the relevant requirements of the RMS and avoid queuing onto Stoney Creek Road. The width of the driveway is unable to be reduced given the location of the site on a classified road. Plans illustrate the provision of a motorized vehicular security gate, the proposal will be conditioned to ensure that this is not provided as a solid element. A perforated security gate with a minimum 50% transparency shall be provided in order to assist with pedestrian and vehicular safety and streetscape.

The design of the proposal facilitates a pattern of built form that has regard to eastern and western adjoining lots which are not as yet developed to their full potential. The proposal is generally consistent with the desired future character of the local neighborhood centre in terms of its overall bulk, height and scale. The scale, footprint and mass of the development fits appropriately on the site. The proposed development is consistent with the anticipated scale of future development, as permitted by the current planning controls. The proposal is satisfactory in regards to this principle.

#### Principle 3 – Density

*The Panel is supportive of the proposed density.*

Comment: The proposal complies with the maximum FSR standard for the site, providing an appropriate building mass and bulk on the subject site. The proposal satisfies this principle.

#### Principle 4 - Sustainability

*The Panel notes that the development proposes a number of sustainability initiatives and addresses the minimum BASIX requirements. The Panel considers the development could benefit from utilization of rainwater harvesting; recycling of water on site; more substantial use of photo voltaic panels to the roof areas and broader sustainability issues such as communal productive gardens for residents.*

Comment: Energy efficiency is appropriately addressed by the BASIX certificate requirements accompanying the application. The passive solar design of the proposal is appropriate with solar access maximized to the proposed dwellings, their balconies and communal open spaces given the orientation of the site and building design. Revised plans incorporate productive herb gardens within the ground level rear communal open space area, photo voltaic panels upon the roof and a 2000 litre rainwater tank for irrigation. The proposal is satisfactory with regards to this principle.

#### Principle 5 – Landscape

*The Panel considers that while there is sufficient space for an acceptable landscape solution, the landscape planting selection is inappropriate and unsuitable within an urban context. The landscape plan provides a number of ambiguities and requires further clarification, including:*

- *location of lawn and available communal open space to the ground floor deep soil area;*
- *fencing type to the rear boundary;*
- *clarify what is happening with the optional detention tank;*
- *a significant number of the plan species nominated do not achieve the height suggested in the plant schedule.*

*Further, the Panel suggested the Council should consider the inclusion of a street tree to the very particularly as there are no overhead power lines. The Landscape Plan is required to be prepared by a qualified Landscape Architect.*

Comment: A revised Landscape Plan, prepared by Treecas and Karen Marshall and dated 10 May 2018 was submitted to Council for review and comment. The revised detail was referred to Council's Landscape Architect and demonstrated to suitably respond to planting selection recommendations including the provision of one (1) *Corymbia maculata* (Spotted Gum) street tree along the Stoney Creek Road frontage of the site. Revised plans identify the provision of 1.8m high colourbond fencing to side / rear property boundaries, with reference to the detention tank removed.

Plans illustrate that the proposal complies with and exceeds the deep soil requirements of the ADG. The proposal incorporates two landscaped communal areas on site, to the rear at ground level and at first floor. These communal spaces have been designed and landscaped with a mix of ground covers, shrubs and trees to provide amenity for future occupants. i.e. visual amenity, shade, equitable access, opportunities for social interaction etc. The proposal incorporates automated irrigation to ensure the health and survival of landscaped areas on site.

The proposal provides appropriately sized and located landscaped areas on site, which, subject to



recommended conditions, are considered to satisfy the provisions of this Principle.

#### Principle 6 – Amenity

*The Panel considers that the development does not provide sufficient amenity outcomes for the public realm. Further consideration needs to be given to the interaction between the internal spaces and the street. Further, as identified above, there should be a greater extent of active frontage and interaction to the street.*

*Consideration should be given to activating the facade at the upper levels with balconies and reconfiguration of the walk-in robes and ensuites (i.e. walk in robes should not be put on the street frontage and en suites can utilize windows and natural lighting). The Panel supports the orientation of the apartments fronting Stoney Creek Road being focused on the courtyard, however, the Panel considers that there is an amenity issue relating to the balconies/private open space of Dwellings 2 and 6 which are overlooked by the internal walkway and which have compromised visual and acoustic privacy. The part of the design requires further consideration by the applicant in order to resolve these issues.*

Comment: It is reiterated that revised plans have sought to maximize the extent of the commercial shopfront with clear full height glazing to the street at ground level in order to appropriately address the public domain. This assists in providing a visual connection between the commercial premises and the public domain in this location. The provision of a one (1) *Corymbia maculata* (Spotted Gum) street tree along the Stoney Creek Road frontage of the site, is a positive attribute and shall provide visual interest. The proposal has been conditioned to ensure the awning as proposed is designed to accommodate the growth of the proposed street tree.

At upper levels, the private open space of dwellings 2 and 6 have been flipped and are now provided with a southerly outlook to Stoney Creek Road. Bedrooms of these dwellings adjoining a planter, are provided with highlight windows with a sill height of 1.7m, in order to maximize privacy to these rooms.

Overall, unit layouts are well designed, with appropriately dimensioned living areas and private open spaces. The configuration, layout and design of units, their overall size, spaces & rooms are practical and will allow future users to furnish their homes in a variety of ways. Appropriate storage is also provided within units, with supplementary at basement level. Security parking is provided at basement level with direct lift access.

Sufficient communal open space areas are provided within the development, however it is noted that the proposal does not incorporate communal bbq facilities, which will encourage social interaction and maximize amenity for future occupants. As such the proposal has been conditioned to require its provision within the rear ground level communal open space area adjoining the internalized rainwater tank

The proposal is satisfactory in regards to this principle.

#### Principle 7 - Safety

*The Panel recommends that further consideration be given to where gates; fences and access controls are applied to the ground floor. In particular, this should provide for appropriate vehicle queuing (inbound and exiting) and pedestrian movement to the main residential entry and beyond,*

*including the deep soil planting zone at the rear of the site.*

*Better delineating is required between vehicular movement areas and pedestrian access pathways so that there is no conflict between vehicles and pedestrians; especially when accessing the rear open communal area. Consideration should be given to moving the disabled parking space closer to the lift.*

Comment: Plans have been revised to address the above matters raised by the panel. A vehicular security gate has been recessed in approximately 13m, from the front boundary to enable sufficient room for vehicular queuing (into and out of the site). A 1.8m high pedestrian security gate is proposed to the residential access of the development. Pedestrian access into the development is designated, leading to the residential lobby and rear communal open space area on site. Accessible car parking has been relocated to be as close to the lift as is possible.

Further to the above, the proposal has been conditioned to ensure monitored security cameras are incorporated at residential / vehicular entries & within the basement level. The provision of clear directional signage to advise users of security measures in place will also be required.

With respect to the development, the proposal provides an easily identifiable residential entry, with a commercial tenancy activating the public domain. Residential apartments & car parking areas on site will be accessible via a secure electronic system. Common areas will be well lit with clearly defined legible pathways. The proposal is satisfactory with regards to this principle.

#### Principle 8 - Housing Diversity and Social Interaction

*The proposal achieves good housing diversity outcomes.*

Comment: The design of the development and proposed unit mix provides for varied housing choice for a variety of household types. The development is designed to provide two appropriate communal facilities at ground level and podium with various spaces which will encourage and provide opportunities for social interaction between future occupants. The DRP was supportive of the proposal in regards to this principle.

#### Principle 9 – Aesthetics

*The Panel generally supports the design aesthetics subject to the comments above.*

Comment: The proposal incorporates a varied palette of colours and materials to create visual interest when viewed from the public domain. Materials proposed include but are not limited to natural timber cladding, white / grey render, powder coated metal screens, colourbond roofing and boundary fencing and glass balustrades. These materials, selected colours and textures will provide a modern, contemporary, high quality and visually appealing development on site.

#### *c. the Apartment Design Guide*

The proposal has been assessed against the Apartment Design Guide (ADG). The proposed development is considered to have performed adequately in respect to the objectives and design criteria contained within the ADG. The relevant issues are discussed below:



CLAUSE	DESIGN CRITERIA			COMMENTS	COMPLIES
3D – Communal Open Space	25% (192.1sq/m) Site Area 50% (96sq/m) Direct sunlight to principle useable part of COS for minimum 2 hours between 9am 3pm in midwinter			Ground Level - 105sq/m Podium - 97sq/m Total = 202sq/m Ground level north facing COS within rear of site achieves >2 hours solar access in midwinter	Yes
3E - Deep Soil Zones	7% (53sq/m) Site Area 3m minimum dimensions			85.1sq/m rear of site at ground level	Yes
3F Visual Privacy	Building height Up to 12m (4 storeys)  Zone transition – additional 3m required.	Habitable rooms / balconies 6m	Non habitable rooms 3m	Rear Setback - 12m - 13m Building Separation on Site - 11.59m - 15.763m	<b>No</b> - See Discussion below.
4A – Solar and daylight access	Living rooms + POS of at least 70% (7 of 10) of apartments receive min 2hrs direct sunlight b/w 9am & 3 pm mid-winter Max 15% (1.5 of 10) apartments receive no direct sunlight b/w 9am & 3pm mid-winter			80% (8 of 10) units receive 2 hours solar access in midwinter 20% (2 of 10) receive nil solar in midwinter	Yes  <b>No</b> - see discussion below
4B – Natural ventilation	Min 60% (6 of 10) of apartments are naturally cross ventilated.  Depth does not exceed 18m, glass line to glass line.			All units are naturally cross ventilated.  10.6m maximum building depth	Yes  Yes
4C – Ceiling heights	Minimum ceiling heights: Habitable 2.7m Non-habitable 2.4m Mixed use 3.3m for ground and first floor			2.7m upper levels 3.5m Ground Floor 3.3m First Floor	Yes

4D – Apartment size and layout	<b>Dwelling</b>	<b>Min area</b>	Unit sizes comply with minimum areas	Yes
	Studio	35m <sup>2</sup>		
	1 bed	50M <sup>2</sup>		
	2 bed	70m <sup>2</sup>		
	3 bed	90m <sup>2</sup>		
4E – Private open space and balconies	Primary balconies as follows:		POS areas comply with minimum areas	Yes
	<b>Dwelling</b>	<b>Min area</b>		
		<b>Min depth</b>		
	Studio	4m <sup>2</sup>		
	1 bed	8m <sup>2</sup>		
	2 bed	10m <sup>2</sup>		
	3+ bed	12m <sup>2</sup>		
		2.4m		
4F – Common circulation and spaces	Max apartments off a circulation core on a single level is eight.		Four units per core	Yes
4G – Storage	<b>Dwelling</b>	<b>Volume</b>	Appropriate storage provided internally per dwelling	Yes
	Studio	4m <sup>2</sup>		
	1 bed	6M <sup>2</sup>		
	2 bed	8m <sup>2</sup>		
	3 bed	10m <sup>2</sup>		

### Non Compliance

#### 3F - Visual Privacy

##### *Northern Neighbors - Abercorn Street*

Plans illustrate the provision of a 12m - 13m building separation from the edge of proposed residential balconies to the rear boundary of the subject site. Given the site is located at a zone transition i.e B1 - Neighbourhood Centre and R2 - Low Density Residential to properties to the rear, the requirements of the Apartment Design Guide require an increased separation distance of 3m when development is proposed adjacent to a different zone that permits lower density residential development to provide for a transition in scale and increased landscaping.

It is reiterated that the site shares a common rear boundary with 79 and 81 Abercorn Street, with 77 also in close vicinity. The rear yards of these sites comprise a substantial number of established mature screens, which will function as a visual buffer between the proposed development and lower density residential building forms to the north.

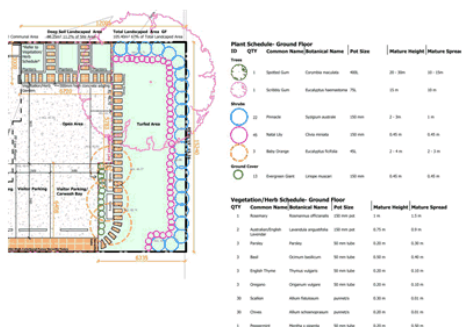


Looking to rear boundary of site from within 88 Stoney Creek Road



Looking to rear boundary of site from within 81 Abercorn Street

The submitted landscape plan illustrates a range of planting along the rear and side boundaries of the proposed rear COS area on site. Planting includes screen hedging up to a 3m mature height (Syzgium Australe) with a tree (Eucalyptus Haemastoma) proposed in the north western corner of the site.



Whilst the proposal seeks to vary the building separation requirements of the ADG, it is considered that the intent of these requirements is achieved via reasonable building separation and rear setback, building design, provision of appropriate landscaping within the rear of the site and existing vegetation within the rear of adjoining northern properties.

The proposal is acceptable in this regard and a variation is warranted.

Western Neighbor - 90 Stoney Creek Road

The adjoining neighbouring property at 90 Stoney Creek Road, comprises a commercial premises

fronting the street, with a residential dwelling to the rear. This residential dwelling comprises rear ground level private open space which incorporates a swimming pool as illustrated below.



As designed, the proposal has the potential to result in overlooking of the rear POS and swimming pool of the residence at 90 Stoney Creek Road from the following areas;

- a) North facing POS of Dwelling 3 (1 x 3 bed) - First Floor
- b) North facing POS of Dwelling 7 (1 x 2 bed) - Second Floor
- c) North facing POS of Dwelling 9 (1 x 2 bed) - Third Floor

Dwellings 9 and 3 are provided with fixed full height privacy screens along the western edge of the balcony, however oblique sight lines of the adjoining pool remain from these balconies. As a result, the proposal is to be conditioned to require the fixed 1.8m high privacy screening to the western edge of balconies to dwellings 3 / 7 / 9, which also wraps along the northern side of balconies 3 / 9 for a distance of 1m. This will minimise line of sight from these balconies into the adjoining POS area.

#### Eastern Neighbor - 86 Stoney Creek Road

As existing the eastern neighbouring site is a single storey building comprising an existing mechanical repairs workshop. Consideration has been given to the redevelopment potential of this site and the implications of the proposed design of the development upon this site. In order to ensure visual privacy is retained to the eastern adjoining site in the event of future redevelopment, the proposal will be conditioned to require the installation of fixed 1.8m high privacy screens to the eastern edge of balcony to units 8 and 10.

As conditioned, the proposal is considered to be satisfactory with respect to visual privacy.

#### 4A – Solar and Daylight Access

As per the requirements of this clause, a maximum of 15% (1.5 of 10) of units proposed within the development are to receive nil direct sunlight in midwinter between the hours of 9am to 3pm. When this figure is rounded up to the nearest whole number, the amount of units that are impacted is equivalent to two (2).

The proposal indicates a total of 2 of 10 units, being dwellings 2 and 6, receiving nil direct solar access in midwinter, this is equivalent to 20% of the development. Given the design, orientation, party wall construction and scale, of the development and number of units within the building, the proposed technical non compliance, is not unreasonable, nor of a scale which should warrant refusal of the application.

**Rockdale Local Environmental Plan 2011**

Relevant clauses	Compliance with objectives	Compliance with standard/provision
2.3 Zone B1 Neighbourhood Centre	Yes	Yes - see discussion
2.7 Demolition requires consent	Yes	Yes - see discussion
4.3 Height of buildings	Yes	Yes - see discussion
4.4 Floor space ratio	Yes	Yes - see discussion
5.10 Heritage conservation	Yes	Yes - see discussion
6.1 Acid Sulfate Soil - Class 5	Yes	Yes - see discussion
6.2 Earthworks	Yes	Yes - see discussion
6.4 Airspace operations	Yes	Yes - see discussion
6.7 Stormwater	Yes	No - see discussion
6.12 Essential services	Yes	Yes - see discussion

2.3 Zone B1 Neighbourhood Centre

The subject site is zoned B1- Neighbourhood Centre under the provisions of Rockdale Local Environmental Plan 2011 (LEP 2011). The proposal is defined as a commercial premises and shop top housing, which constitute permissible uses with development consent. The proposal is consistent with the objectives of the zone, providing a small scale retail / business opportunity on the site, with associated shop top housing residential development of a nature and scale which is compatible within the existing and emerging context of the site.

2.7 Demolition requires consent

The application is accompanied by Demolition Plan, Drawing No. SW-06 and dated 9 March 2018. The Plan nominates existing structures, including a single storey brick building with the detached, rear metal garage. Subject to appropriate demolition conditions, the provisions of this Clause are satisfied.

4.3 Height of buildings

A maximum building height of 13m applies to the subject site. The proposed development illustrates a height of;

- Block A - 12.48m (60.75RL) to rooftop
- Block B / Lift Overrun - 12.76m (61.16RL) to rooftop



The proposal complies with the height standard as required by this clause.

#### 4.4 Floor space ratio

A maximum FSR of 1:1 applies to the subject site. This equates to a maximum gross floor area of 768.7sq/m.

The proposal comprises a gross floor area of 768.5sq/m. This equates to an FSR of 0.99:1. The proposal complies with the FSR standard for the site.

#### 5.10 Heritage conservation

The subject site is located diagonally opposite Bexley Oval which is identified as a local heritage item listed in Schedule 5 of the RLEP 2011 (Item I159). The application was referred to Council's Heritage Advisor who has determined the site to be separated from the heritage item by Stoney Creek Road which serves as both a physical and visual barrier between the development site and the item. The proposed development therefore will not have any impact upon the heritage significance of Bexley Park and Oval.

The provisions of this Clause are satisfied.

#### 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

The proposal requires excavation and earthworks to a maximum depth of approximately 3 metres to construct the basement level. Council's Development Engineer has confirmed that the submission of a Geotechnical Report is acceptable prior to the issue of a Construction Certificate for the proposed development. The Report shall investigate and demonstrate that excavation will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land. In addition to this, relevant conditions are included in the draft Notice of Determination to ensure that the environmental amenity of surrounding land is maintained, and soil erosion, sedimentation, and drainage impacts are minimised.

Subject to conditions, the provisions of this Clause are satisfied.

#### 6.4 Airspace operations

The subject site is affected by the 51 Obstacle Limitation Surface (OLS). The proposed development comprises a maximum overall height of 61.16RL and therefore approval was sought under the Airports (Protection of Airspace) Regulations 1996, for the intrusion of the proposed development into prescribed airspace.

The proposal was referred to Sydney Airports for comment, approval for a height of 61.16RL was provided, subject to conditions of consent. The proposal is satisfactory with regards to the provisions of this clause.

#### 6.7 Stormwater

The proposal involves the construction of an on site detention system to manage storm-water. The proposed storm-water system has been revised by Council's development engineers who have imposed conditions of consent to ensure compliance with the requirements of this clause and

associated technical specifications.

As conditioned the proposal complies with the provisions of this clause.

#### 6.12 Essential services

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

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

The following Development Control Plan is relevant to this application:

#### **Rockdale Development Control Plan 2011**

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

<b>Relevant clauses</b>	<b>Compliance with objectives</b>	<b>Compliance with standard/provision</b>
4.1.1 Views and Vista	Yes	Yes - see discussion
4.1.2 Heritage Conservation - Vicinity of Heritage Item	Yes	Yes - see discussion
4.1.3 Water Management	Yes	Yes
4.1.4 Soil Management	Yes	Yes - see discussion
4.1.9 Lot size and Site Consolidation - Mixed use	Yes	No - see discussion
4.1.9 Lot size and Site Consolidation - isolated sites	Yes	Yes - see discussion
4.4.1 Energy Efficiency - Residential	Yes	Yes - see discussion
4.4.2 Solar Access - Residential Flat Buildings and Shop Top Housing	Yes	Yes - see discussion
4.4.3 Natural Lighting and Ventilation - Mixed Use	Yes	Yes - see discussion
4.4.4 Glazing - General Controls	Yes	Yes - see discussion
4.4.5 Acoustic privacy	Yes	Yes - see discussion
4.4.6 Noise Impact	Yes	Yes - see discussion
4.5.1 Social Equity - Housing Diversity and Choice	Yes	No - see discussion
4.5.2 Social Equity - Equitable Access	Yes	Yes - see discussion
4.6 Parking Rates Residential Flat Buildings	Yes	Yes - see discussion
4.6 Car Park Location and Design	Yes	Yes
4.6 Vehicles Enter and Exit in a Forward Direction	Yes	Yes
4.6 Basement Parking - General	Yes	Yes
4.6 Driveway Widths	Yes	Yes
4.6 Traffic - Classified Roads	Yes	Yes
4.6 Access to Parking	Yes	Yes - see discussion
4.6 Car Wash Facilities	Yes	Yes
4.7 Air Conditioning and Communication Structures	Yes	Yes - see discussion
4.7 Waste Storage and Recycling Facilities	Yes	Yes - see discussion
4.7 Service Lines/Cables	Yes	Yes - see discussion

Relevant clauses	Compliance with objectives	Compliance with standard/provision
4.7 Laundry Facilities and Drying Areas	Yes	Yes - see discussion
4.7 Letterboxes	Yes	Yes - see discussion
4.7 Hot Water Systems	Yes	Yes - see discussion
5.3 Mixed Use - Front Setbacks	Yes	Yes - see discussion
5.3 Mixed Use - Side Setbacks	Yes	No - see discussion
5.3 Mixed Use - Ground Level Uses	Yes	Yes - see discussion
5.3 Mixed Use - Retail	Yes	Yes - see discussion
5.3 Mixed Use - Awnings	Yes	Yes - see discussion

#### 4.1.1 Views and Vista

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

#### 4.1.2 Heritage Conservation - Vicinity of Heritage Item

As discussed under Clause 5.10 of the RLEP 2011 in the above body of this Report, the subject site is located diagonally opposite Bexley Oval which is identified as a local heritage item listed in Schedule 5 of the RLEP 2011 (Item I159). The application was referred to Council's Heritage Advisor who has determined the site to be separated from the heritage item by Stoney Creek Road which serves as both a physical and visual barrier between the development site and the item. The proposed development therefore will not have any impact upon the heritage significance of Bexley Park and Oval.

The provisions of this Clause are satisfied.

#### 4.1.4 Soil Management

The application is accompanied by a Soil and Water Plan, Drawing No. SW-05 and dated 9 March 2018. The Plan provides sediment control notes and measures to ensure that the potential for impact on adjoining land and surrounding waterways is minimised. Subject to conditions, the provisions of this Clause are satisfied.

#### 4.1.9 Lot size and Site Consolidation - Mixed use

The requirements of this clause require a minimum frontage width of 18m for mixed use development of 4 or more storeys in height. The subject site comprises a 15.24m frontage and is thus does not comply with this requirement, comprising a 2.76m wide frontage deficiency.

The applicant has sought to amalgamate the property with adjoining neighbours, yet to no avail, this is detailed further in this report.

Given amalgamation was not possible, the proposal has been designed to respond to the opportunities and constraints of the subject site. The development has been designed to activate the street frontage via the provision of a reasonably sized retail space, vehicular and pedestrian access is also designed to fit within the existing street frontage.

The development is of appropriate overall size, scale and density and complies with the height and FSR standards for the site. The proposal provides a satisfactory rear setback to the adjoining R2 low density residential zone.



The development has been designed to make efficient use of the site, accommodates appropriate levels of landscaping, complies with parking requirements and does not result in adverse overshadowing impacts to neighbouring sites.

The proposal in its current form is satisfactory and it has been demonstrated that adjoining sites are capable of being economically redeveloped at a future time.

The proposal is satisfactory in this regard and complies with the objectives of this clause.

#### 4.1.9 Lot size and Site Consolidation - isolated sites

Rockdale DCP 2011 requires a site frontage of 18m for mixed use development of 4 storeys or greater. The subject site comprises a site frontage of 15.24m and the matter of site frontage was considered previously within this report.

The subject site adjoins 86 Stoney Creek Road, directly to the east, which is also zoned B1 - Neighbourhood Centre. This neighbouring property is rectangular in shape, has a site frontage of approximately 15.5m to Stoney Creek Road and site area of 768sq/m. The neighbouring property is of equivalent overall area and site frontage to the subject site.



Given the neighbouring site also comprises a site frontage less than the required 18m as per Rockdale DCP 2011, consideration has thus been given as to whether the redevelopment of the subject site could potentially result in the isolation of this adjoining eastern neighbour at 86 Stoney Creek Road.

In *Karavellias v Sutherland Shire Council* [2004] NSWLEC 251, the Land and Environment Court established that the general questions to be answered when dealing with amalgamation of sites or when a site is to be isolated through redevelopment are:

- Firstly, is amalgamation of the sites feasible?
- Secondly, can orderly and economic use and development of the separate sites be achieved if amalgamation is not feasible?

The principles to be applied in determining the answer to the first question are set out by Brown C in *Melissa Grech v Auburn Council* [2004] NSWLEC 40 as follows:

1. Negotiations between the owners of the properties should commence at an early stage and prior to the lodgement of the development application.
2. Written evidence of efforts to acquire that lot to amalgamate it with the current site. Reasonable

*offer to purchase & expenses to be incurred must have been made. Recent independent valuation is required. Potential economic development of that lot should no negotiations be reached.*

*3. The level of negotiation and any offers made for the isolated site are matters that can be given weight in the consideration of the development application.*

The above was considered in the assessment of the application.

Comment: Information submitted with the application indicates that the applicant has previously sought to purchase the adjoining property at 86 Stoney Creek Road Bexley. Correspondence from the applicants solicitor, dated 24 August 2017, indicates that a comparative market analysis was provided to the neighbouring owner, with an offer made to purchase this neighbouring site. This offer was valid until 8th September 2017. The applicant confirmed that nil response was received from the neighbouring owner and negotiations failed. Additionally, the applicant submitted an updated valuation to Council on 22 March 2019, this valuation was dated 20 March 2019 and noted the estimated property value of 86 Stoney Creek Road. The offer made was above the current market value price of the subject site.

Given the lack of response and current operational business on the neighbouring property, subsequent attempts to purchase 86 Stoney Creek Road do not appear to have been pursued. The applicant thus sought to redevelop the subject site independently, as the acquisition of the eastern neighbour was not commercially feasible.

The subject application was submitted to Council on 15 March 2018, this is approximately 7 months following the initial offer to purchase the adjoining site. It is evident that the attempt to purchase this neighbouring site was undertaken early in the process.

In order to respond to the second question raised by Commissioner Tuor in *Karavellas v Sutherland Shire Council* [2004] NSWLEC 251, the commissioner refers to *Cornerstone Property Group Pty Ltd v Warringah Council* [2004] NSWLEC 189, where Commissioner Brown stated:

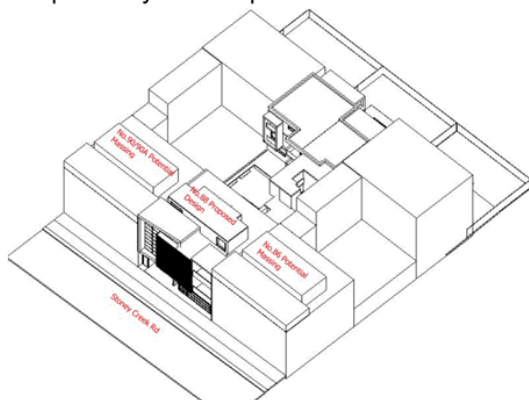
*The key principle is whether both sites can achieve a development that is consistent with the planning controls. If variations to the planning controls would be required, such as non compliance with a minimum allotment size, will both sites be able to achieve a development of appropriate urban form and with acceptable level of amenity.*

*To assist in this assessment, an envelope for the isolated site may be prepared which indicates height, setbacks, resultant site coverage (both building and basement). This should be schematic but of sufficient detail to understand the relationship between the subject application and the isolated site and the likely impacts the developments will have on each other, particularly solar access and privacy impacts for residential development and the traffic impacts of separate driveways if the development is on a main road.*

*The subject application may need to be amended, such as by a further setback than the minimum in the planning controls, or the development potential of both sites reduced to enable reasonable development of the isolated site to occur while maintaining the amenity of both developments.*

Comment: The applicant submitted plans and massing diagrams, to Council which illustrated the redevelopment potential of not only this eastern neighbour, but those further to the west. i.e. 90 & 90A Stoney Creek Road. Massing diagrams with similar heights, density, setbacks and building

configuration to the proposed development, illustrate that 86 Stoney Creek Road has the potential to be independently redeveloped.



Whilst the neighbouring site does not adhere to the minimum DCP frontage requirement, the proposed development for which consent is sought, is situated upon a site of similar width, area, shape and orientation. The proposal on the subject site complies with the Height and FSR standards, and accordingly, given the similarity of the subject site with its eastern neighbour, it is fair to state that a similar development to that which is sought on the subject site is also readily achievable on the neighbouring allotment.

Given the above, it is evident that whilst negotiations to amalgamate have not been successful, the proposed development does not unreasonably isolate this property and the orderly and economic use and development of 86 Stoney Creek Road is possible at a later date.

The proposal in this regard is satisfactory with regards to the objectives and provisions of this clause.

#### 4.4.1 Energy Efficiency - Residential

As discussed in the above body of this Report, the application is accompanied by Multi Dwelling BASIX Certificate No. 8815878M\_02 dated Friday 9 March 2018. The Certificate demonstrates the proposal satisfies the relevant water; thermal comfort and energy commitments as required by the SEPP BASIX. These commitments are also demonstrated on the accompanying architectural plans. Subject to compliance with the commitments contained therein, the provisions of this Clause are also satisfied.

#### 4.4.2 Solar Access - Residential Flat Buildings and Shop Top Housing

The provisions of this clause seek to ensure that the *"Living rooms and private open spaces for at least 70% of apartments in a development and adjoining properties should receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid winter."*

The subject site is oriented north south, with Stoney Creek Road being located to the south of the site. Low density residential properties are located to the north, north east and north west of the site within Abercorn Street. Given the location of these properties, the proposed development does not result in adverse overshadowing impacts to neighbours within Abercorn Street.

The proposal overshadows the adjoining property at 90 Stoney Creek Road at 9am in midwinter with shadows reaching into the rear POS and part of the inground pool, however this western property is in full sun by approximately 11am and remains in sun until 3pm.

From 1pm - 3pm the proposal casts shadow onto the eastern property (mechanical repairs) at 86 Stoney Creek Road, however should this property be redeveloped in future it is evident that sufficient solar access is achieved in midwinter from 9am - 12pm.

Given the above, the proposal complies with the requirements & objectives of this clause.

#### 4.4.3 Natural Lighting and Ventilation - Mixed Use

The proposed development is designed to achieved natural ventilation and lighting, incorporating the following floor to ceiling heights in accordance with the provisions of this Clause:

- 3.3m Ground Floor;
- 3.3m First Floor;
- 2.7m Second Floor; and
- 2.7m Third Floor.

#### 4.4.4 Glazing - General Controls

Design matters relating to thermal comfort are deemed satisfactory with the issue of BASIX Certificate No. 881587M\_02 and dated Friday 9 March 2018. The provisions of this Clause are therefore satisfied.

#### 4.4.5 Acoustic privacy

The application is accompanied by an Acoustic Assessment, prepared by Koikas Acoustics Pty Ltd, dated 20 March 2019. The report considered sound insulation requirements for partition walls separating dwellings and impact isolation between floors. The Report contains a set of recommendations, when implemented, will limit noise transfer between separate sole occupancy units in accordance with the provisions of this Clause. Subject to conditions, this Clause are therefore satisfied.

#### 4.4.6 Noise Impact

The subject site is located adjacent to an existing vehicle repair station, which operates 8:00am to 5:00pm Monday to Friday, 8.00am to 1.00pm Saturday and the premises are closed on Sunday. Given the nature of the adjoining use, it is prudent to ensure acoustic amenity will be retained to proposed residential dwellings. As such the applicant submitted a revised Acoustic Report taking into consideration the operations of the adjoining use.

The report, prepared by Koikas Acoustics, dated 20 March 2019 took into consideration road noise associated with traffic along Stoney Creek Road as previously discussed in this report, and potential noise impacts from the vehicle repair station adjacent to and opposite the subject site.



The report concluded that noise impact from near-by mechanical repairs (immediately adjacent and directly opposite) was insignificant and barely audible during lulls in traffic or inaudible. Notwithstanding, the report includes recommendations for construction in relation to glazing, roof and wall systems, which will ensure that appropriate acoustic amenity is provided to future occupants of the development.

4.5.1 Social Equity - Housing Diversity and Choice

The proposed development provides the following residential unit mix:

Unit	Required	Proposed	Complies
Studio/1 bedroom	10-20%	3 units or 30%	No
2 bedroom	50-75%	6 units or 60%	Yes
3 bedroom	10-30%	1 unit or 10%	Yes

Whilst the proposal results in a minor non-compliance, the development is considered to be of a mix which appropriately contributes to new residential supply within Bexley, located near well supplied infrastructure. The proposal maintains a range of unit sizes and layouts which cater to different housing needs and changing lifestyle demands. Whilst the proposal technically fails the numerical requirements of this Clause, it has demonstrated suitable provision for the housing needs of a diverse range of households within Bexley and is supported in this instance.

4.5.2 Social Equity - Equitable Access

The proposal was accompanied by an Access Report prepared by Ammar Becca which concluded that *"the current design contains some BCA DTS non-compliances, however, such can be readily resolved by BCA Performance Solution(s) at the relevant Construction Certificate documentation phase"*. It is further noted that plans illustrate the provision of appropriately designed and located accessible facilities and services within the development. Equitable access is provided within and

throughout the development and site, to the communal areas.

The proposal has been conditioned to ensure compliance with relevant legislative requirements in regards to Access. The proposal is satisfactory in this regard.

#### 4.6 Parking Rates Residential Flat Buildings

The provisions of this clause require the provision of parking on site as follows;

Requirement	Required	Provided	Compliance
1-2 bed units (9)	9 spaces	9	Yes
3+ bed units (1)	2 spaces	2	Yes
Visitor	2 spaces	2	Yes
Commercial	2 spaces	3	Yes
<b>Total</b>	<b>15 spaces</b>	<b>16</b>	<b>Yes</b>
Bicycle parking	2 spaces	3	Yes
Motorcycle parking	2 spaces	3	Yes
Loading / Unloading & Waste Collection on site	1 SRV space (3.5m x 7m)	1	Yes
Car wash bay (shared with visitor space)	3.5 x 5.5m	1	Yes

The proposal complies with the requirements of this clause.

#### 4.6 Access to Parking

Councils Development Engineer conditioned the proposal to ensure that safe methods of traffic management are provided on site to the top and bottom of the proposed vehicular ramp to ensure safe manoeuvrability and access of vehicles on site. The proposal is acceptable in this regard.

#### 4.7 Air Conditioning and Communication Structures

Plans do not depict the location of proposed residential air conditioning units on site. Accordingly, a condition is imposed on the draft Notice of Determination requiring air conditioning units to be obscured from public view should they be provided. Subject to conditions, the development is acceptable with regards to this Clause.

#### 4.7 Waste Storage and Recycling Facilities

Appropriate waste storage areas are located on site at ground level within the development. The applicant has confirmed that the development will be serviced by a private waste contractor and as designed is capable of accommodating a 6.4m Small Rigid Vehicle size or smaller. The proposal is satisfactory in this regard.

#### 4.7 Service Lines/Cables

Plans illustrate the provision of a fire hydrant booster recessed into the frontage of the commercial tenancy proposed at ground level. Doors to the booster are proposed to be painted in the color scheme of the development. The proposal is satisfactory in this regard.



#### 4.7 Laundry Facilities and Drying Areas

Plans illustrate the provision of internal laundry facilities within residential units. The provisions of this Clause are satisfied.

#### 4.7 Letterboxes

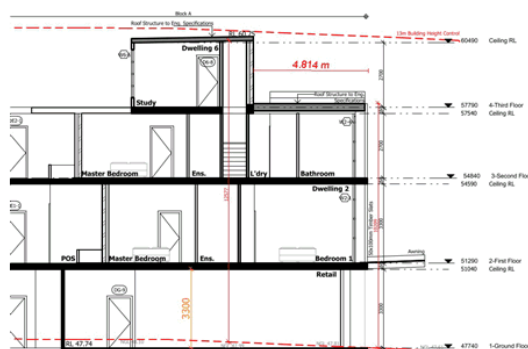
Plans illustrate the provision of letter boxes adjoining the main pedestrian entrance to the development from the public domain. The proposal is satisfactory in this regard.

#### 4.7 Hot Water Systems

A condition is imposed on the draft Notice of Determination which requires hot water systems on balconies to dwellings to be encased in a recessed box with the lid/cover designed to blend with the building. All associated pipe work is to be concealed. Subject to conditions, the proposed development is acceptable with regards to this Clause.

#### 5.3 Mixed Use - Front Setbacks

As per the requirements of this clause, development is to be built to the street alignment with a zero setback. The uppermost floor level may be set back. The proposal has been designed to provide a nil street setback to Stoney Creek Road for a height of three storeys, with the fourth storey recessed 4.8m from the levels below as is illustrated below within an excerpt from Section 2.



The proposal complies with the requirements and objectives of this clause.

#### 5.3 Mixed Use - Side Setbacks

As per the requirements of this clause a minimum 3m side setback is required for buildings up to three storeys, with 4.5m side setbacks for all levels above the third storey.

Plans illustrate side setbacks as follows;

- Nil side setback to a height of three storeys for the front portion of the development fronting Stoney Creek Road.
- Fourth level fronting Stoney Creek Road has a 1.958m side setback to 90A Stoney Creek Road and a 1.508m setback to 86 Stoney Creek Road.
- Rear portion of the development has a nil side setback to a height of 4 storeys.

The above illustrates a non compliance with respect of side setbacks to required by the provisions of

this clause.

It is the assessing officers view that the setbacks as proposed in this instance are not inappropriate, given the limited site width, lack of adverse impacts on site and to neighbours, reduction in bulk and scale of the top level to Stoney Creek Road and in order to achieve a well designed street wall development to the street.

Given the above, the setbacks as proposed are not unreasonable and are supported in this instance.

#### 5.3 Mixed Use - Ground Level Uses

The proposed development activates the public domain at ground level via the provision of the commercial tenancy. The proposal is satisfactory in this regard.

#### 5.3 Mixed Use - Retail

The provisions of this clause require 10% (76sq/m) of the GFA of the development to be provided as retail / commercial floor space. Plans illustrate the provision of a 77.5sq/m retail premises, which is equivalent to 10% of the GFA of the development. The proposal complies with the requirements of this clause.

#### 5.3 Mixed Use - Awnings

Plans illustrate the provision of an awning 3.3m above footpath level, to the Stoney Creek Road frontage of the site. The proposal has been conditioned to ensure a maximum fascia height of 600mm and minimum setback from the edge of the kerb of 600mm, in accordance with the provisions of this clause and requirements of the RMS.

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

The proposed development is not inconsistent with the relevant provisions of the *Environmental Planning and Assessment Regulation, 2000*.

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

#### Safety & Security

The development provides for clearly identifiable and legible building entries from Stoney Creek Road. The residential entry comprises direct pedestrian access and a high level of visibility to the street. Residential apartments, communal open space & car parking areas will be accessible via a secure electronic system. Common areas are to be well lit with clearly defined pathways. The proposal is considered to be satisfactory in this regard.

#### Social Impact

The proposal will activate and enhance the public domain and includes residential units of adequate size and mix for the demographics of the locality. Proposed residential units have access to good public transport and the proposal incorporates alternative transportation modes, via the provision of bicycle and motorbike parking. The proposal further provides a well designed and located communal area with facilities which will encourage social interaction between future occupants on site. The proposed development is not considered to result in any adverse social impacts and is satisfactory for the site.



Construction

Construction of the proposed development includes excavation works, piling and the construction of the development. Impacts will be minimized through the use of standard conditions of consent relating to hours of construction, noise, dust suppression traffic management and the like.

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

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

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

The development has been notified in accordance with the provisions of Rockdale DCP 2011 and a total of four (4) submissions were received. The issues raised in the submission are discussed below:

*Privacy Impacts to 73, 77 & 81 Abercorn Street*

Comment: Privacy impacts have been considered previously within this report. The proposal is not considered to result in unreasonable privacy impacts to neighbouring properties.

*Visual Impact to Abercorn Street properties*

Comment: The proposed development is setback a minimum of 12m from the rear boundary with Abercorn Street properties and furthermore a substantial component of the proposed development is visually obscured by a cluster of significant and mature trees located within the rear yard of Abercorn Street properties. The proposal is not considered to result in adverse visual impact to neighbouring properties in this regard.

*Potential water retention and overflow onto 81 Abercorn Street as the slope of the land is towards the common boundary*

Comment: The proposal was accompanied by storm water plans which were reviewed by Councils Development Engineer. Councils Engineer has conditioned the proposal to require revised stormwater plans prior to the issue of the construction certificate as follows, in order to ensure nil adverse impact to the rear neighbouring properties in relation to ponding during larger storm events. The below further provides an alternative discharge route for storm water in the event that the discharge control pit is blocked.

- a) *The sizing of the above ground OSD system shall be increased by 20% to compensate for landscaping proposed within the rear setback,*
- b) *Ensure surface flows at the rear of the ground floor of the development are appropriately captured through pits, drainage grates and pipes and directed into the proposed stormwater system,*
- c) *Include the provision of a minimum capacity 4000L rainwater tank with a catchment of at least 50% of the roof area to be utilised for internal stormwater re-use within the development,*
- d) *Retaining walls shall be able to withstand all hydrostatic loads generated by the 100 year ARI event. This is the depth of maximum storage plus the depth of flow overtopping the weir,*
- e) *All gas meters, sewer vents, electricity outlets and other services shall be located outside or*

*above the limits of the storage and overflow weir,*

*f) The system shall be designed to ensure that no stormwater is concentrated onto any neighbouring property,*

*g) Appropriate piped emergency overflow shall be provided for storms greater than the 1 in 50 year event to ensure that all stormwater is effectively conveyed to Stoney Creek Road from the rear of the site in an appropriate manner, ensuring no stormwater will inundate the building structure,*

*h) All stormwater plans are to be revised to reflect the current architectural drawings.*

*Height is excessive*

Comment: The proposal complies with the height standard for the subject site.

*Solar Access Impacts to Abercorn Street houses*

Comment: Abercorn Street properties are located to the north of the subject site and as such are not overshadowed by the proposed development.

*Excessive density / Overdevelopment*

Comment: The proposal complies with the FSR standard for the site and is not an overdevelopment of the site.

*Parking overflow into Abercorn Street / Traffic issues will arise within Abercorn Street.*

Comment: The above statement cannot be substantiated. The proposal provides parking for the development in accordance with the provisions of Rockdale DCP 2011. The proposal complies with the parking rates necessary for the development. The proposal is a relatively small scale development and traffic associated with the proposed development would not be in excess of the capacity of the local road network surrounding the site.

*Devaluation of property*

Comment: Nil information has been submitted to substantiate this claim. Additionally, this is not a planning consideration under the EP&A Act 1979 (as amended).

*Mental stress due to proposal and additional noise generated to occupants of 73 Abercorn Street / Acoustic Impacts to 81 Abercorn Street*

Comment: The proposed use is permissible within the subject zone, construction of the development is temporary in nature. The proposed development is positioned in excess of 33m and 36m away from residential dwellings upon 81 and 73 Abercorn Street. It is unlikely adverse acoustic impacts will arise from the proposed development. Any noise generated will be residential in nature.

*Size, Bulk and Scale is not in keeping with existing homes and buildings / Design is not in keeping with the existing character of the area which is composed of Federation & California bungalow type dwellings*

Comment: The proposal complies with the height and FSR standards for the subject site and is permissible within the subject B1 - Neighbourhood Business zone. Consideration has been given to the

overall bulk, scale and design of the proposal and it is deemed that the proposal is a sympathetic response to the existing and future desired character of the area.

*Owners of 90 and 90A do not object to proposal*

Comment: This submission is noted.

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

The proposal has been assessed against the relevant planning policies applying to the site having regard to the objectives of the controls.

The final design scheme for the site is deemed satisfactory and amenity impacts on site and to surrounding properties are negligible. The proposal is permissible in the zone and provides a number of residential dwellings and a commercial tenancy which will activate the public domain and assist in the revitalisation of the local centre. It is reiterated that the development complies with the height and FSR standards for the site.

The proposal will allow the development of the site in accordance with its environmental capacity & will provide for a high quality building that will add architectural value to the existing streetscape & future desired character of the B1 - Neighbourhood Centre zone. As such it is considered that the development application is in the public interest.

#### **S7.11 Contribution towards provision or improvement of amenities or services**

A Section 7.11 Contribution Payment of \$112,844.32 is payable in accordance with Council's Policy and accordingly, imposed as a condition on the draft Notice of Determination.

### **Schedule 1 - Draft Conditions of consent**

#### **General Conditions**

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

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

Plan/Dwg No.	Drawn by	Dated	Received by Council
Site / Roof Plan DA 101	Architecture Becka & Associates (Z.Mohsen)	10/05/2018	14/09/2018
Basement Floor Plan Rev G DA 102	Architecture Becka & Associates (Z.Mohsen)	18/01/2019	31/01/2019

Ground Floor Plan Rev G DA103	Architecture Becka & Associates (Z.Mohsen)	18/01/2019	31/01/2019
First Floor Plan Rev H DA 104	Architecture Becka & Associates (Z.Mohsen)	05/02/2019	25/03/2019
Second Floor Plan Rev H DA 105	Architecture Becka & Associates (Z.Mohsen)	05/02/2019	25/03/2019
Third Floor Plan Rev B DA 106	Architecture Becka & Associates (Z.Mohsen)	18/04/2018	14/09/2018
Sections Rev H DA 109	Architecture Becka & Associates (Z.Mohsen)	05/02/2019	06/02/2019
Elevations North South Internal Rev H DA 107	Architecture Becka & Associates (Z.Mohsen)	05/02/2019	25/03/2019
Elevations East West Rev E DA108	Architecture Becka & Associates (Z.Mohsen)	02/11/2018	05/11/2018
Finishes Schedule DA 115	Architecture Becka & Associates (Z.Mohsen)	25/09/2018	26/09/2018
Landscape Plan LS-2 Ground and First Floor	TREECAS	10/05/2018	14/09/2018
Landscape Plan LS-3 Second and Third Floor	TREECAS	10/05/2018	14/09/2018
Landscape Plan LS-1 Specifications	TREECAS	10/05/2018	14/09/2018

3. All new building work must be carried out in accordance with the provisions of the Building Code of Australia (BCA) including any external cladding.
4. **A Construction Certificate must be obtained from Council or an Accredited Certifier prior to any building work commencing.**
5. The development must be implemented and all BASIX commitments thereafter maintained in accordance with BASIX Certificate Number 8815878M\_02 other than superseded by any further amended consent and BASIX certificate.  
**Note:** Clause 145(1)(a1) of the Environmental Planning & Assessment Regulation 2000 provides: A certifying authority must not issue a construction certificate for building work unless it is satisfied of the following matters: -
  - (a1) that the plans and specifications for the building include such matters as each relevant BASIX certificate requires.**Note:** Clause 154B(2) of the Environmental Planning & Assessment Regulation 2000 provides: "A certifying authority must not issue a final occupation certificate for a BASIX affected building to which this clause applies unless it is satisfied that each of the commitments whose fulfilment it is required to monitor has been fulfilled."  
 Note: For further information please see <http://www.basix.nsw.gov.au>.
6. Balconies shall not be enclosed at any future time without prior development consent.
7. This approval is not to be construed as permission to erect any structure on or near a boundary contrary to the provisions of the Dividing Fences Act.
8. Excavation, filling of the site or construction of retaining walls are not permitted unless approved by a separate Development Consent and authorised by a subsequent construction certificate.
9. 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.
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. Parking spaces shall be allocated to residential apartments / non-residential units in the development in the following manner and this shall be reflected in any subsequent strata subdivision of the development:

**Allocated Spaces**

Studio, 1 - 2 bedroom apartments - 1 space per apartment

3 bedroom apartments - 2 spaces per apartment

Total Residential = 11 spaces (including 2 accessible spaces)

Commercial Units 1 space per 40sq/m gross floor area (including 1 accessible space)

**Non-Allocated Spaces**

Residential Visitor Spaces 1 space per 5 apartments (including 1 accessible space and 1 car wash bay)

1 SRV loading / unloading bay

2 bicycle spaces

2 motorbike spaces

Parking calculations that are not whole numbers must be rounded up to the nearest whole number.

All residential visitor spaces, car wash bays and loading bays shall be labelled as common property on the final strata plan for the site.

Note: This parking allocation condition applies to any Strata Certificate issued with respect to a Consent issued in accordance with Section 4.18(1)(A) of the *Environmental Planning and Assessment Act 1979* or a Complying Development Certificate issued in accordance with Part 6 of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

### Development specific conditions

The following conditions are specific to the Development Application proposal.

12. Waste & Recycling Collection / Removalist Drop-off's & Pick-ups - Operational Requirements
  - Waste & recycling collection and servicing, including removalist trucks, must be carried out entirely within the approved loading bay at all times.
  - Waste & recycling collection, deliveries, removalists and / or any other servicing must not be undertaken from the Stoney Creek Road at any time.
  - Waste and recycling must be collected by a private waste contractor, no bins will be collected from Stoney Creek Road. A contract for waste and recycling collection must be entered into prior to issue of the Occupation Certificate. The company engaged must ensure that all recycling is collected separately from waste.
  - Waste & recycling collection must be undertaken during off-peak times.
  - The maximum size truck permitted to access the site is a Small Rigid Vehicle (SRV).
  - The loading bay must be allocated as 'common property' on any future strata plan of subdivision under the Strata (Freehold) Schemes Act.

13. The design and construction of the off-street parking facilities shall comply with Australian Standards, as follows:
- Comply with Council's Vehicular Entrance Policy in relation to the design of the access driveways, in particular the layout of the access driveways shall be provided in the form of a layback in the kerb and gutter.
  - The vehicular path of travel to or from loading bay for SRV vehicle shall have minimum headroom clearance of 3.5m.
  - Bicycle parking facilities shall be designed in accordance with AS2890.3:1993.
  - The off-street parking areas associated with the subject development shall be designed strictly in accordance with AS2890.1, AS2890.2 and AS2890.6 and RDCP2011.
  - Internal height clearance shall be designed throughout the car park and access driveway in accordance with AS2890.1, AS2890.2 and AS2890.6.
  - Commercial vehicle facilities shall be designed strictly in accordance with AS2890.2:2002.
  - Parking spaces shall not be enclosed without further approval of Council.
  - One (1) loading bay shall be provided at Ground level to accommodate SRV - removalist trucks as shown in the approved plans. The SRV space shall be in accordance with Council DCP, Rockdale Technical specification – Traffic, Parking and Access and AS 2890.2 and the swept path analysis for the SRV entering the loading bay shall be provided using a recognised computer software package such as Autoturn, complying with Section B3 of AS/NZS2890.1:2004.
  - All Waste Collection, loading, unloading and transfer of goods to and from the loading bay and premises shall take place wholly within the property. Loading areas are to be used only for the loading and unloading of goods, materials etc. not for any other purpose. A buzzer providing access to the basement car park must be provided to Council's Waste Education & Contract Supervisor prior to issue of the Occupation Certificate.
  - Loading and unloading (including Waste Collection) within the site shall be restricted to commercial vehicles not exceeding the size and mass description of the SRV from AS2890.2:2002. Commercial vehicles greater in size and mass than the SRV are not permitted to enter the site.
  - Allocate all off-street visitor parking, loading bays and car wash bay as 'common property' on any future strata plan of subdivision under the Strata (Freehold) Schemes Act.
14. A minimum total of 11 residential car spaces, 2 visitor car spaces, 2 commercial / retails car spaces, 2 motorcycle parking spaces, 2 bicycle parking spaces and 1 car wash bay shared with a visitors parking space, must be provided within the development. The parking must be allocated in accordance with the Rockdale Development Control Plan (RDCP) 2011 requirements in accordance with the minimum rates provided in the table below. This parking must be reflected in any subsequent strata subdivision of the development.

Dwelling Size (Proposed No. of units)	Required
Studio / 1 / 2 bed dwellings (9 units)	1 space/dwelling = 9 spaces

3 bedroom dwellings (1 units)	2 spaces / dwelling = 2 spaces
Total Car Parking Spaces for Residential Units	11 spaces (min.) (including 2 accessible spaces)
Visitor	1 space / 5 dwellings = 2 spaces (including 1 accessible space)
Com. / Retail	1 space / 40m <sup>2</sup> GFA = 2 spaces (including 1 accessible space)
Bicycle	2 spaces minimum
Motorcycle (Res + Com.)	2 spaces minimum
Carwash Bay	1 car wash bay (shared with visitor space-3.5m wide)
SRV Loading Bay	1 SRV Loading Bay (dedicated space-3.5m headroom height)

Note:

- All residential visitor spaces, car wash bays and loading bays shall be labelled as common property on the final strata plan for the site.
  - This parking allocation condition applies to any Strata Certificate issued with respect to a Consent issued in accordance with Section 81 (1)(A) of the Environmental Planning and Assessment Act 1979 or a Complying Development Certificate issued in accordance with Part 6 of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.
15. The front windows of the commercial tenancy shall remain unobscured at all times, in order to ensure passive surveillance is maintained to and from the tenancy.
16. Safer by Design  
To maximise security in and around the development the following shall be incorporated into the development. Details for the following are to be approved by the Principal Certifying Authority prior to the issue of the Construction Certificate, implemented prior to issue of the Occupation Certificate, and maintained for the lifetime of the development:
- a) Monitored CCTV facilities shall be implemented throughout the development. Areas of focus include the basement car park (including entry and exits), main entry areas to the development and garbage/storage areas.
  - b) A lighting maintenance policy shall be established for the development. Lighting shall be designed to the Australian and New Zealand Lighting Standards. Australia and New Zealand Lighting Standard 1158.1 - Pedestrian, requires lighting engineers and designers to consider crime risk and fear when selecting lamps and lighting levels.
  - c) Security mirrors shall be installed within corridors and on blind corners to enable users to see around blind corners.
  - d) Graffiti resistant materials shall be used to ground level external surfaces.



- e) Intercom facilities shall be installed at all vehicular and pedestrian entry/exit points to enable residents to communicate and identify with people prior to admitting them to the development.
  - f) The front window of the ground floor tenancy must be kept free of shelves, and a maximum of 15% of the window display area may be covered with promotional materials to ensure passive surveillance is maintained to and from the tenancy.
17. All loading, unloading and transfer of goods to and from the loading bay and premises shall take place wholly within the property. Loading areas are to be used only for the loading and unloading of goods, materials etc. not for any other purpose.
18. Loading areas are to be used only for the loading and unloading of goods, materials etc. not for any other purpose.
19. 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.
20. The existing and future owners (Registered Proprietor) of the property will be responsible for the operation and maintenance of the detention system. The registered proprietor will:
- (i) permit stormwater to be temporarily detained by the system;
  - (ii) keep the system clean and free of silt, rubbish and debris;
  - (iii) maintain, renew and repair the whole or parts of the system so that it functions in a safe and efficient manner, and in doing so complete the same within the time and in the manner specified in written notice issued by the Council;
  - (iv) carry out the matters referred to in paragraphs (ii) and (iii) at the proprietor's expense;
  - (v) not make any alterations to the system or elements thereof without prior consent in writing of the Council;
  - (vi) permit the Council or its authorised agents from time to time upon giving reasonable notice (but at any time and without notice in the case of emergency) to enter and inspect the land for compliance with the requirements of this clause;
  - (vii) comply with the terms of any written notice issued by the Council in respect to the requirements of this clause within the time stated in the notice.
21. The existing and future owners (Registered Proprietor) of the property will be responsible for the efficient operation and maintenance of the pump system.
- The Registered Proprietor will:
- (i) permit stormwater to be temporarily detained and pumped by the system;
  - (ii) keep the system clean and free of silt, rubbish and debris;
  - (iii) maintain, renew and repair the whole or parts of the system so that it functions in a safe and efficient manner; and in doing so complete the same within the time and in the manner specified in written notice issued by the Council;
  - (iv) carry out the matters referred to in paragraphs (ii) and (iii) at the proprietor's expense;
  - (v) not make alterations to the system or elements thereof without prior consent in writing of the Council.

- (vi) permit the Council or its authorised agents from time to time upon giving reasonable notice (but at any time and without notice in the case of emergency) to enter and inspect the land for compliance with the requirement of this clause;
  - (vii) comply with the terms of any written notice issued by the Council in respect to the requirements of this clause within the time stated in the notice.
22. All wastewater and stormwater treatment devices (including drainage systems, sumps and traps) shall be regularly maintained in order to remain effective. All solid and liquid wastes collected from the device shall be disposed of in accordance with the Protection of the Environment Operations Act, 1997.
  23. 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.
  24. 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.
  25. 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.
  26. Residential air conditioners shall not cause 'offensive noise' as defined by the Protection of the Environment Operations Act 1997 or contravene provisions of the Protection of the Environment (Noise Control) Regulation 2008 where emitted noise from a residential air conditioner can be heard within a habitable room in any other residential premises at night.
  27. Temporary dewatering of the site to construct the subsurface structure is not permitted without permit from relevant authority.  
Ground water shall only be pumped or drained to Council's stormwater system if the water is clean and unpolluted. The standard used to determine the acceptability of the quality of the water is the 'Australian and New Zealand Environment and Conservation Council - Australian Water Quality Guidelines for Fresh and Marine Waters 2000'.
  28. 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.
  29. Bicycle parking facilities shall be designed in accordance with AS2890.3:1993.
  30. 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.
  31. Hot and cold water hose cocks shall be installed to the garbage room. Services or utility systems shall not be located in the garbage room.
  32. (b) In order to ensure the design quality I excellence of the development is retained:
    - i) A registered architect is to have direct involvement in the design documentation, contract documentation and construction stages of the project;

- ii) The design architect is to have full access to the site and is to be authorised by the applicant to respond directly to the consent authority where information or clarification is required in the resolution of design issues throughout the life of the project;
    - iii) Evidence of the design architect's commission is to be provided to Bayside Council prior to issue of the Construction Certificate.
  - (c) The design architect of the project is not to be changed without prior notice and approval of Bayside Council.
33. All vertical plumbing, other than roofwater heads and downpipes, shall be concealed within the brickwork of the building. Details demonstrating compliance with this requirement shall be submitted to the Principal Certifying Authority (PCA) prior to the issue of the Construction Certificate.
34. Public Domain Landscape Works
- Street tree planting in the form of One (1) *Corymbia maculata*, (Spotted Gum) shall be planted in the verge strip between the footpath and kerb to Stoney Creek Road, as follows,
- a) Pot size supplied shall be not less than 400 Litre.
  - b) Pit size to be 1.5m long and the width of the verge strip.
  - c) Planting distance 12 meters, along strip between footpath and kerb.
  - d) Height above container 3.5meters, calliper at 300mm greater than 60mm, with a clear trunk height of 1.5 meters.
  - e) Trees supplied shall be healthy and vigorous, free of pest and disease, free from injuries.
  - f) Root barriers shall be specified to be installed in all street trees along both kerb and footpaths. Root barriers shall be installed as far as possible of trees. Ensure 50mm of root barrier is left above finished ground height. Root barrier shall be minimum 2 meters long to each side. Root barriers shall be installed alongside the landscape element to be protected in accordance with manufacturer's recommendations.
  - g) Tree trunk shall be not less than 3 meters from driveway, or lighting pole.
  - h) Tree pit to be 1.5 m long, width of the space between kerb and footpath. Interface between turf and tree pit shall be hardwood to flush kerb finished level with the front edge of footpath and top of kerb.
  - i) Mulching- Tree pit mulched shall conform to AS4454 and free of deleterious extraneous matter such as soil, weeds, wood slivers, stones. Mulch shall be in all tree pits 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.
  - j) 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.
  - k) Trees provided shall conform to NATSPEC guide.
  - l) Tree pits shall be planted with groundcovers: 20 *Dianella caerulea* 'Breeze' approx., (6 x m2). No groundcovers shall be planted 600mm from tree trunk.
35. General Landscape Requirements
- 1) All landscape areas on slab shall be automatic irrigated and linked to the stormwater drainage system. As a WSUD principle the irrigation shall use on site

harvest water.

2) Planter boxes constructed over a concrete slab shall be built in accordance with the following requirements:

a) Ensure soil depths in accordance with Council's Landscape DCP. The base of the planter must be screeded to ensure drainage to a piped internal drainage outlet of minimum diameter 90mm, with no low points elsewhere in the planter. There are to be no external weep holes.

b) A concrete hob or haunch shall be constructed at the internal join between the sides and base of the planter to contain drainage to within the planter.

c) Planters are to be fully waterproofed and sealed internally with a proprietary sealing agent and applied by a qualified and experienced tradesman to eliminate water seepage and staining of the external face of the planter. All internal sealed finishes are to be sound and installed to manufacturer's directions prior to backfilling with soil. An inspection of the waterproofing and sealing of edges is required by the Certifier prior to backfilling with soil.

d) Drainage cell must be supplied to the base and sides of the planter to minimize damage to the waterproof seal during backfilling and facilitate drainage. Apply a proprietary brand filter fabric and backfill with an imported lightweight soil suitable for planter boxes compliant with AS 4419 and AS 3743. Install drip irrigation including to lawns.

e) Finish externally with a suitable paint, render or tile to co-ordinate with the colour schemes and finishes of the building.

f) All planter boxes shall be irrigated, and shall have the required depth to sustain the proposed planting, as detail:

i) Trees over 8 meters

- Minimum soil volume 150 cubic metres

- Minimum soil depth 1.3 metre

ii) Medium trees (8 metre canopy diameter at maturity)

- Minimum soil volume 35 cubic metres

- Minimum soil depth 1 metre

iii) Small trees (4 metre canopy diameter at maturity)

- Minimum soil volume 9 cubic metres

- Minimum soil depth 800mm

iv) Shrubs

- Minimum soil depths 500-600mm

v) Groundcover

- Minimum soil depths 300-450mm

g) Any subsurface drainage requirements are in addition to the minimum soil depths quoted above

3) 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.

36. Garbage collection and disposal shall occur on site at all times.

37. Ceiling heights for all habitable areas shall be a minimum of 2.7 metres as measured vertically from finished floor level to the underside of the ceiling. Ceiling heights for all non-habitable areas shall be a minimum of 2.4 m as measured vertically from finished floor level to the underside of the ceiling.

**Prior to issue of the construction certificate**

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

38. The following fees shall be paid to Council prior to the issue of a Construction Certificate. If payment is made after the end of the financial year, the amount shall be adjusted in accordance with Council's adopted fees and charges.
  - i. A Footpath Reserve Restoration Deposit of \$6,519.00. This is to cover repair of any damages, or other works to be done by Council. This includes construction, removal, or repair as required to: kerb and guttering, existing or new driveways; paved areas and concrete footpaths. The deposit may be lodged with Council in the form of a Bank Guarantee (Any proposed Bank Guarantee must not have an expiry date). The deposit will not be returned by Council until works are completed and all damage is restored and all specified works are completed by Council.
  - ii. An environmental enforcement fee of 0.25% of the cost of the works.
  - iii. A Soil and Water Management Sign of \$18.00.
39. The PCA shall ensure that plans submitted with the Construction Certificate demonstrate compliance with the following prior to the issue of any Construction Certificate:
  - a) Fixed 1.8m high privacy screens shall be provided along the western edge of balconies to units 3 / 7 / 9. This screen shall wrap along the northern side of the aforementioned balconies for a distance of 1m.
  - b) Fixed 1.8m high privacy screens shall be provided to to the eastern edge of balcony to units 8 and 10.
  - c) All hot water systems/units located on the balcony of a dwelling shall be encased in a recessed box on the balcony with the lid/cover of the box designed to blend in with the building. All associated pipe work is to be concealed. All vertical plumbing, other than roof water heads and down pipes, shall be concealed within the brickwork of the building.
  - d) Glass balustrades to residential balconies shall be provided as frosted or opaque.
  - e) 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 metres as measured vertically from finished floor level to the underside of the ceiling.
  - f) Acoustic Attenuation - The noise reduction measures specified in the Acoustic report prepared by "Koikas Acoustics" dated 20 March 2019 shall be shown in the construction plans.
  - g) A single antenna shall be provided to the building for use of all residents.
  - h) The motorized vehicular security gate, shall be perforated with a minimum 50%

transparency.

i) Landscape plans shall be revised to ensure consistency with approved plans.

j) The fire hydrant booster recessed into the frontage of the commercial tenancy, shall be screened with doors which treated to match the approved finishes of the development.

k) A bbq facility shall be provided for residents within the rear communal open space area on site, adjoining the internalized rainwater tank wall.

l) The awning to Stoney Creek Road, shall be designed in a manner which facilitates the growth of the *Corymbia maculata* (Spotted Gum) to be planted along as per the approved plans.

40. 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.
41. An application for Frontage Works (Public Domain Frontage Works Construction Application) shall be made to Council's Customer Service Centre prior to issue of the Construction Certificate. All boundary frontage works, egress paths, driveways and fences shall comply with the approval. A fee is payable to Council. If payment is made after the end of the financial year, the amount shall be adjusted in accordance with Council's adopted fees and charges.
42. A Section 7.11 contribution of \$112,844.32 shall be paid to Council. Such contributions are only used towards the provision or improvement of the amenities and services identified below. The amount to be paid is adjusted at the time of payment, in accordance with the contribution rates contained in Council's current Adopted Fees and Charges. The contribution is to be paid prior to the issue of any construction certificate for works above the floor level of the ground floor. (Payment of the contribution is not required prior to any separate construction certificates issued only for demolition, site preparation works and the construction of basement levels). The contribution is calculated from Council's adopted Section 7.11 contributions plan as follows;

Regional Open Space Fund \$ 8,335.91  
City Wide Open Space Fund \$ 13,184.67  
Bexley Local Open Space Fund \$ 76,053.47  
City Wide Town Centre & Streetscape Fund \$ 1,481.86  
Bexley Local Town Centre & Streetscape Fund \$ 450.95  
Pollution Control Contribution \$ 7,626.45  
Administration Bexley Planning Precinct \$ 568.43  
Child Care Services \$ 310.71  
Community Services \$ 332.93  
Library services \$ 4,498.94

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

43. Prior to the issue of the Construction Certificate a certificate from a practicing Structural Engineer, registered with NER, shall be submitted to Council stating that

the subsurface structural components located on the boundary of the public road and neighbouring properties, including but not limited to the slabs, walls and columns, have been designed in accordance with all SAA Codes for the design loading from truck and vehicle loads. An engineering design certificate is required to be submitted for the design of the Basement system including shoring wall.

44. The development shall achieve the following minimum equivalent AAAC Star Rating within the below specified areas of the development.

- 3 Star for tiled areas within kitchens, balconies, bathrooms and laundries. Tiled flooring within corridors, living areas and bedrooms is not permitted.
- 4 Star for timber flooring in any area.
- 5 Star for carpet in any area.

The development shall comply with the Building Code of Australia requirement for walls dividing occupancies.

A report shall be submitted to the Principal Certifying Authority for approval prior to the issue of any Construction Certificate. The report is to include BCA requirements and details of floor/ceilings between residential apartments. Floor coverings within apartments shall be identified within the report. A suitably qualified acoustic engineer with MIE Australia membership or employed by a consulting firm eligible for AAAC membership is to certify that the details provided in the said report satisfy the requirements of this condition, with the certification to be submitted to the Principal Certifying Authority for approval prior to the issue of any Construction Certificate for the relevant stage of works.

45. 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.
46. Compliance with Council's Development Control Plan (DCP) 2011 – Requirements for Access. Access in accordance with Australian Standard 4299 must be provided to and within two (2) residential units, and between these units and their allocated carparking spaces. The allocated parking space will be located in close proximity to the access points of the building. The adaptable units are to be unit numbers 1 and 2. Please note that compliance with this condition requires the relevant units to be constructed to comply with all the essential (Type C) requirements of AS4299.

**Note:** Compliance with Council's Development Control Plan (DCP) 2011 – Requirements for Access and the Building Code of Australia does not necessarily guarantee that the development meets the full requirements of the Disability Discrimination Act (DDA) 1992. It is the responsibility of the applicant to make the necessary enquiries to ensure that all aspects of the DDA legislation are met.

47. Compliance with Council's Development Control (DCP) 2011 in relation to requirements for access. Compliance with this condition will require the design and fitout of the commercial/retail areas to be in accordance with Australian Standard 1428.1-2009.

**Note:** Compliance with Council's Development Control Plan (DCP) 2011 and the Building Code of Australia does not necessarily guarantee that the development meets the full requirements of the Disability Discrimination Act (DDA) 1992. It is the responsibility of the applicant to make the necessary enquiries to ensure that all aspects of the DDA legislation are met.

48. The applicant shall confer with Ausgrid to determine if an electricity distribution substation is required. Written confirmation of Ausgrid's requirements shall be



obtained prior to issue Construction Certificate.

49. The applicant shall confer with Ausgrid to determine if installation of electricity conduits in the footway is required. Written confirmation of Ausgrid's requirements shall be obtained prior to issue Construction Certificate.
50. The applicant shall confer with Ausgrid to determine if satisfactory clearances to any existing overhead High Voltage mains will be affected. Written confirmation of Ausgrid's requirements shall be obtained prior to issue Construction Certificate.

All low voltage street mains in that section of the street/s adjacent to the development shall be placed underground if necessary. This shall include any associated services and the installation of underground supplied street lighting columns where necessary. The applicant shall confer with Ausgrid to determine Ausgrid requirements. Written confirmation of Ausgrid's requirements shall be obtained prior to issue Construction Certificate.

The applicant is responsible for all relocation costs, including costs associated with other cabling such as telecommunications cables.

51. Any building proposed to be erected over or near the existing Sydney Water pipeline is to be approved by Sydney Water. A copy of Sydney Water's approval and requirements are to be submitted to Council prior to issuing a Construction Certificate.
52. Prior to the issue of the Construction Certificate, the approved plans must be submitted to Sydney Water Tap in™ online service to determine whether the development will affect any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met.

Sydney Water's Tap in™ online service is available at:

<https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm>

53. Details shall be submitted to Council for assessment and approval pursuant to Section 138 of the Roads Act 1993 in relation to the following:
  - Construction of footpath and streetscape works.
  - Public domain and drainage works.
  - Footpath alignment, width and surface finish;
  - Landscaping and tree planting areas;
  - Street lighting layout and details;
  - Drainage plus kerb & gutter alignment and details;
  - Adjustment/removal/relocation/protection of assets within the frontage;
  - Construction of vehicular entrance.
54. Prior to issue of the Construction Certificate, a longitudinal driveway profile shall be submitted to Principal Certifying Authority for assessment and approval. The profile shall start in the centre of the road and be along the critical edge (worst case) of the driveway. Gradients and transitions shall be in accordance with Council's Code. The profile shall be drawn to a scale of 1 to 25 and shall include all relevant levels, height clearances, grades (%) and lengths.
55. Prior to the issue of any Construction Certificate, as excavation is required close to existing built structures on neighbouring properties, which may be in the zone of influence of the proposed works and excavations on this site, a qualified practicing Chartered Professional Geotechnical Engineer must:

- (a) Prepare a geotechnical report for the site in line with current geotechnical engineering Australian Standards and practice with reference to all proposed works, protection of neighbouring structures and infrastructure, site soil profiles, site stability, risk assessment, substrata testing etc. with appropriate recommendations to ensure the development is carried out safely, and
- (b) Provide a certificate that the construction certificate plans are satisfactory from a geotechnical perspective, and
- (c) Prepare a Construction Methodology report demonstrating that the proposed construction methods (including any excavation, and the configuration of the built structures) will have no adverse impact on any surrounding property and infrastructure. The report must be submitted with the application for a Construction Certificate, and
- (d) Prepare critical stage inspection schedule, supervise installation of support measures & inspect the works as they progress. Inspect all new footings and earthworks to confirm compliance to design assumptions with respect to allowable bearing pressure, basal cleanness and stability prior to the placement of steel or concrete. The inspections shall be conducted by the geotechnical engineer and are to occur at frequencies determined by the geotechnical engineer, and
- (e) Where a Private Certifier issues the Construction Certificate a copy of the above documentation must be provided to Council, once the Construction Certificate is issued.

The above requirements must be submitted to, assessed and approved by the Principal Certifier prior to the issue of Construction Certificate.

Note: A failure by contractors to adequately assess and seek professional engineering (geotechnical) advice to ensure that appropriate underpinning and support to adjoining land is maintained prior to commencement may result in damage to adjoining land and buildings. Such contractors are likely to be held responsible for any damages arising from the removal of any support to supported land as defined by section 177 of the Conveyancing Act 1919.

56. Prior to the release of the Construction Certificate, a suitably qualified traffic engineer shall provide the following required details for assessment and approval by the Principal Certifier.
- Swept path analysis shall be submitted. The swept path drawings shall include the entry/exit of the internal ramps within the basement levels, internal vehicular circulation and detail that an 'SRV' sized vehicle entering/exiting of the driveway / loading bay in accordance with section 7.2 of Councils Technical Specification – Traffic, Parking and Access. All vehicles shall enter the property in a forward direction and exit the property in a forward direction;
  - 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;

- Demonstrate safe headroom clearance is achieved in the driveway entrance and along the travel path, parking and maneuvering areas of a Small Rigid Vehicle (SRV) with a required minimum height clearance of 3.5m;
- A longitudinal section plotting headroom clearance above driveway access is to be provided for assessment.
- Ensure the sight distance upon exiting the driveway is in accordance with AS/NZS 2890.1:2004. This will require the relocation of the mail boxes.
- Ensure the parking facility is designed in accordance with AS/NZS 2890.1:2004 and AS/NZS 2890.6:2009.

Design certification shall be provided by a suitably qualified traffic engineer certifying the above requirements. Where a Private Certifier issues an Construction Certificate, the plans mentioned in the above paragraph must be provided to Council.

57. Any sub-surface structure within the highest known groundwater table level + 0.5m shall be designed with a waterproof retention system (i.e. 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 the relevant stage of works.

Additionally, prior to the issue of the any construction certificate, a design certificate is required to be submitted for the design of the Basement system including shoring wall. The certificate shall be issued by a Chartered Professional Engineer competent in Structural engineering. The design of the basement and any other underground structure or excavation shall take into consideration of geotechnical recommendations.

58. A Construction Management Plan (CMP) shall be prepared in accordance with the requirements of all relevant regulatory approval bodies. Prior to the commencement of works the Certifying Authority shall be satisfied that the construction Management Plan has obtained all relevant regulatory approvals. The Construction Management Plan shall be implemented during demolition, excavation and construction. Copy of the CMP shall be submitted to Council.
59. A detailed Traffic Management Plan for the pedestrian and traffic management of the site during construction shall be prepared and submitted to the principal certifier for assessment and approval. The Plan shall be prepared by a RMS accredited consultant to address, but not be limited to, the following matters:
- ingress and egress of vehicles to the site;
  - loading and unloading, including construction zones;
  - predicted traffic volumes, types and routes; and
  - pedestrian and traffic management methods and safety;
  - Construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control shall be detailed;
  - 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;
  - 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: The swept path of the longest construction vehicle proposed to enter and exit the subject site, as well as manoeuvrability through the site, shall be in accordance with Austroads. A swept path plan shall be submitted to Certifying Authority for approval illustrating compliance with this requirement, prior to release of the Construction Certificate.

Note: A construction zone will not be permitted on Stoney Creek Road.

60. A visitor car space shall also operate as a car wash bay. A tap shall be provided. A sign shall be fixed saying 'Visitor Car Space and Car Wash Bay'. The runoff shall be directed and treated as per Rockdale Technical Specification Stormwater Management. Details shall be provided with the plans accompanying the Construction Certificate.
61. All surface runoff shall be directed through a propriety oil and sediment filtration system prior to discharge. Details of the pit type, location, performance and manufacturer's maintenance and cleaning requirements shall be submitted and approved prior to the issue of the construction certificate.

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

62. Prior to the issue of the Construction Certificate, detailed drainage design plans generally in accordance with stormwater drainage plan prepared by Com Construction P/L, drawing no 15-05-18-D1 7 15-05-18-D3, Revision A, dated 15/05/2018 for the management of stormwater are to be submitted to Certifying Authority/Accredited Certifier for assessment and approval with the following revisions as specified below:

- a) The volume of the above ground OSD system shall be increased by 20% to compensate for landscaping proposed within the rear setback,
- b) Ensure surface flows at the rear of the ground floor of the development are appropriately captured through pits, drainage grates and pipes and directed into the proposed stormwater system,
- c) Retaining walls shall be able to withstand all hydrostatic loads generated by the 100 year ARI event. This is the depth of maximum storage plus the depth of flow overtopping the weir,
- d) All gas meters, sewer vents, electricity outlets and other services shall be located outside or above the limits of the storage and overflow weir,
- e) The system shall be designed to ensure that no stormwater is concentrated onto any neighbouring property,
- f) Appropriate piped emergency overflow shall be provided for storms greater than the 1 in 50 year event to ensure that all stormwater is effectively conveyed to Stoney Creek Road from the rear of the site in an appropriate manner, ensuring no stormwater will inundate the building structure,
- g) Include the provision of a minimum capacity 4000L rainwater tank with a catchment of at least 50% of the roof area to be utilised for internal stormwater re-use within the development in accordance with sydney water requirement for residential properties,
- h) All stormwater plans are to be revised to reflect the current architectural drawings.

Design certification, in the form specified in Rockdale Technical Specification Stormwater Management, and drainage design calculations are to be submitted with the plans. Council's Rockdale Technical Specification Stormwater Management sets out the minimum documentation requirements for detailed design plans. Stormwater management requirements for the development site, including the final discharge/end connection point, must comply with Rockdale Technical Specification Stormwater Management.

A silt/litter arrestor pit as detailed in Rockdale Technical Specification Stormwater Management shall be provided prior to discharge of stormwater from the site.

Drainage grates shall be provided and designed in accordance with Rockdale Technical Specification Stormwater Management.

63. Prior to the issue of Construction Certificate, if neighbouring properties or roadway are to be utilised for excavation support, the legal rights of any adjoining properties must be respected including for permanent and temporary excavation supports. In this regard the written permission of the affected property owners must be obtained and a copy of the owner's consent for excavation support or other material in adjacent lands must be lodged to the principal certifier. Where excavation support materials are proposed to be used in public land, an application must be made to Council for approval under Section 138 of the Roads Act 1993, via a permit application.
64. Prior to the issue of a construction certificate, a design verification statement shall be submitted to the PCA from a qualified designer certifying that the development achieves or improves the design quality of the development as shown in the plans and specifications in respect of which the construction certificate was issued, having regard to Schedule 1 of *State Environmental Planning Policy No 65—Design Quality of Residential Flat Development*.
65. Prior to the issue of the Construction Certificate, details of the proposed street awning, including plans and sections, must be provided to the Principal Certifying Authority for assessment and approval. The details must include:
  - The street awning must be setback 600mm from the kerb line, minimum Fascia height 600mm, minimum soffit height 3.3m. for sloping sites maximum step of 900mm. The awnings must be entirely self-supporting; posts are not permitted.
  - The awning must provide a minimum 3.5m clearance height at the entry to the parking facility over the proposed driveway crossing to Stoney Creek Road. Suitable cross sections detailing compliance must be provided.
  - All stormwater is to be collected and connected to Council's street gutter. In this regard awning downpipes for drainage are to be fully concealed within or recessed into the ground floor frontage of the building. Awning gutters are to be constructed so that they are not visible from the footpath or are integral to the awning structure.
  - The awning must be designed by a Chartered Professional Structural Engineer for Roof Category R1 in accordance with AS/NZS 1170.1: 2002, AS/NZS 1170.0: 2002, and AS/NZS 1170.3: 2011. The design must incorporate all loads including dead loads, live loads, wind load (lateral, uplift, and downward pressure), and potential impact load.
  - If the awning(s) is to be built over an exit that would be utilised in an emergency it must be constructed of non-combustible material.
  - Lighting is required and must comply with AS/NZS 1158.3.1: 2005 and

AS/NZS 1158.0: 2005. Lighting must be recessed into the awning and be integral to its structure with all wiring and conduits concealed.

Subject to compliance with the requirements above, Bayside Council grants approval pursuant to Section 138 of the Roads Act 1993. Council's approval remains whilst the structure is in place and the structural stability of the awning is not compromised. Maintenance of the awning is the responsibility of the owner of the land.

66. The developer is to submit design drawings and documents relating to the excavation of the site and support structures to Roads and Maritime for assessment, in accordance with Technical Direction GTD2012/001. The developer is to submit all documentation at least six (6) weeks prior to commencement of construction and is to meet the full cost of the assessment by Roads and Maritime. If it is necessary to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owner/s of the roadway is/are given at least seven (7) day notice of the intention to excavate below the base of the footings. The notice is to include complete details of the work. Additionally, detailed design plans and hydraulic calculations of any changes to the stormwater drainage system are to be submitted to Roads and Maritime for approval, prior to the commencement of any works. A plan checking fee will be payable and a performance bond may be required before Roads and Maritime approval is issued.
67. Prior to issue of Construction Certificate, swept path analysis shall be submitted to Certifying Authority for assessment and approval. The swept path drawings shall include the entry/exit of the internal ramps within the basement levels, internal vehicular circulation and detail that an 'SRV' sized vehicle entering/exiting of the driveway / loading bay. All vehicles shall enter and exit the site in a forward direction. The analysis shall indicate that sufficient space and headroom (3.5m minimum) is provided for an SRV vehicle whilst maneuvering in the proposed development on the ground floor.

### **Prior to commencement of works**

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

68. A dilapidation survey shall be undertaken of all properties and/or Council infrastructure, including but not limited to all footpaths, kerb and gutter, stormwater inlet pits, and road carriageway pavements, in the vicinity which could be potentially affected by the construction of this development. Any damage caused to other properties during construction shall be rectified. A copy of the dilapidation survey and an insurance policy that covers the cost of any rectification works shall be submitted to the Accredited Certifier (AC) or Council prior to Commencement of Works. The insurance cover shall be a minimum of \$10 million.
69. A Soil and Water Management Plan shall be prepared. The Plan must include details of the proposed erosion and sediment controls to be installed on the building site. A copy of the Soil and Water Management Plan must be kept on-site at all times and made available on request.

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

Council's warning sign for soil and water management must be displayed on the

most prominent point on the building site, visible to both the street and site workers. The sign shall be erected prior to commencement of works and shall be displayed throughout construction.

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

If vibration monitoring equipment detects any vibration at the level of the footings of any adjacent building exceeding the peak particle velocity adopted by the professional engineer as the maximum acceptable peak particle velocity an audible alarm must activate such that the principal contractor and any sub-contractor are easily alerted to the event.

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

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

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

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

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

**Note:** Professional engineer has the same meaning as in Clause A1.1 of the BCA.

**Note:** Building has the same meaning as in section 4 of the Act i.e. "building includes part of a building and any structure or part of a structure".

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

71. 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.
72. 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.
- 73. 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.
- 74. (a) A hoarding or fence shall be erected between the work site and the public place when the work involved in the erection or demolition of a building:
  - (i) is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or
  - (ii) building involves the enclosure of a public place,

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

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

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

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

  - (i) extend from the common boundary to 200mm from the edge of the carriageway for the full length of the boundary;
  - (ii) have a clear height above the footpath of not less than 2.1m;
  - (iii) terminate not less than 200mm from the edge of the carriageway (clearance to be left to prevent impact from passing vehicles) with a continuous solid upstand projecting not less than 0.5m above the platform surface; and
  - (iv) together with its supports, be designed for a uniformly distributed live load of not less than 7 kPa The 'B' Class hoarding is to be lit by fluorescent lamps with anti-vandalism protection grids. Any such hoarding, fence or awning is to be removed when the work has been completed.

(d) The principal contractor or owner builder must pay all fees and rent associated with the application and occupation and use of the road (footway) for required hoarding or overhead protection.
- 75. 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.
- 76. 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.
77. 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.
78. 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 or other approved methods of preventing movement of the soil must be provided and:-
    - ii. Adequate provision must be made for drainage.
79. Stoney Creek Road is identified in the NSW Governments 2013 Sydney Clearways Strategy for a possible future clearway. Full time No Stopping restrictions are to be implemented along the Stoney Creek Road frontage of the development site. This restriction should be implemented prior to the commencement of any demolition works relating to the proposed development. Prior to the installation of the parking restrictions the applicant is to contact Roads and Maritime CBD & East Network and Safety Unit, by email [development.sydney@rms.nsw.gov.au](mailto:development.sydney@rms.nsw.gov.au), for a works instruction. Roads and Maritime may, in the future, supplement the No Stopping restriction with Clearways.

A Road Occupancy Licence (ROL) should be obtained from Transport Management Centre for any works that may impact on traffic flows on Stoney Creek Road during construction activities. A ROL can be obtained through <https://myrta.com/oplinc2/pages/security/oplincLogin.jsf>.

### **During demolition / excavation / construction**

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

80. **If a CC is required**, 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.

81. 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.
82. Hours of construction shall be confined to between 7 am and 6.30 pm Mondays to Fridays, inclusive, and between 8 am and 3.30 pm Saturdays with no work being carried out on Sundays and all public holidays.
83. 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.

84. 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.
85. 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.
86. All waste generated on site shall be disposed of in accordance with the submitted Waste Management Plan.
87. 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.

88. All excavation and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards and guarded and protected to prevent them from being dangerous to life or property.

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

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

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

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

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

89. When soil conditions require it:
- i. retaining walls associated with the erection or demolition of a building or other approved methods of preventing movement of the soil shall be provided, and
  - ii. adequate provision shall be made for drainage.
90. All contractors shall obtain permits for, and comply with permit conditions during all stages of demolition and construction. Refer to Council "Work Activities on Council Sites Application Form" to obtain permits for the following activities listed below. Contractors must have a valid permit prior to undertaking any work or activity within the public domain. Fines apply if an activity commences without a valid permit being issued. All contractors shall comply with the following during all stages of demolition and construction:

Road, Footpath and Road Related Area Closure (EP05)

This permit will allow the applicant to close a road or part of, footpath or car park to vehicle or pedestrian traffic.

Stand and Operate Registered Vehicle or Plant (EP03)

This permit is used when construction activities involve working from a vehicle

parked on the street including mobile crane, concrete truck, concrete pump or other similar vehicles.

#### Occupy Road with Unregistered Item (EP02)

This permit will allow the applicant to place unregistered items within the roadway including waste containers and skip bins.

#### Works Zone (EP01)

This permit is used when a statutory work zone is required to conduct construction activities adjacent to the work site. These applications are assessed by Council officers and are referred to the Traffic Committee for approval.

#### Scaffolding, Hoarding and Fencing (EP04)

This permit applies to all temporary structures to enclose a work area within the public domain. These include site fencing, types A & B hoarding, type A & B hoarding with scaffolding and type B hoarding plus site sheds.

#### Temporary Shoring/Support (EP09)

This permit will allow the applicant to install temporary support system in or under a public road to support excavation below the existing road surface level. The support systems include ground anchors and shoring.

#### Tower Crane (EP06)

This permit is used when tower crane(s) are used inside the work site and will swing, slew or hoist over Council property or asset.

#### Public Land Access (EP08)

This permit is used by applicants to access or occupy Council land including access over plus access over and occupy any part of Council land.

#### Temporary Dewatering (EP07)

This permit is used when temporary dewatering is required to pump out water from the construction site into Council stormwater drainage system including gutter, pits and pipes. Dewatering management plan and water quality plan are required for this application.

91. All demolition work shall be carried out in accordance with AS2601 – 2001: The Demolition of Structures and with the requirements of the WorkCover Authority of NSW.
92. The following conditions are necessary to ensure minimal impacts during construction:
  - i. Building, demolition and construction works not to cause stormwater pollution and being carried out in accordance with Section 2.8 of Council's Stormwater Pollution Control Code 1993. Pollutants such as concrete slurry, clay and soil shall not be washed from vehicles onto roadways, footways or into the stormwater system. Drains, gutters, roadways and access ways shall be maintained free of sediment. Where required, gutters and roadways shall be swept regularly to maintain them free from sediment.
  - ii. Stormwater from roof areas shall be linked via a temporary downpipe to an approved stormwater disposal system immediately after completion of the roof area.
  - iii. All disturbed areas shall be stabilised against erosion within 14 days of completion, and prior to removal of sediment controls.

- iv. Building and demolition operations such as brickcutting, washing tools or paint brushes, and mixing mortar shall not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.
- v. Stockpiles are not permitted to be stored on Council property (including nature strip) unless prior approval has been granted. In addition stockpiles of topsoil, sand, aggregate, soil or other material shall be stored clear of any drainage line or easement, natural watercourse, kerb or road surface.
- vi. Wind blown dust from stockpile and construction activities shall be minimised by one or more of the following methods:
  - a) spraying water in dry windy weather
  - b) cover stockpiles
  - c) fabric fences
- vii. Access to the site shall be restricted to no more than two 3m driveways. Council's footpath shall be protected at all times. Within the site, provision of a minimum of 100mm coarse crushed rock is to be provided for a minimum length of 2 metres to remove mud from the tyres of construction vehicles.

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

In addition builders / demolishers are required to erect a 1.5m high fence along the whole of the street alignment other than at the two openings. Such protection work, including fences, is to be constructed, positioned and maintained in a safe condition to the satisfaction of the Principal Certifying Authority, prior to the demolition of the existing structures and commencement of building operations.

- viii. Any noise generated during construction of the development shall not exceed limits specified in any relevant noise management policy prepared pursuant to the Protection of the Environment Operations Act, 1997 or exceed approved noise limits for the site.
93. Council's warning sign for soil and water management must be displayed on the most prominent point on the building site, visible to both the street and site workers. The sign must be displayed throughout construction. A copy of the sign is available from Council.
94. 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 Development Control Plan 2011.

### **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.

95. An Occupation Certificate shall be obtained in relation to the approved works prior to any use or occupation of the building.
96. 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.
97. 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.
98. Where Council's park/reserve is damaged as a result of building work or vehicular building traffic, this area shall be restored by Council at the applicant's expense. Repairs shall be completed prior to the issue of the Occupation Certificate.
99. All excess excavated material, demolition material, vegetative matter and builder's rubbish shall be removed to the Waste Disposal Depot or the Regional Tip prior to final inspection.  
Note: Burning on site is prohibited.
100. A by-law shall be registered and maintained for the life of the development, which requires that :
  - (a) balconies are not to be used as clothes drying areas, storage of household goods and air-conditioning units that would be visible from the public domain;
  - (b) an owner of a lot must ensure that all floor space within the lot complies with the acoustic conditions for floors specified in this consent;
  - (c) Notwithstanding subclause (b), in the event that a floor covering in the lot is removed, the newly installed floor covering shall have a weighted standardized impact sound pressure level not greater than L'nT,w 45 measured in accordance with AS ISO 140.7 and AS ISO 717.2, A test report from a qualified acoustic engineer employed by a firm eligible to membership of the Association of Australian Acoustical Consultants shall be submitted to the Owners Corporation within 14 days of the installation of the new floor covering demonstrating compliance with that standard. In the event that the standard is not complied with, the floor covering shall be removed and replaced with a floor covering that conforms to that standard in accordance with any directions given by the Owners Corporation.

Proof of registration of the By Law shall be submitted to Council prior to the issue of the Occupation Certificate.
101. 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.
102. All landscape works are to be carried out in accordance with the approved landscape plans prior to the issue of an Occupation Certificate for the approved development. The landscaping is to be maintained to the approved standard at all times.
103. 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.
104. Where an electricity substation is required by Ausgrid, a final film survey plan shall be endorsed with an area having the required dimensions as agreed with Ausgrid over the location of the proposed electricity distribution substation site. The substation must be located within the boundary of the development site, or within the building,



- subject to compliance with the BCA. The substation site shall be dedicated to Council as public roadway, or as otherwise agreed with Ausgrid. Ausgrid's requirements shall be met prior to release of the issue of the Occupation Certificate.
105. 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 a prominent place approved by the Principal Certifying Authority, stating the following: "All vehicles shall enter and exit the site in a forward direction at all times".
  106. 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.
  107. The width of the driveway shall be a minimum of 5.5 metres at the property boundary.
  108. A large convex mirror is to be appropriately installed near the bottom of the basement ramp in a strategic position chosen by a traffic engineer to provide increased sight distance for vehicles.
  109. The gate for the parking facility shall be located in order to permit the queuing of two (2) vehicles when waiting to enter the basement garage. The control mechanism for the gate shall be arranged such that access to the basement garage for registered proprietors of the commercial units, and their visitors, does not require security clearance or assisted entrance between the hours of 7:30am to 6:00pm Monday to Saturday and 7:30am to 1:00pm on Sunday. Where the hours of operation of the commercial units are approved outside of these hours, the access arrangements shall match the approved hours of operation.
  110. Prior to Occupation, bollards and kerbs designed in accordance with AS/NZS 2890.1:2004 shall be installed by the Developer on the eastern side of the vehicular entry adjacent to the pedestrian access, designed to protect internal pedestrian access. Such bollards are to be evenly spaced.  
  
Bollard(s) shall be installed by the developer for the accessible parking spaces in accordance with AS/NZS 2890.6:2009.  
  
Additional physical barriers are to be provided within the parking facility, located and designed in accordance with AS/NZS 2890.1:2004 section 2.4.5.  
  
Bollards are to be constructed from steel pipe minimum 100mm diameter, domed at the top and filled with concrete. They are to be installed a minimum of 900mm into the ground and are to be 1100 mm out of the ground, painted white, with reflectors attached. Future maintenance will be the responsibility of the owner and/or occupier.
  111. All off-street car spaces shall be provided in accordance with the approved plans and shall be sealed and linemarked to the satisfaction of the Principal Certifier in accordance with AS/NZS 2890.1:2004 and AS/NZS 2890.6:2009. The pavement of all car parking spaces, manoeuvring areas and internal driveways shall comply with Australian Standard AS3727 – Guide to Residential Pavements.
  112. Prior to the issue of the Final Occupation Certificate, a Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water.

It is recommended that applicants apply early for the certificate, as there may be water and sewer pipes to be built and this can take some time. This can also impact on other services and building, driveway or landscape design.

Application must be made through an authorised Water Servicing Coordinator. For help either visit [www.sydneywater.com.au](http://www.sydneywater.com.au) > Plumbing, building and developing > Developing > Land development or telephone 13 20 92.

113. Prior to occupation, a registered surveyor shall certify that the driveway(s) over the footpath and within the property have been constructed in accordance with the approved driveway profile(s). The certification shall be based on a survey of the completed works. A copy of the certificate and a works-as-executed driveway profile shall be provided to Council if Council is not the Principal Certifying Authority.
114. The noise reduction measures specified in the noise report prepared by Koikas Acoustics, dated 20 March 2019 shall be validated by a Certificate of Compliance prepared by the acoustic consultant and submitted to the Principal Certifying Authority (PCA) prior to the issue of an Occupation Certificate. If Council is not the PCA, a copy shall be submitted to Council concurrently.
115. 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.
116. 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.
117. Prior to occupation or use of the premises, a qualified mechanical engineer shall certify that the mechanical ventilation/air conditioning system complies in all respects with the requirements of Australian Standard 1668, Part 1 & 2.
118. Prior to occupation a Chartered Professional Engineer shall certify that the stormwater system has been constructed in accordance with the approved construction stormwater plans and as required by Rockdale Technical Specification Stormwater Management. The certificate shall be in the form specified in Rockdale Technical Specification Stormwater Management and include an evaluation of the completed drainage works. A works-as-executed drainage plan shall be prepared by a registered surveyor based on a survey of the completed works. A copy of the certificate and works-as-executed plan(s) shall be supplied to the Principal Certifying Authority. A copy shall be provided to Council if Council is not the Principal Certifying Authority.
119. Prior to Occupation, Positive covenants pursuant to the Conveyancing Act 1919 shall be created on the title of the lots that contain the following facilities to provide for the maintenance of the facilities.
  - The stormwater detention facility to provide for the maintenance of the system.
  - The pump-out facility to provide for the maintenance of the system
  - Waste management is to be undertaken by a private contractor wholly on site in the dedicated loading bay with a maximum vehicle size of an SRV vehicle
120. The pump system, including all associated electrical and control systems, shall be tested and inspected by a suitably qualified and experienced person. Records of testing shall be retained and provided to the certifying hydraulic engineer and/or PCA upon request.
121. The drainage system shall be constructed in accordance with the approved construction 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.

A silt/litter arrestor pit as detailed in Rockdale Technical Specification Stormwater Management shall be provided prior to discharge of stormwater from the site.

122. Prior to the issue of an Occupation Certificate, the location of all onsite above ground storage systems shall be marked by the permanent fixing of a marker plate of minimum size 200 mm by 150 mm to the nearest permanent surface. The plate shall be made of a non-corrosive metal that contains the following wording:  
"This onsite stormwater detention system will pond after heavy rain. The outlet pit must be cleared of debris regularly."

Additionally, signs shall be displayed adjacent to all stormwater drains on the premises, clearly indicating "Clean water only - No waste".

123. The owner of the premises is required to comply with the following requirements when installing a rainwater tank:
- Inform Sydney Water that a Rainwater tank has been installed in accordance with applicable requirements of Sydney Water.
  - The overflow from the rainwater tank shall be directed to the storm water system.
  - All plumbing work proposed for the installation and reuse of rainwater shall comply with the NSW Code of Practice: Plumbing and Drainage and be installed in accordance with Sydney Water "Guidelines for rainwater tanks on residential properties.
  - A first flush device shall be installed to reduce the amount of dust, bird faeces, leaves and other matter entering the rainwater tank.
124. Prior to the issue of an Occupation Certificate for occupation or use of residential flat development, a design verification statement shall be submitted to the PCA from a qualified designer certifying that the development achieves the design quality of the development as shown in the plans and specifications in respect of which the construction certificate was issued, having regard to Schedule 1 of *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*.
125. Waste and recycling must be collected by a private waste contractor, no bins will be collected from Stoney Creek Road. A contract for waste and recycling collection must be entered into prior to issue of the Occupation Certificate and the maximum size of the waste collection vehicle shall be equal to or smaller than a SRV vehicle. The company engaged must ensure that all recycling is collected separately from waste.
126. Prior to occupation, a Chartered Professional Engineer competent in geotechnics shall certify that the construction works has been constructed in accordance with the approved geotechnical report and include an evaluation of the completed works. A copy of the certificate shall be supplied to the Principal Certifying Authority. A copy shall be provided to Council if Council is not the Principal Certifying Authority.

### **Integrated development/external authorities**

The following conditions have been imposed in accordance with Section 91A of the Environmental Planning and Assessment Act, 1979.

127. **Roads and Maritime Service**

A. All buildings and structures (other than pedestrian footpath awnings), together with

any improvements integral to the future use of the site are to be wholly within the freehold property (unlimited in height or depth), along the Stoney Creek Road boundary

B. The redundant driveway on the Stoney Creek Road boundary shall be removed and replaced with kerb and gutter to match existing. The design and construction of the kerb and gutter on Stoney Creek Road shall be in accordance with Roads and Maritime requirements. Details of these requirements should be obtained by email to DeveloperWorks.Sydney@rms.nsw.gov.au.

Detailed design plans of the proposed kerb and gutter are to be submitted to Roads and Maritime for approval prior to the issue of a Construction Certificate and commencement of any road works. A plan checking fee and lodgement of a performance bond is required from the applicant prior to the release of the approved road design plans by Roads and Maritime.

C. Stoney Creek Road is identified in the NSW Governments 2013 Sydney Clearways Strategy for a possible future clearway. Full time No Stopping restrictions are to be implemented along the Stoney Creek Road frontage of the development site. This restriction should be implemented prior to the commencement of any demolition works relating to the proposed development. Prior to the installation of the parking restrictions the applicant is to contact Roads and Maritime CBD & East Network and Safety Unit, by email development.sydney@rms.nsw.gov.au, for a works instruction. Roads and Maritime may, in the future, supplement the No Stopping restriction with Clearways.

Parking for all vehicles associated with the proposed development must be fully contained within the development site and must not encroach onto any state road.

D. Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system are to be submitted to Roads and Maritime for approval, prior to the commencement of any works. A plan checking fee will be payable and a performance bond may be required before Roads and Maritime approval is issued.

E. The developer is to submit design drawings and documents relating to the excavation of the site and support structures to Roads and Maritime for assessment, in accordance with Technical Direction GTD2012/001. The developer is to submit all documentation at least six (6) weeks prior to commencement of construction and is to meet the full cost of the assessment by Roads and Maritime.

If it is necessary to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owner/s of the roadway is/are given at least seven (7) day notice of the intention to excavate below the base of the footings. The notice is to include complete details of the work.

F. All vehicles are to enter and exit the property in a forward direction.

G. All works and signposting associated with the subject development shall be at no cost to Roads and Maritime.

H. 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 for approval prior to the issue of a Construction Certificate.

I. A construction zone will not be permitted on Stoney Creek Road.

J. A Road Occupancy Licence (ROL) should be obtained from Transport Management Centre for any works that may impact on traffic flows on Stoney Creek Road during construction activities. A ROL can be obtained through <https://myrta.com/oplinc2/pages/security/oplincLogin.jsf>.

128. Sydney Airport Corporation Limited (SACL) has approved the maximum height of the proposed building at 61.16RL. This height is inclusive of all vents, chimneys, aerals, TV antennae and construction cranes etc. No permanent or temporary structure is to exceed this height without further approval from Sydney Airport Corporation Limited.

**Note:** Under Section 186 of the Airports Act 1996, it is an offence not to give information to the Airport Operator that is relevant to a proposed "controlled activity" and is punishable by a fine of up to 50 penalty units. For further information on Height Restrictions please contact SACL on 9667 9246.

## Roads Act

129. Construction related activities must not take place on the roadway without Council/RMS approval.

Short-term activities (including operating plant, materials delivery) that reduce parking spaces, affect access to a particular route or prevent or restrict the passage of vehicles along the road must not occur without a valid Temporary Roadside Closure Permit.

Activities involving occupation of the parking lane for durations longer than allowed under a Temporary Roadside Closure Permit require a Construction Zone Permit and must not occur prior to the erection of Works Zone signs by Council's Traffic and Road Safety Section.

Permit application forms should be lodged at Council's Customer Service Centre allowing sufficient time for evaluation. An information package is available on request.

130. Where applicable, the following works will be required to be undertaken in the road reserve at the applicant's expense:
- i) construction of a concrete/paved footpath along the frontage of the development site;
  - ii) construction of a new fully constructed concrete vehicular entrance/s;
  - iii) removal of the existing concrete vehicular entrance/s, and/or kerb laybacks which will no longer be required;
  - iv) reconstruction of selected areas of the existing concrete Footpath/vehicular entrances and/or kerb and gutter;
  - v) construction of paving between the boundary and the kerb;
  - vi) removal of redundant paving;
  - vii) construction of kerb and gutter.
131. All footpath, or road and drainage modification and/or improvement works to be

undertaken in the road reserve shall be undertaken by Council, or by a Private Licensed Contractor subject to the submission and approval of a Private Contractor Permit, together with payment of all inspection fees. An estimate of the cost to have these works constructed by Council may be obtained by contacting Council. The cost of conducting these works will be deducted from the Footpath Reserve Restoration Deposit, or if this is insufficient the balance of the cost will be due for payment to Council upon completion of the work.

132. All driveway, footpath, or road and drainage modification and/or improvement works to be undertaken in the road reserve shall be undertaken in accordance with Council's Subdivision and Civil Works Construction Specification (AUS-SPEC 1). Amendment to the works specification shall only apply where approved by Council. Where a conflict exists between design documentation or design notes and AUS-SPEC 1, the provisions of AUS-SPEC 1 shall apply unless otherwise approved by Council.
133. This Roads Act approval does not eradicate the need for the Contractor to obtain a Road Opening Permit prior to undertaking excavation in the road or footpath.
134. 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.
135. Following completion of concrete works in the footpath reserve area, the balance of the area between the fence and the kerb over the full frontage of the proposed development shall be turfed with either buffalo or couch (not kikuyu).
136. All works associated with the proposed development shall be at no cost to the RMS.
137. The following details shall be submitted to PCA for assessment and approval pursuant to *Section 138 of the Roads Act 1993*, in relation to the awning over Council's footpath.
  - i) Detailed design plans and specifications, including structural details; and
  - ii) Design certificate.

The awning shall be designed by a Chartered Professional Engineer (Structural).

**Note:** Awnings are required to comply with the requirements under Rockdale Development Control Plan 2011. Awnings are required to be set back a minimum of 600 mm from the kerb face and be a minimum height of 3.3 metres above the footpath level. Drainage from the awning shall be connected to the stormwater system for the development. The awning shall provide a minimum 3.5m clearance above the driveway crossing at the entrance to the parking facility.

Following completion of the installation of the awning a certificate from a Chartered Professional Engineer (Structural) shall be submitted to PCA stating that the awning has been constructed in accordance with the design plans and specifications.

### Development consent advice

- a. Some forms of signage require separate development consent. Please refer to relevant planning policies for more information.
- b. A street/shop number shall be prominently displayed at the front of the development.

The street number shall be a minimum of 120 mm in height to assist emergency services and visitors to locate the property. The numbering shall be erected prior to commencement of operations.

- c. 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.
- d. *Dial Before You Dig*

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

- e. Where Council is not engaged as the Principal Certifying Authority for the issue of the Subdivision Certificate (Strata), and the Section 88B Instrument contains easements and/or covenants to which Council is a Prescribed Authority, the Council must be provided with all relevant supporting information (such as works-as-executed drainage plans and certification) prior to Council endorsing the Instrument.
- f. All asbestos fibre demolition material and asbestos dust shall be handled, stored and removed in accordance with the relevant legislation and guidelines including:
  - Work Health and Safety Act 2011
  - Work Health and Safety Regulation 2011
  - Code of Practice for the Safe Removal of Asbestos [NOHSC: 2002 (2005)]
  - Code of Practice for the Management and Control of Asbestos in Workplaces [NOHSC: 2018 (2005)]
  - Protection of the Environment Operations (Waste) Regulation 2005

All work procedures shall be devised to minimise the release of dust and fibres. A checklist of safety precautions when working with asbestos is available in Health & Safety Guidelines prepared by the WorkCover Authority of NSW. Collection, storage and transportation is subject to the Protection of the Environment Operations (Waste) Regulation 2005.

- g. Hazardous and/or intractable wastes arising from the demolition process shall be removed and disposed of in accordance with the requirements of the relevant statutory authorities (NSW WorkCover Authority and the NSW Environment Protection Authority), together with the relevant regulations, including:
  - Work Health and Safety Act 2011
  - Work Health and Safety Regulation 2011
  - Protection of the Environment Operations (Waste) Regulation 2005.
- h. Demolition and construction shall minimise the emission of excessive noise and prevent "offensive noise" as defined in the Protection of the Environment Operations Act 1997. Noise reduction measures shall include, but are not limited to the following strategies:

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



# 88 STONEY CREEK ROAD BEXLEY NSW 2211

SHOP TOP HOUSING DEVELOPMENT

## DESIGN VERIFICATION STATEMENT SEPP 65

Pursuant to the provisions of **State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development**, I hereby confirm that I am a qualified designer within the meaning of clause 3 of the Environmental Planning & Assessment Regulation 2000.

I verify that:

- (a) I directed the design amendments for the Pre-Development Application of 681-683 Old Princess Hwy & 24 Belmont St Sutherland and
- (b) that the design quality principles set out in Part 2 of State Environmental Planning Policy No 65-- Design Quality of Residential Flat Development are achieved for the above residential flat development.

**FULL NAME OF ARCHITECT:** AMMAR BECKA

**QUALIFICATIONS:** Master of Architecture AUCKLAND UNIVERSITY first Class Honours  
Registered Architect no. 6549 in NSW

*AMMAR BECKA*

**Ammar Becka** (BArch MArch 1<sup>st</sup> class honours)

Chartered Architect NSW Registration number 6549

• Certificate

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## 2017 Statement of currency

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This is to certify that in accordance with  
section 28 (1) of the Architects Act 2003 that;

Ammar S Becka

Registration Number: 6549

is registered in the Practising  
Category of the NSW Register of Architects

Registration is valid to 30 June 2018.

---

Tim Horton  
Registrar

28 June 2017

NSW  
Architects  
Registration  
Board





## Statement of Environmental Effects

### Demolition of Existing structures and proposed Shop Top Housing Development

Lot 14 in DP 913489

No 88 Stoney Creek Road, Bexley

20<sup>th</sup> February 2018



**David Haskew (Partner)**

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PLANNING

APPROVALS

DEVELOPMENT

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88 Stoney Creek Road, Bexley

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# 1 Introduction

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The purpose of this Statement of Environmental Effects is to assist Bayside Council in its assessment of a Development Application proposing Demolition of the Existing structures and proposed Shop Top Housing on **Lot 14 DP 913489 No 88 Stoney Creek Road, Bexley**.

In summary, the proposed Shop Top Housing development will comprise a four (4) storey building containing ten (10) residential units over ground floor retail premises and car parking, and additional basement car parking.

*In general, as provided for in this submission Shop Top Housing is often proposed and ideally located in established centres, along main streets and close to public transport hubs. They can be small infill developments where the ground floor is occupied by retail and/or commercial uses. Shop top apartments typically range between two and six storeys and are best used when:*

- *increased residential uses are desired in Centre areas;*
- *the context is a traditional frontage to the main street;*
- *zero setbacks to side boundary walls are possible and desired;*
- *active frontages such as retail tenancies are desired at street level, and*
- *pedestrian activity on the street is desired.*

(Source – ADG, page 17)



This report is submitted in accordance with Clause 50(1)(a) of the *Environmental Planning and Assessment Regulation 2000* ("the EPAA Regulation 2000"). The purpose of this Statement of Environmental Effects is:

- To provide a description and general information about the site and the proposed development in accordance with Clause 1 of Schedule 1 of the EPAA Regulation 2000.

In accordance with Clause 2 of Schedule 1 of the EPAA Regulation 2000, to provide the following information:

- The environmental impacts of the development;
- How the environmental impacts of the development have been identified; and
- The steps to be taken to protect the environment or to lessen the expected harm to the environment.

To address the above statutory requirements, the report considers the following matters:

- Description of the site, surrounding development and the wider locality;
- Description of the proposed development;
- Assessment of the proposed development in accordance with State Environmental Planning Policy 65 – Design Quality of Residential Flat Development (SEPP 65) and Apartment Design Guideline (ADG) particularly relating to Mixed Uses, and all relevant statutory controls; and,
- A broader environmental assessment of the proposal, having regard to the matters for consideration contained within Section 79C of the Environmental Planning and Assessment Act 1979 (The EPA Act 1979).

The proposed Shop Top Housing development will occur upon land zoned B1 Neighbourhood Centre pursuant to the Rockdale Local Environmental Plan 2011 (RLEP2011) and is a permitted land use within this zone.

The objectives of the B1 Neighbourhood Centre Zone are:

- *To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.*
- *To ensure that development within the zone does not detract from the economic viability of the commercial centres in Zone B2 Local Centre and Zone B4 Mixed Use within Rockdale.*
- *To ensure that the nature, scale and type of development is compatible with adjacent residential development.*

It is considered that the proposed development satisfies one or more of the zone objectives, particularly that this proposal will ensure that the nature, scale and type of development is compatible with adjacent residential development.

The subject site provides a total site area of 768.70sqm and the development as proposed generally satisfies the State Environmental Planning Policy 65 – Design Quality of Residential Flat Development (SEPP 65) and Apartment Design Guideline (ADG) particularly relating to Mixed Uses, Rockdale Local Environmental Plan 2011 (RLEP2011) and Rockdale Development Control Plan 2011 (RDCP2011).

Provided with this Statement of Environmental Effects is the information required to enable the determination of the development application. The site, proposal and development controls are discussed, and with a Section 79C summary assessment of the proposal, forms the required Statement of Environmental Effects.

## 2 Site Details

---

### 2.1 SITE CONTEXT

The site encompasses a single lot with its primary frontage to Stoney Creek Road. Existing structures consist of a single storey brick building with metal roof and street awning, single storey carport to the rear of the site and paving or concrete on ground. All structures are proposed to be demolished.

The site is generally rectangular in shape, orientated due north to south, is approximately 768.70sqm (survey figure) in size and slopes from the rear of the site to Stoney Creek Road. Current vehicle access is via a single width driveway located to the eastern portion of the site.

The local context is principally informed by surrounding development commensurate with a B1 Neighbourhood Centre Zone that encompasses a total of six (6) relatively small and narrow lots within the zone, with land zoning of R2 Low Density Residential immediately surrounding the site and R3 Medium Density Residential further to the north. Bexley Park is located across Stoney Creek Road from the site.

The future character and land use along this strip of Stoney Creek Road is distinctly Shop Top Housing / Mixed Use and high density residential. Shop Top Housing / Mixed Use and high density residential development of the site would be consistent with the future local character of B1 Neighbourhood Zones.

The site's location is shown in the Regional Context as Figure 1. and Figure 2. are aerial photographs depicting the site in its local context.

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88 Stoney Creek Road, Bexley



Figure 1: Site Location (Regional Context)



Figure 2: Site Location (Local Context)

88 Stoney Creek Road, Bexley

## 2.2 SITE DESCRIPTION

The site is formally described as upon Lot 14 DP 913489 and commonly known as No 88 Stoney Creek Road, Bexley. A survey plan of the site is provided for in the submission. The development site is of regular shape with a total area of 768.70sqm (Survey figure).

## 2.3 EXISTING DEVELOPMENT

The site currently supports single storey commercial building and outbuilding to be demolished. The existing building is provided with a carport to the rear of the site. All structures are proposed to be demolished. Vehicle access is direct from Stoney Creek Road of which is a "Classified Road".

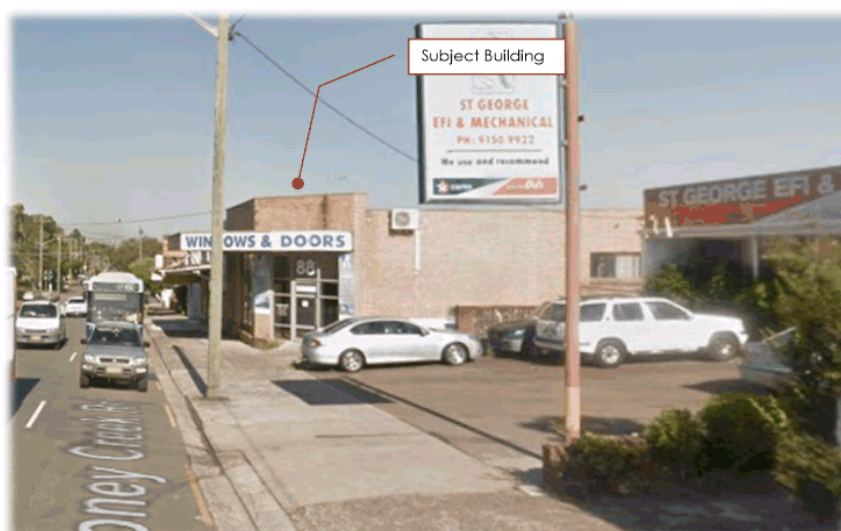


Figure 3: Single storey building to be demolished

## 2.4 VEGETATION

The subject site does not support any vegetation of any form. The existing building and concrete slabs encompass the entire site. A detailed landscape plan has been

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88 Stoney Creek Road, Bexley



provided in support of the application. A large established tree is located on the rear adjoining site that will remain unaffected and provide for visual privacy.

## **2.5 SURROUNDING DEVELOPMENT**

The site is situated within a B1 Neighbourhood Centre Zone, with Shop Top Housing / Mixed Use and High Density Residential being the desired future character of the centre. The surrounding area is zoned R2 Low Density Residential and R3 Medium Density Residential further to the north. The existing neighbourhood centre appears to be experiencing sustained poor economic vitality. Importantly, the B1 zone is underdeveloped relative to the applicable planning controls. Redevelopment of the subject site has the potential to act as a catalyst to encourage similar redevelopment of other land within the neighbourhood centre. The introduction of shop top housing and medium to high density residential land uses will assist in activating the precinct and provide additional activity, particular after business hours.

## **2.6 LOCAL SERVICES**

Local services consist of a range of retail and/or commercial premises located in walking distance from the site including shops, a variety of food and drink premises, and business premises. The site is very well serviced with public transport.

## **2.7 SUITABILITY OF THE SITE**

The key opportunities and constraints from which the proposed development responds are as follows.

- The site is appropriately zoned for a Shop Top Housing (mixed use) building;
- The site is well serviced by public transport;
- The site is of sufficient size and configuration to accommodate the proposal;
- The site is not affected by any natural hazards;
- Opportunity to satisfy local housing demand on an otherwise underutilized site;
- The site is in close proximity to Bexley Park; and

### 3 Proposed Development

---

This site is zoned B1 Neighbourhood Centre pursuant to the Local Government Area (LGA) of Rockdale Local Environmental Plan 2011 (RLEP2011) and located within Bayside Council. This zoning permits the development of the land for Shop Top Housing. In our assessment this proposal:

- Acknowledges the site attributes and constraints that adopts presentation to Stoney Creek Road street frontage;
- Provides for the provision of a contemporary / modern architectural design;
- Provides an activated street frontage to Stoney Creek Road;
- Provides for aesthetically pleasing facades and structures with modern materials and finishes;
- Provides for a natural colour pallet to provide the building with a soft, understated modern appearance, and
- Provides landscaping treatments that softens the building's visual impact when viewed in the round, including from the public and private domains.

With respect to building form and design, this proposal was derived after careful consideration of the State Environmental Planning Policy 65 (SEPP65) and the Apartment Design Guide (ADG), and in particular the relevant section for Mixed Use developments of the ADG. This proposal is consistent with the objectives and requirements of these guidance documents as further discussed below.

Further reference should be made to the Architectural drawings included with this application prepared by Architecture Becka & Associates Pty Ltd.

#### 3.1 OVERVIEW

This proposed Shop Top Housing development will comprise a building of four (4) storey form, contain ten (10) residential units, over ground floor retail premises and car parking, and additional basement car parking.

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88 Stoney Creek Road, Bexley

A 3.80 metre wide vehicle access to the basement is provided to the western portion of the site which provides vehicle access direct from Stoney Creek Road. Basement level will provide for a total of eleven (11) car spaces primarily for the units above, including two (2) spaces for persons with disability. Motor cycle parking spaces are proposed.

The basement will also consist of a lift, storage rooms and two (2) exit stairs. The finished floor level RL is 44.99 AHD and floor area of 650sqm.

As noted above the ground floor will provide for site vehicle entrance direct from Stoney Creek Road, one (1) retail premises with a total floor area of 77sqm directly fronting and activating Stoney Creek Road, landscaped communal area of 79.90sqm to the rear of the site, motorcycle and bicycle parking, garbage area, a total of five (5) car parking spaces being two retail premises and three (3) Visitor parking spaces.

Lift access to the units above is located to the rear of the Retail Premises, with pedestrian access direct from Stoney Creek Road. Two (2) fire isolated stairs egress at the street level, at either end of the site. Additional landscaping treatments / beds are provided to the front facade of the Retail Premises, along with the pedestrian entrance as well as immediately behind the western fire stair.

The first floor will consist of a total of four (4) units, being Unit 1 and Unit 2 of 2 x bedrooms, unit 3 x 3 bedrooms and unit 4 x studio. Access to the units is via a lift located to the eastern portion of the site along with the fire isolated stairs. Private Open Spaces (POS) will be provided in the form of individual balconies facing due north, with an additional communal open space area inclusive of seating and dense garden beds which are provided at this level.

The second and third floors will consist of single and double storey units respectively. Unit 5 and unit 6 will directly front Stoney Creek Road and be provided in a two storey form. The units are provided with 2 x bedrooms with the top floor plate providing for 1 x bedroom respectively. Unit 7 will provide for 2 x bedrooms and unit 9 providing for 1 x bedroom. Private Open Spaces (POS) will be provided in the form of individual balconies facing due north.

The third floor will consist of the final single level units. Unit 9 will provide for 2 x bedrooms with unit 10 provide for 1 x bedroom. Private Open Spaces (POS) will be provided in the form of individual balconies facing due North.

### 3.2 DEVELOPMENT DATA

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88 Stoney Creek Road, Bexley



Development data is provided as follows, as extracted from the Architectural Plans:

**Area Calculations**

Area	Required (m <sup>2</sup> )	Proposed (m <sup>2</sup> )
<b>Site Area</b>		768.7
<b>FSR</b>		
FSR	1:1 or 768.7	768.3 (0.99:1)
GFA- Ground Floor		77
GFA- First Floor		273.77
GFA- Second Floor		269
GFA- Third Floor		148.6
GFA- Basement		650
<b>Communal Space</b>		
Communal Space	Min.25% of Site Area or 192.17	193.37 (25.1%)
Communal Space GF		92.50
Communal Space FF		100.87
<b>Retail</b>		
Retail	Min. 10% of Site Area or 76.87	77 (10%)
<b>Landscape</b>		
Total Landscape		171.3
Deep soil Landscape	Min. 10% of Site Area or 76.87	79.9 (10.4%)
Landscape Area GF		113.7 (66.5% of Total Landscape)
Landscape Area FF		57.60 (33.5% of Total Landscape)

**Carparking Requirements**

Unit/Parking Type	No. of Dwellings	Rockdale DCP 2011		
		Min. Req. per Unit	Min. Spaces Req. (rounded)	Provided
1 Bedroom/ Studio	3	1	3	3
2 Bedroom Dwellings	6	1	6	6
3 Bedroom Dwellings	1	2	2	2
Visitor Parking	10	1 per 5 units	2	2
Retail	77m <sup>2</sup>	1 per 40m <sup>2</sup> GFA	0	2
Additional Accessible	-	0	0	1
Additional Loading Bay	-	0	0	1
<b>Total</b>			15	17
Motorcycle	10	1 per 15 units	0	2
Retail		1 per 20 car spaces	0	1
Bicycle	10	1 per 10 units	1	1
Retail		1 per 200m <sup>2</sup> GFA	0	2
<b>Total</b>			1	6

**Dwelling Mix - Rockdale DCP 2011**

Dwelling Type	Of Total Dwellings	Provided
3 Bedroom and/or more	10-20%	1 (10%)
2 Bedroom	50-75%	6 (60%)
1 Bedroom and/or studio	10-30%	3 (30%)
<b>Total No. of Dwellings= 10</b>		



Area Schedule (Gross Building)											
Unit No.	Type	Area ADG Req. (m <sup>2</sup> )	Proposed Area (m <sup>2</sup> )	POS ADG Req. (m <sup>2</sup> )	Proposed POS (m <sup>2</sup> )	Storage ADG Req. (m <sup>3</sup> )	Total Storage Provided	Proposed Storage in Unit (m <sup>3</sup> )	Proposed Storage in Base. (m <sup>3</sup> )	Direct Sunlight Req.	Direct Sunlight Proposed
1	2 Bedroom	70	75.55	15	17.1	8	11.75	4	7.75	Min. 2hrs	3hrs
2	2 Bedroom	70	73.22	15	15.1	8	9.9	4	5.9	Min. 2hrs	2hrs
3	3 Bedroom	90	90	12	12.5	10	11.78	5.28	6.5	Min. 2hrs	6hrs
4	Studio	35	35	4	9.6	4	4	4	0	Min. 2hrs	6hrs
5	2 Bedroom	70	93.8	10	15.3	8	10.75	4	6.75	Min. 2hrs	5hrs
6	2 Bedroom	70	93.8	10	17.14	8	10.75	4	6.75	Min. 2hrs	2hrs
7	2 Bedroom	70	70	10	10	8	10.75	4	6.75	Min. 2hrs	6hrs
8	1 Bedroom	50	52.4	8	19.3	6	9.9	3.2	6.7	Min. 2hrs	6hrs
9	2 Bedroom	70	74.3	10	15.07	8	10.5	4.3	6.2	Min. 2hrs	6hrs
10	Studio	35	36.5	4	13.81	4	7.8	2.9	4.9	Min. 2hrs	6hrs
	Retail	76.87	77								

### 3.3 AESTHETICS AND ARCHITECTURAL EXPRESSION

The proposal adopts a modern architectural expression that is complementary to proposed (future character) of Shop Top housing / mixed use and residential developments. The style and form of the proposed building is considered appropriate for the B1 Neighbourhood Centre location and is consistent with the desired future high-density character of the locality. The building provides for appropriate setbacks to the adjoining properties side and rear and opportunity for substantial landscaping treatments.

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The proposed development achieves an appropriate built form in terms of building alignment, proportion and articulation of building elements. The overall architectural language appropriately communicates a contemporary mixed-use building and delivers an aesthetic appearance which is likely to sit comfortably with existing residential buildings in the locality.

#### **3.4 LANDSCAPING**

Landscaping of the site is provided in appropriate locations. The site will be landscaped with vegetation suitable for the style of mixed use and high-density development proposed. This will include a mix of garden beds, low shrubbery with selected taller species in key locations in private and common locations.

The landscape design has carefully considered style and species to screen adjoining premises, while also remaining consistent with Crime Prevention Through Environmental Design (CPTED) principles and residential amenity. Reference should be made to the landscape plan accompanying this application.

#### **3.5 VEHICULAR ACCESS AND PARKING**

Vehicle access to the site is provided direct from Stoney Creek Road which is identified as a Classified Road, with vehicle parking located over two levels inclusive of onground and basement level, for both residents and visitors to the site. The site fronts Stoney Creek Road, with no on-street vehicle parking available. Reference should be made to the Traffic management report accompanying this application.

#### **3.6 SERVICING AND LOADING FACILITIES**

A loading bay servicing a small rigid vehicle is provided at ground floor. Lower table top vehicles may access the basement car park for loading / unloading purposes.

#### **3.7 WASTE MANAGEMENT**

Waste management onsite is considered to be satisfactory. Every residence of the building is provided with ground floor bulk waste storage and basement waste storage. It is noted that household waste will be stored within these waste storage rooms and removed by private contractors. Transportation of waste bins within the basement will be by mechanical plant means by the vehicle entrance ramp. Reference should be made to the waste management plan accompanying this application.

### **3.8 ENVIRONMENTAL MANAGEMENT**

This proposal will ensure the efficient and sustainable use of land. This development, will result in the provision of a Shop Top Housing that is both viable and needed in the locality. The residential units will achieve high levels of solar access and ventilation.

#### **3.8.1 Erosion and sediment control**

The risk to the natural environment as a result of this proposal is considered to be very low. The activity that poses the most significant risk to the environment is considered to be run-off of potentially sediment laden waters during construction. This environmental risk has been considered and appropriate environmental controls included in the development site soil and sediment control plan.

#### **3.8.2 Site contamination**

The requirements of State Environmental Planning Policy No 55 (SEPP55) Remediation of Land have been considered. This Policy requires that Council must be satisfied that any development site is appropriately remediated of contamination and suitable for any proposed use. Given the current low scale commercial Use over time, there is unlikely to be any contamination currently on site that might pose any risk to the future use.

#### **3.8.3 Flora and Fauna**

There are no significant Flora onsite, and given the built up commercial and residential locality, fauna of any kind is unlikely in the immediate vicinity.

**3.9 BASIX REQUIREMENTS**

The development is subject to NatHERS & BASIX. The Thermal assessments and BASIX Commitments have been adopted into the design. These aspects of the development add to the overall high sustainable design outcomes. Reference should be made to the NatHERS & BASIX Reports accompanying this application.

## 4 Relevant Planning Controls

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The relevant environmental planning instruments and development controls are outlined below and comment on compliance provided.

### 4.1 STATE ENVIRONMENTAL PLANNING POLICY 65

State Environmental Planning Policy 65 – Design Quality of Residential Flat Development (SEPP 65) aims to improve the quality of residential flat development in New South Wales. The SEPP recognises that the design quality of residential flat development is of significance for environmental planning for the State due to the economic, cultural and social benefits of high quality design.

SEPP 65 further aims to deliver a better living environment for the residents within residential apartment developments and enhance the streetscapes and neighbourhoods in which these buildings are located.

In addition to a Design Verification Statement from a qualified designer, the SEPP also requires the Statement of Environmental Effects to include, amongst other things, an explanation of the design in terms of the design quality principles within the SEPP, development compliance, architectural drawings and landscape plans.

In the absence of a Design Review Panel, the local authority must give consideration in determining a proposal, the design quality of the proposal when evaluated in accordance with the design quality principles, and the publication Apartment Design Guideline (ADG).

It is considered that the proposal generally satisfies the relevant State Environmental Planning Policy, with the Architect providing a Design Verification Statement. An assessment against the Apartment Design Guide (ADG) is provided in the appendix of this report. The proposal is consistent with the desired future neighbourhood character of the locality as identified through the development standards and controls applicable to the B1 zoned land.

#### **4.2 STATE ENVIRONMENTAL PLANNING POLICY NO. 55 - REMEDIATION OF LAND**

Clause 7(1)(a) of State Environmental Planning Policy 55 – Remediation of Land (SEPP 55) states that a consent authority must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated. The Department of Planning publication “Managing Land Contamination– Planning Guidelines SEPP 55 – Remediation of Land” provides advice on the process of determination as to whether a site is contaminated. In this regard, Section 2.2 of the Guidelines states:

When carrying out planning functions under the EP & A Act, a planning authority must consider the possibility that a previous land use has caused contamination of the site as well as the potential risk to health or the environment from that contamination.

When an authority carries out a planning function, the history of the land use needs to be considered as an indicator of potential contamination. Where there is no reason to suspect contamination after acting substantially in accordance with these Guidelines, the proposal may be processed in the usual way.

The Guidelines continue at Section 3.2.1 by stating that:

“The potential for contamination is often linked to past uses of land and a good early indicator of possible uses is land zoning. Contamination is more likely to have occurred if the land is currently, or was previously, zoned for industrial, agricultural or defence purposes.”

The history of retail and commercial land use suggests that it is very unlikely that land uses have occurred to render the site unsuitable for future Shop Top Housing land uses. The site has been used for retail and commercial purposes and this proposal continues such use.

#### **4.3 STATE ENVIRONMENTAL PLANNING POLICY (BUILDING SUSTAINABILITY INDEX - BASIX) 2007**

State Environmental Planning Policy - Building Sustainability Index: BASIX 2004 (SEPP BSI) is applicable to the subject proposal. In accordance with Schedule 1 of the Regulations and SEPP 2004 a BASIX Report was submitted in support of the application demonstrating that the proposed scheme achieves the minimum water, thermal and energy targets.

A development application for any BASIX affected development must also be accompanied by a BASIX certificate or BASIX certificates for the development, being a

BASIX certificate or BASIX certificates that has or have been issued no earlier than 3 months before the date on which the application is made.

A NatHERS and BASIX assessment and subsequent Certificate(s) have been issued. In this regard, the subject application is considered to satisfy the provisions of the Regulations and the SEPP BSI. Reference should be made to the NatHERS and BASIX Certificates accompanying this application.

#### **4.4 GREATER METROPOLITAN REGIONAL ENVIRONMENTAL PLAN NO 2 — GEORGES RIVER CATCHMENT**

The Georges River is a highly-valued river within the Sydney Metropolitan Area. The Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment provides general and specific planning principles to be applied to the preparation of LEPs and assessment of development applications in the Georges River catchment area.

These principles aim to ascertain likely impacts on downstream LGAs and cumulative impacts of developments on the Georges River and its tributaries. The Georges River Catchment REP is a deemed SEPP (EP&A Act, Schedule 6, clause 119).

A comprehensive assessment of the water quality impacts of the Project has been provided in the stormwater report with the findings of this assessment incorporated into the development.

#### **4.5 ENVIRONMENTAL PLANNING POLICY (INFRASTRUCTURE) 2007**

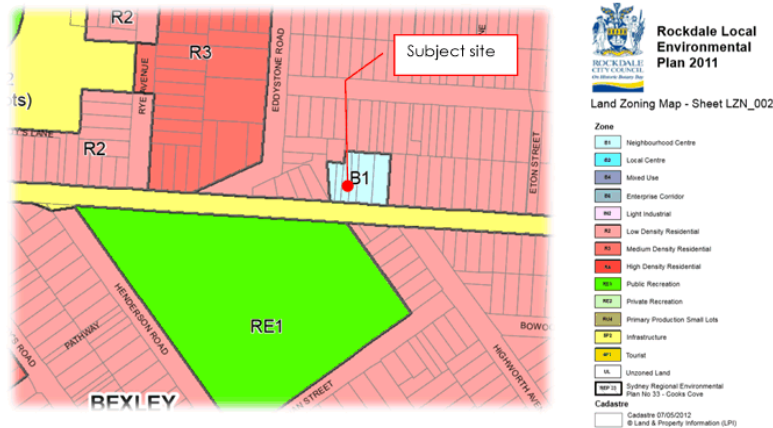
State Environmental Planning Policy (Infrastructure) 2007 assists the NSW Government, local councils and the communities they support by simplifying the process for providing infrastructure.

The proposal is deemed Local development and therefore no concurrence is required to any Government Agencies. We note in that regard that Schedule 3 of SEPP (Infrastructure) 2007 requires residential apartment buildings containing more than 75 dwellings, where they rely on access to a classified road to be referred to the RMS. The yield of the proposed development is well below that threshold.

#### 4.6 ROCKDALE LOCAL ENVIRONMENTAL PLAN 2011 (RLEP2011)

##### 4.6.1 Land Use Zoning

The subject site is zoned B1 Neighbourhood Centre pursuant to the Rockdale Local Environmental Plan 2011 (RLEP2011).



##### 4.6.1.1 Satisfying zone objectives

The objectives of the B1 Neighbourhood Centre Zone are:

- To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.
- To ensure that development within the zone does not detract from the economic viability of the commercial centres in Zone B2 Local Centre and Zone B4 Mixed Use within Rockdale.
- To ensure that the nature, scale and type of development is compatible with adjacent residential development.



It is considered that the proposed development satisfies one or more of the zone objectives, particularly that this proposal will ensure that the nature, scale and type of development is compatible with adjacent residential development.

#### 4.6.1.2 Permissibility

Land uses permitted with consent within the B1 Neighbourhood Centre zone are:

*Boarding houses; Building identification signs; Business identification signs; Business premises; Centre-based child care facilities; Commercial premises; Community facilities; Exhibition homes; Medical centres; Neighbourhood shops; Plant nurseries; Respite day care centres; **Shop top housing; Shops;***

The proposed development is characterised as shops and shop top housing, and is permitted with consent in the Zone. "Definitions" of the Rockdale Local Environmental Plan 2011 (RLEP2011) defines Shop Top Housing as:

#### 4.6.2 Principal Development Standards

The Rockdale Local Environmental Plan 2011 (RLEP2011) sets a number of standards relevant to this proposal as summarised below.

##### Height of Buildings



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The proposed building is less than the maximum height of buildings standard of 13 metres, and therefore satisfies this part of the Rockdale local Environmental Plan 2011 (RLEP2011).

#### 4.6.2.1 Floor Space Ratio



The proposed building is less than the maximum FSR of 1:1, with a total FSR of 0.99:1 and therefore satisfies this part of the Rockdale Local Environmental Plan 2011 (RLEP2011).

#### 4.6.2.2 Heritage



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The proposed site is located across from Bexley Park of which is noted a Heritage item. There will be no detrimental effects of the proposed development on the heritage significance of the item.

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## 5 Assessment of Environmental Effects

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In determining the environmental effects of a development proposal the consent authority, in this case, Bayside Council, is required to consider those matters relevant as listed in section 79C of the Environmental Planning and Assessment Act, 1979. These matters are listed below with commentary where required.

### 5.1 ENVIRONMENTAL PLANNING INSTRUMENTS - SECTION 79C(1)(A)(i)

The relevant environmental planning instruments have been identified and discussed in section 4 of this statement. This proposal is permissible subject to the provisions of the Rockdale Local Environmental Plan 2011 (RLEP2011) and it is considered that the provisions of all relevant environmental planning instruments have been satisfactorily addressed within Section 4 of this statement.

### 5.2 DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS - SECTION 79C(1)(A)(ii)

At the time of preparing this application there were no draft planning instruments which would affect this proposal.

### 5.3 DEVELOPMENT CONTROL PLANS - SECTION 79C(1)(A)(iii)

The Rockdale Development Control Plan, 2011 (RDCP2011) applies to this proposal and it is argued that the proposal is consistent with the aims and objectives of the DCP and generally compliant with the specific controls applicable to the site and the type of development proposed. A summary of the relevant controls prescribed by the DCP and commentary is provided below.

### 5.3.1 Rockdale Development Control Plan, 2011 (RDCP2011)

The applicable Development Control Plan for this proposal is the Rockdale Development Control Plan, 2011 (RDCP2011). This Plan is divided into several parts and the relevant parts to this proposal are discussed below.

The key local development controls have been highlighted and discussed while all other relevant matters for consideration have been summarised and commented upon as detailed in the following sections of this statement.

The following table summarises the **most relevant** (not all) development controls and compliance with such controls.

Part	Guidance	Comment	Compliance
<b>4.1.2 Heritage Conservation</b>	<b>Development in the Vicinity of Heritage Items</b>  Any proposed development located adjacent to or nearby a heritage item must not have an adverse impact on the heritage item including its setting and curtilage.	The site is located across from the Bexley Park, with no foreseen adverse impact on the parkland.	Yes
<b>Part 4 General Principles for Development</b>			
<b>4.1.9 Lot size and Site Consolidation</b>	<b>Mixed use</b>  For all development of 4 storeys or greater, a minimum frontage width of 18m is required.	The site is afforded a frontage of 15.24 metres. A DCP variation statement is provided at Section 5.3.1.1 below	No

Part	Guidance	Comment	Compliance														
4.3.1 Open Space and Landscape Design	<p>Landscaped areas, as defined in Rockdale LEP, must be provided at the following rates :</p> <table><thead><tr><th>Development/Building Type</th><th>Minimum landscaped area (of the site area)</th></tr></thead><tbody><tr><td>Low and medium density residential</td><td>25%</td></tr><tr><td>Residential flat buildings</td><td>15%</td></tr><tr><td>Mixed use (with shoptop housing)</td><td>10%</td></tr><tr><td>Highway commercial</td><td>10%</td></tr><tr><td>Industrial</td><td>10%</td></tr><tr><td>Child care centres</td><td>20%</td></tr></tbody></table>	Development/Building Type	Minimum landscaped area (of the site area)	Low and medium density residential	25%	Residential flat buildings	15%	Mixed use (with shoptop housing)	10%	Highway commercial	10%	Industrial	10%	Child care centres	20%	Landscaping of 10.40% is proposed.	Yes
Development/Building Type	Minimum landscaped area (of the site area)																
Low and medium density residential	25%																
Residential flat buildings	15%																
Mixed use (with shoptop housing)	10%																
Highway commercial	10%																
Industrial	10%																
Child care centres	20%																
4.3.2 Private Open Space	<table><thead><tr><th colspan="3">Residential Flat Building / Shoptop Housing</th></tr><tr><th colspan="3">as per recommended external area for the relevant apartment type set out in Part 3 of the Residential Flat Design Code</th></tr></thead><tbody><tr><td>Each dwelling</td><td></td><td>Minimum depth of 2m</td></tr></tbody></table>	Residential Flat Building / Shoptop Housing			as per recommended external area for the relevant apartment type set out in Part 3 of the Residential Flat Design Code			Each dwelling		Minimum depth of 2m	POS for each unit satisfies the ADG and this part of the DCP.	Yes					
Residential Flat Building / Shoptop Housing																	
as per recommended external area for the relevant apartment type set out in Part 3 of the Residential Flat Design Code																	
Each dwelling		Minimum depth of 2m															
	For residential flat building and shop top housing, private open space is to be provided for each dwelling in the form of balconies, roof terraces or in the case of ground floor units, courtyards. The primary private open space of each unit must directly connect to the living area.	Each individual unit is provided with a private balcony, directly facing north.	Yes														
4.3.3 Communal Open Space	shoptop housing of a mixed use development which has 12 or more dwellings	Although not required, a common open space has been provided on the ground floor and level 1	Yes														
4.4.1 Energy Efficiency	A BASIX certificate is to be submitted with the development application for residential development.	NatHERS and BASIX assessment has been provided.	Yes														
4.4.2 Solar Access	Living rooms and private open spaces for at least 70% of apartments in a development and adjoining properties should receive a minimum of 3 hours	Refer to overshadowing diagrams and ADG assessment.	Yes														

Part	Guidance	Comment	Compliance												
	direct sunlight between 9am and 3pm in mid winter.														
4.4.3 Natural Lighting and Ventilation	<table> <tr> <th>Development type</th> <th>Minimum height Habitable space</th> <th>Minimum height Non-habitable space</th> </tr> <tr> <td>Residential</td> <td>2.7m</td> <td>2.4m</td> </tr> <tr> <td>Retail and commercial</td> <td>3.3m</td> <td>2.4m</td> </tr> <tr> <td>First floor of a mixed use building</td> <td>3.3m</td> <td>2.4m</td> </tr> </table>	Development type	Minimum height Habitable space	Minimum height Non-habitable space	Residential	2.7m	2.4m	Retail and commercial	3.3m	2.4m	First floor of a mixed use building	3.3m	2.4m	The first floor heights are not less than 3.30metres	Yes
Development type	Minimum height Habitable space	Minimum height Non-habitable space													
Residential	2.7m	2.4m													
Retail and commercial	3.3m	2.4m													
First floor of a mixed use building	3.3m	2.4m													
4.4.4 Glazing	Areas of glazing are located to avoid energy loss and unwanted energy gain	Nathers and BASIX Assessment has been provided taking into account window location and glazing performance.	Yes												
4.4.5 Visual and Acoustic Privacy	<p><b>Visual Privacy</b></p> <p>Balconies, terraces, rooftop recreation areas and the like should be located to minimise overlooking of an adjoining property's open space or windows. Techniques such as recessing, screens or landscaping may be used to prevent direct views into habitable rooms or private open space of adjacent dwelling</p> <p>Privacy</p>	Balconies of the units face directly north and are positioned to reduce overlooking onsite and to adjoining properties.	Yes												
	<b>Acoustic Privacy</b>	The location of the units and the developments open spaces	Yes												

Part	Guidance	Comment	Compliance																
	The location of driveways, open space and recreation areas and ancillary facilities external to the dwelling must be carefully planned to ensure minimal noise impact on adjoining residential properties	and pathways have been provided to mitigate noise.																	
	<p><b>Building Separation</b></p> <p>9. For residential flat buildings and shoptop housing, the building separation for internal courtyards and between adjoining sites increases in proportion to building height in accordance with the following minimum dimensions:</p> <table><tr><th>Height</th><th>Between habitable rooms and balconies</th><th>Between habitable rooms/ balconies and non-habitable rooms</th><th>Between non-habitable rooms</th></tr><tr><td>Three to four storeys (12m)</td><td>12m</td><td>9m</td><td>6m</td></tr><tr><td>Five to eight storeys (25m)</td><td>18m</td><td>13m</td><td>9m</td></tr><tr><td>Nine storeys and above (over 25m)</td><td>24m</td><td>18m</td><td>12m</td></tr></table>	Height	Between habitable rooms and balconies	Between habitable rooms/ balconies and non-habitable rooms	Between non-habitable rooms	Three to four storeys (12m)	12m	9m	6m	Five to eight storeys (25m)	18m	13m	9m	Nine storeys and above (over 25m)	24m	18m	12m	Refer to ADG Assessment.	Yes
Height	Between habitable rooms and balconies	Between habitable rooms/ balconies and non-habitable rooms	Between non-habitable rooms																
Three to four storeys (12m)	12m	9m	6m																
Five to eight storeys (25m)	18m	13m	9m																
Nine storeys and above (over 25m)	24m	18m	12m																
<b>4.4.6 Noise Impact</b>	External walls facing potential sources of noise are to be constructed of materials with good sound insulating quality and have no large openings that would transmit noise. The mitigation measure must be consistent with the BASIX certificate	BASIX Certificate has been provided, as has a NCC - BCA Assessment report.	Yes																
<b>4.5.1 Housing Diversity and Choice</b>	<p><b>Controls</b></p> <p>1. Residential flat buildings and shoptop housing are to comply with the following dwelling mix:</p> <table><tr><th>Dwelling type</th><th>Of total dwellings</th></tr><tr><td>3 bedroom and/or more</td><td>10%-20%</td></tr><tr><td>2 bedroom</td><td>50%-75%</td></tr><tr><td>1 bedroom and/or studio</td><td>10%-30%</td></tr></table>	Dwelling type	Of total dwellings	3 bedroom and/or more	10%-20%	2 bedroom	50%-75%	1 bedroom and/or studio	10%-30%	Refer to ADG Assessment.	Yes								
Dwelling type	Of total dwellings																		
3 bedroom and/or more	10%-20%																		
2 bedroom	50%-75%																		
1 bedroom and/or studio	10%-30%																		
	<table><tr><th>No of dwellings in development</th><th>No of adaptable dwellings required</th></tr><tr><td>less than 10</td><td>1</td></tr><tr><td>10 - 30</td><td>2</td></tr><tr><td>more than 30</td><td>10%</td></tr></table>	No of dwellings in development	No of adaptable dwellings required	less than 10	1	10 - 30	2	more than 30	10%	A total of 2 units are proposed for Adaptable Housing.	Yes								
No of dwellings in development	No of adaptable dwellings required																		
less than 10	1																		
10 - 30	2																		
more than 30	10%																		
<b>4.6 Car Parking, Access and Movement</b>	Development is to provide on-site parking in accordance with the rates nominated in the table.	Refer to submitted Traffic Assessment report	Yes																



Part	Guidance	Comment	Compliance
<b>4.7 Site Facilities</b>	Air Conditioning and Communication Structures	Individual AC systems to be provided	Yes
	<b>Waste Storage and Recycling Facilities</b>  Development must comply with Council's Technical Specification – Waste Minimisation and Management regarding construction waste and on going management of waste facilities	Waste services have been provided	Yes
	<b>Laundry Facilities and Drying Areas</b>  Laundry facilities are to be incorporated into each dwelling unit.	Refer to ADG assessment	Yes
	<b>Letterboxes</b>  Letterbox points are to be integrated with building design and are preferably to be located in a covered area attached to or within the building.  Letterboxes are to be centrally located either/or close to the major street entry and lockable.		Yes

Part	Guidance	Comment	Compliance
	<b>Storage Areas</b>  For residential flat buildings and shop top housing, a minimum of 10m <sup>3</sup> storage area must be provided for each apartment. The storage area is to be exclusive of bedroom wardrobes, kitchen cupboards and services. At least 50% of the required storage within each apartment must be accessible from either the hall or living area	Adequate storage facilities are provided in the basement car park. Refer to ADG assessment.	Yes
	<b>Hot Water Systems</b>  All hot water systems/units located on the balcony of a dwelling 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	Noted – to comply	Yes
<b>5.3 Mixed Use</b>	<b>Development Setbacks</b>		
	<b>Front setbacks</b>  Front setbacks must define a coherent alignment to the public domain and accentuate street corners. 2. Development is to be built to the street alignment with a zero setback. The uppermost floor level may be set back. If there is a predominant parapet line in the street, a setback from this line may be required to achieve a cohesive streetscape	The building front façade is located on the frontage of the site fronting Stoney Creek Road and is considered an activated frontage.	Yes

Part	Guidance	Comment	Compliance
	Development on a busy road is to have a zero setback for at least the first three levels. A setback may be provided above the third level to ameliorate the impact of traffic noise and pollution	The first three front setbacks are generally zero.	Yes
	<b>Side and rear setbacks</b>  For minimum side and rear setbacks for shoptop housing refer to 5.2 Residential flat buildings of this DCP.	Refer to ADG Assessment	Yes
	Generally the lower levels of buildings are to be built to side and rear boundaries or be set back no less than 3m.	The rear ground floor setback is greater than 3.0metres and is provided with landscaping treatments.	Yes
	<b>Building Uses</b>  Ground level uses 8. Building uses fronting the public domain at ground level are to be active uses wherever possible.	The ground floor is provided with retail premises.	Yes
	<b>Shop-top housing</b>  All shop top housing must address at least one street frontage, and have its main access off the primary street frontage and not a public internal circulation space.	The building addresses the primary frontage to Stoney Creek Road.	Yes

Part	Guidance	Comment	Compliance
	The building must be designed to minimise potential impacts of commercial uses (eg restaurants and bars) on the amenity of residential users	To be determined post DA	Yes
	<b>Building Design</b>  Façade and roof design is to comply with relevant controls in Section 5.2 Residential Flat Buildings of this DCP	Noted	Yes
	<b>Public Domain Interface</b>  Building design avoids dead spots at ground floor level, such as car parking frontages, blank walls and recessed spaces	The proposal public domain interface is considered to be satisfactory.	Yes
	<b>Access to premises</b>  Buildings must provide access to all ground floor retail or commercial premises which front the street	All access is provided from Stoney Creek Road	Yes
	<b>Visual connection</b>  Development includes display windows with clear glazing to ground floor retail and commercial premise	Glazing to the ground floor premises is full height glazing.	Yes

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Part	Guidance	Comment	Compliance												
5.2 Residential Flat Buildings	Development Setbacks														
	<table><tr><th>Setback</th><th>Requirement</th></tr><tr><td></td><td>to be consistent with the prevailing setback along the street within the range of 3-9m</td></tr><tr><td>Street Setbacks</td><td>secondary street/lane 3-5m</td></tr><tr><td></td><td>min 3m for buildings up to three storeys</td></tr><tr><td>Side Setback</td><td>min 4.5m for all levels for buildings more than three storeys</td></tr><tr><td>Rear Setback</td><td>min of 12m or 15% length of site, whichever is the greater</td></tr></table>	Setback	Requirement		to be consistent with the prevailing setback along the street within the range of 3-9m	Street Setbacks	secondary street/lane 3-5m		min 3m for buildings up to three storeys	Side Setback	min 4.5m for all levels for buildings more than three storeys	Rear Setback	min of 12m or 15% length of site, whichever is the greater	<p>The building is setback 12.0 metres from the rear setback.</p> <p>Side setbacks are less than 4.50 metres. See discussion at Section 5.3.1.1 below</p>	<p>Yes</p> <p>No</p>
Setback	Requirement														
	to be consistent with the prevailing setback along the street within the range of 3-9m														
Street Setbacks	secondary street/lane 3-5m														
	min 3m for buildings up to three storeys														
Side Setback	min 4.5m for all levels for buildings more than three storeys														
Rear Setback	min of 12m or 15% length of site, whichever is the greater														
	Building Design														
	Facade design must respond to environmental conditions such as orientation, noise, breezes, privacy and views, through the use of appropriate sun shading devices, noise barriers, privacy screens, and the careful location of balconies, terraces and loggias	The façade treatments are considered satisfactory for the design and location.	Yes												
	Private open space elements such as balconies should be predominantly north, east and west facing and should be designed to ensure visual and acoustic privacy	All POS balconies face directly North.	Yes												

**5.3.1.1 Rockdale Development Control Plan – Variation Statements.****Lot size and Site Consolidation**

The width of the subject site is 15.24m. Clause 4.1.9 of RDCP 2011 requires a minimum lot size of 18m for development of 4 storeys or greater. The Objectives of clause 4.1.9 are:

*Objectives:*

- A. *To promote the efficient use of land*
- B. *To encourage where necessary the amalgamation of land parcels into larger development sites for medium and high density developments*
- C. *To ensure allotment size is sufficient for development and associated provision of landscaping, parking, vehicular and pedestrian access*
- D. *To maintain amenity in relation to overshadowing, privacy and views by having sensitive layout of buildings*
- E. *To ensure surrounding sites can be economically developed*
- 1. *The development must satisfy the relevant minimum lot size and minimum site frontage requirements specified below*

**Mixed use** - *For all development of 4 storeys or greater, a minimum frontage width of 18m is required.*

Support for variation to the minimum lot width requirement is provided on the basis of two grounds. These are particular characteristics of the site, its surrounding B1 precinct and the particular characteristics of the design; and secondly, consistency with the Planning Principles set out in *Karavellas v Sutherland Shire Council* [2004] NSWLEC 251. Each of these reasons in support of variation to the minimum lot width development standard are expounded below.

**Particular Characteristics of the Site, Its Precinct and the Design**

The subject site, together with all other lots within the subject Neighbourhood Centre are orientated north-south and are situated on the northern side of Parramatta Road. The practical consequence of site location and orientation is that overshadowing impacts are primarily experienced to Parramatta Road, as compared to adjoining properties or the public domain. This characteristic of the subject site operates to mitigate adverse overshadowing impacts associated with 4 storey development of less than 18m wide sites which would otherwise be experienced for lots of less favourable orientation and location.

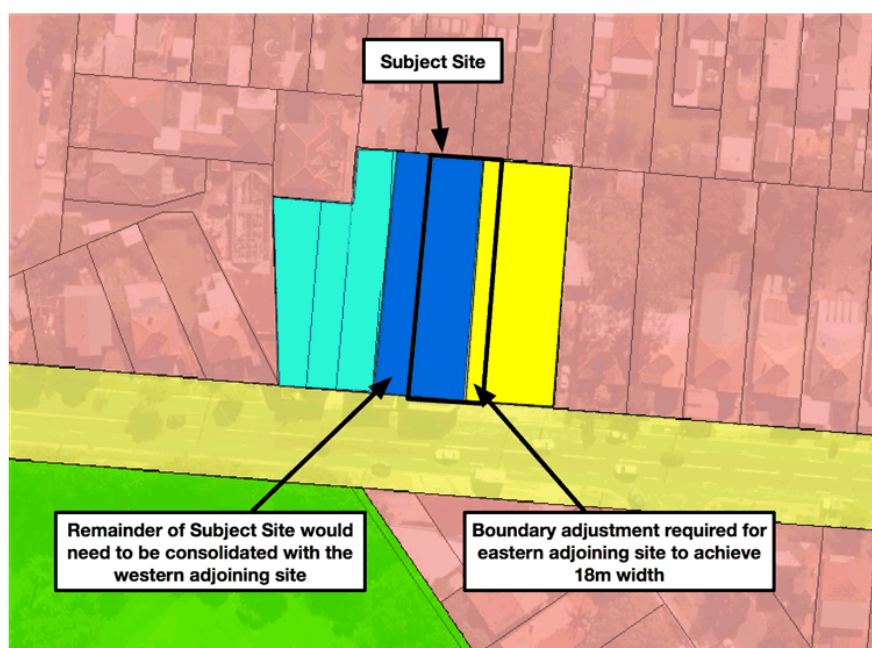
Further, the subject site and, with the exception of the two westernmost lots, all other lots within the precinct are in the order of 50m in length. Generous site depth creates opportunity for show top housing development to occur within the precinct on the basis of substantially the same site planning arrangement as that which is proposed for the subject site. Specifically, the depth allows two separate residential buildings above a common podium. Site depth allows generous separation between the buildings which in turn facilitates solar access to the southernmost of the two buildings.

Through the particular design response, which is replicable on all other sites within the precinct, the constraints of site width are directly off-set by site planning flexibility imparted by generous site depth. Further, the particular design response also supports the absence of east and west facing windows because each row of residential buildings contain dual aspect, north-south orientated dwellings. The absence of side facing windows mitigates against adverse privacy impacts which might otherwise be present for four storey development of lots having a width of less than 18m.

Lastly, analysis of the subdivision pattern within the precinct identifies that a consolidation pattern which strictly complied with the standard would produce three development lots, but which are highly problematic to establish because of the need for consolidations and boundary adjustments.

In contrast, the development of the subject site and its eastern adjoining owner requires no boundary adjustments and less consolidations to occur, and would result in four development lots rather than three.

The consolidation and boundary adjustment constraints of a fully compliant consolidation pattern are summarised in the following Figure 4.



**Figure 4: Consolidation Pattern Analysis Identifying Additional Consolidations and Boundary Adjustments Necessary to Achieve Strictly DCP Compliant Lot Widths within the Precinct.**

Section 79C(3A)(b) of the EP&A Act 1979 requires that in respect of a proposed non-compliance with a DCP standard, that the consent authority is to be "flexible in applying those provisions and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development"

A consolidation pattern which complied with the standard would necessitate fragmentation of the subject site and thence its consolidation with its western adjoining owner. It is highly uncertain that this outcome will ever be possible and pursuant to offers to purchased detailed in the following subsection of this report, it is certainly not an outcome which is possible at the date of the subject application. In contrast, the development involves a design which takes full advantage of lot width constraints by utilising generous site depth to affect a high amenity outcome which imparts negligible additional environmental impacts compared with a hypothetical development which



complied with the standard. Flexible application of the standard must support variation given those particular circumstances.

**Karavellas v Sutherland Shire Council [2004] NSWLEC 251**

The Planning Principles set out in Karavellas v Sutherland are not directly applicable to the subject application because a situation of potential isolation does not arise. Failure to consolidate with either adjoining owner does not sterilise development potential of their land. Based on the appropriateness of variation to the minimum width requirement for this precinct, as detailed above, it is our opinion that each of the adjoining sites (subject to consolidation in the case of the western adjoining site) are capable of accommodating 4 storey development in a similar fashion to that which is proposed for the subject site. If that is not agreed, then three storey development clearly remains available.

The Karavellas Principles are set out at paragraphs 17 to 19 as follows:

*17 The general questions to be answered when dealing with amalgamation of sites or when a site is to be isolated through redevelopment are:*

- Firstly, is amalgamation of the sites feasible?*
- Secondly, can orderly and economic use and development of the separate sites be achieved if amalgamation is not feasible?*

*18 The principles to be applied in determining the answer to the first question are set out by Brown C in Melissa Grech v Auburn Council [2004] NSWLEC 40. The Commissioner said:*

*Firstly, where a property will be isolated by a proposed development and that property cannot satisfy the minimum lot requirements then negotiations between the owners of the properties should commence at an early stage and prior to the lodgement of the development application.*

*Secondly, and where no satisfactory result is achieved from the negotiations, the development application should include details of the negotiations between the owners of the properties. These details should include offers to the owner of the isolated property. A reasonable offer, for the purposes of determining the development application and addressing the planning implications of an isolated lot, is to be based on at least one recent independent valuation and may include other reasonable expenses likely to be incurred by the owner of the isolated property in the sale of the property.*

*Thirdly, the level of negotiation and any offers made for the isolated site are matters that can be given weight in the consideration of the development application. The amount of weight will depend on the level of negotiation, whether any offers are deemed reasonable or*

*unreasonable, any relevant planning requirements and the provisions of s 79C of the Environmental Planning and Assessment Act 1979.*

*19 In the decision Cornerstone Property Group Pty Ltd v Warringah Council [2004] NSWLEC 189, I extended the principles of Brown C to deal with the second question and stated that:*

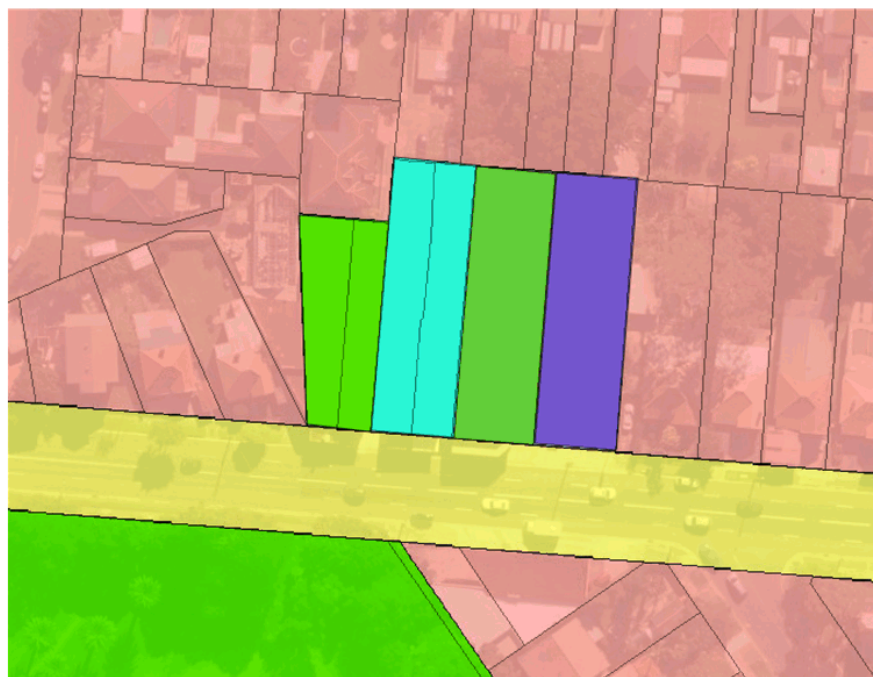
*The key principle is whether both sites can achieve a development that is consistent with the planning controls. If variations to the planning controls would be required, such as non compliance with a minimum allotment size, will both sites be able to achieve a development of appropriate urban form and with acceptable level of amenity.*

*To assist in this assessment, an envelope for the isolated site may be prepared which indicates height, setbacks, resultant site coverage (both building and basement). This should be schematic but of sufficient detail to understand the relationship between the subject application and the isolated site and the likely impacts the developments will have on each other, particularly solar access and privacy impacts for residential development and the traffic impacts of separate driveways if the development is on a main road.*

*The subject application may need to be amended, such as by a further setback than the minimum in the planning controls, or the development potential of both sites reduced to enable reasonable development of the isolated site to occur while maintaining the amenity of both developments.*

In response to these principles:

- Our clients have attempted purchase both adjoining properties and written record of those attempts are submitted with the Development Application. Adjoining owners not taken up an offer to purchase and as such, consolidation is not feasible.
- For the aforesaid reasons in relation to the site, its context and the particular design, orderly and economic development under an amended amalgamation patterns is feasible. The amended consolidation pattern in which independent development of the subject site is feasible is shown in the following Figure 5.



**Figure 5: Consolidation Pattern Available Subsequent to Independent Development of the Subject Site**

Having regard to the above, variation to the minimum lot width requirement is considered to be reasonable and appropriate in the circumstances.

#### **Side Setbacks**

Control 2 to Clause 5.2 of DCP 2011 requires 4.5 m side setbacks to the residential component of a mixed use development. The proposed development provides nil side boundary setbacks.

Support for this variation to the DCP is founded on many of the same factors which support variation to minimum lot width controls.

Before dealing with specific design advantages accrued from nil side setbacks compared with the DCP imposed 4.5 m side setbacks, it is instructive to consider ADG guidance in relation to setbacks.

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88 Stoney Creek Road, Bexley

At page 17, in respect of general commentary about shop top housing the ADG states:

*Shop top apartments typically range between two and six storeys and are best used when:*

- *increased residential uses are desired in established retail and commercial areas*
- *the context is a traditional main street*
- **zero setbacks to side boundary walls are possible or desired** (emphasis added)
- *active frontages such as retail tenancies are desired at street level*
- *pedestrian activity on the street is desired*
- *rear lane access is available.*

ADG, page 17

At page 41, specifically in relation to side setbacks, the ADG states:

*Consider zero side setbacks where the desired character is for a continuous street wall, such as in dense urban areas, main streets or for podiums within centres.*

The ADG was published in 2015 and therefore post dates DCP 2011. We do not suggest that there is a situation of direct conflict between ADG and DCP setback controls. However the ADG guidance which supports the use of nil side setback in contexts which are directly consistent with the context of the subject site argues for cautious application of the DCP side setback controls.

In respect of site width non-compliance it was demonstrated that generous site depth offset constraints typically associated with narrow frontage sites. Site depth facilitated two rows of residential buildings above a common podium between which, sunlight was able to strike the northern elevation of the southern building. The imposition of 4.5 m side setbacks would result in redistribution of building mass to reduce the separation presently available. Further, the resultant podium level space orientated to the side boundary would be a low amenity space which, if utilised, would introduce privacy impacts to future residential development on adjoining lots.

The provision of two by 4.5 m side setbacks between adjoining developments would result in an effective building separation of 9m. The same would be inadequate to satisfy habitable room building separation design guidance under the ADG and hence the side elevation would, even if 4.5 m side setbacks were provided, need to be blank, or potentially include bathroom and laundry windows. Consequently, the side setback space would be afforded little to no passive surveillance and hence, would be a space which performed poorly against principles of Crime Prevention Through Environmental Design.

Given the particular characteristics of the subject neighbourhood centre, it is considered that nil side setback will deliver a higher amenity and more efficient development outcome than would be achieved if strict DCP compliance were required. The fact that the proposed site planning is supported by the ADG for mixed use developments in commercial contexts lends further support for that conclusion.

Accordingly, variation to the side setback provisions of DCP 2011 is considered to be reasonable and appropriate in the circumstances of the case.

**ANY PLANNING AGREEMENT - SECTION 79C(1)(A)(IIIA)**

No planning agreement is proposed and nor is there an existing planning agreement which affects the subject site.

**5.4 THE REGULATIONS (TO THE EXTENT THAT THEY PRESCRIBE MATTERS FOR THE PURPOSES OF THIS PARAGRAPH) - SECTION 79C(1)(A)(IV)**

Clause 92 of the Environmental Planning and Assessment Regulation 2000 requires that in the case of development involving demolition of a building the provisions of Australian Standard AS 2601 – 2001: The Demolition of Structures need to be taken into consideration.

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88 Stoney Creek Road, Bexley

**5.5 ANY COASTAL MANAGEMENT PLAN - SECTION 79C(1)(A)(IIIA)**

Coastal management planning does not apply to this proposal.

**5.6 ENVIRONMENTAL AND SOCIAL IMPACTS - SECTION 79C(1)(B)**

Section 79C(1)(b) requires the consent authority to consider:-

“(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality.”

The proposed development will not have a detrimental social impact in the locality considering the future mixed use character of the area. The proposal provides for varying mixes of retail and residential dwellings. This proposed dwelling mix delivers housing choice and responds to existing and likely future demographic characteristics of the locality.

The proposed development will not have a detrimental economic impact on the locality considering the retail and residential nature of the surrounding land use. The re-development of the site will add to the vitality of the Stoney Creek Road streetscape and will result in a use of the land which is consistent with the town planning intention as expressed by the zone objectives and B1 land use table.

The proposed development will have a positive impact on the new residents accommodated on the site and will have a beneficial economic impact.

**5.6.1 Impacts on the natural environment**

The site is located within a Neighbourhood Centre zone and will have no significant impact on the natural environment. The environmental impacts of the proposed development on the natural environment are addressed in this report. The overall ESD performance of the proposal is identified as high with the dwellings achieving a high BASIX rating, along with appropriate orientations, landscaping and water efficiency measures. The design of the units satisfies the Councils requirements with regard to energy rating, water recourses, solar principles and the like. The design orientates a large number of living areas and private open spaces towards north

**5.6.2      *Impacts on the built environment*****Bulk and scale**

This proposal generally satisfies the objectives of Council's built form development controls, with justification of the non-complaint allotment width provided in this report. The proposed Building height and FSR is compliant and not considered to be excessive and does not result in any unreasonable bulk and scale impacts.

**Overshadowing**

Shadow diagrams demonstrate that overshadowing impacts to private open spaces meet Council's development controls and should not be considered a limit to development as proposed. The site faces due north, with the majority of the overshadowing will occur to Stoney Creek Road.

**Privacy and visual impacts**

Impact on privacy to residential development in the vicinity will be minimised by appropriate rear building setbacks, dense landscaping, and positioning of windows relative to adjoining premises. The proposed setbacks and design of the proposal will result in good aesthetic when viewed from public spaces.

**Acoustic**

Noise impacts and noise attenuation can be addressed through appropriate construction materials and location and layout of residential units and open spaces.

**Traffic and parking**

The traffic and parking impacts arising from the proposal are not considered to be unacceptable. Proposed car parking complies with Council's controls. A detailed Traffic Management report has been provided in support of the proposal.

**Social and economic impacts**

The social and economic impacts of the proposal will be positive. That is, this proposal will encourage the efficient economic use of the land, introduce good quality and well located Shop Top Housing to the locality. Future residents will have good amenity with ready access to public transport, shopping, sporting and recreational opportunities in close proximity to the site.



**5.7 THE SUITABILITY OF THE SITE - SECTION 79C(c)**

Section 79C(c) requires the consent authority to consider:

"(c) the suitability of the site for the development."

The site is zoned B1 Neighbourhood Centre pursuant to the Rockdale Local Environmental Plan 2011 (RLEP2011) in which Shop Top Housing is permissible with consent. This proposal is consistent with permissibility and can be built on the land without giving rise to unacceptable environmental impact to the natural and built environments. The site is not detrimentally affected by any known natural or technological constraint that would prevent development in accordance with the zone objectives.

Adjacent development does not unreasonably constrain this proposal and would not lead to unmanageable transport demands. There is excellent public transport, recreational and public open space facilities close at hand.

Adequate utilities and services are available to the site and adequate for the development. The air quality and microclimate is appropriate for the development and there are no hazardous land uses or activities nearby. Noise levels can be addressed to ensure suitability for shoptop developments.

The site is not subject to natural hazards including subsidence, slip, mass movement, and not requiring specialised construction methods.

**5.8 SUBMISSIONS - SECTION 79C(d)**

Section 79C(d) requires the consent authority to consider:

"(d) any submissions made in accordance with this Act or the regulations".

Any relevant submissions will require consideration by the consent authority in the determination of this proposal. The applicant will also seek the opportunity to respond to submissions if received after exhibition.

**5.9 PUBLIC INTEREST - SECTION 79C(e)**

Section 79C(e) requires the consent authority to consider:



“(e) the public interest”.

It is argued that the public interest is best achieved by the orderly and economic use of land for permissible purposes that do not impact unreasonably on development and/or enjoyment of surrounding land. In this case the proposal represents an efficient, orderly and economic use of land while also satisfying a market demand for Shoptop Housing.

The proposal is in the public interest as it will:

- provide additional mixed use stock and expanded housing choice within the locality to meet future demand; and
- provide additional housing with easy access to onsite amenities and public transport.

#### **5.10 DEVELOPMENT CONTROL PLANS- SECTION 79C(3A)**

Section 79C(3A) of the Act the Environmental Planning and Assessment Act, 1979 requires Councils to be flexible in applying any provisions that apply to a proposal and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development.

As stated in this statement, the proposed development warrants a flexible application of the Rockdale DCP in relation to allotment width as the proposal meets the applicable objectives of the controls and will provide a high level of amenity for future residents, without adversely impacting on the natural, social and built environments.

## 6 Conclusion

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The purpose of this Statement of Environmental Effects is to assist Bayside Council in its assessment of a Development Application proposing Demolition of the Existing structures and proposed Shop Top Housing on **Lot 14 DP 913489 No 88 Stoney Creek Road, Bexley**.

It is considered that the proposed Shop Top Housing development satisfies the relevant B1 Neighbourhood Centre zone objectives. The proposal relates to the development of land for housing which is consistent with existing and future high-density development in the locality. Furthermore, it is argued that the provision of this development in this location improves housing choice and contributes to the urban renewal of the locality.

The building design is considered sympathetic to the adjoining development and provides good transition in terms of bulk and scale to buildings within the locality. Adequate building separation is proposed between existing residential development and the proposed. The overall amenity of the proposed will be high in terms of location, access to facilities and services, appearance and layout.

This planning report is a town planning assessment that is to be submitted in concurrence with a deemed Local Development submission to the consent authority of Bayside Council. There will be no measurable adverse environmental impact from the proposed development, which substantially complies with all the relevant requirements and underlying objectives of the relevant State and Local Environmental Planning Instruments.

The proposed development, will deliver a well-designed, high-quality, Shop Top Housing development to Bexley and is deserving a positive determination from Bayside Council.

## Appendix

### Apartment Design Guide Compliance Summary

Clause 28 of the policy requires a consent authority to take into consideration the Apartment Design Guide (ADG), prepared by the Department of Planning and Environment. Clause 6A of the SEPP confirms that with respect to the objectives, design criteria and design guidance set out in Parts 3 and 4 of the Apartment Design Guide (Department of Planning and Environment, 2015), Development control plans cannot be inconsistent with this guide in respect of the following:

- (a) *visual privacy,*
- (b) *solar and daylight access,*
- (c) *common circulation and spaces,*
- (d) *apartment size and layout,*
- (e) *ceiling heights,*
- (f) *private open space and balconies,*
- (g) *natural ventilation,*
- (h) *storage*

The Table below demonstrates that the proposed development will comply with the Design Criteria of the Apartment Design Guide (ADG), being the standards by which the guidelines contained in the Apartment Design Guide take precedence over the Liverpool LEP2008 and DCP2008.

### Part 3 Siting the Development

Control	Design Criteria	Discussion / Compliance
<b>3A Site analysis</b>	<p><i>Site analysis is an important part of the design process and should be undertaken at the outset of a project to inform the design principles.</i></p> <p><i>Development proposals need to illustrate that design decisions are based on careful analysis of the site conditions and relationship to the surrounding context.</i></p>	<p>Objective 3A-1 and Design guidance have been satisfied.</p> <p>A detailed site analysis has been provided in support of the proposal addressing the local context of the proposal within Stoney Creek Road.</p>
<b>3B Orientation</b>	<p><i>Designing the site layout to maximise northern orientation is an important consideration, but it must be balanced with:</i></p> <ul style="list-style-type: none"> <li><i>responding to desired streetscape character</i></li> <li><i>promoting amenity for both the proposed development and neighbouring properties</i></li> <li><i>providing for the enjoyment of significant views</i></li> </ul>	<p>Objective 3B-1 and Objective 3B-2 and Design guidance have been satisfied. The Building responds to the streetscape and site while optimising solar access within the development. Overshadowing of neighbouring properties is minimal during mid winter.</p> <p>The site faces directly to the North. The desired character of the site has been discussed in this report.</p> <p>Amenity is high as Solar access to living rooms, balconies and private open spaces of neighbours is provided. A minimum of 3</p>

- retaining trees and locating open spaces
- hours of solar access should be retained on neighbouring buildings

- responding to the topography and contextual constraints such as overshadowing and noise

### 3C Public domain interface

The public domain interface is the transition area between the apartment building, its private or communal space at the street edge and the public domain.

Objective 3C-1 and Design Guidance is satisfied without compromising safety and security. The street edge is considered active. The upper level balconies provide for overlooking of common spaces.

Opportunities should be provided for casual interaction between residents and the public domain. Design solutions may include seating at building entries, near letter boxes and in private courtyards adjacent to streets.

Objective 3C-2 and Design Guidance is satisfied. Amenity of the public domain is retained and enhanced.

### 3D Communal and public open space

The size, location and design of communal or public open space will vary depending on the site context and the scale of development. The function of open space is to provide amenity in the form of:

Objective 3D-1 and Design Guidance is satisfied. Communal open space onsite has a minimum area equal to 26.90% of the site and achieves a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid winter).

- landscape character and design

- opportunities for group and individual recreation and activities

Objective 3D-2 and Design Guidance is satisfied. Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting.

- opportunities for social interaction

- environmental and water cycle management

- opportunities to modify microclimate

- amenity and outlook for residents

Objective 3D-3 and Design Guidance is satisfied. The COS and the public domain and is readily visible from habitable rooms and private open space areas while maintaining visual privacy.

Objective 3D-4 and Design Guidance is satisfied. The COS is provided to enhance residential amenity and to provide opportunities for landscaping Common open areas onground and to the first floor.

*Design Criteria:*

1. Communal open space has a minimum area equal to 25% of the site
2. Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter).

**3E Deep soil zones**

Deep soil zones are areas of soil not covered by buildings or structures within a development. They exclude basement car parks, services, swimming pools, tennis courts and impervious surfaces including car parks, driveways and roof areas.

Objective 3E-1 and Design Criteria is and Design Guidance is satisfied. The site is provided with 10.4% DSZ.

*Design criteria 1.*

Deep soil zones are to meet the following minimum requirements:

Site area dimensions	Minimum
Deep soil zone area)	(% of site area)
less than 650m <sup>2</sup>	-
650m <sup>2</sup> - 1,500m <sup>2</sup>	3m
greater than 1,500m <sup>2</sup>	6m
greater than 1,500m <sup>2</sup>	6m

### 3F Visual privacy

Visual privacy allows residents within an apartment development and on adjacent properties to use their private spaces without being overlooked. It balances the need for views and outlook with the need for privacy. In higher density developments it also assists to increase overall amenity

Objective 3F-1 and Design Criteria and Design Guidance is satisfied.

The side boundaries are built to the respective boundaries of which is ideal for mixed use developments. Visual privacy is considered high both internally and externally

Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:

Separation between windows and balconies are appropriate for a mixed-use development with a narrow lot.

Building height Habitable rooms and balconies

Objective 3F-2 and Design Guidance is satisfied. Windows are offset from the

*Non habitable rooms* windows of adjacent buildings and/or provided with screening.

*up to 12m (4 storeys) 6m 3m*

*up to 25m (5-8 storeys) 9m 4.5m*

*over 25m (9+ storeys) 12m 6m*

**3G Pedestrian access and entries**

*Good pedestrian access delivers high quality, equitable, safe and pleasant walking environments along the street, into the development and to individual apartments. Pedestrian access and entries must be priorities over vehicle access.*

Objective 3G-1 and Design guidance is satisfied. The building entries are clearly identifiable and communal entries are clearly distinguishable from private entries.

*Building entries should be clearly identifiable and communal entries should be clearly distinguishable from private entries*

Objective 3G-2 and Design guidance is satisfied. The building access areas including lift lobbies, stairwells and hallways are clearly visible from the public domain and communal spaces

*Pedestrian links through sites facilitate direct connections to open space, main streets, centres and public transport.*

Objective 3G-3 and Design guidance is satisfied. Pedestrian links through sites facilitate direct connections to open space and main streets.

**3H Vehicle access**

*The location, type and design of vehicle access points have significant impacts on the streetscape, the site layout and the building facade design.*

Objective 3H-1 and Design guidance is satisfied. A detailed Traffic Management report has been submitted in support of the application. Clear sight lines should be provided at pedestrian and vehicle crossings.

*It is important that vehicle access is integrated with site planning from an early stage to balance*



*any potential conflicts with traffic patterns, streetscape elements and safe pedestrian access.*

**3J Bicycle and car parking**

*Integrating car parking within apartment buildings has a significant impact on site planning, landscape and building design.*

Objective 3J-1 and Design Criteria and Design guidance is satisfied. These facilities have been provided. Car parking is located both onground and underground.

*Onsite parking can be located underground, above ground within a structure or at grade.*

Objective 3J-2 and Design Criteria and Design guidance is satisfied.

Objective 3J-3 and Design Criteria and Design guidance is satisfied.

*Secure undercover bicycle parking should be provided that is easily accessible from both the public domain and common areas.*

Supporting facilities within car parks, including garbage, plant and switch rooms, storage areas and car wash bays can be accessed without crossing car parking spaces.

Objective 3J-4 and Design Criteria and Design guidance is satisfied.

Objective 3J-5 and Design Criteria and Design guidance is satisfied. Car parking is within a basement structure.

Objective 3J-6 and Design Criteria and Design guidance is satisfied. The building provides for a positive street address.

## Part 4 Designing the Building

### Control

### Design criteria

### Discussion / compliance

#### 4A Solar and daylight access

Solar and daylight access are important for apartment buildings, reducing the reliance on artificial lighting and heating improving energy efficiency and residential amenity through pleasant conditions to live and work

Objective 4A-1 and Design criteria and Design guidance is satisfied. Living rooms and private open spaces in the building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter.

1. Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas
2. In all other areas, living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid winter
3. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter

#### Direct Sunlight to Dwellings

	9	10	11	12	1	2	3	Total:
Dw No.1								3hrs
Dw No.2								2hrs
Dw No.3								6hrs
Dw No.4								6hrs
Dw No.5								5hrs
Dw No.6								2hrs
Dw No.7								6hrs
Dw No.8								6hrs
Dw No.9								6hrs
Dw No.10								6hrs

\*All living rooms and private open spaces receive 2hrs or more of direct sunlight between 9am and 3pm during mid winter\*

Legend  
 Direct Sunlight

Objective 4A-2 and Design guidance is satisfied. Daylight access to living rooms are

maximized through window openings and balconies.

Objective 4A-3 and Design guidance is satisfied. Greater than 15% of dwellings Balconies provide for design shading and glare control, particularly for warmer months.

**4B  
ventilation**

**Natural**

*Natural ventilation is the movement of sufficient volumes of fresh air through an apartment to create a comfortable indoor environment. Sustainable design practice incorporates natural ventilation by responding to the local climate and reduces the need for mechanical ventilation and air conditioning.*

*To achieve adequate natural ventilation, apartment design must address the orientation of the building, the configuration of apartments and the external building envelope.*

*1. At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed*

*2. Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line*

Objective 4B-1 and Design guidance is satisfied. Doors and openable windows maximise natural ventilation opportunities.

Objective 4B-2 and Design guidance is satisfied. The building is ideally orientated north to south. Apartment depths are limited to maximise ventilation and airflow.

Objective 4B-3 and design Criteria and Design guidance is satisfied. Greater than 60% of apartments are naturally cross ventilated.

**4C Ceiling heights**

Ceiling height is measured internally from finished floor level to finished ceiling level. The height of a ceiling contributes to amenity within an apartment and the perception of space. Well designed and appropriately defined ceilings can create spatial interest and hierarchy in apartments.

Objective 4C-1 and Design Criteria and Design Guidance is satisfied. Habitable Ceiling heights are not less than 2.70 metres on the upper levels and over 3.00metres on the lower levels.

Habitable rooms 2.7m

Objective 4C-2 and Design Guidance is satisfied. Well proportioned rooms are provided and ceiling heights are maximized.

Non-habitable 2.4m

Objective 4C-3 and Design Guidance is satisfied.

**4D Apartment size and layout**

The layout of an apartment establishes the way rooms of different functions are arranged and located, the size of the rooms, the circulation between rooms and the degree of privacy for each room

Objective 4D-1 and Design Criteria and Design Guidance is satisfied.

Apartment type Minimum internal area

Studio 35m2

Studios > 35sqm

1 bedroom 50m2

1 bed room units > 50sqm

2 bedroom 70m<sup>2</sup>

2 bedroom units > 70sqm

3 bedroom 90m<sup>2</sup>.

3 bedroom units >90sqm

The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m<sup>2</sup> each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m<sup>2</sup> each.

1. Master bedrooms have a minimum area of 10m<sup>2</sup> and other bedrooms 9m<sup>2</sup> (excluding wardrobe space)

2. Bedrooms have a minimum dimension of 3m (excluding wardrobe space)

3. Living rooms or combined living/dining rooms have a minimum width of:

• 3.6m for studio and 1 bedroom apartments • 4m for 2 and 3 bedroom apartments

4. The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts

Unit No.	Type	Area ADG Req. (m <sup>2</sup> )	Proposed Area (m <sup>2</sup> )
1	2 Bedroom	70	75.55
2	2 Bedroom	70	73.22
3	3 Bedroom	90	90
4	Studio	35	35
5	2 Bedroom	70	93.8
6	2 Bedroom	70	93.8
7	2 Bedroom	70	70
8	1 Bedroom	50	52.4
9	2 Bedroom	70	74.3
10	Studio	35	36.5
	Retail	76.87	77

Objective 4D-2 and Design Criteria and Design Guidance is satisfied. Generally, living areas and bedrooms should be located on the external face of the building

Objective 4D-3 and Design Criteria and Design Guidance is satisfied. Apartment layouts allow flexibility and design solutions

<b>4E Private open space and balconies</b>	Private open spaces are outdoor spaces of the apartment, including balconies, courtyards and terraces, which enhance the amenity and indoor/outdoor lifestyle of residents. They capitalise on New South Wales' temperate climate, providing an area for external activities and an extension of living spaces		Objective 4E-1 and Design Criteria and Design Guidance is satisfied. Private open spaces provide for high amenity outcomes in the form of north facing balconies.
	All apartments are required to have primary balconies as follows:		Objective 4E-2 and Design Guidance is satisfied. Private open spaces and balconies predominantly face north.
	Dwelling type Minimum depth	Minimum area	
	Studio apartments -	4m2	Objective 4E-3 and Design Guidance is satisfied. Balconies are designed to allow views and passive surveillance of the internal spaces while maintaining visual privacy and allowing for a range of uses on the balcony.
	1 bedroom apartments 2m	8m2	
	2 bedroom apartments 2m	10m2	Objective 4E-4 and Design Guidance is satisfied.
	3+ bedroom apartments 2.4m	12m2	Studio apartments are greater than 4sqm  1 Bedroom apartment balconies are generally greater than 8sqm and are at least 2 metres wide
	The minimum balcony depth to be counted as contributing to the balcony area is 1m		2 Bedroom apartment balconies are generally greater than 10sqm and are at least 2 metres wide
	For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have		

a minimum area of 15m<sup>2</sup> and a minimum depth of 3m.

3 Bedroom apartment balconies are generally greater 12sqm and are at least 2.4 metres wide.

**4F Common circulation and spaces**

Common circulation and spaces within a building are shared communally by residents. They include lobbies, internal corridors and external galleries, vertical circulation such as lifts and stairs, as well as community rooms and other spaces.

Objective 4F-1 and Design Criteria and Design Guidance is satisfied. Common circulation spaces are considered adequate.

1. The maximum number of apartments off a circulation core on a single level is eight

Objective 4F-1 and Design Guidance is satisfied. One (1) lift is provided.

2. For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40

**4G Storage**

Adequate storage is an important component of apartment design. It is calculated by volume as opposed to floor area and should be provided.

Objective 4G-1 and Design Guidance is satisfied. Storage is provided in the basement, as well as at least 50% of the required storage located within the apartments. Storage tables have been provided with the application.

In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:

Dwelling type  
Storage size volume

Objective 4G-2 and Design Guidance is satisfied. Storage is integrated into the overall building design and is not visible from the public domain.

Studio apartments  
4m<sup>3</sup>

1 bedroom apartments  
6m3

2 bedroom apartments  
8m3

3+ bedroom apartments  
10m3

At least 50% of the required storage is to be located within the apartment

Unit No.	Storage ADG Req. (m³)	Total Storage Provided
1	8	11.75
2	8	9.9
3	10	11.78
4	4	4
5	8	10.75
6	8	10.75
7	8	10.75
8	6	9.9
9	8	10.5
10	4	7.8

**4H Acoustic privacy** Acoustic privacy is about protecting sound transmission between external and internal spaces, between apartments and communal areas and between apartments within a building

Objective 4H-1 and Design Guidance is satisfied. Acoustics are considered satisfactory. Objective 4H-2 and Design Guidance is satisfied. Noise impacts are mitigated within apartments through layout and acoustic treatments.

**4J Noise and pollution** Properties located near major roads, rail lines and beneath flight paths can be subject to noise and poor air quality. Similarly, hostile and noisy environments such as industrial areas, substations or sports stadiums can have impacts on residential amenity. Careful design solutions can help to improve quality of life in affected apartments by minimising potential noise and pollution impacts

Objective 4J-1 and Design Guidance is satisfied.

**4K Apartment mix** Apartment mix refers to the percentage of apartments with different numbers of bedrooms in a development.  
The number of bedrooms is directly related to floor area which in turn determines the yield that can be generated on the site

Objective 4K-1 and Design Guidance is satisfied. Apartment mix is adequate.  
Proposed mix:  
2 x studios  
1 x 1 bedroom unit  
6 x 2 bedroom units  
1 x 3 bedroom units

**4L Ground floor apartments** Ground floor apartments offer the potential for at-grade landscaped private open spaces and direct

No Ground Floor Apartments are proposed.



access from the street. They also provide opportunities for the apartment building and its landscape to respond to the human scale of the streetscape. On steep sites they may be located over different floors of the building stepping down the site.

#### **4M Facades**

The design of facades contributes greatly to the visual interest of the building and the character of the local area.

Facades that face the street have an impact on the public domain, while side and rear facades often influence the amenity of neighbouring buildings and communal and private open spaces.

Objective 4M-1 and Design Guidance is satisfied. Building services are integrated within the overall façade.

#### **4N Roof design**

The roof is an important element in the overall composition and design of a building. Quality roof design provides a positive addition to the character of an area and can form an important part of the skyline.

Roofs also provide opportunities for open space where appropriate and can add to the sustainability performance of a building

Objective 4N-1 and Design Guidance is satisfied. The roof form is flat and satisfies SEPP65. The common open spaces are provided on these structures.

Objective 4N-2 and Design Guidance is satisfied. Habitable roof space should be provided with good levels of amenity.

Objective 4N-3 and Design Guidance is satisfied. Roof design maximises solar access to apartments during winter and provides shade during summer.

#### **4O Landscape design**

Successful landscape design complements the existing natural and cultural features of a site and contributes to the building's setting.

Landscape design includes the planning, design, construction and maintenance of all external spaces.

Objective 4O-1 and Design Guidance is satisfied. A detailed landscape plan is provided.

Objective 4O-2 and Design Guidance is satisfied. A detailed landscape plan is provided.

#### **4P Planting on structures**

Planting on structures is where plants are on top of built structures such as basement car parks, podiums, roofs and walls. Planting on structures can provide amenity, improve air quality and microclimate, and reduce direct energy use and stormwater runoff. It can also supplement deep soil planting on sites where opportunities for this are limited or

Objective 4P-1 and Design Guidance is satisfied. A detailed landscape plan is provided.

*restricted, e.g. in high density areas*

<b>4Q Universal design</b>	<p><i>Universal design is an international design philosophy that enables people to continue living in the same home by ensuring that apartments are able to change with the needs of the occupants. Universally designed apartments are safer and easier to enter, move around and live in. They benefit all members of the community, from young families to older people, their visitors, as well as those with permanent or temporary disabilities. Developments achieve a benchmark of 20% of the total apartments incorporating the Liveable Housing Guideline's silver level universal design features</i></p>	<p>Objective 4Q-1 and Design Guidance is satisfied. The apartments are capable of complying. Two x units are proposed to be adaptable.</p> <p>Objective 4Q-2 and Design Guidance is satisfied.</p> <p>Objective 4Q-3 and Design Guidance is satisfied.</p>
<b>4R Adaptive reuse</b>	<p><i>Buildings adapted for reuse as apartments can range from large houses, redundant industrial buildings, major institutional buildings and groups of buildings to commercial office towers</i></p>	<p>Objective 4R-1 and Design Guidance is satisfied.</p> <p>Objective 4R-2 and Design Guidance is satisfied.</p>
<b>4S Mixed use</b>	<p><i>Mixed use development includes multiple uses in one building. In apartment buildings this is commonly achieved vertically with different uses stacked above one another. A vertical mix of uses is more likely to increase activity through the day and night which in turn improves passive surveillance of the public domain.</i></p>	<p>Objective 4S-1 and Design Guidance is satisfied. The developments positively contributes to the public domain. The development addresses the street, activates the frontage, provides for diverse activities and uses and avoids blank walls at the ground level and levels above.</p> <p>Objective 4S-2 and Design Guidance is satisfied. Residential entry is separated from commercial entry and directly accessible from the street, residential car parking and communal facilities are separated or secured.</p>
<b>4T Awnings and signage</b>	<p><i>Awnings are prominent streetscape elements requiring considerable design attention. Continuous awnings encourage pedestrian activity along streets and in conjunction with active frontages, support and enhance the vitality of the local area.</i></p>	<p>NA</p>

*Together with building entries, awnings provide a public address, thereby contributing to the identity of a development*

**4U Energy efficiency**

*Passive environmental and energy efficient design is about the ability of an apartment to manage thermal performance (thermal comfort) and daylight access, providing increased amenity to occupants and reducing energy costs*

Objective 4U-1 and Design Guidance is satisfied. A BASIX assessment has been provided.

Objective 4U-2 and Design Guidance is satisfied. The development incorporates passive solar design to optimise heat storage in winter and reduce heat transfer in summer.

Objective 4U-3 and Design Guidance is satisfied. Adequate natural ventilation is provided. NatHERS and BASIX is provided.

**4V Water management and conservation**

*Water sensitive urban design is the integrated management of water in urban areas. It takes into account all of the elements of the urban water cycle including potable (drinking quality) water, rainwater, wastewater, stormwater and groundwater.*

Objective 4V-1 and Design Guidance is satisfied. A BASIX assessment has been provided.

Objective 4V-2 and Design Guidance is satisfied.

Objective 4V-3 and Design Guidance is satisfied. Detention tanks have been proposed.

**4W Waste management**

*The minimisation and effective management of domestic waste from apartments contributes to the visual and physical amenity of the building as well as limiting potentially harmful impacts on the environment*

Objective 4W-1 and Design Guidance is satisfied. A waste management plan has been provided.

Objective 4W-2 and Design Guidance is satisfied. A waste management plan has been provided.

**4X Building maintenance**

*Careful design and material selection can reduce the long term maintenance obligations of apartment development. In addition, effective maintenance of the development ensures the longevity of buildings, sustaining the value of the property and reducing the life-cycle cost to owners.*

Objective 4X-1 and Design Guidance is satisfied. Materials have been selected for ease of maintenance and longevity.

Objective 4X-2 and Design Guidance is satisfied. Window design enables cleaning from the inside of the building.

Objective 4X-3 and Design Guidance is satisfied. Material selection reduces ongoing maintenance costs.







ST George EPJ Mechanical Repairs Pg.390 RL SS



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Site/Roof Plan

SHEET NUMBER	DA101
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DATE	10/05/2018 2:54:10 PM

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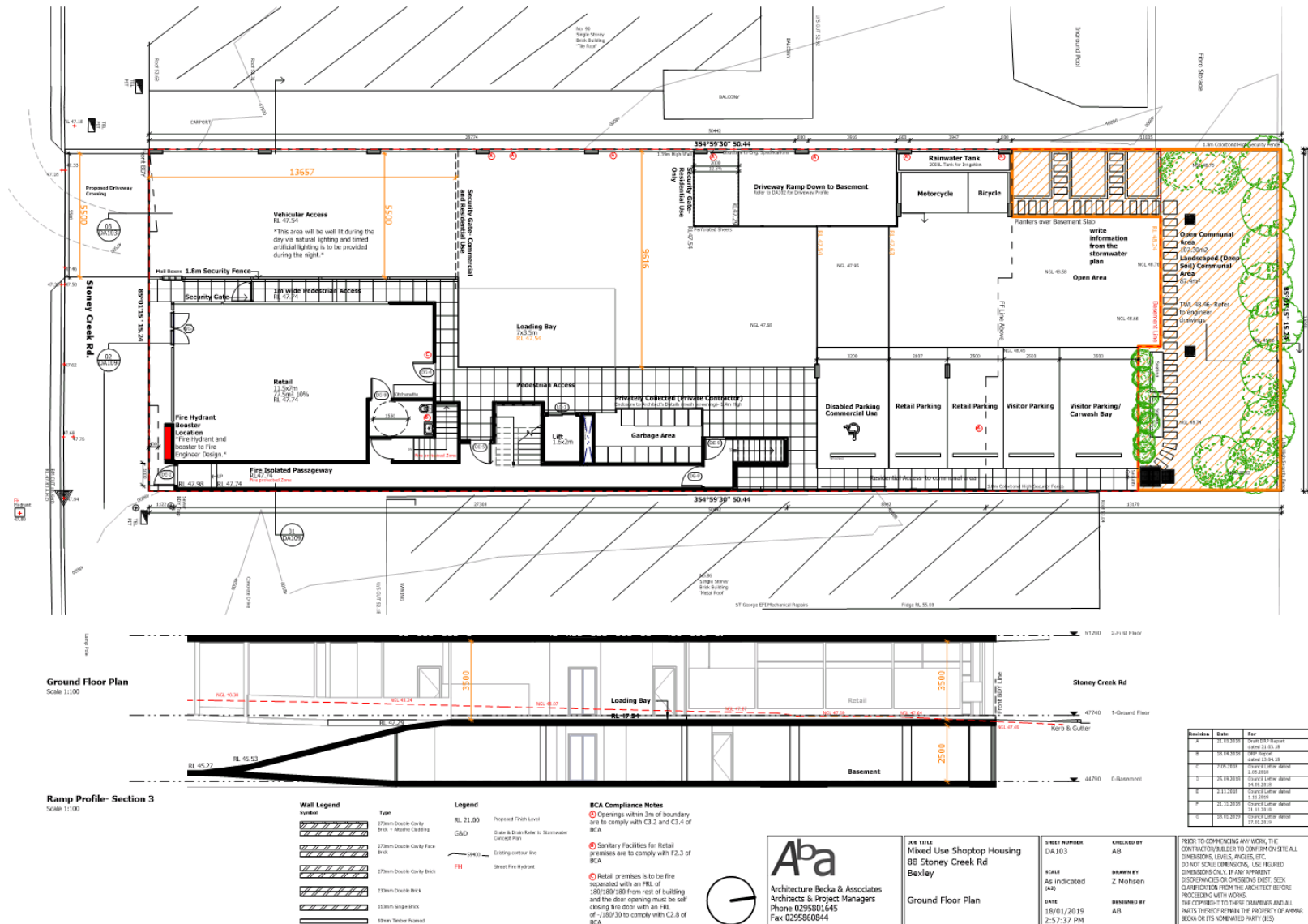
DRAWN BY  
Z Mohsen

DESIGNED BY  
AB

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Revisi	Date	For
A	23.03.2010	LOPP Report dated 23.03.10
B	28.04.2010	LOPP Report dated 13.06.10
C	7.05.2010	Council letter dated 2.05.2010
D	15.06.2010	Council letter dated 16.09.2010
E	2.11.2010	Council letter dated 1.11.2010
F	21.11.2010	Council letter dated 23.11.2010
G	21.01.2011	Council letter dated 23.01.2011
H	5.02.2011	Council letter dated 23.01.2011

The design must be conducted so that all structural elements are structurally adequate and comply with The Building Code of Australia and Australian Standards as follows:

- \* Structural design actions AS1170
- \* Residential slabs and footings AS2780
- \* Concrete structures AS3700
- \* Steel structures AS4100
- \* Timber structures AS1720
- \* Residential timber-framed construction AS1684

**BCA Compliance Notes**  
 1 All Screens and Gliders are to be non-combustible and to comply with C2.4 of Spec. C1.1 of BCA

**A<sup>b</sup>a**  
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Architects & Project Managers  
Phone 0295801645  
Fax 0295860844

JOB TITLE	Mixed Use Shoptop Housing 88 Stoney Creek Rd Bexley
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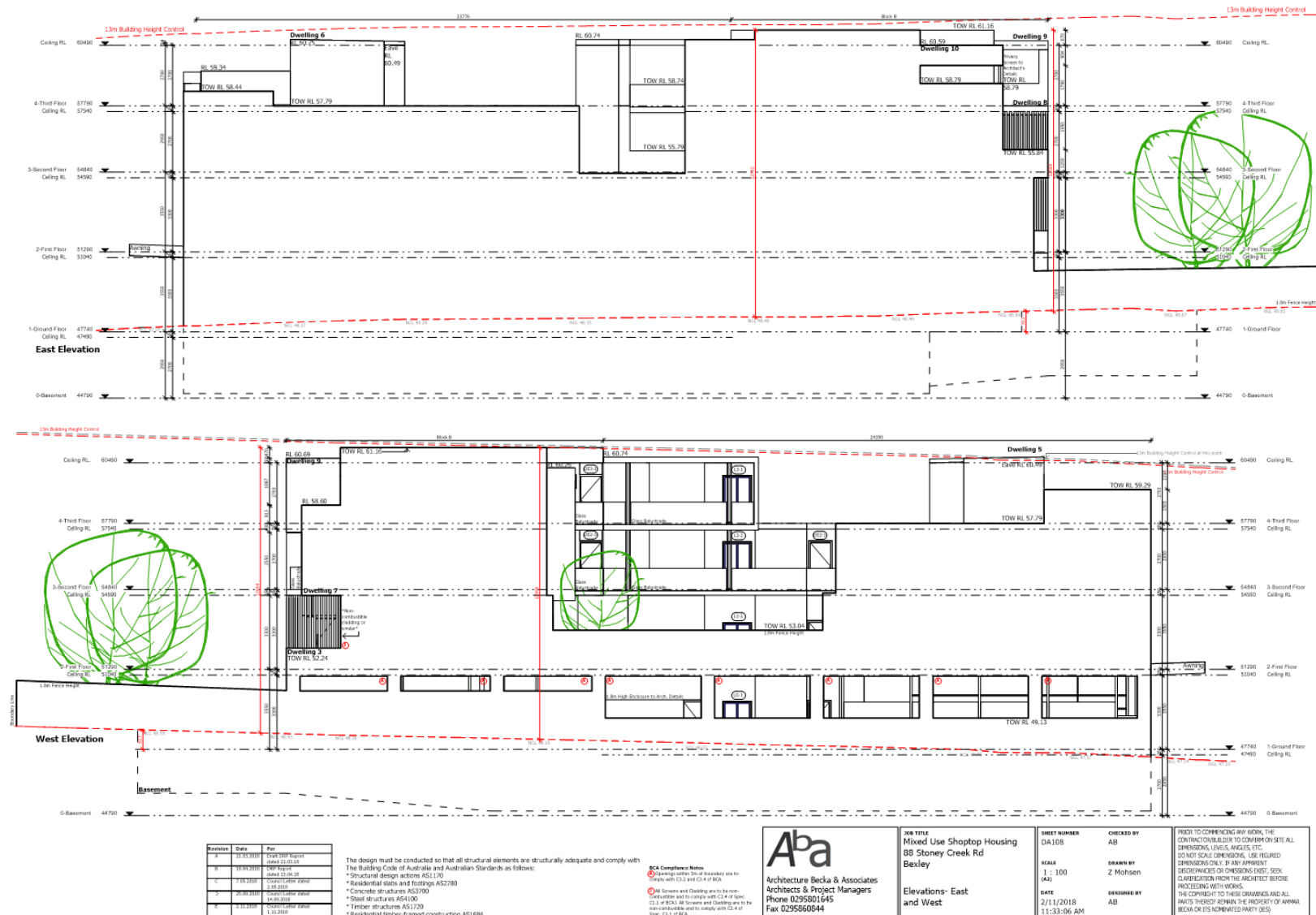
Elevations- North  
and South &  
Internal Elevations

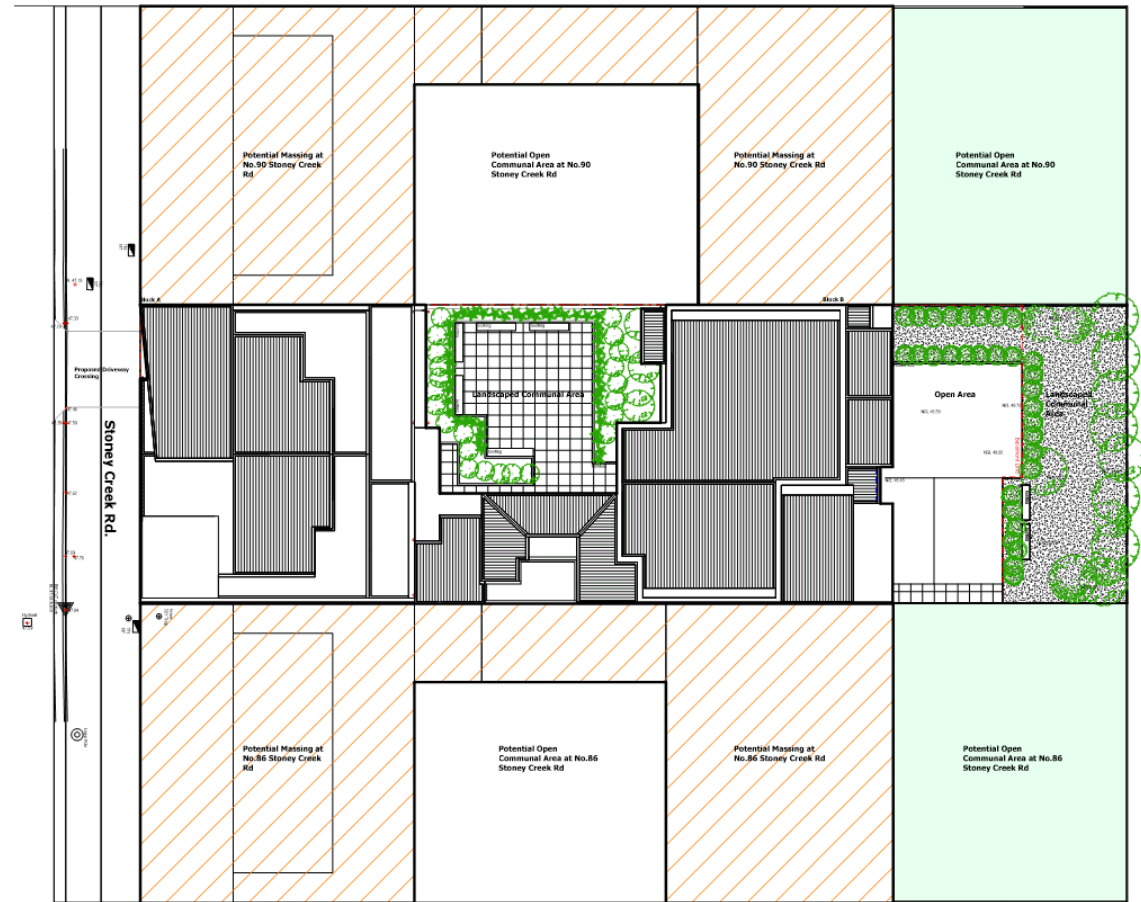
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**Site/Roof Plan/ Massing Diagrams**  
Scale 1:100



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Architects & Project Managers  
Phone 0295801645  
Fax 0293892844

**Site/Room**  
Mixed Use Shoptop Housing  
88 Stoner Creek Rd  
Bedley

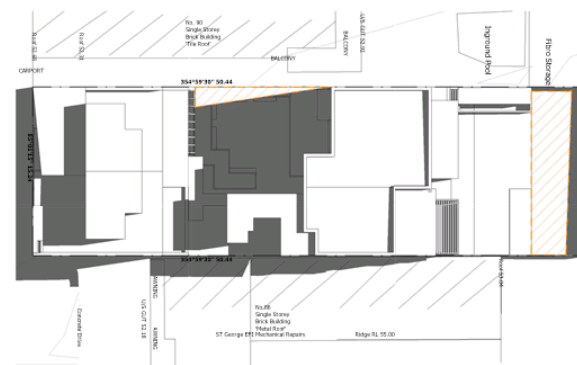
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Plan/Massing  
Diagrams

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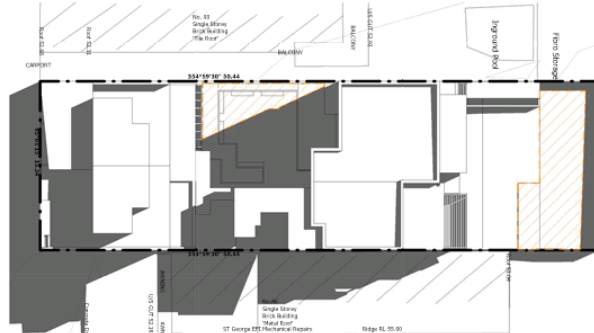
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<b>REVISIONS BY</b> AJS	THE CONTRACTOR TO THESE DRAWINGS AND ALL FINISH THEREON REMAINS THE PROPERTY OF APHRA BLOOM OR ITS ASSOCIATED PARTY (S)



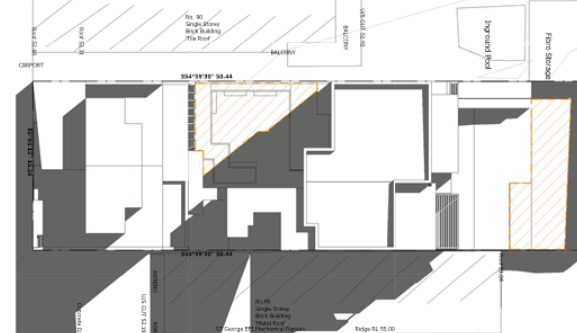
Winter Solstice- 9am



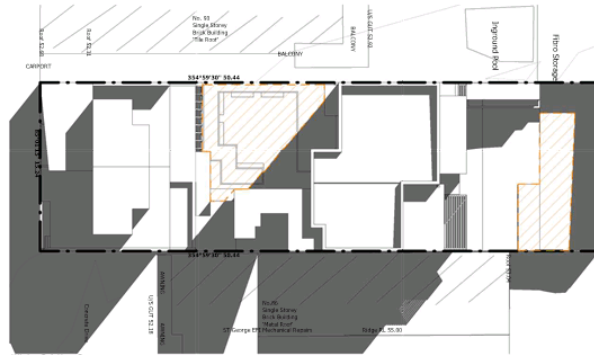
Winter Solstice- 12noon



Winter Solstice- 1pm



Winter Solstice- 2pm



Winter Solstice- 3pm

#### Direct Sunlight to Dwellings

Dwelling	Time							Total Hours
	9	10	11	12	1	2	3	
Dw No.1								3hrs
Dw No.2								0hrs
Dw No.3								0hrs
Dw No.4								0hrs
Dw No.5								0hrs
Dw No.6								0hrs
Dw No.7								0hrs
Dw No.8								0hrs
Dw No.9								0hrs
Dw No.10								0hrs

\*80% of living rooms and private open spaces receive 2hrs or more of direct sunlight between 9am and 3pm during mid-winter\*

Legend  
Direct Sunlight

#### Direct Sunlight to Communal Space

Time	Direct Sunlight Communal GF (m <sup>2</sup> )	Direct Sunlight Communal FF (m <sup>2</sup> )	Total (m <sup>2</sup> )	%
Winter Solstice 9am	27	0	27	14
Winter Solstice 12pm	50	11	61	31.5
Winter Solstice 1pm	67.86	29	96.86	50.1
Winter Solstice 2pm	56.3	50.3	106.6	55.1
Winter Solstice 3pm	47.8	76	123.8	64

Communal Space Area GF (m<sup>2</sup>): 92.47  
Communal Space Area FF (m<sup>2</sup>): 100.87  
Total: 193.34

\*Communal Area receives more than 50% direct sunlight for a min. of 2 hrs during mid-winter\*

#### ADG Design Criteria

- 4a Solar and Daylight Access  
1. Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9am and 3pm at mid winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas.  
2. In all other areas, living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight between 9am and 3pm at mid winter.  
3. A maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm mid winter.

#### ADG Design Criteria

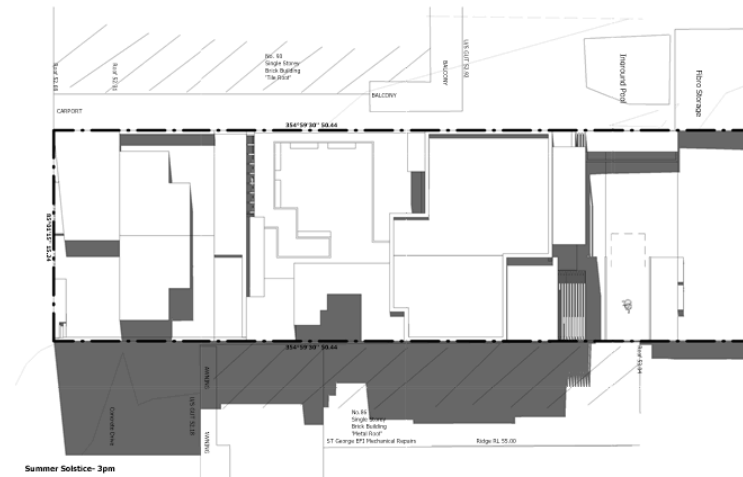
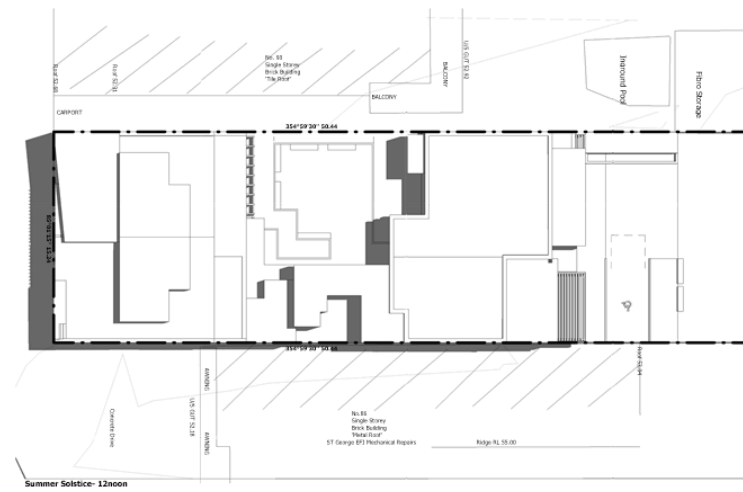
- 30 Communal and Public Open Space  
1. Communal open space has a minimum area equal to 25% of the site.  
2. Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9am and 3pm on 21 June (mid winter).

**Ab**  
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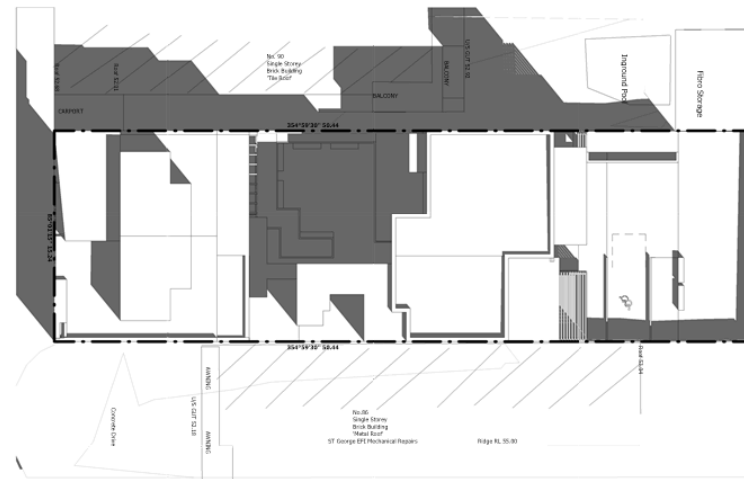
Site Title  
Mixed Use Shoptop Housing  
88 Stoney Creek Rd  
Bexley  
Shadow Diagrams  
Winter Solstice

Sheet Number  
DA111  
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As indicated  
Date  
25/09/2018  
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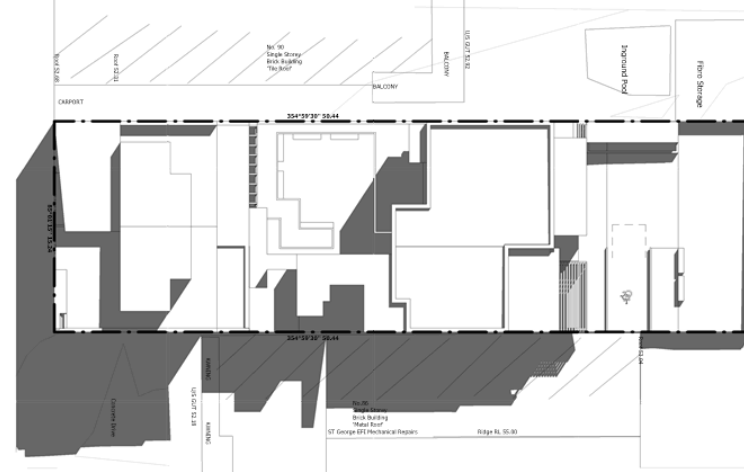
Checked By  
AB  
Drawn By  
Z. Mohsen  
Designed By  
AB  
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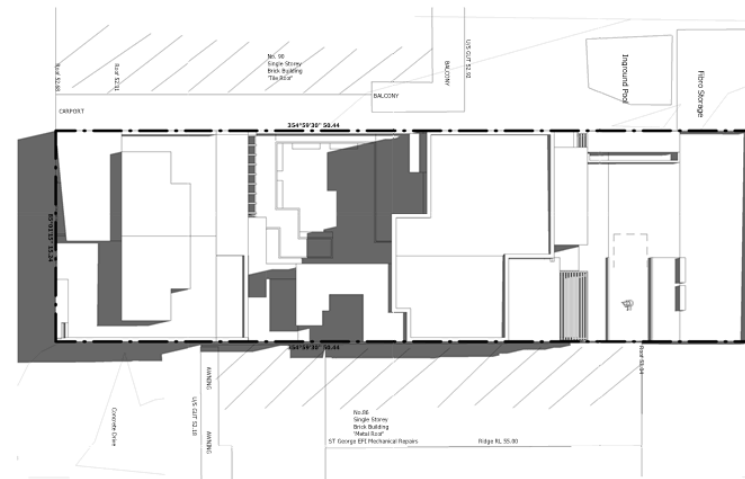
	<b>Aba</b> Architecture, Books & Associates Architects & Project Managers Phone 0295801645 Fax 0295806448	<b>JOB TITLE</b> Visit Site Workshop Housing 88 Stonely Creek Rd Bxley	<b>SHEET NUMBER</b> DA113	<b>CHECKED BY</b> AB	THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROVISIONS TO CONVEYING ANY WORK, THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE DIMENSIONS, LEVELS, ANGLES, ETC. TO NOT SCALE DIMENSIONS, USE MEASURED DIMENSIONS ONLY. IF ANY APPARENT DISCREPANCIES OR DIMENSIONS EXIST, SEEK CLARIFICATION FROM THE ARCHITECT BEFORE PROCEEDING WITH WORK.
		<b>SCALE</b> As indicated (A1)	<b>DRAWN BY</b> M Mohean	THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE DIMENSIONS AND ALL PARTS THEREOF. HOWEVER, THE INCORPORATION OF ANY BECAUSE OF ITS NONUNIFORMITY (A1)	
		<b>DATE</b> 05/09/2018 12:31:04 PM	<b>DESIGNED BY</b> AB		
		<b>Shadow Diagrams</b> <b>Summer Solstice</b>			



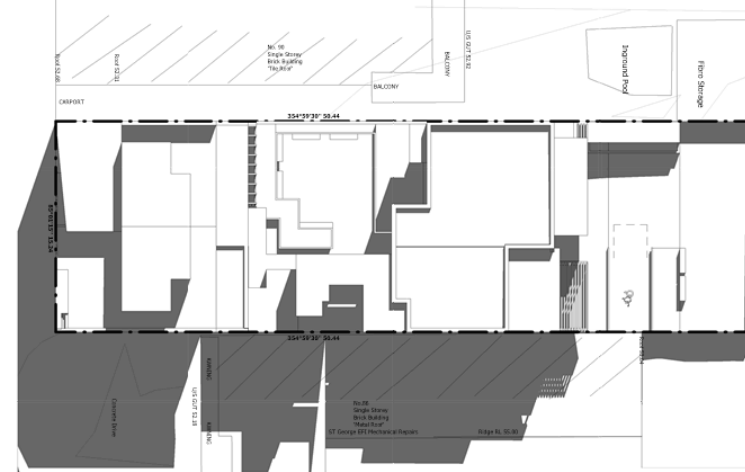
Equinox- 9am



Equinox- 2pm



Equinox- 12noon



Equinox- 3pm



**Aba**  
 Architecture Becka & Associates  
 Architects & Project Managers  
 Phone 0295801645  
 Fax 0295860844

**PROJECT**  
 Mixed Use Shoptop Housing  
 88 Stoney Creek Rd  
 Bexley

**Shadow Diagrams**  
 Equinox

**SHEET NUMBER**  
 DA112

**SCALE**  
 As indicated  
 (A4)

**DATE**  
 25/09/2018  
 12:30-37 PM

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 Z. Mohsen

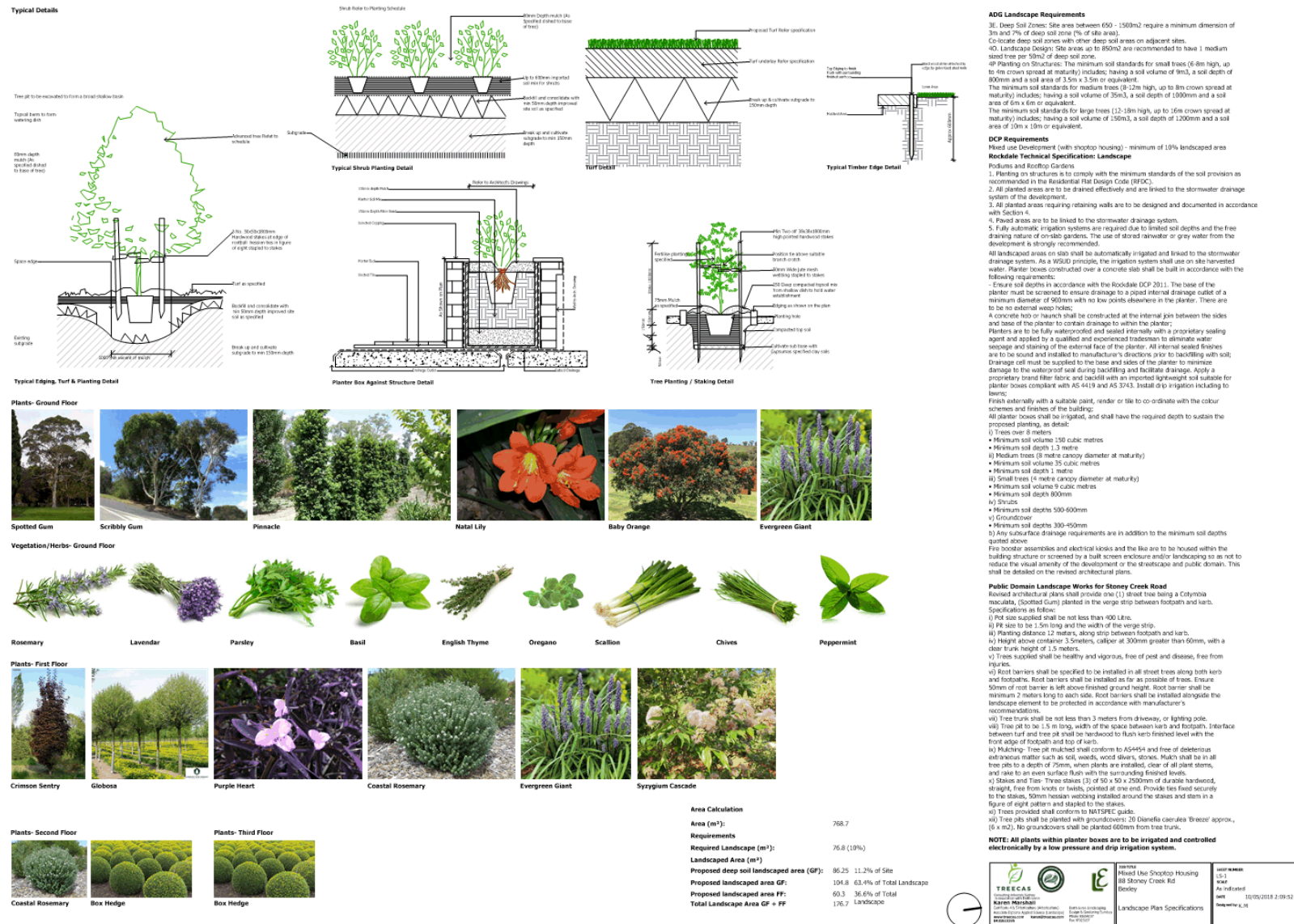
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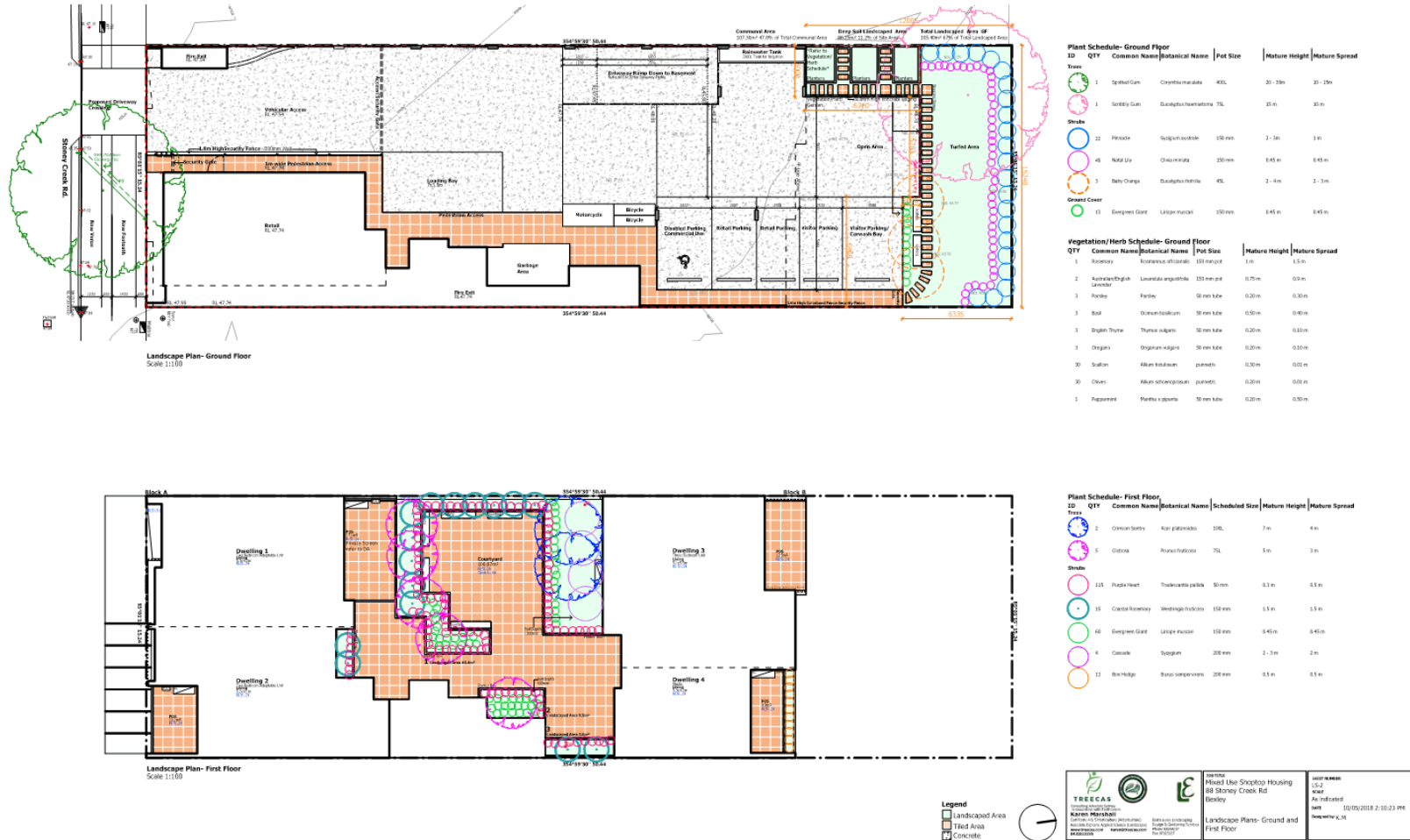


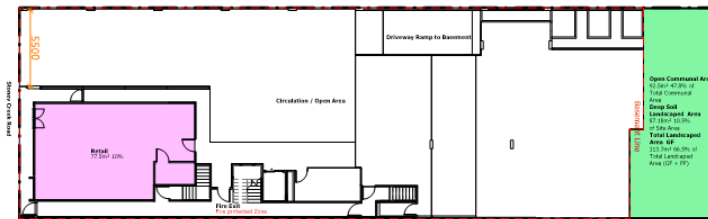




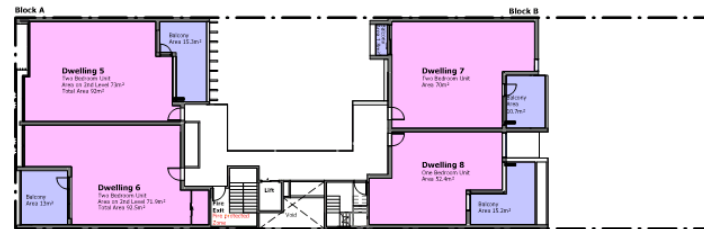








Ground Floor Area  
Scale 1:200



Second Floor Area  
Scale 1:200

#### Area Calculations

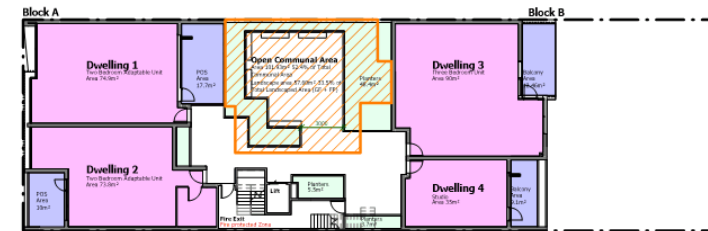
Area	Required (m <sup>2</sup> )	Proposed (m <sup>2</sup> )
<b>Site Area</b>	768.7	768.5
<b>FSR</b>	1.11 or 768.7	768.5 (0.991)
GFA- Ground Floor		77.5
GFA- First Floor		273.7
GFA- Second Floor		267.3
GFA- Third Floor		150
GFA- Basement		650
<b>Communal Space</b>		
Communal Space	Min. 25% of Site Area or 192.17	209.19 (27.2%)
Communal Space GF		107.26
Communal Space FF		101.93
<b>Retail</b>		
Retail	Min. 10% of Site Area or 76.87	77 (10%)
<b>Landscape</b>		
Total Landscape		171.3
Deep soil Landscape	Min. 10% of Site Area or 76.87	79.9 (10.4%)
Landscape Area GF		113.7 (66.5% of Total Landscape)
Landscape Area FF		57.60 (33.5% of Total Landscape)

#### Carparking Requirements

Rockdale DCP 2011				
Unit/Parking Type	No. of Dwellings	Min. Req. per Unit	Min. Spaces Req. (rounded)	Provided
1 Bedroom/ Studio	3	1	3	3
2 Bedroom Dwellings	6	1	6	6
3 Bedroom Dwellings	1	2	2	2
Visitor Parking	10	1 per 5 units	2	2
Retail	77m <sup>2</sup>	1 per 40m <sup>2</sup> GFA	0	2
Additional Accessible	-	0	0	1
Additional Loading Bay	-	0	0	1
<b>Total</b>			15	17
Motorcycle	10	1 per 15 units	0	2
Retail		1 per 20 car spaces	0	1
Bicycle	10	1 per 10 units	1	1
Retail		1 per 200m <sup>2</sup> GFA	0	2
<b>Total</b>			1	6

#### Dwelling Mix - Rockdale DCP 2011

Dwelling Type	Of Total Dwellings	Provided
3 Bedroom and/or more	10-20%	1 (10%)
2 Bedroom	50-75%	6 (60%)
1 Bedroom and/or studio	10-30%	3 (30%)
<b>Total No. of Dwellings= 10</b>		



First Floor Area  
Scale 1:200



Third Floor Area  
Scale 1:200

#### Area Schedule (Gross Building)

Unit No.	Type	Area ADG Req. (m <sup>2</sup> )	Proposed Area (m <sup>2</sup> )	POS ADG Req. (m <sup>2</sup> )	Proposed POS (m <sup>2</sup> )	Storage ADG Req. (m <sup>3</sup> )	Total Storage Provided	Proposed Storage in Unit (m <sup>3</sup> )	Proposed Storage in Base (m <sup>3</sup> )	Direct Sunlight Req.	Direct Sunlight Proposed
1	2 Bedroom	70	74.9	15	17.7	8	11.75	4	7.75	Min. 2hrs	3hrs
2	2 Bedroom	70	74.9	15	17.7	8	11.75	4	7.75	Min. 2hrs	3hrs
3	1 Bedroom	50	50	12	12.5	10	12.55	5.3	7.25	Min. 2hrs	3hrs
4	Studio	35	35	4	9.1	4	9.3	4	5.3	Min. 2hrs	3hrs
5	2 Bedroom	70	70	15	15.3	8	10.35	4	5.35	Min. 2hrs	3hrs
6	2 Bedroom	70	70.5	15	12.9	8	8.6	8.6	0	Min. 2hrs	3hrs
7	2 Bedroom	70	70	15	10.7	8	10	4	6	Min. 2hrs	3hrs
8	1 Bedroom	50	52.4	8	15.2	6	6.9	12	12.7	Min. 2hrs	3hrs
9	2 Bedroom	70	74	15	15	8	10.5	4.3	6.2	Min. 2hrs	3hrs
10	Studio	35	36.4	4	13.8	4	9.65	2.9	6.75	Min. 2hrs	3hrs
	<b>Retail</b>		76.87								

Revision	Date	For
1	11/01/2018	Initial Design
2	18/01/2018	Design Development
3	18/01/2018	Design Development
4	18/01/2018	Design Development
5	18/01/2018	Design Development
6	18/01/2018	Design Development

#### Legend

- Retail Premises + Dwellings
- Private Open Space
- Deep Soil Landscaped Area
- Landscape Area (on slab)
- Open Communal Area

**Abba**  
Architecture Becka & Associates  
Architects & Project Managers  
Phone 0295801645  
Fax 0295860844

**Job Title**  
Mixed Use Shoptop Housing  
88 Stoney Creek Rd  
Bexley  
  
**Area Calculation Plan**

**Sheet Number**  
DA110  
  
**Scale**  
As indicated  
  
**Date**  
2/11/2018  
11:45:00 AM

**Checked By**  
AB  
  
**Drawn By**  
Z. Mohsen  
  
**Designed By**  
AB

**Prior to commencing any work, the contractor shall be responsible for obtaining all necessary permits, approvals, and consents from the relevant authorities. The contractor shall be responsible for ensuring that all work is carried out in accordance with the relevant standards and specifications. The contractor shall be responsible for ensuring that all work is carried out in a safe and sound manner. The contractor shall be responsible for ensuring that all work is carried out in a timely manner. The contractor shall be responsible for ensuring that all work is carried out in a cost-effective manner. The contractor shall be responsible for ensuring that all work is carried out in a professional manner. The contractor shall be responsible for ensuring that all work is carried out in a high-quality manner. The contractor shall be responsible for ensuring that all work is carried out in a sustainable manner. The contractor shall be responsible for ensuring that all work is carried out in a socially responsible manner. The contractor shall be responsible for ensuring that all work is carried out in an environmentally responsible manner. The contractor shall be responsible for ensuring that all work is carried out in a culturally responsible manner. The contractor shall be responsible for ensuring that all work is carried out in a community responsible manner. The contractor shall be responsible for ensuring that all work is carried out in a socially responsible manner. The contractor shall be responsible for ensuring that all work is carried out in an environmentally responsible manner. The contractor shall be responsible for ensuring that all work is carried out in a culturally responsible manner. The contractor shall be responsible for ensuring that all work is carried out in a community responsible manner.**



## Bayside Design Review Panel

### REPORT OF THE BAYSIDE DESIGN REVIEW PANEL

Meeting held on Friday, 13 April 2018 at Bayside Council

[Panel members: Alan Cadogan, David Klingberg and Dean Boone]

#### ITEM 1

<b>Date of Panel Assessment:</b>	13 April 2018
<b>Applicant:</b>	Architecture Becka and Associates
<b>Architect:</b>	Architecture Becka and Associates
<b>Property Address:</b>	88 Stoney Creek Road, Bexley
<b>Description:</b>	Demolition of existing structures and construction of a four (4) storey shop top housing development comprising 10 residential units, one (1) commercial tenancy and basement level parking
<b>No. of Buildings:</b>	1
<b>No. of Storeys:</b>	4
<b>No. of Units:</b>	10 units - 3 x 1 bed/studio units, 6 x 2 bedroom units and 1 x 2 bedroom units
<b>Consent Authority Responsible:</b>	Bayside Council
<b>Application No.:</b>	DA-2018/48
<b>Declaration of Conflict of Interest:</b>	Nil

The Panel inspected the site, reviewed the submitted documentation and met with representatives of the applicant including Ammar Becka (Architect, ABA), Zainab Mohsen (Graduate Architect – ABA) and Ben Latta (Coordinator Development Assessment) and Alexandra Hafner (Senior Development Planner).

Design Principle	Comments
<p><b>Context and Neighbourhood Character</b></p> <p>Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.</p> <p>Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.</p> <p>Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.</p>	<p>The Panel recognises that this proposal is the first in the B1 zone to take up the opportunity for an increased level of development. In doing so, it will set a number of parameters that will influence the design on adjacent sites in the future. It proposes an internal courtyard that is addressed by built form both to the front and rear of the lot. This pattern of development is considered to be appropriate in the locality, however, further testing of this form should be undertaken for the whole precinct to demonstrate its appropriateness for adjacent sites.</p>
<p><b>Built Form and Scale</b></p> <p>Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.</p> <p>Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements.</p> <p>Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.</p>	<p>The Panel is generally supportive of the built form and scale in setting an appropriate precedent for redevelopment of the B1 zone.</p> <p>The proposal should do more to improve the activation of the street frontage. For example:</p> <ul style="list-style-type: none"> <li>the extent of active frontage is not maximised and should be greater;</li> <li>the driveway is wider than necessary;</li> <li>the planter box and associated landscape provides a visual barrier into the shopfront;</li> </ul> <p>There are also opportunities to increase the amount of glazing to the retail along the driveway to improve overlooking of entry spaces and the general retail exposure.</p> <p>The building will require fire hydrant boosters and residential mail boxes which do not appear to be shown in any detail.</p>
<p><b>Density</b></p> <p>Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.</p> <p>Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.</p>	<p>The Panel is supportive of the proposed density.</p>
<p><b>Sustainability</b></p> <p>Good design combines positive environmental, social and economic outcomes.</p> <p>Good sustainable design includes use of natural cross ventilation and sunlight</p>	<p>The Panel notes that the development proposes a number of sustainability initiatives and addresses the minimum BASIX requirements.</p> <p>The Panel considers the development could benefit from utilisation of rainwater harvesting, recycling of water on site, more substantial use</p>

Design Principle	Comments
for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.	of photovoltaic panels to the roof areas and broader sustainability issues such as communal productive gardens for residents.
<p><b>Landscape</b></p> <p>Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.</p> <p>Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks.</p> <p>Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long term management.</p>	<p>The Panel considers that while there is sufficient space for an acceptable landscape solution, the landscape planting selection is inappropriate and unsuitable within an urban context.</p> <p>The landscape plan provides a number of ambiguities and requires further clarification including:</p> <ul style="list-style-type: none"> <li>location of lawn and available communal open space to the ground floor deep soil area;</li> <li>fencing type to the rear boundary;</li> <li>clarify what is happening with the optional detention tank;</li> <li>a significant number of the plant species nominated do not achieve the height suggested in plant schedule.</li> </ul> <p>The Council should consider the inclusion of a street tree to the verge, particularly as there are no overhead powerlines.</p> <p>The landscape plan is required to be prepared by a qualified landscape architect.</p>
<p><b>Amenity</b></p> <p>Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.</p> <p>Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.</p>	<p>The Panel considers that the development does not provide sufficient amenity outcomes for the public realm. Further consideration needs to be given to the interaction between the internal spaces and the street. Further, as identified above there should be a greater extent of active frontage and interaction to the street.</p> <p>Consideration should be given to activating the façade at the upper levels with balconies and reconfiguration of the walk-in robes and en-suites (i.e. walk-in robes should not be put on the street frontage, and en-suites can utilise windows and natural lighting).</p> <p>The Panel supports the orientation of the apartments fronting Stoney Creek Road being focussed on the courtyard, however, the Panel considers that there are amenity issues relating to the balconies/private open space of dwellings 2 and 6, which are overlooked by the internal walkway and which have compromised visual and acoustic privacy. This part of the design requires further consideration by the applicant in order to resolve these issues.</p>
<p><b>Safety</b></p> <p>Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to</p>	<p>The Panel recommends that further consideration be given to where gates, fences and access control are applied to the ground floor. In particular this should provide for appropriate vehicle queuing (inbound and exiting) and pedestrian movement to the main residential entry and beyond, including to the deep soil planting zone at the rear of the site.</p>

Design Principle	Comments
<p>maximise passive surveillance of public and communal areas promote safety.</p> <p>A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.</p>	<p>Better delineation is required between vehicular movement areas and pedestrian access pathways so that there is no conflict between vehicles and pedestrians, especially when accessing the rear open communal area.</p> <p>Consideration should be given to moving the disabled parking space closer to the lift.</p>
<p><b>Housing Diversity and Social Interaction</b></p> <p>Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.</p> <p>Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix.</p> <p>Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents.</p>	<p>The proposal achieves good housing diversity outcomes.</p>
<p><b>Aesthetics</b></p> <p>Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.</p> <p>The visual appearance of a well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.</p>	<p>The Panel generally supports the design aesthetics subject to the comments above.</p>

#### RECOMMENDATION

- The Panel recommends that the above changes be made and be referred to the Council for further consideration.

## Bayside Local Planning Panel

9/04/2019

Item No	<b>6.3</b>
Application Type	Development Application
Application No	DA-17/1047
Lodgement Date	06/04/2017
Property	<b>2 and 2A, 4 Bay Street, Botany</b>
Ward	Port Botany
Owner	Mr F A Alafaci and Mrs P R Alafaci
Applicant	Beraldo Design
Proposal	Integrated Development for demolition of the existing structures and construction of a new residential flat building containing 20 units and basement car parking.
No. of Submissions	Two (2)
Cost of Development	\$6,386,179
Report by	Michael McCabe, Director City Futures

## Officer Recommendation

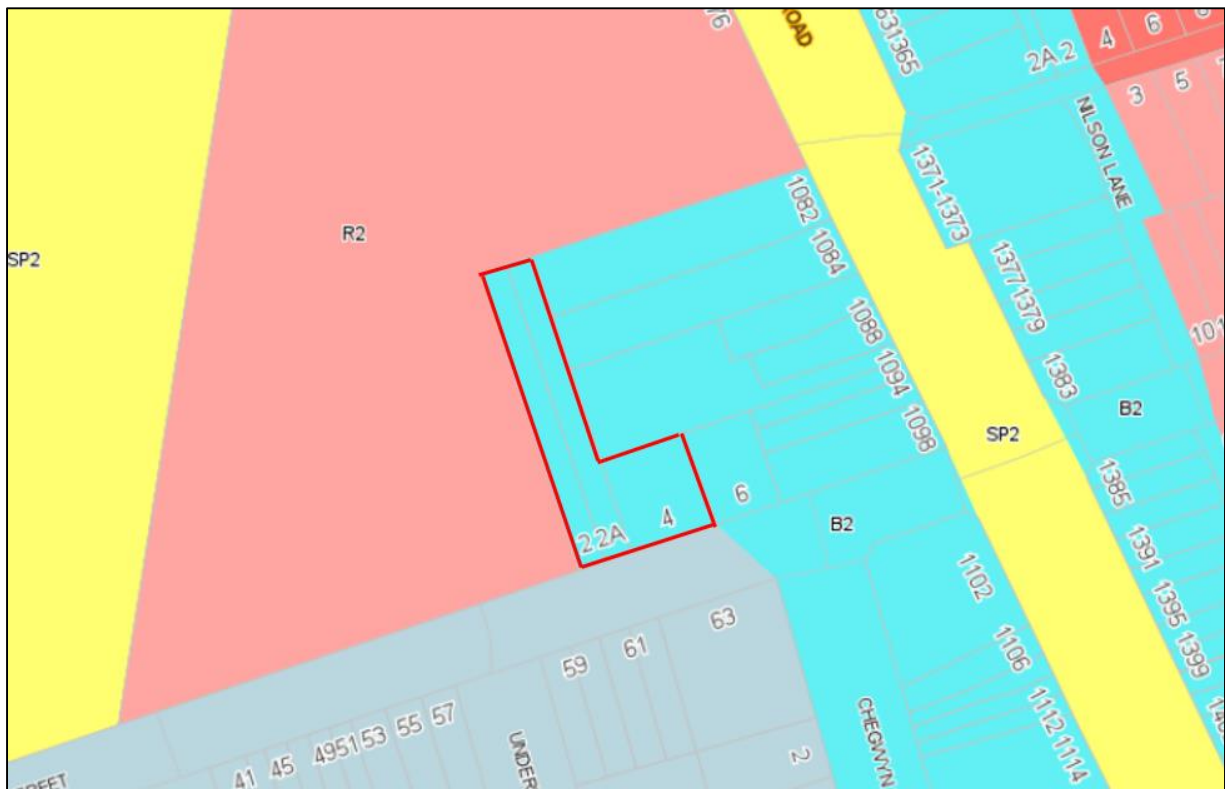
1. That Development Application No. 2017/1047 for demolition of the existing structures and construction of a new residential flat building containing 20 dwellings and basement car parking at 2,2A and 4 Bay Street, Botany, be REFUSED pursuant to Section 4.16(1)(b) of the *Environmental Planning and Assessment Act 1979* for the following reasons:
  1. Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy the following sections of the Botany Bay Development Control Plan 2013:
    - a) Part 3A – Car Parking and Access. The proposed development does not comply with the minimum car parking requirement under Table 1 of Part 3A.2- Parking Provisions of Specific Uses. Further, the depth provided would not accommodate the three level car stacker system proposed. The design of the driveway access fails to maintain boundary alignment levels and the internal circulation from the ramp access to the basement does not comply with Section 2.5.2C of AS2890.1.
    - b) Part 3G – Stormwater Management. The proposed onsite detention volume has been calculated incorrectly. The design of the development does not achieve the floor levels stipulated in the submitted Flood Report and there are design aspects of the development susceptible to flooding which has not been addressed.
    - c) Part 3J – Aircraft Noise and OLS. Compliance with internal noise criteria is contingent upon windows and door remaining closed which would interfere with the natural ventilation of the proposed dwellings.



Additionally, details of a suitable mechanical ventilation system have not been provided.

2. Pursuant to the provisions of Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, and having regard to the aforementioned reason of refusal, the site is not suitable for the development.
  3. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the submitted BASIX Certificate is not valid. The proposal therefore fails to satisfy the requirements of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.
  4. 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 and is likely to set an undesirable precedent.
2. That the objectors be advised of the Bayside Local Planning Panel's decision.
- 

## Location Plan



- 3 Elevations [↓](#)
- 4 Photomontage [↓](#)
- 5 Clause 4.6 - Building Height [↓](#)
- 6 Design Review Panel Minutes [↓](#)

## BAYSIDE COUNCIL

### Planning Assessment Report

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#### Application Details

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<b>Application Number:</b>	2017/1047
<b>Date of Receipt:</b>	6 April 2017
<b>Property:</b>	2, 2A & 4 Bay Street, Botany
<b>Owners:</b>	Mr F A Alafaci and Mrs P R Alafaci
<b>Applicant:</b>	Beraldo Design
<b>Proposal:</b>	Integrated development for the demolition of the existing structures and construction of a new residential flat building containing 20 dwellings and basement car parking.
<b>Recommendation:</b>	Refusal
<b>Value:</b>	\$6,386,000
<b>No. of submissions:</b>	Original notification: Two (2) objections Amended plan notification: Nil
<b>Author:</b>	Patrick Nash, Senior Development Assessment Planner
<b>Date of Report:</b>	26 March 2019

#### Key Issues

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Bayside Council received Development Application No. 2017/1047 on 6 April 2017 seeking consent for an Integrated Development for demolition of the existing structures and construction of a new residential flat building containing 20 dwellings and basement car parking at 2,2A and 4 Bay Street, Botany.

Since lodgement, the design of the development has been amended on a number of occasions, a Flood Impact Assessment has been submitted and other reports (traffic and heritage) have been re-issued for assessment to address a number of concerns which have been raised by Council and the Design Review Panel.

The key issues identified in the assessment of the amended material submitted by the applicant fundamentally relates to matters of car parking, vehicular access/manoeuvrability, stormwater and flooding as assessed by Council's Development Engineer and noted below:

- i) There is a shortfall in the required number of car parking spaces (9 space non-compliance). Further, the depth provided in the basement would not accommodate the proposed three level car stacker as per the product details provided. This would further increase the extent of the car parking variation. The submitted Traffic Report makes reference to 'Council's DCP 2013' and applies the car parking rates within Rockdale DCP 2011 which are not applicable to this site.
- ii) The internal circulation from the ramp access to the basement does not comply with Section 2.5.2C of AS2890.1. Intersections designed for use by one vehicle at a time must be able to do a single turn movement and must have enough space for two vehicles to pass each other. The current ramp access arrangement is non-compliant,

unsafe and is not feasible. It is likely that the vehicular access point to the site would need to be relocated and the development re-designed accordingly.

- iii) The flood report provided discusses multiple scenarios including consideration of the upstream proposed development which is currently under construction. Consideration of that upstream development has demonstrated the need for higher flood levels than what Council's initial Flood Advice Letter has stipulated. Compliance with this requirement would necessitate to a re-design and subsequent height increase, further increasing the extent of breach to the building height development standard.

The development application has been assessed in accordance with the relevant requirements of the *Environmental Planning and Assessment Act 1979* and is recommended for refusal, subject to the reasons of refusal in the attached schedule.

### Recommendation

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It is RECOMMENDED:

1. THAT Development Application No. 2017/1047 for demolition of the existing structures and construction of a new residential flat building containing 20 dwellings and basement car parking at 2,2A and 4 Bay Street, Botany, be REFUSED pursuant to Section 4.16(1)(b) of the *Environmental Planning and Assessment Act 1979* for reasons identified in the attached Schedule.
2. THAT the objectors be advised of the Bayside Local Planning Panel's decision.

### Background

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#### History

##### Development Application History

6 April 2017 – The subject development application was lodged with Council

3 May 2017 to 9 June 2017 – The development application was publicly notified in accordance with the requirements of BBDGP 2013.

23 November 2017 – The application was reviewed by the Bayside Design Review Panel.

21 December 2017 – An additional information letter was sent to the applicant. The concerns raised in this correspondence included: Matters raised by the Design Review Panel, separation distances between the proposed development and the neighbouring development under construction, insufficient and poorly design communal open space, solar and daylight access for proposed units, inadequate heritage assessment, inadequate details regarding proposed building height, car parking non-compliance with Botany Bay DCP 2013, insufficient extent of soft landscaping, dwelling mix, overlooking and missing information in the architectural drawings.

17 January 2018 – A meeting was held between Council and the applicant to discuss the concerns raised.

26 February 2018 – The applicant submitted amended plans.

27 February 2018 – Following the completion of Council's internal Engineering referral, a further additional information request was sent to the applicant raising concerns with respect to flood planning requirements, the proposed stormwater design, design of the basement and parking areas, car parking non-compliance and inaccuracies in the submitted traffic report.

18 May 2018 - Council issued a Flood Advice letter for the subject property.

25 May 2018 – A further meeting was held with Council and the applicant. Matters discussed included: requirements for a Stage 2 – Detailed Site Investigation to be submitted, building re-design required to comply with flood planning levels, amended DA required to be reviewed by the Design Review Panel and re-notified, additional heritage and solar access information required.

31 August 2018- The applicant submitted amended plans.

19 October 2018 - The amended plans were reviewed by the Design Review Panel.

26 October 2018 - Council's Development Engineer requested additional information. The following comments were made:

*The applicant should make sure that the following are addressed and provided:*

- *Stormwater drainage management plans including OSD and basement pump out system.*
- *An overland flow report is required to show how the existing overland flow path has been catered for in the design of the development.*
- *A flood management plan for the development.*
- *Swept paths for all vehicle spaces and loading/unloading movements.*
- *Long sections of all ramps entering the site and the basement area.*
- *Details of the car stacker unit proposed.*
- *Update the traffic report to reflect the above if necessary.*

*From the provided plans the following has been noted:*

- *The car space at the eastern end of the car stacker may be unusable due to the close proximity of the lobby 2 lift well.*
- *The turning movement from the basement access ramp to the southern parking area may not be able to be achieved in a single turning movement, same for accessing the ramp exiting the basement area.*

19 December 2018 – The applicant submitted amended architectural plans, landscape plans, traffic report and clause 4.6 exception (building height). Assessment in this report is based on these plans, traffic report and clause 4.6 exception.

29 January 2019 - Council requested the applicant to pay re-notification fees.

31 January 2019 – The applicant submitted a revised heritage report.

14 February 2019 to 25 March 2019 – The application was re-notified in accordance with BBDCP 2013.

7 February 2019 – The applicant submitted a Flood Impact Assessment report.

8 March 2019 - The applicant submitted updated stormwater drawings.

### Proposal

The development application, in its amended form, seeks consent for Integrated Development - for the demolition of the existing structures and construction of a new residential flat building containing 20 dwellings and basement car parking. The proposed development is further summarised as follows:

#### Basement Level

- 3 level car stacker system (16 car spaces);
- 8 car parking spaces;
- 3 lifts; and
- Storages areas.

#### Ground Floor

- 6 car parking spaces;
- 3 lifts;
- Deep soil landscaping at the rear;
- Vehicular access off Bay Street;
- Pedestrian entries off Bay Street;
- 1 x 1 bedroom unit and 1 x 3 bedroom unit; and
- Bin storage area.

#### First Floor

- 2 x 1 bedroom units;
- 4 x 2 bedroom units;
- Communal courtyard/terrace area;
- 3 lifts; and
- Podium landscaping.

#### Second Floor

- 1 x 1 bedroom units;
- 5 x 2 bedroom unit; and
- 3 lifts.

#### Third Floor

- 1 x 1 bedroom units;
- 5 x 2 bedroom unit; and
- 3 lifts.

#### Roof Plan

- Rooftop terrace area above Building B at the rear of the site.

The proposed dwelling mix is 5 x 1 bedroom, 14 x 2 bedroom and 1 x 3 bedroom apartment. Externally, the proposed residential flat building has a flat roof form and is contemporary in its appearance. The proposed finishes include a combination of brick veneer, painted render, off form concrete, zinc, aluminium cladding and louvres.

The photomontage submitted with the development application is re-produced below for reference:



**Figure 1: Photomontage of the proposed development**

#### **Site Description**

The development site comprises three separate allotments legally defined as Lots A & B DP 354602 and Lot C DP 366954, Nos. 2, 2A and 4 Bay Street, Botany. The site is generally 'L' shaped and located on the northern side of Bay Street approximately 100m to the west of the intersection with Botany Road. The development site has a total area of 1319.3m<sup>2</sup>, with a 32.815m frontage to Bay Street.

No. 2 and 2A Bay Street currently contain brick and timber clad semi-detached single storey dwellings with a sheet metal roof form. The property at No. 4 Bay Street contains a brick building which covers the majority of the. The building is currently utilised as a dance, acting and singing school for children. The land generally falls to the south consistently from the northern boundaries of Lots A and B. The rear yards of the residential allotments are largely turfed open areas however clusters of mature trees and vegetation are located along the western and northern boundaries.

The Botany Public School grounds surround the site to the west and north. There is a large mixed-use development under construction adjoining the site to the east. To the south across Bay Street are situated single storey dwellings of brick and weatherboard construction. The site is situated in the western part of the Botany Local Centre. The area surrounding, inclusive of the subject site is a listed heritage conservation area.





Figure 2: Aerial of the subject site

### Statutory Considerations

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

#### Part 4 Division 5 – Special procedures for integrated development

The relevant requirements under Division 4.8 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. The Development Application is Integrated Development in accordance with the Water Management Act 2000 as the development is deemed to be an Aquifer Interference Activity. In this regard, the Development Application was referred to Water NSW. On 29 June 2017, Water NSW provided its General Terms of Approval. No further concerns are raised in this regard.

#### S.4.15(1) - Matters for Consideration – General

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

The following Environmental Planning Instruments are relevant to this application:



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

*State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004* ("BASIX") applies to the proposed development. The development application was accompanied by BASIX Certificate No. 679578M dated 25 November 2015. This Certificate is invalid because it must be lodged within 3 months of the date of issue. In addition, the proposal has been amended numerous times which may have affected the thermal comfort, water and energy targets. No amended BASIX Certificate has been provided therefore does not comply with the SEPP requirements.

**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. 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.

The proposal was referred to Council's Environmental Scientist to review and who had the following comments:

*I have assessed the above application for the demolition of the existing premises and the construction of a 4 storey and 5-storey residential flat building with one level basement car park. Acid sulfate soils have been encountered in the Geotechnical Investigation and dewatering may be required for excavation of the basement car park.*

*I have reviewed the following reports:*

1. SLR, 'Detailed Site Investigation - 2-4 Bay Street, Botany, NSW', August 2018, SLR Ref: 610.18189-R01-v0.1.
2. SLR, 'Preliminary Site Investigation - Lot A & B in DP354602 and Lot C in DP366954, 2-4 Bay Street, Botany, NSW', 15 December 2015, Report No. 610.15745-R1.

*I have no objections to the DA subject to conditions.*

The environmental scientist has no objections to the proposal subject to the imposition of conditions of consent. No further concerns are raised in this regard.

**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.

During the development application process, the applicant submitted the proposal to the DRP on two (2) separate occasions for consideration. The most recent meeting was held on 19 October 2018. A copy of the minutes from the meeting are attached to the report. The Design Review Panel considered the revised proposal to be a significant improvement on the initial scheme, however, more design resolution is required in some parts of the development. Subsequent to the issuing of that advice, the applicant submitted further amended plans.

**Apartment Design Guide**

A Design Verification Statement has been prepared by Beraldo Design and was submitted with the development application.

An assessment of the proposed development against Part 3 and 4 of the ADG has been undertaken. The key ADG design requirements are detailed in the table below.

Clause 30(1) of SEPP 65 states that if a development application satisfies the following design criteria, the consent authority cannot refuse an application because of those matters. These are deep soil, ceiling heights and building separation.

SEPP 65 – ADG			
Control	Requirement	Proposed	Complies
<b>Dwelling Size</b>	Minimum internal areas as follows: 1 bed unit: 50sqm 2 bed unit: 70sqm 2 bed unit with 2 <sup>nd</sup> bathroom: 75sqm 3 bed unit: 90sqm 3 bed unit with 2 <sup>nd</sup> bathroom: 95sqm	1 bed units: 52-60sqm 2 bed units: 75-80sqm 3 bed unit: 105sqm	Yes Yes Yes
<b>Ceiling Height</b>	Habitable Rooms: 2.7m Non-habitable: 2.4m Mixed Use: 3.3m for ground and first floor	Floor to floor height for residential levels: 3.1 metres which enables a compliant floor to ceiling height to be achieved	Yes
<b>Deep Soil</b>	Objective 3E-1 requires 7% of the site as deep soil area (requires 92.3sqm)	107sqm (8.1%)	Yes
<b>Communal Open Space</b>	25% of site (329sqm)	455sqm (34%)	Yes
<b>Solar Access</b>	50% direct sunlight to the principal usable part of the COS for a minimum of 2 hours during mid-winter Note: Part 4C requires that COS receives 3 hours in winter.	More than 50% of COS receives greater than 2 hours of sun due to its location.	Yes

	Living rooms and POS for at least 70% of apartments (and in neighbouring development) to achieve 2 hours between 9am and 3pm	70% (14/20) of apartments will receive at least two hours of sunlight during June 21 <sup>st</sup>	Yes
<b>Building Depth</b>	Use a range of appropriate maximum building depths of 12-18 metres	The building does not exceed 18 metres in depth.	Yes
<b>Building Separation</b>	<u>Up to 4 storeys (approx. 12m):</u> 3m from non-habitable rooms to site boundary 6m from habitable rooms/balconies to site boundary	The proposed building setbacks are generally compliant with the exception of the following: (1) Eastern side setback of Building B (2) Western side setback of Building A and B	<b>No – Refer to Note 1</b>
<b>Balcony Sizes</b>	1 bed: 8sqm 2 bed: 10sqm 3 bed: 12sqm Ground Floor: 15sqm	1 bed: 10sqm 2 bed: 10sqm-15sqm Ground Floor (3 bed): 17sqm to 18sqm	Yes Yes Yes
<b>Cross Ventilation</b>	60%	75 % (15/20 units). The required aircraft noise attenuation measures may restrict this –refer to discussion later in this report.	Yes
<b>Storage</b>	1 bed: 6m <sup>3</sup> 2 bed: 8m <sup>3</sup> 3 bed: 10m <sup>3</sup>	Storage spaces within the units and in the basement area has been identified on the plans.	Yes

#### Note 1 – Building Separation

The proposed building separation/setback distances are generally compliant with the ADG guidelines with the exception of:

- The eastern setback of Building B. This setback is proposed to be up to 4.17m from the side boundary. The adjacent development to the east has balconies approved with a 6m rear setback. The eastern elevation of the Building B at the rear has been designed to restrict overlooking towards the adjoining development to the east due to the inclusion of frosted glazing to the window openings. The rooftop terrace incorporates landscaping planting proposed around the perimeter of the roof top terrace to provide screening opportunities; and

- The proposed development has a nil side setback to the western side boundary where it adjoins the school grounds. It is noted that there are balconies proposed within Building B which would overlook the adjacent school grounds. Concern has been raised by the school is the submissions received with respect to this aspect of the development.

#### SEPP 65 Design Principles

The assessment of the proposal has had regard to the SEPP 65 Design Principles. The following summary against each of those principles is provided:

##### *Context and Neighbourhood Character*

The revised design is a significant improvement on the previous design and is generally acceptable, however, the DRP noted that design resolution is required at the ground level of the development both to the side and front of the building. This is challenging given the site constraints. On balance, the proposed development is satisfactory with respect to context and neighbourhood character but is not supported for other reasons.

##### *Built Form and Scale*

The built form and scale of the development is generally appropriate for the site and its surroundings. However, there are various other unresolved issues with the design.

##### *Density*

The density is acceptable, noting that the extent of gross floor area proposed is compliant with the floor space ratio development standard within BBLEP 2013.

##### *Sustainability*

The BASIX Certificate provided is not valid and can thus not be relied upon as a sustainability measure.

##### *Landscape*

The landscaping outcomes proposed are generally satisfactory.

##### *Amenity*

The proposal is compliant with the solar access and apartment layout guidelines. These aspects of the proposal are acceptable, however there is some concern with natural ventilation due to the windows and doors needing to be kept close to comply with the aircraft noise requirements.

##### *Safety*

There are vehicular access/manoeuvrability and associated safety concerns due to the non-compliant car parking layout as outlined within this report.

##### *Housing Diversity and Social Interaction*

The proposal provides an appropriate mix of 1, 2 and 3 bedroom dwellings. There are social interaction opportunities by virtue of the communal open space areas.

*Aesthetics*

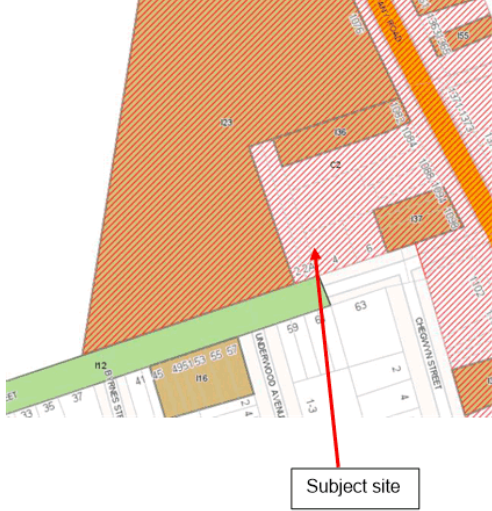
The revised design achieves an acceptable aesthetic quality.

**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:

<b>Relevant Clauses Principal Provisions of Botany Bay Local Environmental Plan 2013</b>	<b>Compliance Yes/No</b>	<b>Comment</b>
Land use Zone	Yes	The site is zoned B2 Local Centre zone under the Botany Bay Local Environmental Plan 2013.
Is the proposed use/works permitted with development consent?	Yes	The proposed use as a residential flat building is permissible with Council's consent under the Botany Bay Local Environmental Plan 2013.
Does the proposed use/works meet the objectives of the zone?	Yes	The proposed development is acceptable with respect of the objectives of the B2 Local Centre.
What is the height of the building?  Does the height of the building comply with the maximum building height?	<b>No – Refer to Note 1 below</b>	A maximum height of 14 metres applies to the subject site.  The maximum height of the development does not comply with Council's requirements under the Botany Bay Local Environmental Plan 2013. Building A is proposed to contain a maximum height of 15.54m and Building B is proposed to contain a maximum height of 16.44m.  A Clause 4.6 variation was provided with the application and is discussed in greater detail in the report below.
What is the proposed Floor Space Ratio?  Does the Floor Space Ratio of the building comply with the	Yes	The maximum allowable Floor Space Ratio requirement is 2:1 (2638sqm). The proposed FSR is 1.26:1 (1671m <sup>2</sup> ).

<b>Relevant Clauses Principal Provisions of Botany Bay Local Environmental Plan 2013</b>	<b>Compliance Yes/No</b>	<b>Comment</b>
maximum Floor Space Ratio?		
Is the site within land marked "Area 3" on the Floor Space Ratio Map?  If so, does it comply with the sliding scale for Floor Space Ratio in Clause 4.4A?	N/A	The site is not located in an Area 3 zone.
Is the land affected by road widening?	N/A	The subject site is not affected by road widening.
Is the site listed in Schedule 5 as a heritage item or within a Heritage Conservation Area?	Yes	The site is not a heritage item however is located in close proximity to a number of heritage items at 1076 Botany Road (I23 – Botany Public School), 1082 Botany Road (I36 – Hippo's Friends Child Care Centre), 1094-1098 Botany Road (I37 – Finnies buildings) and 45-57 Bay Street (I16 – House Group). The site is located within the Botany Township Heritage Conservation Area. Refer to diagram below for reference.

Relevant Clauses Principal Provisions of Botany Bay Local Environmental Plan 2013	Compliance Yes/No	Comment
		 <p data-bbox="1054 1025 1182 1070">Subject site</p> <p data-bbox="767 1081 1262 1223">The design of the proposed development is not anticipated to cause any adverse impacts upon the nearby heritage listed items and/or the broader heritage conservation area (heritage items are highlighted and the conservation area hatched).</p>
<p data-bbox="347 1240 600 1352">The following provisions in Part 6 of Botany Bay Local Environmental Plan apply–</p> <ul data-bbox="347 1368 564 1621" style="list-style-type: none"> <li data-bbox="347 1368 564 1424">• 6.1 – Acid Sulfate Soils</li> <li data-bbox="347 1588 564 1621">• 6.2 – Earthworks</li> </ul>	<p data-bbox="663 1364 703 1397">Yes</p> <p data-bbox="663 1592 703 1626">Yes</p>	<p data-bbox="767 1368 1262 1480">The site is located within a Class 2 ASS zone. The proposed development is seeking to excavate greater than 2 metres below ground. A geotechnical report has been received.</p> <p data-bbox="767 1491 1262 1659">The proposal seeks one level of basement car parking. The proposal has provided the relevant reports to address excavation. The proposal was referred to Council's Environmental Scientist who does not object to the proposal on this basis, subject to conditions of consent.</p>

Relevant Clauses Principal Provisions of Botany Bay Local Environmental Plan 2013	Compliance Yes/No	Comment
<ul style="list-style-type: none"> <li>6.3 – Stormwater Management</li> </ul>	No	The development proposes OSD however the proposal was referred to Council's Development Engineer who had issues with the stormwater system. Refer to BBDCP 2013 discussion later in this report.
<ul style="list-style-type: none"> <li>6.9 – Development in areas subject to aircraft noise</li> </ul>	Yes	The site falls within the 25-30 ANEF contour. The development provided an acoustic report which is acceptable.
<ul style="list-style-type: none"> <li>6.15 – Active Street frontage</li> </ul>	Yes	Whilst the subject site is within the B2 – Local Centre zone, it is not identified as being subject to the provisions of this clause.

#### Note 1: Non-compliance with Clause 4.4 – Building Height

The proposed development does not comply with the building height development standard of 14 metres under BBLEP 2013.

The requested variation is as follows:

- Building A: Roof line of the rear portion of the third floor - RL19.15 (exceedance range from 1.21m (northern and southern elevations and 1.54m (eastern and western elevation)
- Building B: lift overrun and shelters maximum height - RL20.05 (exceedance up to 2.44m)

The highest part of the proposed development would be 16.44m. The extent of the breach is 2.44m or 17.4%.

The following plan extract depicts the extent of the proposed breach along the western elevation:





**Figure 3: Western elevation extract identifying non-compliant building height**

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

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

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

- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) That there are sufficient environmental planning grounds to justify contravening the development standard.*

The applicant provided a clause 4.6 variation addressing the building height non-compliance which has been included as an attachment to this report. Some of the relevant extracts of that submission have been re-produced below:

*"The applicant relies upon the first method demonstrating that compliance is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding a variation with the standard.*

*In dealing with the control it is necessary to identify the purpose of the height control and then progress to dealing with the consistency or otherwise with the height objectives. The first consideration relates to overall scale of a building given that height determines the scale of a building to another building or natural feature. The visual fit of the building in this particular instance having regard to the variations sought is acceptable and appropriate for this site.*

*The site is an isolated site with an L-shaped configuration. It immediately adjoins land occupied by the Botany Public School. The school land immediately west of the site is a driveway access to a school carpark and open space, playing fields and cricket nets for students. To the east is an approved building within an area with an allowable height limit of 22m. Opposite the site is zoned B7 Business Park and permits redevelopment up to 12m in height.*

*The additional volume of built form arising from the proposed variations whether it be the roof element or the lift shaft will not be visible from most positions in the public domain or private lands. The built*

form responds to its locational context having regard to its zoning, allowable building height, and existing and approved development on land immediately surrounding the subject site. These features create an individual set of circumstances that, when applied to this particular site, underpin the context for considering the proposed variation to the height.

In this case the roof element of Building A is setback over 7.5m from the Bay Street property boundary and constructed of a gun-metal grey material and glass. This creates a recessive appearance and volume to the roof envelope that is non-compliant when viewed from Bay Street this roof is not higher than the adjoining approved development to the east.

The lift shaft and stair overrun of Building A are also setback from each edge of the building. It is to be constructed of the same material (gun metal grey) as the Building A roof element, again appearing as a recessive roof element, located towards the middle of the building. The rooftop screening is semi-transparent, complemented by various plants and landscaping with lightweight shade structures for weather protection of residents.

These rooftop elements of Building B will be visible from a distance when viewed from the south-west along Bay Street and from the open space to the east towards Mill Pond. However, they will appear subservient to the higher development behind the subject site, not dominating the skyline or neighbouring school property. The remainder of the roof line and habitable floor levels of Building B is compliant.

Further insight into the purpose of the height standard can be obtained by investigating the objectives of the standard. The objectives in this case are weighted on amenity having regard to solar, visual and privacy impacts. When considered within the framework of the objectives the purpose of the height control requires the development to provide reasonable amenity impacts as a result of the building height and specifically the variation. The following justification relates to both the proposed variations on both buildings.

(a) to ensure that the built form of Botany Bay develops in a coordinated and cohesive manner,

The proposal is a permissible development in this location. It is a logical development that is proposed upon a site which is essentially an isolated site and therefore does not impact on the development potential or logical redevelopment of land in the vicinity. The variation does not prejudice any adjoining site or affect the development potential of other sites. The objective is achieved.

(b) to ensure that taller buildings are appropriately located,

The proposed development is appropriately located as it provides a transition between the 22m height limit facing Botany Road and the open space, rear playing fields of the adjoining school grounds. Objective is satisfied.

(c) to ensure that building height is consistent with the desired future character of an area,

The majority of the development complies with the prescribed height limit. The height limit is nominated to provide the transition in this area. The proposal achieves this by stepping down from the adjoining large residential development that faces both Botany Road and Bay Street, directly adjoining the subject site to the school grounds adjoining to the west.

The proposal is consistent with the Botany Character Precinct provisions contained in the DCP. Objective is satisfied.

(d) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,

The proposal does not disrupt views and is acceptable in terms of views to and from the site. The area of the non-compliance does not unduly affect any adjoining property. The overall height of the development is acceptable when viewed from Bay Street and other public domain viewpoints. Objective is satisfied.

(e) 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.

The maximum height of development permissible in the immediate area ranges from 12m on the R2 zoned school land up to 22m for the land adjoining the subject site (facing Botany Road). Therefore, the 14m height limit for this site sites towards the middle of the height range and is not the upper limit for the area.

The proposed built form is compatible with the desired future character for this area. There is no potential for this development to have a jarring effect in the streetscape, given the backdrop of the adjoining residential development facing Botany Road and the likely future redevelopment across the street (B7 Business Park with 12m height limit). Instead the built form proposed for this site mediates the higher and bulkier adjoining development.

The additional height occurs in two distinct areas at the top most level of Building A and Building B. The first is the recessed roof element of Building A and the second is the lift overrun, stair access and shade structures on the roof of Building B.

Specifically,

- Building A: Roof line of the rear portion of the third floor - RL19.15 (exceedance range from 1.21m (northern and southern elevations and 1.54m (eastern and western elevation)
- Building B: lift overrun and shelters maximum height – RL 20.05 (exceedance up to 2.44m)

The environmental planning grounds justification for the two variations is provided as follows:

- Building A: the habitable floor area of this building complies with the 14m height limit. It is only the rear portion of the third level roof that is non-compliant. This projection provides access to natural light to these units, enhancing their indoor/outdoor living spaces. The highlight windows face north and south, thereby accessing more natural light.
- The non-compliant portion of the roof is setback some 7.7m from the Bay Street property boundary.
- The material used for the upper roof of Building A is dark gun metal grey in colour, thereby creating a recessive structure when viewed from the street.
- The height of the roof is lower than the adjoining development which faces Botany Road, thereby appearing as a subservient element to this development when viewed from the west along Bay Street or from the open space area to the west.
- Building B: the habitable floor area and roof of this building complies with the 14m height limit, it is only the lift overrun, stairway and shade structures that project above the height limit.
- The highest point is the lift overrun. It is located in most desirable position – towards the centre of the roof and the building.
- The central location of the lift overrun maximises the setback to each elevation. This has many practical advantages and enables the basement to be designed with compliant and efficient ramps and isles that would not be achievable with a lift core located toward the edge of the building envelope. Inefficiencies in the use of the available floor area would result if the lift was relocated and made to comply.
- The lift overrun and stair structure is also needed to provide access to the rooftop common open space. This area is required to be accessible for all residents and guests, hence the need for the lift to be taller to provide access this level of the building.
- The rooftop common open space assists with facilitating the orderly and economic use of the land and provide open space with good solar access.
- The lightweight shade structures are required to provide some form of shading for the amenity of residents use all year round.
- The shadow diagrams (see BDAI shadow diagrams in Appendix B) demonstrate that the additional height for Building B does not result in any additional shadowing impact results from the lift position.
- The height variation to Building B predominantly occurs as a result of the need to provide full access to the rooftop open space, noting that the remainder of this building remains under the height control over the building footprint.

*In the present circumstances the positive planning benefits associated with equitable access being provided to a high quality communal open space area and the ability to efficiently plan upper level of Building A to provide more access to natural light are considered sufficient in their own right to justify the variations to the height control in this particular case.*

*Additionally, there is a clear lack of adverse amenity impacts arising from the proposal as neither variation will not result in adverse overshadowing or privacy impacts on adjoining properties. The projections above the height limit do not have any flow-on negative planning impacts and the impacts that arise from the variation whilst extremely negligible or non-existent are nevertheless acceptable.*

*In summary, the HOB variation is considered to be in the public interest given its ability to not cause additional impacts but also because of its ability to provide the site specific environmental planning grounds demonstrating that strict compliance is unreasonable and unnecessary in the circumstances of this particular case. The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed development for this particular site and this particular design by BDAI is not directly transferrable to any other site in the immediate locality, wider region or the State and the scale of the proposed development does not trigger any requirement for a higher level of assessment.*

*Notwithstanding the contravention of the development standard, the proposed development is consistent with the relevant objectives of the development standard pursuant to cl4.3 of the BBLEP 2013 and is consistent with the relevant objectives of the B2 Local Centre zone and therefore, the proposed development is in the public interest".*

Comment:

The request to vary the building height development standard has been assessed in accordance with the provisions of Clause 4.6 and relevant case law, being the principles of *Wehbe v Pittwater Council* [2007] NSW LEC 827 and *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 & NSW LEC 90 (*Four2Five*). The proposal is consistent with the underlying objectives of the standard identified and is consistent with the objectives of the B2 – Local Centre zone. The proposal and Council's assessment has concluded that compliance with the building height 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.

In view of the above, the provisions of clause 4.6(4) of BBLEP 2013 are satisfied.

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

There are no current Draft EPIs applicable to this development

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

**Botany Bay Development Control Plan 2013**

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

*Part 3A –Parking and Access*

In accordance with the provisions of Part 3A of BBDCP 2013, the proposed development is required to provide car parking at the following rates:

Residential flat buildings	1 space/ studio or one (1) bedroom dwelling; 2 spaces / two (2) or more bedrooms dwelling; 1 designated visitor space / 5 dwellings; and 1 car wash bay (visitor parking may be equipped with cold water tap and sewer connection and used as a car wash bay)
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On the basis of 5 x 1 bedroom, 14 x 2 bedroom and 1 x 3 bedroom (total 20 units) the following car parking is required to be provided:

- 35 spaces for residents;
- 4 visitor spaces; and
- 1 car wash bay (this may be shared/dual use with a visitor space).

The total number of car parking spaces required is therefore a minimum of 39. The proposal provides a total of 30 spaces, 16 of which are accommodated within a triple deck car stacker system in the basement level. The proposal results in a car parking shortfall of 9 spaces which is not supported.

Council's Development Engineer has reviewed the updated traffic report and architectural drawings and raises the following concerns with respect to parking and vehicular access:

- 1) The submitted Traffic Report makes reference to 'Council's DCP 2013' and applies the car parking rates within Rockdale DCP 2011 which are not applicable to this site;
- 2) The architectural plans indicate elevating the driveway access at the boundary, this is not supported. The proposal must maintain boundary alignment levels. Additionally the internal circulation from the ramp access to the basement does not comply with Section 2.5.2C of AS2890.1. Intersections designed for use by one vehicle at a time must be able to do a single turn movement, and shall have enough space for two vehicles to pass each other. The current ramp access arrangement is not safe and is not feasible. An alternative location for the ramp to facilitate access to the basement is required; and
- 3) The depth provided in the basement would not accommodate a three level car stacker as per the product details provided. The car parking shortfall would therefore increase further.

Resolution of the abovementioned matters would require a significant re-design, particularly if the vehicular access point to the site is required to be re-located and a compliant amount of on-site car parking provided.

#### *Part 3B – Heritage*

The site is not a heritage item however is located in close proximity to a number of heritage items at 1076 Botany Road (I23 – Botany Public School), 1082 Botany Road (I36 – Hippo's Friends Child Care Centre), 1094-1098 Botany Road (I37 – Fannies buildings) and 45-57 Bay Street (I16 – House Group). The site is located within the Botany Township Heritage Conservation Area.

The initial plans were submitted to Council's Heritage Advisor who noted that the Heritage Impact Statement (HIS) provided is insufficient. The applicant submitted a revised HIS to

address the concerns raised. The proposed development would not cause any adverse impacts upon the surrounding heritage items and/or the conservation area.

*Part 3C – Access and Mobility*

The proposal provides for two accessible units, three disabled car parking spaces as well as appropriate lift access and ramp access throughout the building. The proposed development is compliant with this part of BBDCP 2013.

*Part 3G- Stormwater Management*

**Stormwater**

Council's Development Engineer reviewed the amended stormwater plans and has raised the following concerns:

*The proposed onsite detention volume provided has not been calculated in accordance with Botany Bay Development Control Plan. The OSD volume is to be designed for a 1%AEP and be restricted to 20% AEP and be restricted to the state of nature condition.*

**Flooding**

Council's Development Engineer reviewed the Flood Impact Assessment submitted on 7 February 2019 and has raised the following concerns:

*The flood report provided had discussed multiple scenarios including consideration of the upstream proposed development. The flood report demonstrates little flood impact on adjacent lands.*

*However the consideration of the upstream development have demonstrated higher flood levels than what Council have suggested (and what is proposed in the current plans), also the ground floor parking is susceptible to flooding due to proposed door opening and possibly open cavities in the facade.*

*All habitable floor areas must have a minimum 500mm freeboard and the parking areas shall be protected up to 1%AEP plus 300mm freeboard.*

The above requirements would have the effect of further elevating the finished levels of the proposed development. This would require a re-design of the proposal and further increase the extent of the breach to the building height development standard.

*Part 3J – Aircraft Noise and OLS*

The site is located within the 25-30 ANEF Contour. The application was supported by an acoustic assessment report which demonstrates that the development is capable of complying with the applicable noise criteria. However, the report states that compliance is contingent upon windows and doors being closed and a mechanical ventilation system would be required. This raises concerns with residential amenity as well as the performance of the development against the natural ventilation requirements in the ADG. In addition, specific details of a mechanical ventilation system have not been provided.

*Part 3K – Contamination*

Refer to SEPP 55 section above which discusses the contamination of the site.

*Part 3L – Landscaping and Tree Management*

The proposal was reviewed by Council's Landscape Architect who has indicated that the proposed landscaping outcomes are generally acceptable. No further concerns are raised in this regard.

*Part 3N – Waste Minimisation and Management*

The proposal incorporates suitable waste management facilities.

*Part 4C – High Density Residential*

The subject development is identified as a high density residential development. Part 5 of the BBDCP 2013 is more applicable to the development however there are some controls which relate to the site which are not included within Part 5 but rather in Part 4C. This is predominantly around family friendly controls. The proposal provides an acceptable dwelling mix as it incorporates a mixture of 1, 2 and 3 bedroom apartments. Whilst the design of some of the 2 and 3 bedroom units do not strictly satisfy the apartment layout guidelines within Part 4C.4.2 of BBDCP2013, they are compliant with the ADG provisions which supersede these controls.

*Part 5 – Business Centre*

The site is located within the Botany Local Centre. The following controls apply to the Botany Local Centre and are as follows:

Control	Proposed	Complies
<b>5.2.2.7 Botany Local Centre</b>		
<b>C1</b> Development must provide landscaping, street trees, lighting, public seating, paving and other public domain improvements identified by Council, generally in accordance with Figure 24	The proposal provides for some landscaping opportunities in the ground floor terraces areas at the front of the site. The existing street tree is proposed to be retained.	Yes
<b>C2</b> Pedestrian amenity and connectivity must be enhanced in conjunction with new development. Through site links and arcades are encouraged with redevelopment to improve pedestrian access, amenity and safety	There are no site links proposed and it is unreasonable to request any given the site circumstances.	Yes
<b>C3</b> Redevelopment is encouraged through logical lot consolidation of sites and infill development. Avoid inappropriate lot consolidation patterns that would isolate and unreasonably restrict redevelopment on a single lot.	Site consolidation is not possible in this instance. This is because there is another development currently under construction immediately adjoining the site at No.6 Bay Street & 1084-1088 Botany Road.	Yes
<b>C4</b> New development is to take into account and respond sympathetically to the established heritage streetscape, within the Botany Local Heritage Conservation Area, which exhibits strong architectural features and identity. New buildings are to	The development has been designed to be a satisfactory response to the heritage character of the street and the heritage conservation area in which the site is located.	Yes



reinforce these features and contribute to its character by incorporating traditional shopfronts and building facades.		
<p><b>C5</b> The design of development must be generally consistent with the desired future character of the centre identified in Figure 24 and the existing character of buildings within the Botany Township Heritage Conservation Area.</p>	<p>Figure 24 is not considered to be strictly applicable to the subject site as it only deals with buildings facing Botany Road and the subject site does not fall into this category. See extract below:</p> <p><b>Figure 24 - Desired Future Character - Botany Local Centre</b></p> <p><b>Street awning and verandahs</b> Development includes a continuous solid suspended awning or verandah over the public footpath. Verandahs over the footpath are encouraged to improve residential amenity, passive surveillance of the street to provide weather protection for pedestrians.</p> <p><b>Building Articulation</b> Building articulation at the street alignment is in the form of balconies, verandahs, or wall offsets.</p> <p><b>Street Wall</b> Development provides 2 storeys built to the street alignment with a continuous and consistent parapet line and additional upper levels are setback from the street.</p> <p><b>Height and Setback</b> Development must not exceed 14 metres in height and Levels 3 &amp; 4 should be setback at both front and rear to create articulation of the street facades. The setback is to be determined subject to a detailed site analysis at DA stage.</p> <p><b>Public Domain</b> Development must provide landscaping/street trees, lighting, paving and other infrastructure and improvements in the public domain in consultation with Council's landscape officer.</p> <p>Maximum height 14 metres</p> <p>Botany Road</p> <p>West side East side</p>	Yes
<p><b>C6</b> New development is to take into account and respond sympathetically to an established heritage streetscape with strong architectural features and identity. New buildings are to reinforce these historic features and contribute to its character.</p>	<p>The proposal is an acceptable fit with the surrounding built form, noting that the street wall presentation of the building will be consistent with the adjoining development to the east (No.6 Bay Street) that is currently under construction. It is however noted that resolution of the flooding/parking/vehicular access matters would necessitate to a re-design which may affect this outcome.</p>	Yes
<p><b>C7</b> A maximum height of 14 metres applies under BBLEP 2013. Building height along the street frontage is a maximum of two stories, with Levels 3 and 4 to be setback from the street in accordance with the desired future character identified for the centre in Figure 24.</p>	<p>The development proposes a maximum height of 16.44 metres which does not comply with the 14 metre height limit. Refer to previous clause 4.6 discussion in this report. The building is comprised of three stories at the front of the site, consistent with the neighbouring building under construction.</p>	No
<p><b>C8</b> A setback to the rear may be required where a site adjoins a residential area and is to be determined following a detailed site</p>	<p>The site adjoins the Botany Public School at the rear. A 6m rear setback has been provided which is acceptable.</p>	Yes



analysis at development application stage. Applicants must therefore demonstrate to Council with the development application that the amenity of neighbouring residential properties are protected in terms of sunlight and natural daylight access, privacy and visual amenity.		
<b>C9</b> Buildings must address the street and their entries are to be readily apparent from the street. Developments on sites with two or more frontages must address both frontages, to promote, add prominence and diversity to the streetscape. Buildings that are orientated across sites, contrary to the established development pattern, are intrusive and often overlook adjoining properties (refer to Figure 17).	The building entry is directly off Bay Street at the front of the site which is acceptable.	Yes
<b>C10</b> Dwellings within a mixed use development and shop top housing are to have windows and/or verandahs in the street elevation to encourage surveillance of the street. If the Verandah is built over the street then a lease fee is payable to Council. The fee is set out in Council's Fees and Charges.	The proposal is not for a mixed use development or shop top housing. In any case, the proposed south facing units have their balconies and windows positioned looking onto Bay Street which provides passive surveillance.	Yes
<b>C11</b> Alterations and additions are to reflect the architectural design of the existing building. Materials and finishes are to be compatible with the existing building.	No alterations and additions are proposed.	Yes
<b>C12</b> New development when viewed from the street is to be compatible with the character of buildings within the site's visible locality by using similar shaped windows, doors and similar building materials.	The general building form is an acceptable response to the existing and likely future character of the locality.	Yes
<b>C13</b> Building design is to ensure individual dwellings can be identified clearly from public streets.	The dwellings proposed along the southern (Bay Street) elevation can be clearly identified from the adjacent public street.	Yes
<b>C14</b> A street number for the property is to be clearly identifiable from the street.	The development is capable of complying with this requirement.	Yes
<b>C15</b> Awnings must be provided continuously along the shop frontages to provide pedestrian shelter to the footpath area.	An awning would not be required in this location, given the site does not have a frontage to Botany Road.	Yes
<b>C16</b> Air conditioners must not be installed on street awnings or the front facade of buildings.	The development is capable of complying with this requirement.	Yes

<b>C17</b> Development design is to encourage active street life while providing a high residential amenity		The proposal is not identified as being subject to the active street frontages clause in the LEP.	Yes
<b>C18</b> Development must comply with Council's sustainable development requirements as identified in Part 3H - Sustainable Design.		A Basix Certificate has been provided however it is not valid for reasons previously identified in this report.	No
<b>C19</b> Vehicular access on Botany Road must be avoided where access is available from a side street or rear laneway.		N/A	N/A
<b>C20</b> Where a rear laneway exists loading and unloading must occur from the laneway.		N/A	N/A
<b>C21</b> Development must comply with Part 3A - Car Parking.		The development does not comply with the car parking requirements outlined in BBDCP.	No – Refer to Part 3A above
<b>C22</b> Through site links and arcades are encouraged with new development to improve pedestrian access and safety.		No site links proposed and are not warranted in the site circumstances.	Yes
<b>5.3 General Controls</b>			
5.3.1.2 Height	C2 & C3 In addition to C1, new buildings must also consider and respond to the predominant and characteristic height of buildings within the Centre; and consider the topography and shape of the site. In this regard, the maximum number of storeys must not exceed the maximum number of storeys identified in the relevant character statement for each Business Centre as set out in Part 5.2 - Character Statements for the Business Centres. If the maximum number of storeys is not identified in the Character Precinct, the maximum number of storeys must be consistent with the characteristic building height.	The development proposes a maximum height of 16.44 metres which does not comply with the 14 metre height limit. Refer to previous clause 4.6 discussion in this report.	No
5.3.1.3 Street Setbacks	C1 Buildings are to be aligned along the street frontage to create a consistent street wall no higher than two storeys. A variation to the two storey street wall height along the street frontage will only be permitted in certain	The proposal presents a 4 storey form along Bay Street that is setback 3m from the front (southern) boundary. This would be consistent with the scale and setbacks of the adjoining development under construction to the east.	Yes

	circumstances where the height of adjoining buildings on the street exceeds two storeys. In this instance, the applicant is to submit a written justification to Council for this variation and will be considered by Council on its merits.		
5.3.1.4 Side and Rear Setbacks and Building Separation	C1 Where a site adjoins residential development appropriate rear or side setbacks must be provided to ensure that potential impacts on adjoining or surrounding residential properties are minimised in terms of loss of privacy, sunlight and daylight access and visual amenity.	Refer to previous discussion under SEPP 65 regarding building separation.	Yes
	C2 Development to which SEPP 65 applies are to adhere to the Apartment Design Guide for building separation.	SEPP 65 and ADG assessment has been carried out elsewhere in this report.	Yes
5.3.1.5 Built Form and Streetscape	C2 Building must have a consistent street wall height and provide a continuous street frontage and awning height along the street frontage where appropriate.	The proposed street wall height is consistent with the height of the neighbouring building under construction at No.6 Bay Street.	Yes
5.3.2.1 Design Excellence	C2 The Development Application must identify how design excellence will be achieved in the proposed development.	The applicant has provided a SEPP 65 assessment.	Yes
5.3.2.2 Building Design	C2 All development applications that contain residential development or are adjacent to residential development must provide a design statement addressing privacy and overshadowing of residential dwellings from the business component.	The application provides sufficient information to undertake an assessment of these aspects of the development.	Yes
	C4 If residential dwellings are proposed as part of a mixed use development, balconies, private open space area and communal open space areas must be screened to address any privacy impacts on adjoining residential properties.	Refer to Note 1 discussion below.	No. Acceptable on merit

	C7 A schedule of external finishes and materials must be submitted at development application stage to articulate the building's design complements the Business Centre.	A schedule of materials was submitted with the amended architectural plans.	Yes
5.3.2.3 Reflectivity	C3 The solar reflectance value of building materials must not exceed 20%.	This has not been considered.	No
5.3.2.4 Awnings and Verandahs	C1 New development must provide awnings above the footpath to provide weather protection for pedestrians.	An awning above the footpath is not required in this location.	Yes
5.3.2.5 Public Domain Interface at Ground Level	C1 Development must comply with the Desired Future Character objectives and controls identified in Part 5.2 - Character Statements for the Business Centres.	See earlier discussion.	Yes
	C2 Development must be designed so that it has a clearly definable entry and addresses the street.	The front entries to the building are distinguishable.	Yes
	C3 For mixed use development which contains residential dwellings, the primary area of outdoor private open space must not be located on the street frontage, unless it is on the first floor or above.	The primary communal open space area is located on the roof top terrace.	Yes
5.3.2.6 Active Street Frontages	C1 Development is to provide active street frontages in accordance with the Active Street Frontages Map and Clause 6.15 Active Street Frontages under BBLEP 2013.	N/A	N/A
5.3.2.8 Interface between Business Zones and Adjoining Landuses	C1 Clear boundaries between the public and private domain must be created to enhance security, privacy and safety.	The design of the proposal is acceptable in this respect.	Yes
	C2 Shadow diagrams must be provided for all development proposals for the summer and winter solstices. Shadow diagrams must show shadow impacts	Shadow diagrams have been provided for the development. The overshadowing impacts generated by the development would not cause any adverse	Yes

	at 9am, 12 noon and 3pm for both solstices. Additional building setbacks may be required where internal site shadow impacts or impacts on adjoining properties are considered by Council to be unreasonable.	impacts for neighbouring properties.	
5.3.2.9 Landscaped Area	C1 Residential setbacks from streets and parks are to support planting, at a scale that allows passive surveillance of the public domain. This requirement may vary with each block	The proposal provides a small front setback to Bay Street which enables some soft landscaping opportunities.	Yes
	C3 Provide a sufficient depth of soil on podium areas in accordance with the Councils Technical Guideline for Landscape in Development Sites.	Deep soil is provided which complies with the ADG requirements.	Yes
5.3.2.10 Private Open Space and Communal Open Space	C1 The primary area of outdoor private open space must not be located at grade on the street frontage.	The ground floor dwellings have front and rear private open space areas which is acceptable.	Yes
	C2 Communal open space can be provided at grade or on podiums and roof tops. The space must be appropriately landscaped and provided with a recreational facilities or features, for example BBQ area, seating, children's play area, landscape features or the like and must include pedestrian scale lighting, to be shown in the detailed landscape plan.	Communal open space is located on the level 1 podium and the roof top terrace area above Building B. The design of these spaces are acceptable.	Yes
5.3.2.12 Servicing	C1 New commercial or mixed use buildings must provide a loading dock on-site. Where this is not viable loading and unloading may be permitted from to a rear lane or side street subject to Council's engineer approval.	N/A – building is residential only	N/A
5.3.2.14 Access and Mobility	C1 Development must comply with Part 3C – Access and Mobility  ▪ Residential flat buildings (RFB), conversion of non-residential buildings into RFBs, shop top housing, multi dwelling housing and live/work buildings –	The access and mobility requirements have been complied with.	Yes

	<p>Statement of consistency lodged.</p> <ul style="list-style-type: none"> <li>▪ In developments containing 10 or more dwellings, a minimum of 20% of the dwellings are to be adaptable dwellings designed in accordance with Adaptable Housing Australian Standard 4299 Class B. Refer to AS4299 Class B.</li> <li>▪ Appropriate access for all persons through the principal entrance of a building and access to all common facilities. Refer to BCA and AS1428.1.</li> <li>▪ In developments containing 10 or more dwellings, accessible resident parking is required at 10% to be allocated to adaptable dwellings with a preference for AS4299 designs for at least 80% of the accessible spaces and a maximum of 20% of spaces complying with AS2890.6.</li> </ul>		
5.3.3.1 Acoustic Privacy	C1 Dwellings close to high noise sources such as busy roads, railway lines and airports must be designed to locate noise sensitive rooms and secluded private open spaces away from noise sources and be protected by appropriate noise shielding techniques.	The proposal provided an acoustic report which addresses aircraft noise.	Yes
5.3.3.2 Visual Privacy	<p>C1 In some cases potential visual privacy impacts can be mitigated by incorporation of one or more of the following design measures:</p> <ul style="list-style-type: none"> <li>(i) Fixed screens of a reasonable density (min 75% block out);</li> <li>(ii) Fixed windows with translucent glazing (providing natural ventilation is not compromised);</li> <li>(iii) Appropriate screen planting or planter boxes.</li> </ul>	Refer to Note 1 below	Refer to Note 1 below

5.3.3.5 Solar Access & Shadow	<p>C1 Development must demonstrate:</p> <p>(i) Neighbouring developments will obtain at least two hours of direct sunlight to 50% of the primary private open space and 50% of windows to habitable rooms; and</p> <p>(ii) 30% of any common open space will obtain at least two hours of direct sunlight between 9am and 3pm on 21 June.</p>	The overshadowing impacts generated by the development would not cause any adverse impacts for neighbouring properties.	Yes
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#### **Note 1 – Privacy**

Part 5.3.2.2 and Part 5.3.3.2 of BBDCP 2013 contain various objectives and controls with respect to privacy.

The potential privacy impacts of the development have been considered. The following comments are noted:

- There is sufficient building separation (15.24m) within the development (i.e. – between Building A and Building B) to preserve privacy;
- The rear of Building A (i.e – units 1A, 2A, 7, 8, 13, 14, 19 and 20) face a blank wall (under construction) associated with the re-development of the neighbouring site to the north;
- The eastern elevation of the Building B at the rear has been designed to restrict overlooking towards the adjoining development to the east. A setback of up to 4.17m is proposed and the windows are frosted glazing;
- Building B is setback 6m from the rear (northern) boundary, preserving the interface with the school grounds;
- The rooftop terrace has been cited away from the neighbouring development to the east as far as practically possible. There is landscaping planting proposed around the perimeter of the roof top terrace to provide screening opportunities; and
- It is noted that there are balconies proposed within Building B which have nil setback to the western side boundary. These balconies would overlook the adjacent school grounds. Concern has been raised by the school is the submissions received with respect to this aspect of the development. The balconies and windows are considered to provide additional passive surveillance over the school grounds and are thus acceptable.

#### **S.4.15(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 AS2601:1991 Demolition of Structures when demolition of a building is involved. In this regard a condition of development consent can be imposed to ensure compliance with the

standard. All relevant provisions of the Regulations have been taken into account in the assessment of this proposal.

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

The likely impacts of the development have been outlined through the report and the proposal is found to be unacceptable in its current form.

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

The proposed development is not considered to be suitable for the site to the extent that the proposal does not provide a compliant level of car parking and has not demonstrated suitable vehicular access and manoeuvrability arrangements. It is considered that these shortfalls are a consequence of the irregular shape of the subject allotment and a re-design is required.

#### **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 thirty (30) day period from 3 May 2017 until 9 June 2017. Two (2) objections have been received and a summary of the issues is as below:

Concern: Insufficient geotechnical testing

Comment: This concern is concurred with. As a result, during the assessment of the application Council requested the applicant to provide a Stage 2 – Detailed Site Investigation which has been reviewed by Council's Environmental Scientist and is considered to be acceptable.

Concern: Traffic report and likely car parking/traffic impacts

Comment: Concerns have been raised with the submitted traffic report as identified throughout this report. Additionally, the proposed development does not comply with the minimum car parking requirements which is not supported.

Concern: The aircraft noise impact report requires doors within the development to remain closed. There are associated ventilation issues, given this requirement.

Comment: A mechanical ventilation system would be required, as identified within Part 5.4 of the Aircraft noise impact report. This is considered to be a compromised outcome for residential amenity.

Concern: The construction and waste management plan references a different property

Comment: This concern is capable of being addressed through conditions of consent.

Concern: Privacy impacts towards the adjoining public school.

Comment: This matter has been discussed elsewhere in this report.

Concern: Introduction of 'kiss and drop' facilities on Bay Street for the adjoining public school.

Comment: The subject DA is not a mechanism for the establishment of these facilities and is considered to be a separate matter.

The amended plans were re-notified and placed on public exhibition from 14 February 2019 until 25 March 2019. No submissions were received.



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

It is considered that granting approval to the proposed development would not be in the public interest, given the concerns raised with the design of the development.

**Section 7.11 Contributions**

The proposed development would generate Section 7.11 Contributions, should consent be granted.

**Conclusion**

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Development Application No. 2017/1047 was lodged on 6 April 2017 seeking consent for an Integrated Development for the demolition of the existing structures and construction of a new residential flat building containing 20 dwellings and basement car parking at 2,2A and 4 Bay Street, Botany.

Since lodgement, the design of the development has been amended on a number of occasions, a Flood Impact Assessment has been submitted and other reports (traffic and heritage) have been re-issued for assessment to address a number of concerns which have been raised. The key issues identified in the assessment of the amended material submitted by the applicant fundamentally relates to matters of car parking, vehicular access/manoeuvrability, stormwater and flooding as assessed by Council's Development Engineer. Resolution of these matters would be likely to require a full re-design of the proposed development.

The development application has been assessed in accordance with the relevant requirements of the *Environmental Planning and Assessment Act 1979* and is recommended for refusal, subject to the reasons of refusal in the attached schedule.

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## Attachment

### Schedule 1 – Reasons for refusal

**Premises: 2A, 2 and 4 Bay Street, Botany**

**DA No: DA-2017/1047**

1. Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy the following sections of the Botany Bay Development Control Plan 2013:
  - a) Part 3A – Car Parking and Access. The proposed development does not comply with the minimum car parking requirement under Table 1 of Part 3A.2- Parking Provisions of Specific Uses. Further, the depth provided would not accommodate the three level car stacker system proposed. The design of the driveway access fails to maintain boundary alignment levels and the internal circulation from the ramp access to the basement does not comply with Section 2.5.2C of AS2890.1
  - b) Part 3G – Stormwater Management. The proposed onsite detention volume has been calculated incorrectly. The design of the development does not achieve the floor levels stipulated in the submitted Flood Report and there are design aspects of the development susceptible to flooding which has not been addressed.
  - c) Part 3J – Aircraft Noise and OLS. Compliance with internal noise criteria is contingent upon windows and door remaining closed which would interfere with the natural ventilation of the proposed dwellings. Additionally, details of a suitable mechanical ventilation system have not been provided.
2. Pursuant to the provisions of Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, and having regard to the aforementioned reason of refusal, the site is not suitable for the development.
3. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the submitted BASIX Certificate is not valid. The proposal therefore fails to satisfy the requirements of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.
4. 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 and is likely to set an undesirable precedent.



Client

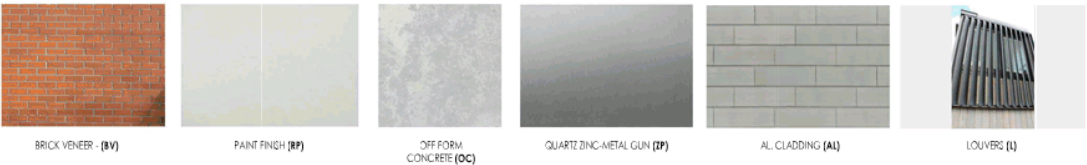
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ABBREVIATIONS

A: AIRING  
BR: BRICK VENEER  
AL: ALUMINIUM CLADDING  
BV: BRICK VENEER  
DA: DRAWER  
FG: FIXED GLASS  
FR: FROSTED GLASS (FIXED)  
FFL: FINISHED FLOOR LEVEL  
L: LOUVER  
OC: OFF FORM CONCRETE  
RL: RELATIVE LEVEL  
RS: RENDERED AND TANKED  
SD: SLIDING DOOR  
ST: STORAGE  
TW: TOP OF WALL  
ZP: ZINC PANEL

project	
Bay St Apartment	
project address	
2&2A - 4 BAY STREET, BOTANY NSW 2019	
COUNCIL	ZONE
LOT	DP

drawing		
Southern Elevation		
project ref	date	
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DA REVIEW

20/02/2019	ISSUE FOR REVIEW	A
03/08/2018	FLOOD LEVEL ADDED	B
14/12/2018	DA REVISION 01	C

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1 Northern Elevation  
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BRICK VENEER - (BV)

PAINT FINISH (RP)



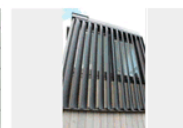
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QUARTZ ZINC-METAL GUN (ZP)



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## ABBREVIATIONS

A:	AWNING
B:	BUILT IN WARDROBE
AL:	ALUMINUM CLADDING
BV:	BRICK VENEER
DA:	DIAMETER
FG:	FIXED GLASS
FR:	FROSTED GLASS (FIXED)
FL:	FINISHED FLOOR LEVEL
LDY:	LAUNDRY
OC:	OFF FORM CONCRETE
RL:	RELATIVE LEVEL
RS:	ROLLER SHUTTER
RP:	RENDERED AND PAINTED
SD:	SLIDING DOOR
STR:	STORAGE
YOW:	TOP OF WALL
ZP:	ZINC PANEL

project <b>Bay St Apartment</b>	
project address <b>2&amp;2A - 4 BAY STREET, BOTANY NSW 2019</b>	
COUNCIL	ZONE
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DA REVIEW

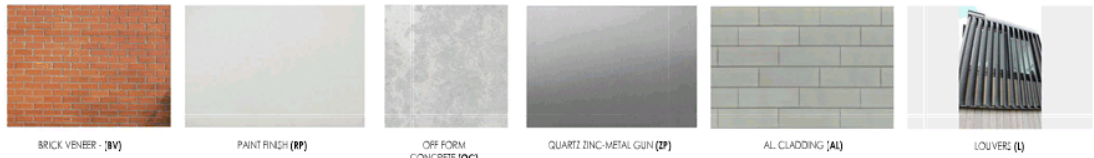
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1 Eastern Elevation  
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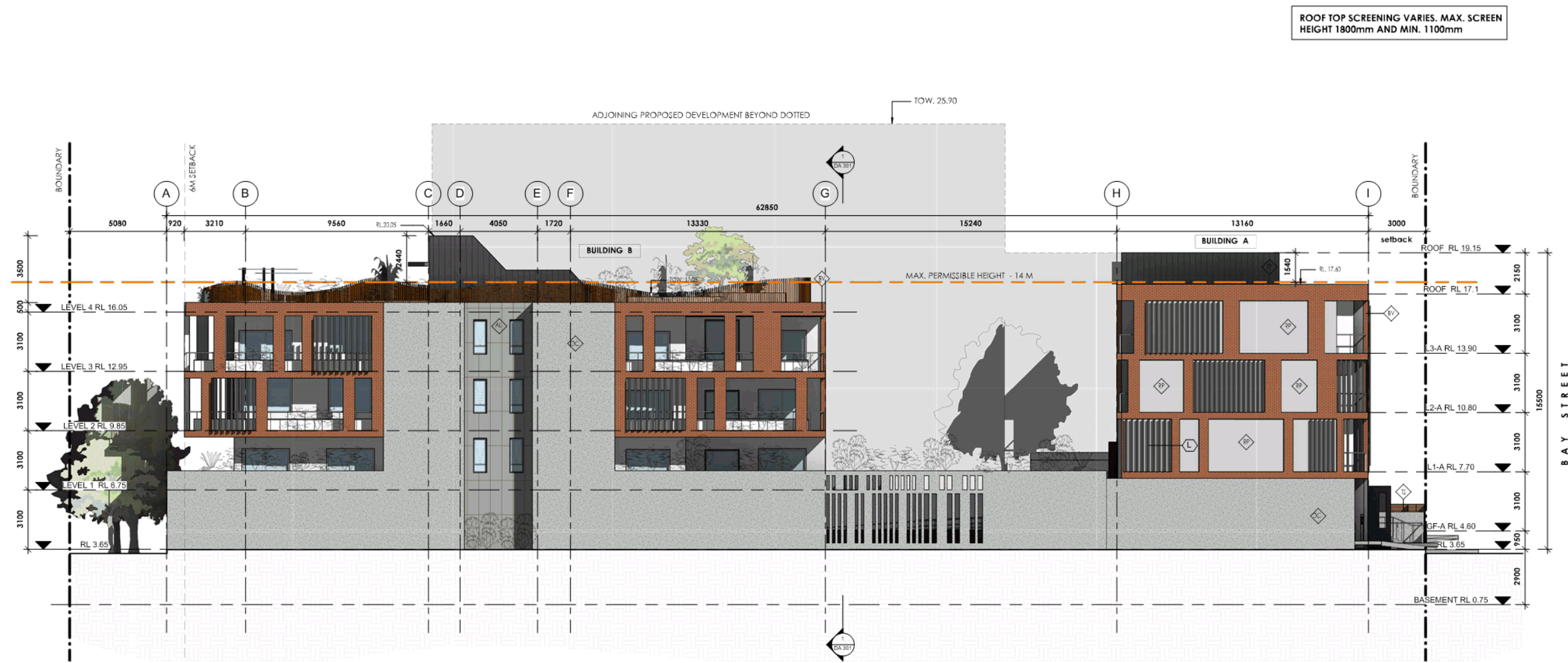
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project address 2&2A - 4 BAY STREET, BOTANY NSW 2019	
COUNCIL	ZONE
LOT	DP

drawing Eastern Elevation		
project ref 15118	date 14/12/2018	
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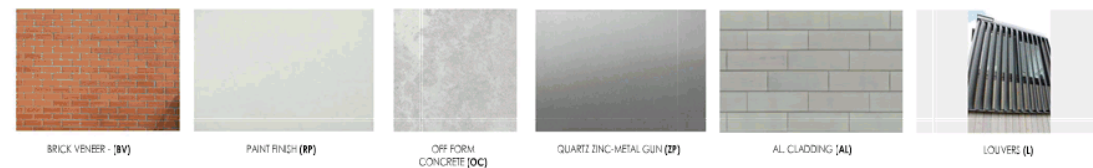
DA REVIEW

20/02/2018	ISSUE FOR REVIEW	A
03/08/2018	FLOOD LEVEL ADDED	B
14/12/2018	DA REVISION 01	C

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project Bay St Apartment	
project address 2&2A - 4 BAY STREET, BOTANY NSW 2019	
COUNCIL	ZONE
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drawing Western Elevation		
project ref 15118	date 30/08/2018	
scale @ A1 1:100	dwg. no. DA 203	Issue B
drawn FA	checked MB	

DA REVIEW

20/02/2018	ISSUE FOR REVIEW	A
30/08/2018	FLOOD LEVEL ADDED	B

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Client

### ABBREVIATIONS

A: AWNING  
BR: BUILT IN WARDROBE  
AL: ALUMINUM CLADDING  
BV: BRICK VENEER  
DA: DIAHER  
FG: FIXED GLASS  
FR: FROSTED GLASS (FIXED)  
FFL: FINISHED FLOOR LEVEL  
LDY: LAUNDRY  
OC: OFF FORM CONCRETE  
RL: RELATIVE LEVEL  
RS: ROLLER SHUTTER  
RP: RENDERED AND PAINTED  
SD: SLIDING DOOR  
SR: STORAGE  
YW: TOP OF WALL  
ZP: ZINC PANEL

project <b>Bay St Apartment</b>	
project address <b>2&amp;2A - 4 BAY STREET BOTANY NSW 2019</b>	
COUNCIL	ZONE
LOT	DP

drawing <b>Perspectives</b>		
project ref 15118	date 30/08/2018	
scale @ A1	dwg. no. DA 600	is /
drawn FA	checked MB	

DA REVIEW

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**CLAUSE 4.6 REQUEST FOR VARIATION TO**

**CLAUSE 4.3 (2) (HEIGHT OF BUILDING) OF BOTANY BAY  
LOCAL ENVIRONMENTAL PLAN 2013 (BBLEP)**

## 1.0 Introduction

- This is a request to vary a development standard pursuant to the provisions of Clause 4.6 of Botany Bay Local Environmental Plan 2013 (BBLEP 2013), the relevant clause being Clause 4.3(2) (Height of Building).
- The relevant maximum height of building control is 14.0m.
- The relevant Height of Building control is a *development standard* for the purposes of the EP & A Act 1979.
- This request to vary the height development standard considers the judgment in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* ("Initial Action").
- The relevant case law confirms that the consent authority not be directly satisfied that compliance is unreasonable or unnecessary and sufficient environmental planning grounds exist, but rather that it "*only indirectly form the opinion of satisfaction that the applicant's written request has adequately addressed*".
- The objectives of Clause 4.6 1(a) is to provide an appropriate degree of flexibility in applying certain development standards to particular development. The intent is to achieve better outcomes for and from development by allowing flexibility in particular circumstances in accordance with Clause 4.6 1(b).
- The relevant plans relied upon are those identified as the DA Plans prepared by BD Architecture Interiors (see Appendix C for plan list) with relevant Elevations and Section Plans as Appendix A and Shadow Diagrams as Appendix B.

## 2.0 Development Standard to be Varied – Height

The relevant *development standard* to be varied is the 14.0m height control under Clause 4.3(2). Clause 4.3 of BBLEP relevantly provides:

### 4.3 Height of buildings

(1) *The objectives of this clause are as follows:*

- (a) *to ensure that the built form of Botany Bay develops in a coordinated and cohesive manner,*
- (b) *to ensure that taller buildings are appropriately located,*
- (c) *to ensure that building height is consistent with the desired future character of an area,*
- (d) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,*
- (e) *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.*

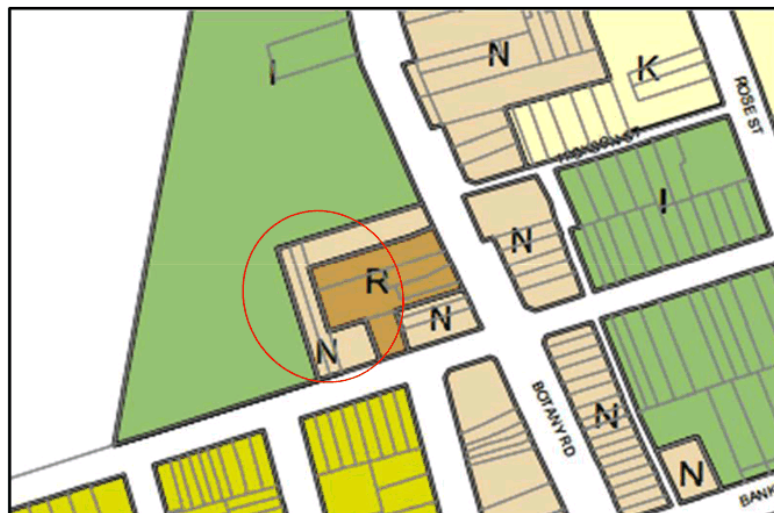
(2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

(2A) *Despite subclause (2), if an area of land in Zone R3 Medium Density Residential or Zone R4 High Density Residential exceeds 2,000 square metres, the height of a building on that land may exceed the maximum height shown for the land on the Height of Buildings Map but must not exceed 22 metres.*

(2B) *Subclause (2A) does not apply to land identified as "Area 1" on the Height of Buildings Map.*

(2C) *Despite subclause (2), if an area of land identified as "Area 2" on the Height of Buildings Map has a site area exceeding 1,900 square metres, the maximum height for a building on that land may exceed the maximum height shown for the land on the Height of Buildings Map by no more than 2 metres.*

The relevant height of buildings map is identified below:



The subject site is shown on LEP Map as 14m ("N"). It is noted that "R" is 22m.

The site has a small crossfall (approximately 300mm) for building purposes. This is reflected in the orange HOB line shown on the northern elevation plan in Figure C below.

### 3.0 Nature of Variation Sought

The requested variation is as follows:

- Building A: Roof line of the rear portion of the third floor - RL19.15 (exceedance range from 1.21m (northern and southern elevations and 1.54m (eastern and western elevation)
- Building B: lift overrun and shelters maximum height - RL20.05 (exceedance up to 2.44m)

The following elevation drawings (prepared by BDAI) shows the 14.0m height limit prescribed under clause 4.3(2) of BBLEP 2013.



**Figure A: Western Elevation**

Note: the grey shaded area behind the subject development is the adjoining proposed development with a TOW of RL25.90.



Figure B: Eastern Elevation



Figure C: Northern Elevation



Figure D: Southern Elevation



Figures A – D above demonstrate that proposed Building A complies along the Bay Street frontage with a setback of approximately 7.7m from the Bay Street property boundary to the non-compliant roof. The habitable floor levels of Building B comply with the height limit. Only the lift and stair overrun, the common open space shade structures and parts of the COS area screen (which varies in height) are non-compliant.

#### 4.0 Height – Development Standard

A development standard is defined in s1.4 of the *Environmental Planning and Assessment Act 1979* ("EP&A Act") to mean:

*"provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:*

- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,*
- (b) the proportion or percentage of the area of a site which a building or work may occupy,*
- (c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*
- (d) the cubic content or floor space of a building,*
- (e) the intensity or density of the use of any land, building or work,*
- (f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,*
- (g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,*
- (h) the volume, nature and type of traffic generated by the development,*
- (i) road patterns,*
- (j) drainage,*
- (k) the carrying out of earthworks,*
- (l) the effects of development on patterns of wind, sunlight, daylight or shadows,*
- (m) the provision of services, facilities and amenities demanded by development,*
- (n) the emission of pollution and means for its prevention or control or mitigation, and*
- (o) such other matters as may be prescribed."*

The 14.0m maximum height standard is a *development standard* as defined under the *EP&A Act 1979*.

#### 5.0 Clause 4.6 of Botany Bay Local Environmental Plan 2013

The following provides a response to relevant Clause 4.6 provisions:

Clause 4.6(2) provides that:

*(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation*





of this clause.

The HOB development standard is not expressly excluded from the operation of cl4.6 and accordingly, consent may be granted.

Clause 4.6(3) relates to the making of a written request to justify the contravention of a development standard and states:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
  - (a) ***that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and***
  - (b) ***that there are sufficient environmental planning grounds to justify contravening the development standard. (our emphasis)***

The proposed development does not comply with the HOB development standard pursuant to cl4.3 of the BBLEP 2013. However, strict compliance is considered to be unreasonable and unnecessary in the circumstances of this case as detailed further in this written request.

Sufficient environmental planning grounds exist to justify contravening the development standard as detailed in section 3. There are two height variations. The first being the roof level of part of the third-floor level of Building A (facing Bay Street) and the second being the lift and stair overrun, the common open space shade structures and parts of the rooftop area screens (which varies in height) on Building B. The remainder of Building A and Building B are compliant.

Clause 4.6(4) provides that consent must not be granted for development that contravenes a development standard unless:

- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
  - (a) *the consent authority is satisfied that:*
    - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
    - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
  - (b) *the concurrence of the Secretary has been obtained.*

Sections below of this written request address the matters required under cl4.6(4)(a) of the BBLEP 2013 and cl4.6(4)(b).

Clause 4.6(5) provides that:

- (5) *In deciding whether to grant concurrence, the Secretary must consider:*
  - (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
  - (b) *the public benefit of maintaining the development standard, and*
  - (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*



Sections below of this written request addresses the matters required under cl4.6(5) of the BBLEP. Clauses 4.6(6) and (8) are not relevant to the proposed development and cl 4.6(7) is an administrative clause requiring the consent authority to keep a record of its assessment under this clause after determining a development application.

## 5.0 Relevant Decisions

### Initial Action

In the Judgment of *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* ('Initial Action'), Preston CJ indicated that cl4.6 does not directly or indirectly establish a test that a non-compliant development should have a neutral or beneficial effect relative to a compliant development. For example, a building that exceeds a development standard that has adverse amenity impacts should not be assessed on the basis of whether a complying development will have no adverse impacts. Rather, the non-compliance should be assessed with regard to whether the impacts are reasonable in the context of achieving consistency with the objectives of the zone and the objectives of the development standard. The relevant test is whether the environmental planning grounds relied upon and identified in the written request are "sufficient" to justify the non-compliance sought.

In addition, Preston CJ ruled that cl4.6 does not directly or indirectly establish a "test" that a development which contravenes a development standard results in a "*better environmental planning outcome*" relative to a development that complies with the development standard. There is no provision in BBLEP clause 4.6 that requires a development that contravenes a development standard to achieve better outcomes.

Furthermore, Preston CJ ruled that it is incorrect to hold that the lack of adverse amenity impacts on adjoining properties is not a sufficient ground justifying the development contravening the development standard, when one way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse amenity impacts.

### **Rebel MH Neutral Bay Pty Ltd v North Sydney Council [2018] NSWLEC 191 Moore J (herein referred to as Rebel MH)**

In *Rebel MH Neutral Bay Pty Ltd v North Sydney Council [2018] NSWLEC 191 Moore J* identifies the steps provided in *Initial Action* confirming what the consent authority must do in order to satisfy itself as follows:

*"For me to grant development consent for this development as it contravenes the permitted maximum building height development standard, cl 4.6(4)(a) requires me to be satisfied that:*

*(1) The written request adequately demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of this proposed development (cl 4.6(3)(a) and cl 4.6(4)(a)(i)); and*

*(2) The written request adequately establishes sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b) and cl 4.6(4)(a)(i)); and*

*(3) The proposed development will be in the public interest because it is consistent with the objectives of the standard in question - set out in cl 4.3 of the LEP (cl 4.6(4)(a)(ii)); and*





*(4) The proposed development will be in the public interest because it is consistent with the objectives of the R4 High Density Residential Zone (cl 4.6(4)(a)(ii)),*

For the first of the above matters, Preston CJ made it clear, in Initial Action at [25], that the Court need not be directly satisfied that compliance is unreasonable or unnecessary and sufficient environmental planning grounds exist, but rather that it "only indirectly form the opinion of satisfaction that the applicant's written request has adequately addressed those matters."

**6.0 Clause 4.6(3)(a): Compliance with the Development Standard is Unreasonable or Unnecessary in the Circumstances of the Case**

In dealing with the "unreasonable and unnecessary" Preston CJ identifies and validates the 5 options available to an applicant in *Wehbe v Pittwater Council* which can be adopted in dealing with the *unreasonable and unnecessary* test under **Cl. 4.6(3)(a)**.

Preston CJ at states as follows:

*"As to the first matter required by cl 4.6(3)(a), I summarised the common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary in Wehbe v Pittwater Council at [42]-[51]. Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary."*

Based on the above the following identifies the first method identified in *Wehbe*:

*"Ways of establishing that compliance is unreasonable or unnecessary*

*42 An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the **objectives of the development standard are achieved notwithstanding non-compliance with the standard**. (our emphasis)*

**Clause 4.6(3)(a) – UNREASONABLE AND UNNECESSARY**

This clause 4.6 responds to the matters required to be demonstrated by sub-clause 4.6(3) namely:

- *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.*

**COMMENT:**

Having considered the above the applicant relies upon the first method demonstrating that compliance is *unreasonable and unnecessary* because the objectives of the development standard are achieved notwithstanding a variation with the standard.

In dealing with the control it is necessary to identify the purpose of the height control and then progress to dealing with the consistency or otherwise with the height objectives. The first consideration relates to overall scale of a building given that height determines the scale of a building to another building or natural feature. The visual fit of the building in this particular instance having regard to the variations sought is acceptable and appropriate for this site.



The site is an isolated site with an L-shaped configuration. It immediately adjoins land occupied by the Botany Public School. The school land immediately west of the site is a driveway access to a school carpark and open space, playing fields and cricket nets for students. To the east is an approved building within an area with an allowable height limit of 22m. Opposite the site is zoned B7 Business Park and permits redevelopment up to 12m in height.

The additional volume of built form arising from the proposed variations whether it be the roof element or the lift shaft will not be visible from most positions in the public domain or private lands. The built form responds to its locational context having regard to its zoning, allowable building height, and existing and approved development on land immediately surrounding the subject site. These features create an individual set of circumstances that, when applied to this particular site, underpin the context for considering the proposed variation to the height.

In this case the roof element of Building A is setback over 7.5m from the Bay Street property boundary and constructed of a gun-metal grey material and glass. This creates a recessive appearance and volume to the roof envelope that is non-compliant. When viewed from Bay Street this roof is not higher than the adjoining approved development to the east.

The lift shaft and stair overrun of Building A are also setback from each edge of the building. It is to be constructed of the same material (gun metal grey) as the Building A roof element, again appearing as a recessive roof element, located towards the middle of the building. The rooftop screening is semi-transparent, complemented by various plants and landscaping with lightweight shade structures for weather protection of residents.

These rooftop elements of Building B will be visible from a distance when viewed from the south-west along Bay Street and from the open space to the east towards Mill Pond. However, they will appear subservient to the higher development behind the subject site, not dominating the skyline or neighbouring school property. The remainder of the roof line and habitable floor levels of Building B is compliant.

Further insight into the purpose of the height standard can be obtained by investigating the objectives of the standard. The objectives in this case are weighted on amenity having regard to solar, visual and privacy impacts. When considered within the framework of the objectives the purpose of the height control requires the development to provide reasonable amenity impacts as a result of the building height and specifically the variation. The following justification relates to both the proposed variations on both buildings.

*(a) to ensure that the built form of Botany Bay develops in a coordinated and cohesive manner,*

The proposal is a permissible development in this location. It is a logical development that is proposed upon a site which is essentially an isolated site and therefore does not impact on the development potential or logical redevelopment of land in the vicinity. The variation does not prejudice any adjoining site or affect the development potential of other sites. The objective is achieved.

*(b) to ensure that taller buildings are appropriately located,*

The proposed development is appropriately located as it provides a transition between the 22m height limit facing Botany Road and the open space, rear playing fields of the adjoining school grounds. Objective is satisfied.



*(c) to ensure that building height is consistent with the desired future character of an area,*

The majority of the development complies with the prescribed height limit. The height limit is nominated to provide the transition in this area. The proposal achieves this by stepping down from the adjoining large residential development that faces both Botany Road and Bay Street, directly adjoining the subject site to the school grounds adjoining to the west. The proposal is consistent with the Botany Character Precinct provisions contained in the DCP. Objective is satisfied.

*(d) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,*

The proposal does not disrupt views and is acceptable in terms of views to and from the site. The area of the non-compliance does not unduly affect any adjoining property. The overall height of the development is acceptable when viewed from Bay Street and other public domain viewpoints. Objective is satisfied.

*(e) 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.*

The maximum height of development permissible in the immediate area ranges from 12m on the R2 zoned school land up to 22m for the land adjoining the subject site (facing Botany Road). Therefore, the 14m height limit for this site sites towards the middle of the height range and is not the upper limit for the area.

The proposed built form is compatible with the desired future character for this area. There is no potential for this development to have a jarring effect in the streetscape, given the backdrop of the adjoining residential development facing Botany Road and the likely future redevelopment across the street (B7 Business Park with 12m height limit). Instead the built form proposed for this site mediates the higher and bulkier adjoining development.

#### 7.0 4.6(3)(b) – SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS

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

The variation relates to height and as such calls upon those matters considered to be environmental planning grounds relevant to the subject matter. Justification provided for the variation applies to this particular application and not environmental planning grounds that could apply to all lands zoned B2 Local Centre.

The additional height occurs in two distinct areas at the top most level of Building A and Building B. The first is the recessed roof element of Building A and the second is the lift overrun, stair access and shade structures on the roof of Building B.

Specifically,

- Building A: Roof line of the rear portion of the third floor - RL19.15 (exceedance range from 1.21m (northern and southern elevations and 1.54m (eastern and western elevation)
- Building B: lift overrun and shelters maximum height – RL 20.05 (exceedance up to 2.44m)



The environmental planning grounds justification for the two variations is provided as follows:

- Building A: the habitable floor area of this building complies with the 14m height limit. It is only the rear portion of the third level roof that is non-compliant. This projection provides access to natural light to these units, enhancing their indoor/outdoor living spaces. The highlight windows face north and south, thereby accessing more natural light.
- The non-compliant portion of the roof is setback some 7.7m from the Bay Street property boundary.
- The material used for the upper roof of Building A is dark gun metal grey in colour, thereby creating a recessive structure when viewed from the street.
- The height of the roof is lower than the adjoining development which faces Botany Road, thereby appearing as a subservient element to this development when viewed from the west along Bay Street or from the open space area to the west.
- Building B: the habitable floor area and roof of this building complies with the 14m height limit, it is only the lift overrun, stairway and shade structures that project above the height limit.
- The highest point is the lift overrun. It is located in most desirable position – towards the centre of the roof and the building.
- The central location of the lift overrun maximises the setback to each elevation. This has many practical advantages and enables the basement to be designed with compliant and efficient ramps and isles that would not be achievable with a lift core located toward the edge of the building envelope. Inefficiencies in the use of the available floor area would result if the lift was relocated and made to comply.
- The lift overrun and stair structure is also needed to provide access to the rooftop common open space. This area is required to be accessible for all residents and guests, hence the need for the lift to be taller to provide access this level of the building.
- The rooftop common open space assists with facilitating the orderly and economic use of the land and provide open space with good solar access.
- The lightweight shade structures are required to provide some form of shading for the amenity of residents use all year round.
- The shadow diagrams (see BDAI shadow diagrams in Appendix B) demonstrate that the additional height for Building B does not result in any additional shadowing impact results from the lift position.
- The height variation to Building B predominantly occurs as a result of the need to provide full access to the rooftop open space, noting that the remainder of this building remains under the height control over the building footprint.

In dealing with the sufficient environmental planning grounds Preston CJ in Initial Action considers that it is available to the applicant to also deal with the Objectives of the Act under S1.3 in order to demonstrate that grounds exist to warrant a variation to height. Clause 1.3 of the EP and A Act 1979 relevantly provides:

**“1.3 Objects of Act (cf previous s 5)**

*The objects of this Act are as follows:*

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*





- (d) to promote the delivery and maintenance of affordable housing,  
 (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,  
 (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),  
**(g) to promote good design and amenity of the built environment,**  
**(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,**  
 (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,  
 (j) to provide increased opportunity for community participation in environmental planning and assessment. (emphasis added)

The plans by BDAI DA Plans and specifically the elevation drawings (extracts in Figure A – D above) satisfy the objectives in bold given that:

- The L-shaped configuration of the site is awkward in terms of layout and integration of the two buildings across one amalgamated site;
- The site is essentially an isolated parcel wherein the design, layout and built form proposed allows for its orderly and economic development;
- The design, layout and built form provide a transitional built form within the B2 Local Centre zone that provides for higher density housing in an accessible location;
- The proposal reflects Council's strategic planning direction for the Botany area;
- The additional roof height on Building A allows for enhance opportunities for natural light penetration into the upper floor units.
- The upper roof of Building A has been designed to be subservient to the height of the development immediately behind the site.
- The colours and materials used for the roof element and lift overrun structure is a dark colour in order to blend into the building and be recessive rather than bold.
- Its central lift location provides a more efficient floor plate at each level of Building B.
- The above design elements and locational characteristics predominantly auger towards addressing achieving objective (g) – good design and amenity of the development.

Based on the above the consent authority can be satisfied that there are sufficient environmental planning grounds to warrant the variation.

Notwithstanding the above, Preston CJ clarified in *Micaul and Initial Action*, that sufficient environmental planning grounds may also include demonstrating a lack of adverse amenity impacts.

In the present circumstances the positive planning benefits associated with equitable access being provided to a high quality communal open space area and the ability to efficiently plan upper level of Building A to provide more access to natural light are considered sufficient in their own right to justify the variations to the height control in this particular case.

Additionally, there is a clear lack of adverse amenity impacts arising from the proposal as neither variation will not result in adverse overshadowing or privacy impacts on adjoining properties. The projections above the height limit do not have any flow-on negative planning impacts and the impacts that arise from the variation whilst extremely negligible or non-existent are nevertheless acceptable.

In summary, the HOB variation is considered to be in the public interest given its ability to not cause additional impacts but also because of its ability to provide the site specific environmental planning grounds demonstrating that strict compliance is unreasonable and unnecessary in the circumstances of this particular case.



Clause 4.6(4)(a)(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 development within the zone within which the development is proposed to be carried out.

#### **Consistency with the Zone Objectives**

An enquiry is now made in relation to the ability of the proposal and the identified variations, as one departing from the HOB standard, to reasonably satisfy the stated objectives of the zone.

#### **B2 Local Centre zone**

*The objectives of the B2 Local Centre zone are as follows:*

##### **Objectives of zone**

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*

The following provides a review of the zone objectives:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*

The proposal provides additional housing on land which permits this type and scale of residential development. The existing development on the site comprises low density dwellings and a small business. The proposal offers genuine housing for families or individuals in an accessible area. Bay Street is an easy walk to the local services and facilities, including public transport along Botany Road. The objective is achieved.

- *To encourage employment opportunities in accessible locations.*

The proposal supports local business with the increase of population on the site. The units generate additional population over and above the current situation. New residents will support local businesses and services in the area. The changing population base require greater access to walkable areas, public transport and access to employment opportunities.

- *To maximise public transport patronage and encourage walking and cycling.*

The proposal is well located in terms of public transport. The area is relatively flat which will encourage walking and cycling in the area.

Overall, the proposal achieves the B2 zone objectives by:

- Providing a built form which complements the future desired character and style of the area.
- The scale of development proposed is anticipated for this area and the additional height can be supported because it is in the public interest.
- The building design includes good quality design elements, layout and provision of facilities for residents while not compromising the amenity and future character of the area.



## 8.0 Other Matters For Consideration

### Step 4 - Clause 4.6(4)(b) – The Concurrence of the Secretary has been obtained

On 21 February 2018, the Secretary of the Department of Planning and Environment issued a Notice ('the Notice') under cl. 64 of the *Environmental Planning and Assessment Regulation 2000* (the EP&A Regulation) providing that consent authorities may assume the Secretary's concurrence for exceptions to development standards for applications made under cl4.6 of the BBLEP.

The Court has power to grant development consent to the proposed development even though it contravenes the HOB development standard, without obtaining or assuming the concurrence of the Secretary by reason of s39(6) of the *Land and Environment Court Act 1979* (the Court Act).

### Clause 4.6(5) - Concurrence Considerations

In the event that concurrence cannot be assumed pursuant to the Notice, cl4.6(5) of the LEP provides that in deciding whether to grant concurrence, the Secretary must consider:

- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) *the public benefit of maintaining the development standard, and*
- (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

The proposed contravention of the HOB development standard has been considered in light of cl4.6(5) as follows:

- The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed development for this particular site and this particular design by BDAI (plan list at annexure C) is not directly transferrable to any other site in the immediate locality, wider region or the State and the scale of the proposed development does not trigger any requirement for a higher level of assessment;
- As indicated in Section 5.3, the proposed contravention of the development standard is considered to be in the public interest because it is consistent with the objectives of the zone and the objectives of the development standard.

The proposed development contravenes the Height of Building development standard under cl4.3 of BBLEP 2013 and the building control under cl4.3 of the BBLEP is a development standard and is not excluded from the application of cl4.6.

This written request to vary the development standard has been prepared in accordance with cl4.6(3) of the LEP and demonstrates that strict compliance with the development standard is unreasonable and unnecessary for the following reasons:

- Notwithstanding the contravention of the development standard, the proposed development is consistent with the relevant objectives of the development standard pursuant to cl4.3 of the BBLEP 2013 and is consistent with the relevant objectives of the B2 Local Centre zone and





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therefore, the proposed development is in the public interest;

- Notwithstanding the contravention of the development standard, the proposed flat building will not result in adverse environmental harm in that the amenity of neighbouring properties will be reasonably maintained and there will be no adverse impacts on the solar amenity or visual privacy and streetscape of the locality;

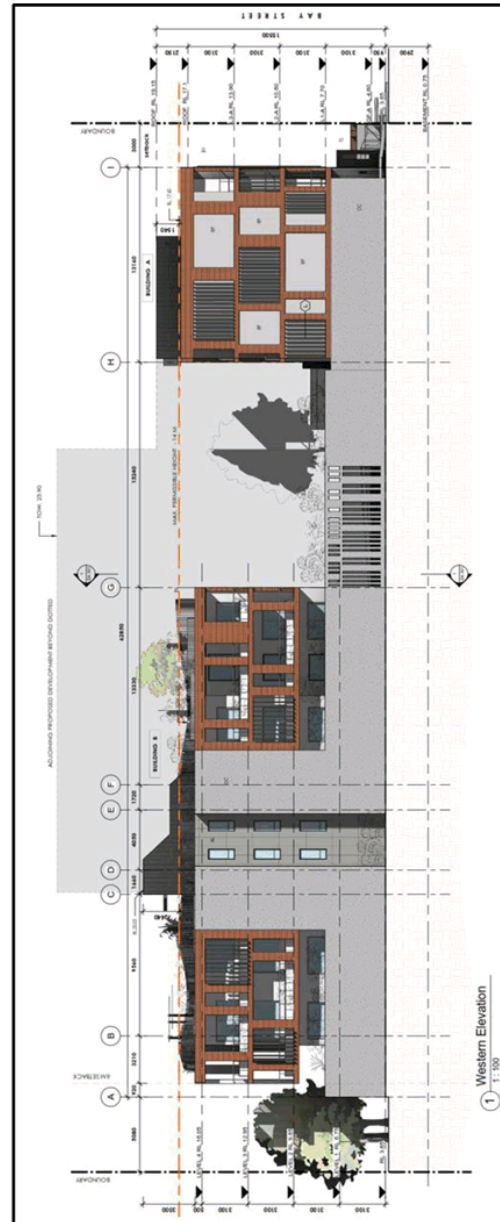
In addition, this written request outlines sufficient environmental planning grounds to justify the contravention of the HOB development standard including:

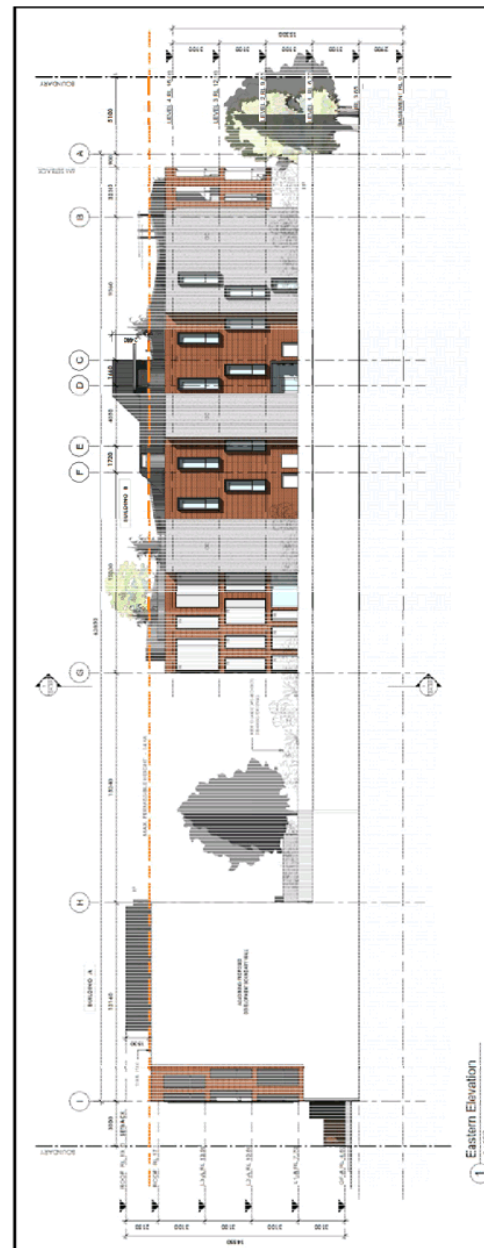
- a lack of adverse environmental amenity impacts such as privacy and solar;
- constructing a new contemporary building to satisfy the strategic planning imperatives available via the zoning of the site that allows for higher density development;
- the provision of high-quality residential living;
- provision of basement parking for residents;
- provision of a high-quality rooftop communal open space area for the amenity of residents.

A handwritten signature in black ink that reads 'Martin'.

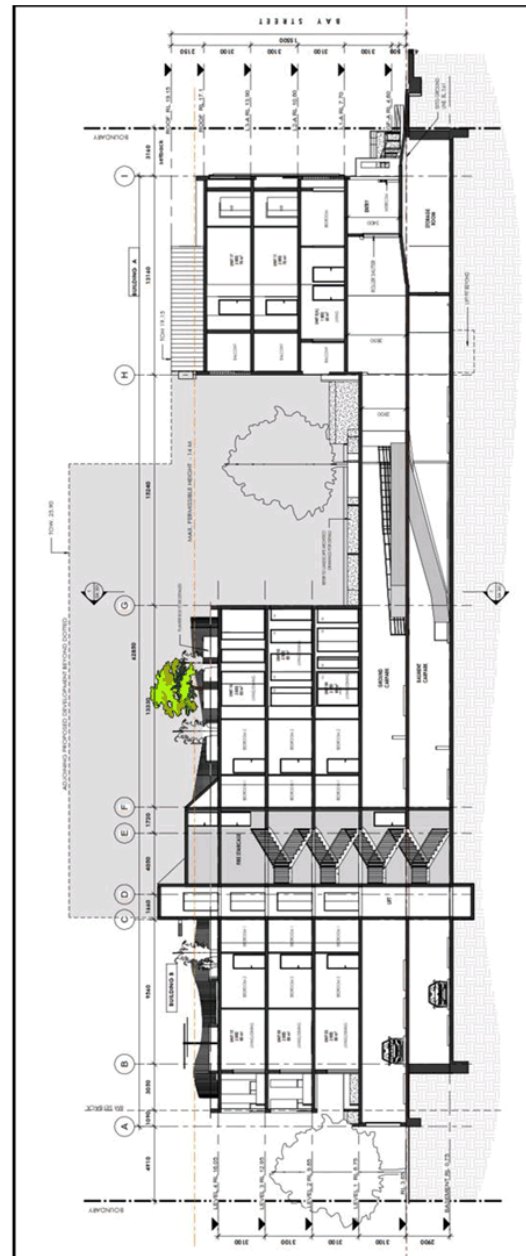
**Andrew Martin** *MPIA*  
**Planning Consultant**

Annexure A – Elevations and Section Plans – BD Architecture Interiors



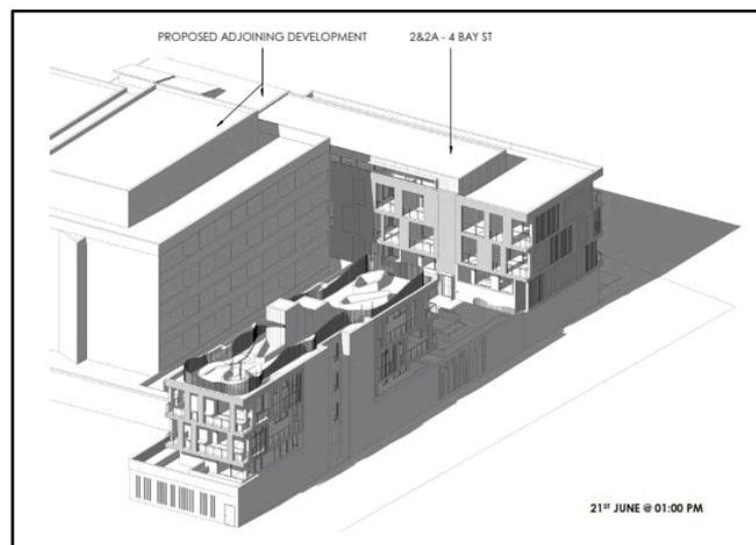
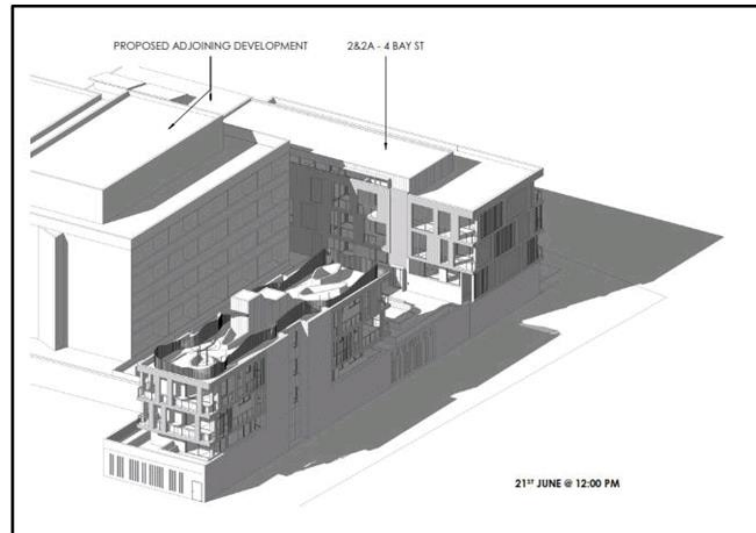




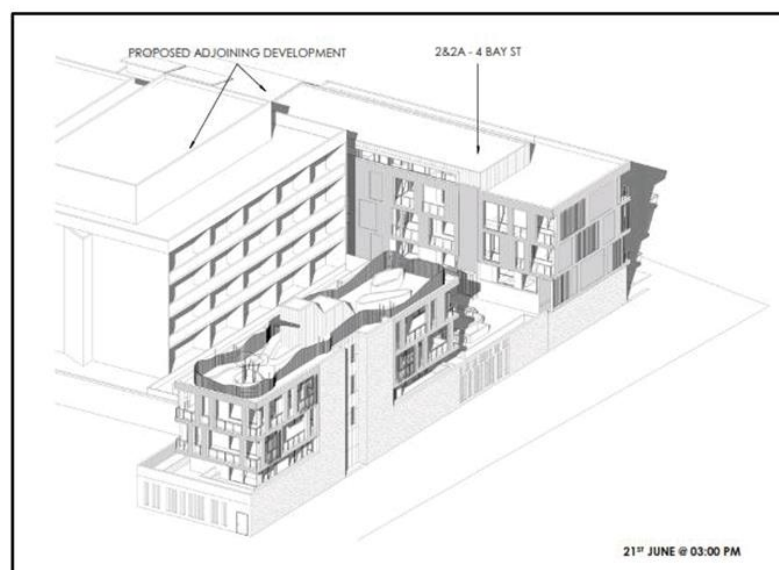
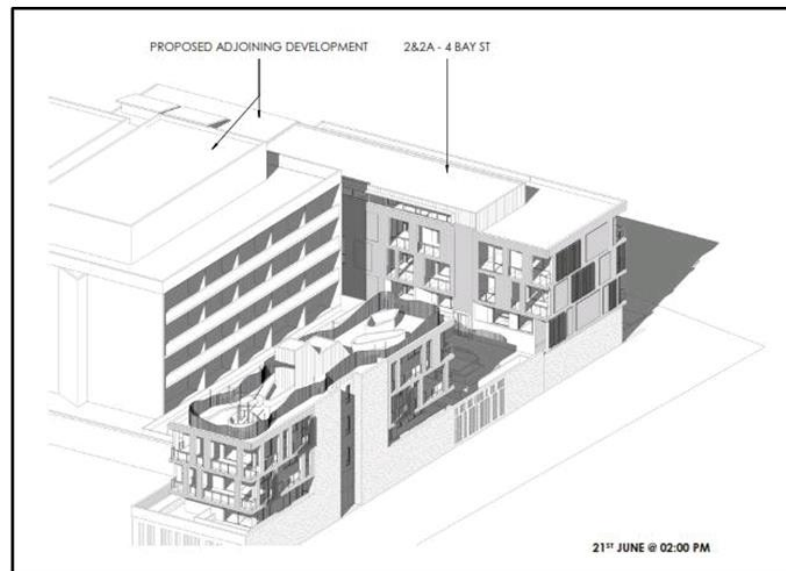




**Annexure B – Solar Access Plan Overshadowing by BD Architecture Interiors**










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**Annexure C - Plan list of plans by BDAI Architecture Interiors**

Drawing No.	Drawing Title	Revision	Drawn By	Date
DA100	Proposed Basement	C	BDAI	14/12/2018
DA101	Proposed Ground Floor	C	BDAI	14/12/2018
DA102	Proposed First Floor	B	BDAI	30/08/2018
DA103	Proposed Second Floor	B	BDAI	30/08/2018
DA104	Proposed Third Floor	B	BDAI	30/08/2018
DA105	Proposed Roof Plan	C	BDAI	14/12/2018
DA200	Southern Elevation	C	BDAI	14/12/2018
DA201	Northern Elevation	C	BDAI	14/12/2018
DA201a	Northern Elevation Building B	A	BDAI	14/12/2018
DA202	Eastern Elevation	C	BDAI	14/12/2018
DA203	Western Elevation	C	BDAI	14/12/2018
DA300	Section A-A	C	BDAI	14/12/2018
DA301	Section B-B & C-C	C	BDAI	14/12/2018
DA400	Compliance Diagram 1	C	BDAI	14/12/2018
DA401	Compliance Diagram 2	B	BDAI	30/08/2018
DA402	Compliance Diagram 3	B	BDAI	30/08/2018
DA500	Shadow Diagrams	C	BDAI	14/12/2018
DA600	Perspective	B	BDAI	30/08/2018

## Bayside Design Review Panel

### REPORT OF THE BAYSIDE DESIGN REVIEW PANEL

Meeting held on Friday, 19 October 2018 at Bayside Council

[Panel members: Alan Cadogan, David Klingberg and Dean Boone]

#### ITEM 3

<b>Date of Panel Assessment:</b>	19 October 2018
<b>Applicant:</b>	Beraldo Design
<b>Architect:</b>	Beraldo Design
<b>Property Address:</b>	2 & 2A, 4 Bay Street Botany
<b>Description:</b>	Integrated Development Application for demolition of the existing structures and construction of new residential flat buildings, containing 20 units and basement car park.
<b>No. of Buildings:</b>	1
<b>No. of Storeys:</b>	4
<b>No. of Units:</b>	20 units total - 5 x 1 bed units; 14 x 2 bed units and 1 x 3 bed unit
<b>Consent Authority Responsible:</b>	Bayside Council
<b>Application No.:</b>	DA-2017/1047
<b>Declaration of Conflict of Interest:</b>	Nil

The Panel inspected the site, reviewed the submitted documentation and met with representatives of the applicant including John Alafaci and Maurice Beraldo (Architect BDAI), Marta Gonzalez-Valdes (Council's Coordinator Development Assessment) and Patrick Nash (Council's Senior Development Assessment Planner).

[**Note:** Texts in *italics* were Minutes of the previous Design Review Panel meeting held on 23 November 2017].

Design Principle	Comments
<p><b>Context and Neighbourhood Character</b></p> <p>Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.</p> <p>Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.</p> <p>Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.</p>	<p><i>The Panel concluded that it was extremely difficult to properly assess the proposed development given the poor quality of the documentation provided by the applicant which contains multiple inconsistencies and anomalies. Plans do not match elevations, elevations do not match sections, and the photomontage does not match any other drawing.</i></p> <p><i>The proposed development sits within a varied context, with single storey cottages on the opposite side of Bay Street to the south, Botany Public School playing fields to the west, and an approved six-storey apartment and mixed-use development (currently under construction) to the north and east.</i></p> <p><i>The subject site is an awkward "L" shape, not particularly well suited to the proposed development type which requires significant design skills and dexterity.</i></p> <p><i>The Panel considered that the proposed design responds poorly to its context and shows little regard for the desired future streetscape as expressed by Council codes.</i></p> <p>The Panel considers that revised design is a significant improvement on the previous design and is generally acceptable, however, more design resolution is required at the ground level of the development both to the side and front of the building.</p>
<p><b>Built Form and Scale</b></p> <p>Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.</p> <p>Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements.</p> <p>Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.</p>	<p><i>The Panel considered that the design exceeds the permissible building height limit without justification and is poorly articulated to reduce the consequential impacts. It is likely that the actual exceedance is greater than that shown in the drawings provided by the applicant. For example, the lift overrun for building A is not properly dimensioned.</i></p> <p><i>The height of Building A should be reduced to comply with Council codes.</i></p> <p><i>The east façade of Building B presents an unarticulated face to the balconies and living rooms on the neighboring site – just 9m to the east. Articulation of the façade should be given further consideration by the applicant.</i></p> <p><i>The corner articulation (Bay Street and the school driveway) appears clumsy and, given the inconsistent presentation different drawings, cannot be properly assessed by the Panel.</i></p> <p>The Panel considers that revised design is a significant improvement on the previous design. The Panel supports the minor height increase to the building fronting Bay Street because it achieves a better interface with the development to the east. The Panel generally supports the improved elevational treatment above the ground floor.</p> <p>The Panel recommends that the rooftop of Building B should be utilized for communal open space, and notes that this would result in a minor height exceedance in order to provide the lift access and associated structures, which the Panel supports.</p>
<p><b>Density</b></p> <p>Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.</p> <p>Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed</p>	<p><i>The Panel noted that the proposed development is well under the allowable FSR. However the design does not achieve a high level of amenity for the residents of each apartment.</i></p> <p>The Panel considers that the revised design is now acceptable in relation to density.</p>

Design Principle	Comments
infrastructure, public transport, access to jobs, community facilities and the environment.	
<b>Sustainability</b> <p>Good design combines positive environmental, social and economic outcomes.</p> <p>Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.</p>	<p><i>The Panel noted that the documentation provided by the applicant does not adequately demonstrate that 70% of the apartments will have access to 2 hours of sunlight in winter. This should be properly addressed by the applicant.</i></p> <p><i>In addition, further consideration should be given to harvesting of solar energy and rain water for reuse within the development.</i></p> <p>Sustainability was not discussed at the meeting. However, the Panel notes that there are further opportunities for including sustainability initiatives in the design above and beyond those required by BASIX, such as solar energy generation, rainwater harvesting, etc.</p>
<b>Landscape</b> <p>Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.</p> <p>Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks.</p> <p>Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long term management.</p>	<p><i>The Panel considered the landscape design proposal should be revised in response to the below comments and the revised response should consider the following:</i></p> <ul style="list-style-type: none"> <li><i>The provision of communal open space that provides opportunities for gathering and social exchange. Quality open space should be provided beyond the provision of seating within communal walkways and consider the inclusion of shade structures, barbecue facilities, seating, tables and softscape that enhances the communal open space</i></li> <li><i>The landscape design should provide separation and privacy between communal and private spaces</i></li> <li><i>Deep soil zones need to be adequate in area to support the structural root zone of proposed canopy trees</i></li> <li><i>The design should explore the screening of views on to the southern sheer wall of the adjoining development</i></li> <li><i>The design should better respond to the adjoining school site with a revised layout that provides for private balcony/terraces overlooking the playing fields</i></li> <li><i>Access to proposed landscape areas is essential for maintenance. Some of the proposed landscape areas are not readily accessible</i></li> <li><i>The landscape design could be enhanced by the provision of softscape treatment to the street frontage, in particular to the 1800mm fence/privacy screens that face Bay Street.</i></li> </ul> <p>The Panel considers that the revised landscape design is now generally acceptable at a conceptual level but requires a detailed landscape design for further assessment. The Panel recommends:</p> <ul style="list-style-type: none"> <li>Making all landscape spaces (in particular those at the rear of the development) accessible so they can be maintained;</li> <li>Introducing planters or other landscaping to the Bay Street boundary fencing to soften this element;</li> <li>Utilising the rooftop of Building B to provide communal open space (as noted above);</li> </ul>

Design Principle	Comments
	<ul style="list-style-type: none"> <li>Reconfiguring the arrangement of public landscape and private landscape around Building B at the first floor to provide improved residential privacy to Unit 3 and Unit 4 (by providing more private open space to these units).</li> </ul>
<p><b>Amenity</b></p> <p>Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.</p> <p>Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.</p>	<p><i>Refer to comments above (Landscape).</i></p> <p><i>The Panel noted that the level of amenity provided for residents of the level 1 apartments of Building B, is substantially compromised by the lack of privacy from communal areas. This should be addressed by the applicant.</i></p> <p><i>The northerly outlook and solar access for residents of apartments on the ground floor and level 1 of Building A are likewise compromised by their proximity to the approximately 18-metre high sheer wall of the development to the north. This should be addressed by the applicant.</i></p> <p><i>As noted above, the quality of the communal open space provided is poor. This should be addressed by the applicant.</i></p> <p>The Panel does not support the design expression of the ground floor elevations:</p> <ul style="list-style-type: none"> <li>The design relies on accessing light and views over the side boundary with the school. Whilst this cannot be guaranteed in perpetuity it is reasonable to assume the school's open space will be maintained for the foreseeable future. This means that the side elevation of the development will remain in public view for the foreseeable future and must be of an appropriately high design quality especially at the ground floor. The current expression of the ground floor as off form concrete with little or no articulation in relation to the built form above is not considered to be of an appropriately high quality and its design should be improved;</li> <li>The Bay Street ground level interface and building façade is not well resolved and is not considered appropriate to its locality given the diverse frontages extant in the streetscape; and</li> <li>A higher level of visual articulation and responsiveness is required to the ground level. A greater level of articulation of the whole ground level façade and highlighting and celebrating the entrance to the development is required.</li> </ul>
<p><b>Safety</b></p> <p>Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.</p> <p>A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.</p>	<p><i>Given the poor quality of the documentation provided by the applicant it is difficult for the Panel to determine if adequate consideration has been given to egress in the event of fire, particularly from Building B and the "communal open space" between the two buildings.</i></p> <p><i>A positive relationship between public and private spaces has not been achieved – particularly for Adaptable Unit A1.04, B1.02 and B1.01. This should be addressed by the applicant.</i></p> <p>The Panel notes there are potential issues in relation to:</p> <ul style="list-style-type: none"> <li>How to turn vehicles within the basement given its narrow width;</li> <li>The egress pathway to open space from Building B fire stairs.</li> </ul>

Design Principle	Comments
<p><b>Housing Diversity and Social Interaction</b></p> <p>Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.</p> <p>Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix.</p> <p>Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents.</p>	<p><i>The Panel considered the diversity of apartment types to be acceptable.</i></p> <p><i>However, as previously noted, the design does not provide appropriate types of communal spaces for a broad range of people or provide sufficient opportunities for social interaction among residents. This should be addressed by the applicant.</i></p> <p>The Panel considers the diversity of apartment types to be acceptable and will provide acceptable communal open space subject to the changes noted above.</p>
<p><b>Aesthetics</b></p> <p>Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.</p> <p>The visual appearance of a well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.</p>	<p><i>The Panel considered that the proposed aesthetic of the development requires significant design input. While the elevational treatment does appear to provide a measure of articulation including recognition of the corner (Bay Street and the school driveway), given the inconsistencies between various drawings the Panel cannot properly assess the aesthetics of the building at this stage.</i></p> <p>The Panel considers that the revised design achieves an acceptable aesthetic quality subject to the changes identified above.</p>

#### RECOMMENDATION

- The Panel recommends that the above changes be made and be referred to Council for further consideration.



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**Bayside Local Planning Panel**

**9/04/2019**

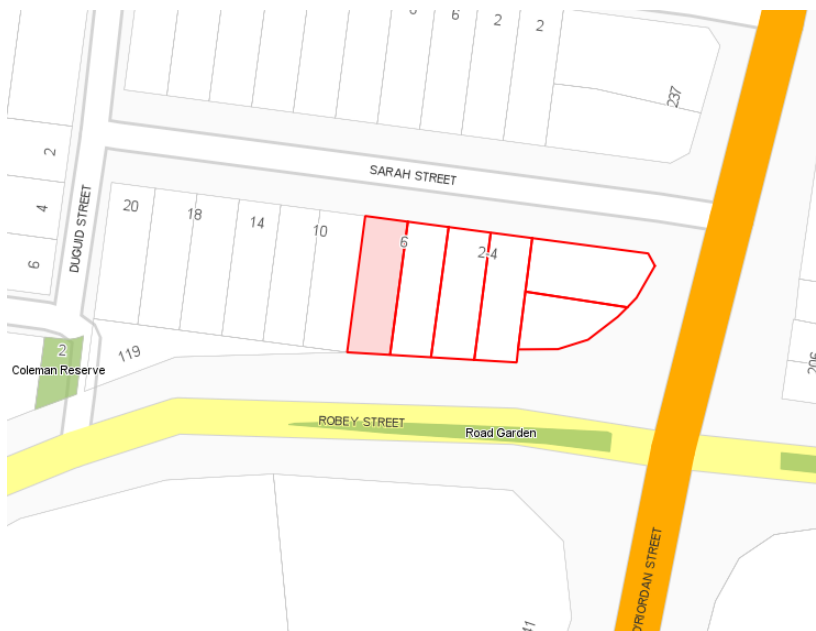
Item No	<b>6.4</b>
Application Type	Modification Application to modify approved hotel development
Application No	BDA-2014/45/A
Lodgement Date	23/11/2018
Property	<b>2-8 Sarah Street, Mascot</b>
Ward	Mascot
Owner	Pro-Invest Australian Hospitality Opportunity (ST) Pty Ltd
Applicant	Pro-Invest Australian Hospitality Opportunity (ST) Pty Ltd
Proposal	Section 4.55(1A) Modification Application to DA-2014/45 to an approved hotel development to facilitate the integration with the adjacent addition at 10-12 Sarah Street Mascot including modification of Condition Nos. 13, 28(c)(ii), 67, 74(d) and 89.
No. of Submissions	Nil
Cost of Development	N/A
Report by	Michael McCabe, Director City Futures

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**Officer Recommendation**

- 1 That the Bayside Local Planning Panel is satisfied that:
    - a. The proposed modification is of minimal environmental impact
    - b. it is substantially the same development as that originally approved
    - c. it has been notified in accordance with the Regulations; and
    - d. any submissions have been considered.
  - 2 That the Bayside Local Planning Panel APPROVE the Section 4.55(1A) Application to modify Development Consent No. DA-2014/45 to the approved hotel to facilitate the integration with adjacent addition at 10-12 Sarah Street Mascot and modify conditions 13, 28, 67, 74 and 89.
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## Location Plan



## Attachments

- 1 Planning Assessment Report [↓](#)
- 2 Site Plan [↓](#)
- 3 Eastern Elevation [↓](#)
- 4 Northern Elevation [↓](#)
- 5 Southern Elevation [↓](#)
- 6 Western Elevation [↓](#)
- 7 Schedule of Colours and Finishes [↓](#)
- 8 GFA Calculations [↓](#)
- 9 Statement of Environmental Effects [↓](#)

# BAYSIDE COUNCIL

## Planning Assessment Report

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### Application Details

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<b>Application Number:</b>	BDA-2014/45/A
<b>Date of Receipt:</b>	23 November 2018
<b>Property:</b>	2-8 Sarah Street Mascot Lot 1 in DP 1232424, Lot 1 in DP 262142 and Lots 1-4 in DP 236339
<b>Owners:</b>	Pro-Invest Australian Hospitality Opportunity (ST) Pty Ltd
<b>Applicant:</b>	Pro-Invest Australian Hospitality Opportunity (ST) Pty Ltd
<b>Proposal:</b>	Section 4.55(1A) Modification Application to approved hotel to facilitate the integration with adjacent addition at 10-12 Sarah Street Mascot including modification of Condition Nos. 13, 28(c)(ii), 67, 74(d) and 89
<b>Recommendation:</b>	Approval, subject to conditions of consent
<b>Value:</b>	N/A
<b>No. of submissions:</b>	Nil
<b>Author:</b>	Angela Lazaridis, Senior Development Assessment Planner
<b>Date of Report:</b>	26 March 2019

### Key Issues

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Development Application No. 14/45 was issued a deferred commencement by the former Joint Regional Planning Panel on 22 July 2014 for the integrated development application for the demolition of existing structures and construction of part 8 and 9 storey hotel containing 169 rooms and 69 car parking spaces, landscaping and basement car parking. An operational consent was issued by Council on 12 August 2015.

On 23 November 2018, the applicant lodged the subject Section 4.55(1A) Application to modify Development Consent No. 14/45 to an approved hotel to facilitate the integration with adjacent addition at 10-12 Sarah Street Mascot including modification of Condition Nos. 13, 28(c)(ii), 67, 74(d) and 89 at the site at 2-8 Sarah Street Mascot.

The application was placed on public exhibition and was advertised under the Environmental Planning and Assessment Regulation for a twenty-eight (28) day period from 17 December 2018 to 14 January 2019. No objections were received as part of the notification period.

Key issues that were raised within the application include floor space ratio and car parking. The FSR proposed will increase the approved FSR of 3.38:1 to 3.46:1 which results in an increase of 118sqm. This is a result of losing five car parking spaces to extend the size of the great room to accommodate the additional guests that will be provided with the approval of

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the addition at DA-2018/319. The additional FSR and the loss of five car parking spaces is discussed in detail in the report below.

The application does not significantly alter the approved building. The modification is considered to be substantially the same development is not considered to create any likely impacts to the surrounding development.

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.

### Recommendation

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That the Bayside Local Planning Panel:

1. Approve Section 4.55(1A) Application to modify Development Consent No. 14/45 to the approved hotel to facilitate the integration with adjacent addition at 10-12 Sarah Street Mascot including modification of Condition Nos. 13, 28(c)(ii), 67, 74(d) and 89 at 2-8 Sarah Street, Mascot.

### Background

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#### Site Description

The site is identified as 2-8 Sarah Street Mascot and comprises of six lots which are legally known as Lot 1 in DP 1232424, Lot 1 in DP 262142 and Lots 1-4 in DP 236339. The site is located on the junction of two roads and is located with three street frontages, being Sarah Street, O'Riordan Street and Robey Street. The site was previously subject to RMS road widening (Lot 7 in DP 1232424) and is therefore no longer included in the site. The site currently is vacant as the previous building on the site that was used as a car/truck rental premises and associated parking, has been demolished to enact the approved consent.

The site has a total area of 1,502sqm and is primarily rectangular with a curved edge on the corner of O'Riordan Street and Robey Street. The site has a primary northern street frontage width along Sarah Street of 67.84 metres and a southern frontage of 18.3 metres along Robey Street with the remaining curve along the eastern boundary, and a western boundary of 29.82 metres. The site is affected by the 25-30 ANEF contour.

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**Figure 1. Locality Plan**

Development surrounding the site is predominantly light industrial and commercial land uses. To the north of the site is a car wash café with Patchett's Pies (a food production and sales) premises adjoining that site, to the south across on Robey Street is the Stamford Plaza hotel which is a 13 storey hotel development, to the west of the site is vacant land which previously comprised of a 2 storey building used for commercial purposes and to the east of the site across on O'Riordan Street is a car hire premises and the 9 storey Quest Serviced Apartment hotel development.



**Figure 2. Aerial map (circa 2018)**

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### Approved Development

#### Development Application No. 14/45

Development Application No. 14/45 was submitted to Council on 11 March 2014 seeking consent for a hotel development comprising of the following:

- Demolition of the existing car/truck rental and associated car park;
- Construction of a part 8 and 9 storey hotel comprising of 169 rooms (including 8 accessible rooms), a business centre and gym, dining room and sky/bar lounge on Level 8, car parking for a total of 69 vehicles comprising a basement car park and two levels of above ground car parking, on-site drop off/pick up zone for a 52 seater bus with vehicle entry and exit points along Sarah Street, a shuttle bus and all vehicular access obtained from Sarah Street.
- The approved FSR is 3.19:1 which is a GFA of 4,836sqm and an approved height of 29.97 metres (RL 36.37)- based on a site area of 1,516sqm (includes area that had been earmarked for road widening).

The proposal was determined on 22 July 2014 as a deferred commencement by the former Joint Regional Planning Panel based on the recommendation by Council. The reason for the deferred commencement was to allow the applicant to provide additional information to Railcorp for approval which included geotechnical and structural reports, final construction methodology, cross sectional drawings, survey plan and a fee analysis. The applicant provided the information and an operational consent was issued on 12 August 2015.

#### Section 4.55 Application- DA-14/45/02

One previous Section 4.55(2) Application to modify Development Application DA-14/45 was originally assessed by Council. The application proposed the following modifications:

- Increase in the number of bedrooms from 169 to 192 (additional 23 rooms)
- Removal of the ground level car park and relocation of the car parking spaces to the basement level to provide car stackers in the basement;
- Increase in the FSR from 3.19:1 (as approved) to 4.23:1;
- The provision of 75 car parking spaces across the ground level and basement;
- Additional storey proposed by lowering the floor to floor heights from 3.12m to 2.8m;
- Relocation of roof level bar/restaurant to ground level and provision of increased staff, administration and service areas at ground level;
- Provision of separate staff only lift at south-western end of the typical floor plates;
- Increase in ceiling height of uppermost storey by 1.01 metres from RL 35.44 to RL 36.45;
- Additional architectural roof feature to conceal rooftop services;
- An on-site drop off/pick up zone for a 52 seater bus with vehicle entry and exit points along Sarah Street (as approve);
- A shuttle bus service (as approved);
- All vehicular access will be obtained from Sarah Street (as approved).

The Panel, in principle was not in support of the proposed modifications. The application was withdrawn on 8 May 2018.

#### Section 4.55 Application- DA-14/45/03

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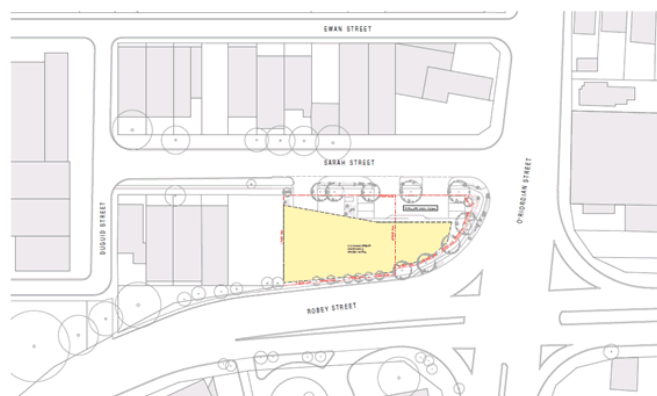
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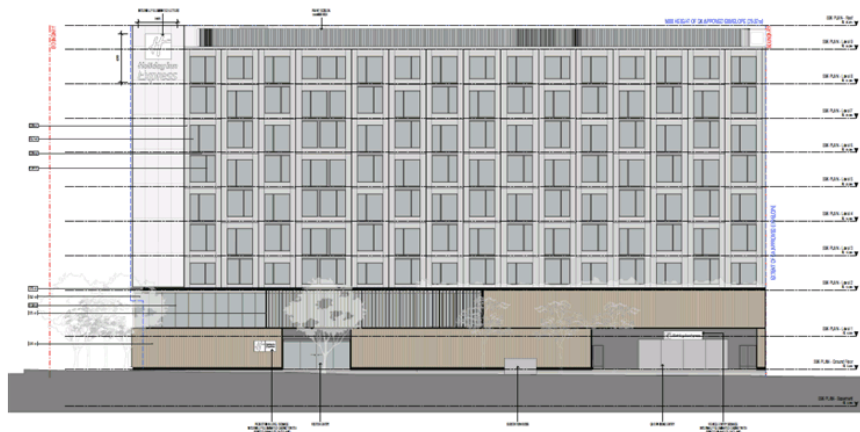
A previous Section 4.55(2) Application to modify Development Application No. 14/45 was determined by the Sydney Eastern City Planning Panel on 4 September 2018 which resulted in the following modifications to the proposal:

- The provision of two (2) additional car parking spaces- increase from 69 to 71 spaces;
- The provision of nine (9) additional hotel rooms- increase from 169 to 178 rooms;
- Increase in the FSR from 3.19:1 (as approved) to 3.38:1 (5,079sqm- additional GFA of 243sqm above the approved GFA of 4,836sqm);
- Relocation of the substation externally to the building, located along Sarah Street frontage;
- Five (5) business identification signs are proposed on the site with three of them being internally illuminated;
- Addition of two mechanical car lifts to access basement car park;
- External façade changes to the building to include perforated metal cladding, concrete look finish and satin sandstone aluminium finish;
- Size of the plant area on the rooftop has slightly increased.

The approved plans were as follows:



**Figure 3. Approved Site Plan**



**Figure 4. Approved Northern Elevation**

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Figure 5. Approved Southern Elevation

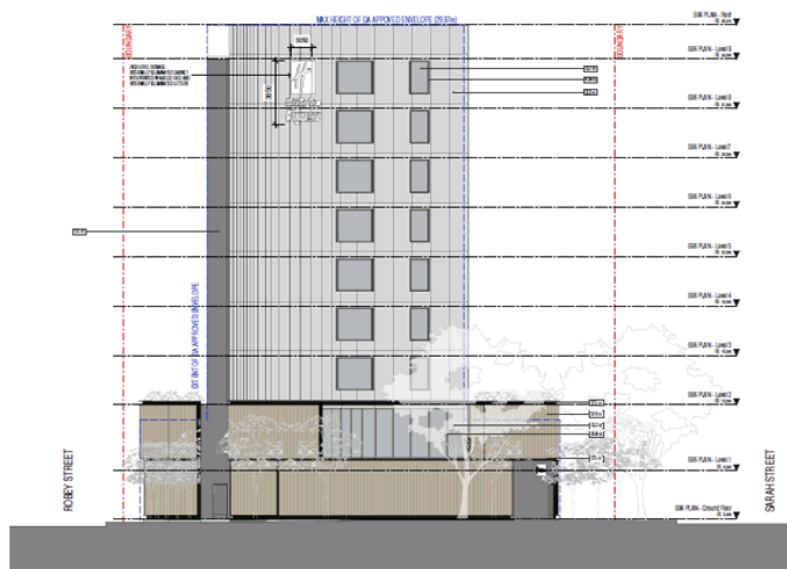


Figure 6. Approved Eastern Elevation

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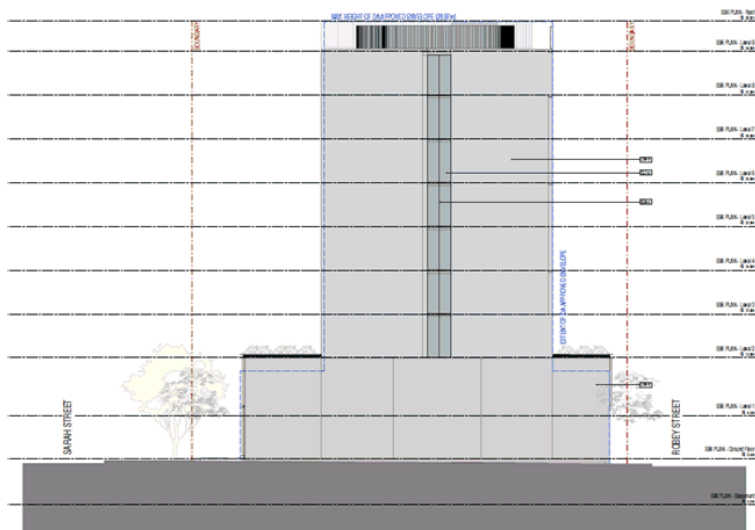


Figure 7. Approved Western Elevation



Figure 8. Approved Photomontage looking south-west from O'Riordan Street to the site

#### Description of the Proposed S.4.55 (1A) Modifications

The proposed modification subject to this application will modify the approved development as follows:

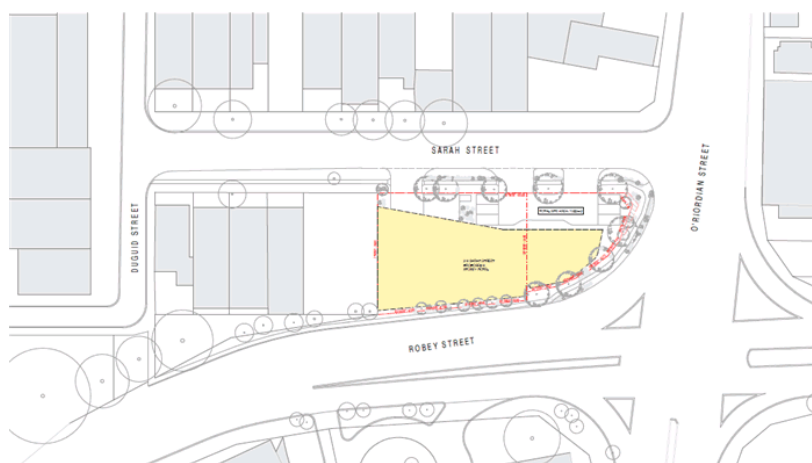
- An increase in the size of the Level 1 'Great Room', to include a study room and meeting rooms;

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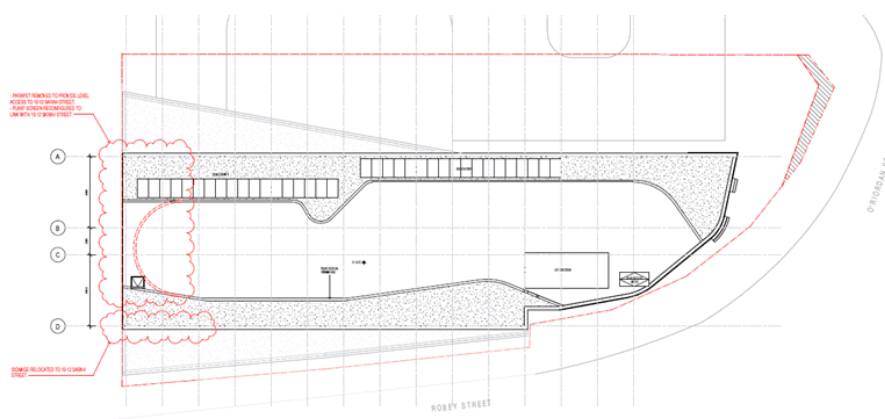
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- A reduction of five car parking spaces from 71 to 66 spaces (however noting that the five lost spaces will instead be incorporated in the proposed hotel addition on the adjoining site);
- A penetration in the western wall of the car park on ground and level 1 to provide vehicle access to the adjoining site's car park;
- A penetration in the western wall on all other levels of the building to provide guest access to rooms located on the adjoining site;
- Removal of the approved sign on the southern elevation (which will be relocated to the proposed addition under DA-2018/319); and
- Modifications to Condition Nos. 11 and 13 relating to solar panels and 28 and 74 which relates to the scope of the required public domain works.

The proposal will enable the seamless integration of the subject site and 10-12 Sarah Street and will result in a single operational Holiday Inn Express Hotel across the combined site. The proposed plans are as follows:



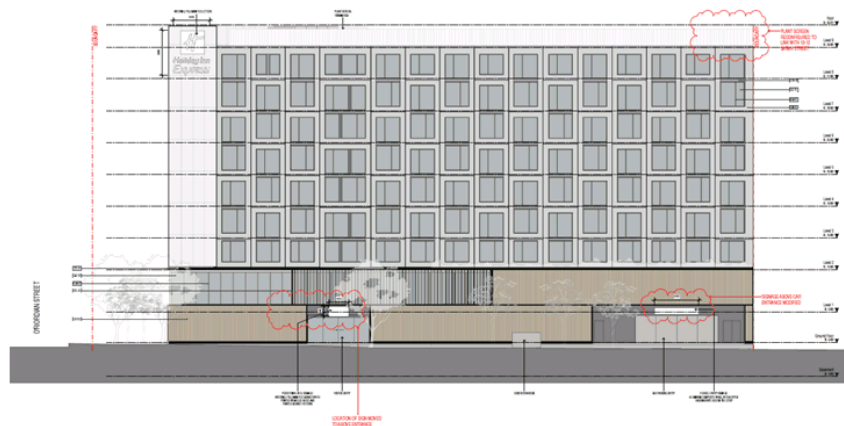
**Figure 9. Proposed Site Plan**



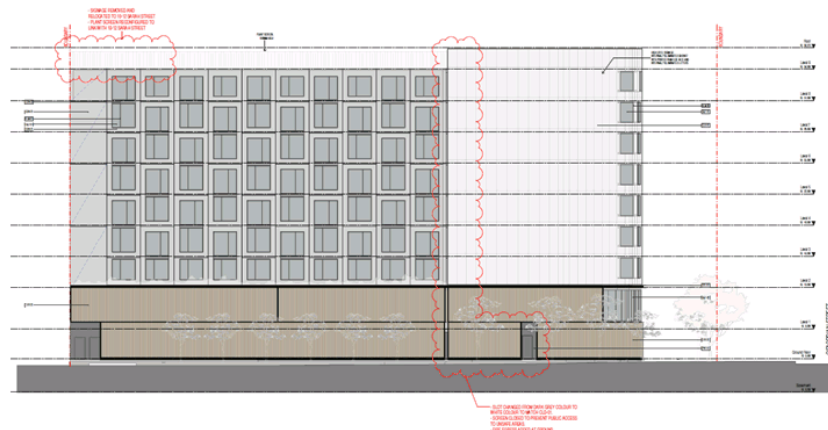
**Figure 10. Proposed Roof Plan**

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**Figure 11. Proposed Northern Elevation**



**Figure 12. Proposed Southern Elevation**

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Figure 13. Proposed Eastern Elevation

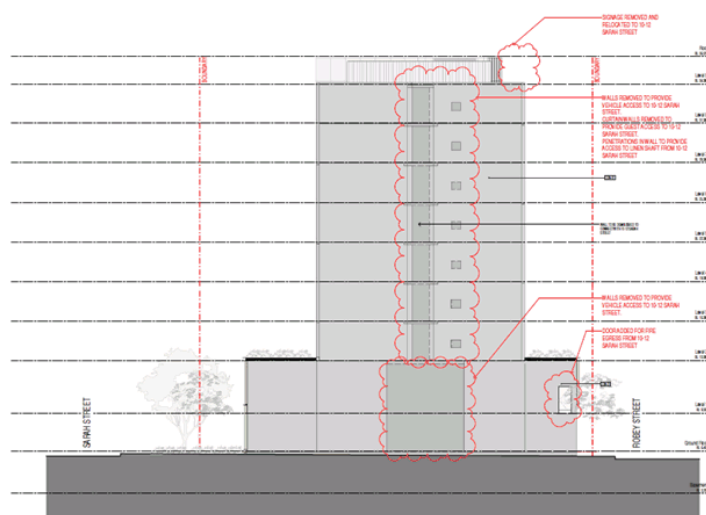


Figure 14. Proposed Western Elevation

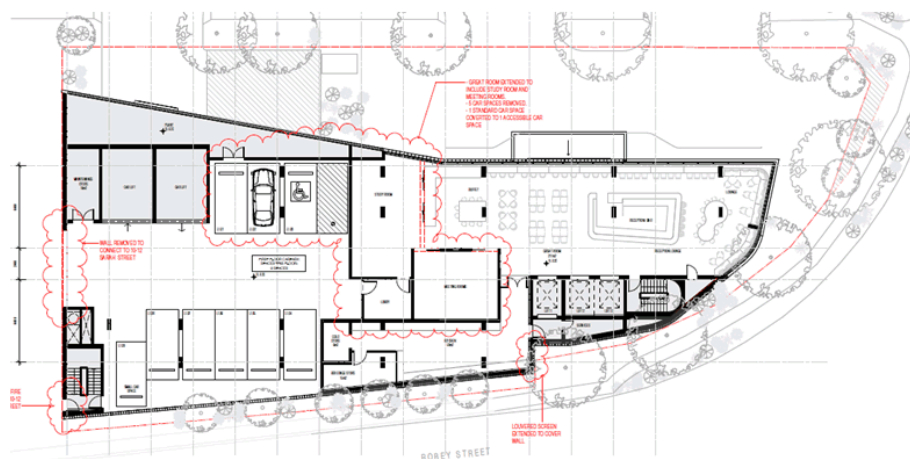
#### Assessment of the Proposed S.4.55 (1A) Modifications

An assessment of the modifications is as follows:

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Modification No. 1 – Increase in the size of Level 1 ‘Great Room’ and subsequent increase in GFA/FSR

The proposed modification seeks to increase the size of the Great Room on Level 1 by 118sqm which will include a study and meeting rooms to accommodate the additional guests that will utilise the space when the addition at 10-12 Sarah Street is integrated with the subject site. The figure below demonstrates the proposed Level 1 floor plan showing the size of the Great Room, study and meeting rooms.



**Figure 15. Proposed Level 1 floor plan demonstrating larger 'Great Room'**

The subsequent increase in the size of the Great Room results in an additional 118sqm of gross floor area. This will modify the approved FSR from 3.19:1 to 3.46:1. This results in an increase in the gross floor area from 5,079sqm to 5,197sqm.

While a Clause 4.6 variation is not required as part of the application, the applicant has provided a justification to the additional FSR on the site. Their justification is as follows:

*"The further increase in GFA does not raise any matters of significance that were not previously addressed in the Clause 4.6 variation submitted with the original DA. For the original DA, which had an FSR of 3.19:1, Council and the JRPP accepted that the FSR development standard had been virtually abandoned through decisions of the consent authority and further, that the development met the objectives of the development standard and the zone notwithstanding the variation, and was in the public interest. In minutes dated 22 July 2014, the JRPP endorsed the Clause 4.6 variation request, as follows:*

- 1) *The Panel resolves unanimously to accept the recommendation of the planning assessment report to approve the application...*
- 2) *The principal reasons for the Panel's decision are:*
  - a) *The variation of Floor Space Ratio control is minor and has been justified under cl 4.6 of the Botany LEP 2013...."*

*In addition, the further increase in FSR in the current application does not raise any additional issue compared with the assessment of the previously approved modification, where Council's August 2018 assessment report notes that:*

*The application did not require a Clause 4.6 variation to be provided as part of the assessment as the proposal is part of a modification application. Nevertheless, the applicant notes that the modified proposal adopts a similar building footprint, setback and landscaped area to the approved DA-14/45. The slight increase to the approved FSR will have no adverse impacts to the surrounding streetscape or to the amenity of the adjoining developments. Overshadowing, privacy and view loss will be maintained as per existing.*

*The Sydney Eastern City Planning Panel supported this position, providing the following reasons for the approval of the modification application:*

- *The modified proposal is substantially the same as the approved proposal*
- *The modified building has similar bulk and scale to the approved building.*
- *The additional floor space has no additional discernible visual or amenity impacts.*

*As for the current modification application, the proposed additional GFA results in no additional discernible visual or amenity impacts. Further, despite the loss of five car parking spaces, these spaces will be relocated to within the proposed adjoining addition to the hotel, therefore resulting in no net loss in car parking."*

Council agrees with the justification provided by the Applicant as the bulk, scale and height of the development has not been altered therefore there is no change to the surrounding sites and developments relating to overshadowing and bulk. A comparison of developments in close proximity that have been approved under the BBLEP 2013 include 113 Baxter Road with an FSR of 3.48:1 and 289 King Street with an FSR of 3.22:1. The proposal is not considered to have abandoned the development standard in this case and as the site has already been approved with a non-compliance to the FSR development standard, non-compliance with the development standard is not unreasonable. Additionally, the proposed FSR of the addition at 10-12 Sarah Street seeks an FSR of 3.47:1. Therefore when combined, the overall development will have an FSR of 3.46:1. Considering the above and the nil change to the external façade and bulk, the additional FSR/GFA is supported.

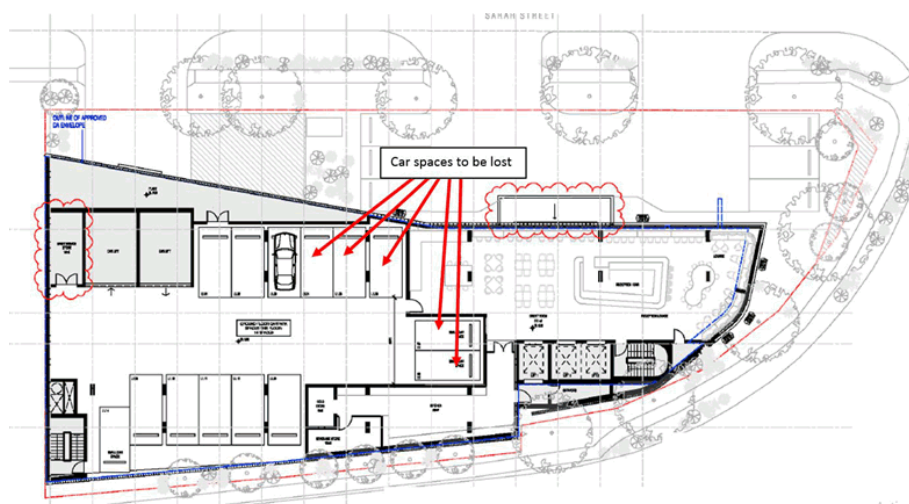
#### Modification No. 2 – Reduction in car parking spaces from 71 to 66 spaces

The proposed modification seeks to reduce the amount of car parking spaces approved in the development from 71 spaces to 66 spaces. The removal of the five spaces will be from Level 1 and this is a result of the proposed increase in the size of the 'Great Room' as discussed above. The figure below demonstrates the location of the previously approved car spaces to be deleted.

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**Figure 16. Approved Level 1 floor plan demonstrating the location of car spaces to be removed**

The applicant has provided a justification for the removal of the five car parking spaces which is as follows:

*"The proposed modification to allow for the integration of the two sites will result in the loss of five spaces on 2-8 Sarah Street. However, these spaces will be picked up within the proposed addition at 10-12 Sarah Street, and the proposal will deliver a net increase of 27 parking spaces which equates to a total car parking provision of 98 spaces for the extended hotel."*

*The following table provides a summary of the progressive parking provisions of the proposal against the approved hotel on 2-8 Sarah Street.*

	Approved 2- 8 Sarah Street	Extended Hotel (Proposed 10-12 Sarah Street plus <u>modified</u> 2-8 Sarah Street)	Net change
No. of hotel rooms	178	247	+69 rooms
Car parking spaces	71	98	+27 spaces
Car lift	Yes	Yes	Nil

*The proposal will maintain the approved the vehicular access, pedestrian access and Porte Cochere as approved. The car park will have direct pedestrian access between the two sites. Car park lifts are located within the approved hotel to provide access to the general car parking area which has been spread over 3 levels. This remains consistent with the previously approved system."*

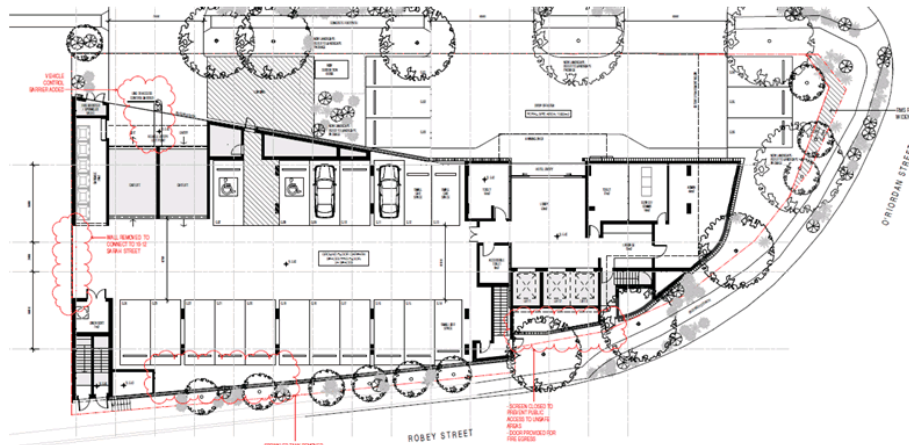
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The proposal that is currently under assessment in DA-2018/319 that is for the addition to the development at 10-12 Sarah Street proposes a total of 32 car parking spaces. The addition will provide a total of 69 hotel rooms which would generate a demand for 28 car spaces (as rounded up). Therefore there was a total of four spaces additional which can cater for the lost spaces from 2-8 Sarah Street. The total number of car parking spaces equals 98 however the overall number of car parking spaces that is generated from the combined development is 99 car spaces. This modification results in a shortfall of one car parking space for the development. The applicant has provided a traffic report with the subject modification which justifies the shortfall in one car parking space. Considering the previous modification for this site (DA-2014/45/03) approved a shortfall of one car parking space, it is not considered the loss a significant impact to the surrounding street network particularly as the development offers a coach and taxi services. Therefore the modification to the car parking spaces is supported.

**Modification No. 3 – Penetration of the western elevation wall to provide vehicle access and guest access to the adjoining proposed development at 10-12 Sarah Street**

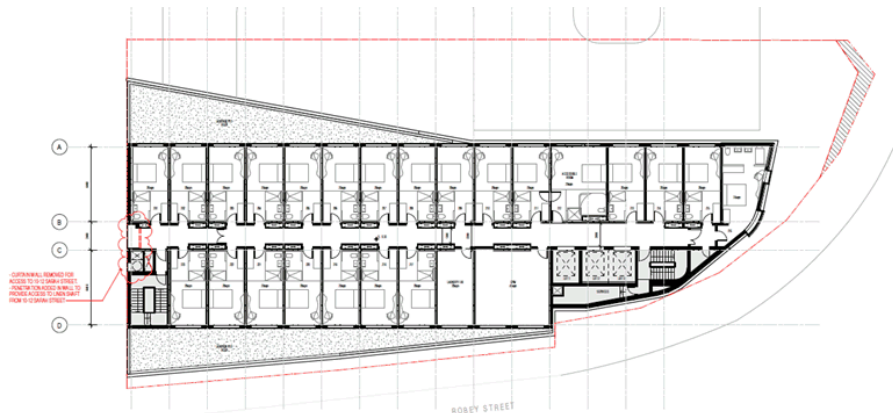
The proposed modification seeks to provide a seamless integration of the two developments at 2-8 Sarah Street and the proposed development at 10-12 Sarah Street that will be combined to operate as one hotel development. This would require minor changes to the western façade on all levels of the approved development. Changes proposed include portion of the western walls at ground and first level to be removed to allow vehicular access between the two sites. Additionally the approved windows and a portion of the walls at Level 2 to 8 will be removed to allow for guest access at all hotel floors. This includes penetration being added to the western façade to provide access to the linen shaft from 10-12 Sarah Street at Levels 3 to 8. The below figures demonstrate the changes to a typical floor of the development aligning the two developments together and allowing for an appropriate transition between them both. Additionally, Figure 19 demonstrates the proposed addition to the subject site at 10-12 Sarah Street (DA-2018/319) which is concurrently being assessed with this application



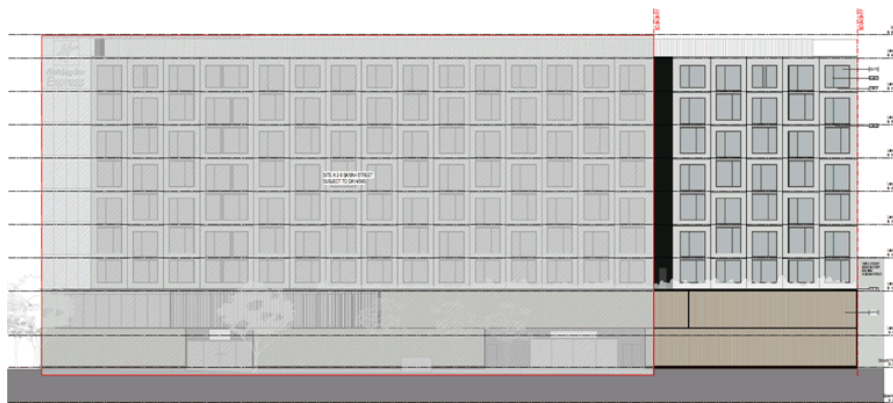
**Figure 17. Proposed ground floor plan demonstrating removal of western wall for vehicular access to 10-12 Sarah Street**

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**Figure 18. Proposed Typical hotel floor demonstrating removal of western wall for guest access to 10-12 Sarah Street**



**Figure 19. Plan submitted with DA-2018/319 demonstrating the proposed addition at 10-12 Sarah Street.**

The justification that the applicant has provided for this modification is as follows:

- *"The modification will facilitate the integration of two sites resulting in a single operational Holiday Inn Express Hotel across the combined site (2-12 Sarah Street). This is a superior outcome to a stand-alone hotel being developed on the adjoining site as vehicle access and servicing can be shared, thereby reducing the potential for streetscape and amenity impacts.*
- *The modification will contribute to the provision of additional visitor accommodation on the adjoining land in a highly suitable location close to Sydney Airport and public transport.*
- *The modification is consistent with Council's vision and objectives for the Mascot Business Development Precinct.*
- *The modification is in the public interest. All impacts to amenity and the surrounding environment have been minimised and the proposal is considered to positively contribute to the surrounding streetscape and built environment."*

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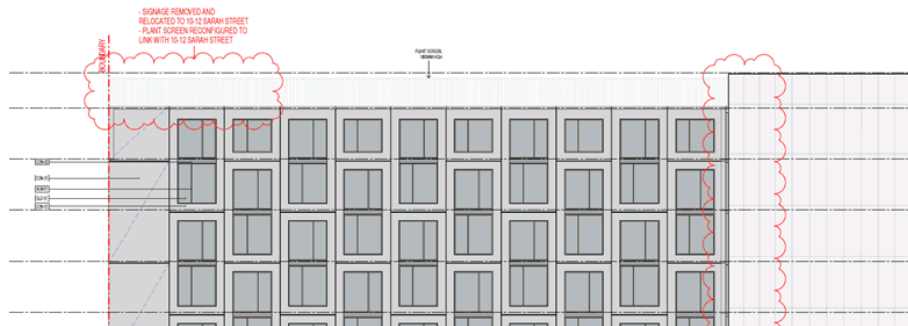
The proposed justification and the amended plans are supported. Appropriate conditions have been imposed within DA-2018/319 at 10-12 Sarah Street in regards to vehicular access until the development could be consolidated.

#### Modification No. 4 – Relocation of approved signage

The proposed modification seeks to amend the location of three approved signs within the development. Two of the signs are located on the northern elevation of the development at ground floor while the third sign is located on the southern elevation of the development at Level 8 and roof level. The figure below demonstrates the proposed change to the southern elevation sign which was located on the top left-hand corner of the development. This sign is to be deleted from the approved built form and be located to the top left-hand corner of the addition at 10-12 Sarah Street which is assessed under DA-2018/319. While the sign already has approval, an assessment under SEPP No. 64 has been carried out on that development application. The relocation of this sign is supported.



**Figure 20. Approved signage on the southern elevation**



**Figure 21. Proposed removal of approved sign**

The modification seeks to make minor amendments to two of the signs at ground level on the northern elevation. The approved signs were located at pedestrian eye level near the entry lobby to the hotel as well as above the vehicular entry to the site. As demonstrated in the figures below, the pedestrian entry sign has now been relocated to be above the hotel lobby entry rather than on the western side of the entry. The signage above the vehicular entry is retained in the same location however has increased slightly in length. The proposed changes are not considered onerous or require an assessment against SEPP No. 64 as they are very minor in nature. The proposed modification is supported in this instance.

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Figure 22. Approved location of signage on the northern elevation

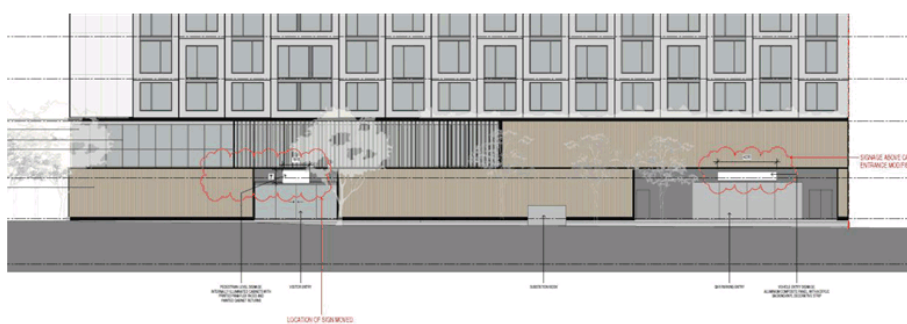


Figure 23. Proposed relocation of signage on the northern elevation

#### Modification No. 5 – Minor modifications to the floor plans

The proposal seeks minor modifications, further to what is stated above, as follows:

- Basement floor plan- sprinkler tank removed for coordination.
- Ground floor plan:
  - screen behind lift core to prevent public access to unsafe areas;
  - Door added behind lift core for fire egress;
  - Grid lines modified to incorporate 10-12 Sarah Street;
  - Sprinkler tank removed for coordination;
  - Vehicle control barrier added.
- Level 1 plan:
  - Door added to south western fire stair to provide egress from 10-12 Sarah Street;
  - 1 Accessible car space replaces 1 car space;
  - Grid lines modified to incorporate 10-12 Sarah Street;
  - Louvered screen extended to cover wall.
- Level 2 to 8 plan:
  - Grid lines modified to incorporate 10-12 Sarah Street.
- Roof Plan:

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- Parapet on the western edge of the roof removed to provide level access to 10-12 Sarah Street;
- Plant screen reconfigured to link with 10-12 Sarah Street;
- Grid Lines modified to incorporate 10-12 Sarah Street.
- Northern Elevation:
  - Plant screen reconfigured to link with 10-12 Sarah Street.
- Southern Elevation:
  - Plant screen reconfigured to link with 10-12 Sarah Street;
  - Slot changed from dark grey colour to white colour to match CLD-01;
  - Screen behind lift core closed to prevent public access to unsafe areas;
  - Fire egress added to ground level.
- Eastern Elevation:
  - Louvered screen extended to cover wall.
- Western Elevation:
  - Door added to south western fire stair to provide egress from 10-12 Sarah Street.

As demonstrated within the plans, these minor changes will not change the approved built form or create a negative impact onto the surrounding locality therefore the changes are supported.

#### Modification No. 6 – Modifications of conditions

The proposed modification seeks to amend a number of conditions as part of the proposal. The conditions that are proposed to change and the reason for their amendment is as follows:

##### Condition No. 1

The condition relates to the approved plans and documents. The condition will be updated with the amended plans and documents accordingly.

##### Condition No. 13

The applicant seeks to amend Condition No. 13 which relates to solar panels on the rooftop. The condition is worded as follows:

*13 Prior to the issue of a Construction Certificate and subject to the approval of the Civil Aviation Safety Authority (CASA), the applicant is to provide roof mounted solar collector panels below a height of RL51m AHD to the rooftop area of the building. The collectors shall collect sufficient electricity to supply at least 20% of the building's energy requirements. Details of the panel system are to be provided with the Construction Certificate, including the approval of CASA.*

The reasons for amending the condition that the applicant has provided is as below:

***Deletion of the requirement to provide 20% of the building's energy requirements from solar and requirement instead to optimise the use of available roof space***

*It is not possible to generate sufficient electricity from the roof to cater for 20% of energy demand.*

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*As part of detailed services and plant design, engineering consultants Wood and Grieve have worked with the contractors and architects to ascertain the amount of roof space available for solar panels while still maintaining access and the design integrity of the roof top plant screening. A total of 77 solar panels could be installed on the roof of the expanded hotel (ie 2-8 Sarah Street and 10-12 Sarah Street).*

*The expanded hotel's annual energy demand is calculated at 1,432,000 kWh. The 77 panels would generate in total 31,938 kWh, equal to 2.23% of the annual energy demand. This proportion would vary depending on the actual energy usage of the hotel. Therefore, rather than replacing 20% with 2.23% or thereabouts, it is proposed to require the optimisation of available roof space*

***Deletion of the requirement to obtain further CASA approval***

*Condition 11 of the consent includes all required conditions of SACL (on behalf of CASA).*

- *11(b) states that the Civil Aviation Safety Authority (CASA) have no objection to the proposed development to a maximum height of 36.37 metres above Australian Height Datum (AHD)*
- *11(c) states that the approved height is inclusive of all lift over-runs, vents, chimneys, aerials, TV antennae, construction cranes etc.*
- *11(h) notes that the height of the prescribed airspace at the site is 51.0 metres above AHD, and that no structure or thing may be approved which would protrude above this height.*

*Having regard to these provisions, it is unreasonable and unnecessary to require further CASA approval for the solar panels, as these panels will be located entirely below the maximum height of 36.37m AHD as identified in 11(b).*

For the reasons stated above, Council agrees to the modification of the condition therefore the amendment of Condition No. 13 is supported.

Condition No. 28(c)(ii)

The applicant has requested that Condition No. 28(c)(ii) be deleted. The condition is worded as follows:

*c) On Sarah Street adjacent to the development reconstruct:*

- (i) existing Kerb and Gutter for the full length of the property in accordance with Council Infrastructure Specifications;*
- (ii) half width of the road asphalt, in accordance with Council's Infrastructure Specifications.*

The applicant has stated that Sarah Street was recently resurfaced in late 2018. As a result of this, the applicant met with Council's public domain team to discuss the imposition of this conditions. It was agreed that Condition No. 28(c)(ii) could be deleted, provided that the applicant carefully install new kerbing to avoid damaging the existing road paving. Therefore deletion of Condition No. 28(c)(ii) is supported.

Condition No. 74(d)

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The applicant has provided the following response in relation to Condition No. 74(d):

"Condition 74(d) is considered to be unclear and also contains an error. Condition 74 is reproduced below:

*74 At the completion of landscaping on the site and public domain areas, the Applicant is required to obtain a Certificate of Compliance from the Landscape Consultant to certify that the landscaping has been installed in accordance with the Council approved landscape plan. The Certificate is to be submitted to the City of Botany Bay Council prior to the Issue of an Occupation Certificate and to address the following:*

...

*(d) Upgrade the public domain by the reconstruction of half the road pavement, kerb and gutter, footpath, drainage system, street trees, landscaping and any associated works for the street frontage Robey Street, Sarah Street and O'Riordan Street of the site, at the applicant's expense. All improvements shall be in accordance with specifications and requirements from Council's landscape and engineering sections, the approved civil works construction plans and landscape plans, and Condition 27 of this Consent.*

Condition 74(d) requires the developer to obtain a Certificate of Compliance to certify that the public domain works have been installed in accordance with the Council approved landscape plan prior to the issue of an Occupation Certificate. Three concerns with the current wording are as follows:

- Firstly, the condition could be interpreted to require "reconstruction of half the road pavement...for the street frontage Robey Street, Sarah Street and O'Riordan Street of the site". However, Condition 28, which details the required public domain works, requires the developer only to reconstruct the Sarah Street kerb, gutter and half road pavement (28(c)), with only the footpaths to be paved on O'Riordan and Robey Street. In order to eliminate uncertainty, Condition 28 should be amended to clarify that the scope of public domain works are limited by Condition 28 of the consent.
- Secondly, the reference to Condition 27 appears to be in error. This may have intended to refer to Condition 28 – which would in part address the concern raised above.
- Thirdly, due to the passage of time since the original consent was granted, some of the public domain works may not be required or should be delayed to avoid futile works. This is due to scheduled RMS upgrade works to Robey and O'Riordan Streets. The contractors are working with RMS on this matter however timing is not confirmed, and a concern is that this may delay the issue of an Occupation Certificate. For this reason, we request that Condition 74(d) be amended to facilitate the potential for Council's landscape and engineering sections to agree to an alternative (deferred or modified) timeframe or method for delivery of public domain works, which could be triggered if necessitated by RMS."

Reviewing both condition Nos. 74(d) and 28, it appears that there is an error in Condition No. 74 by requiring construction of half of the road pavement. As discussed in Condition 28(c), discussions were had with Council regarding requiring the applicant to resurface the road pavement after it has recently been done. Council's public domain team has agreed that there is no requirement for this to be done. Therefore condition No. 74(d) will be amended to delete reference to reconstruction of half the road pavement. Additionally, the reference of condition No. 27 will be modified to reflect Condition No. 28. Condition No. 74(d) will be worded as follows:

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- d) Upgrade the public domain by the reconstruction of ~~half the road pavement~~, kerb and gutter, footpath, drainage system, street trees, landscaping and any associated works for the street frontage Robey Street, Sarah Street and O'Riordan Street of the site, at the applicant's expense. All improvements shall be in accordance with specifications and requirements from Council's landscape and engineering sections, the approved civil works construction plans and landscape plans, and Condition ~~27~~ 28 of this Consent.

Condition No. 67 and 89

Condition No. 67 reflects the amount of car parking spaces within the premises. This has been amended from seventy-one (71) to sixty-six (66) to reflect the recent changes.

Condition No. 89 has been updated to reflect the most recent modification.

Additional conditions

Council's Development Engineer has reviewed the subject proposal and has requested that the following conditions be imposed within the consent:

***Prior to the issue of any Occupation Certificate, suitable service easements shall be created on the subject lots of the development benefiting 10-12 Sarah Street. A right of way easement(s) for vehicular access and an easement(s) to drain water for stormwater drainage shall be provided over the lots of 2-8 Sarah Street, benefiting the lots of 10-12 Sarah Street. The service easements are to be covered by a Section 88B Instrument, which may only be varied or extinguished with the consent of Bayside Council. These provisions are to be put into effect prior to the release of the Occupation Certificate.***

***Prior to occupation, a positive covenant pursuant to the Conveyancing Act 1919 shall be created on the title of the lots that contain the mechanical car lift facility to provide for the maintenance of the mechanical car lift facility.***

As vehicle access to the car parking spaces at 10-12 Sarah Street is proposed from the existing vehicle access at 2-8 Sarah Street in addition to the stormwater system, the above conditions are appropriate. The conditions will be imposed as 73A and 73B.

## **Statutory Considerations**

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### **SECTION 4.55(1A) CONSIDERATIONS**

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***

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The Section 4.55(1A) modification application relates to amendments to an approved hotel development by increasing the GFA, reducing car parking, puncturing walls on the western façade to integrate the development to the west, signage amendments and modification of conditions, and as such, the modifications will result in minimal environmental impact as approved under DA-2014/45 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*

The Section 4.55(1A) modification application relates to amendments to an approved hotel development by increasing the GFA, reducing car parking, puncturing walls on the western façade to integrate the development to the west, signage amendments and modification of 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 – Advertising and Notification of the Botany Bay Development Control Plan (BBDCP) 2013, the modification application was notified for twenty-eight (28) days between 17 December 2018 to 14 January 2019.

- 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 the application was not publically notified.

### SECTION 4.55(3) MODIFICATION CONSIDERATIONS

*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 consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.*

The original development application as well as the previous modification were determined by the former Joint Regional Planning Panel (DA) and the Sydney Eastern City Planning Panel (modification). The recent modification application was approved for the following reasons:

- The modified proposal is substantially the same as the approved proposal;
- The modified building has similar bulk and scale to the approved building; and
- The additional floor space has no additional discernible visual or amenity impacts.

Having reviewed the reasons for the decision of the previous modification, it could be considered that the proposal subject to this application could adopt the above reasons of approval as all three points apply.

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**S.4.15(1) – MATTERS FOR CONSIDERATION – GENERAL****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 No. 55 – Remediation of Land

The provisions of SEPP No. 55 have been considered in the assessment of the development application, as the proposed development involves excavation for a basement car park. Clause 7 of State Environmental Planning Policy 55 requires Council to be satisfied that the site is or can be made suitable for its intended use at the time of determination of an application. Consideration of SEPP No. 55 was carried out within the assessment of DA-14/45. Therefore SEPP No. 55 does not need to be assessed as part of this proposal particularly as there is no further excavation proposed.

State Environmental Planning Policy (Infrastructure) 2007

The parent development application was originally referred to Sydney Trains (formerly RailCorp) in accordance with the requirements of the SEPP, due to the proximity of the subject site over the rail corridor. Initially, the original DA was approved as a deferred commencement to satisfy Sydney Trains request for additional information. This information was received and appropriate conditions imposed. The subject application does not seek to amend the footprint or lower the level of the basement therefore additional comment from Sydney Trains is not required.

State Environmental Planning Policy No. 64 – Advertising and Signage

State Environmental Planning Policy No 64 – Advertising and Signage (SEPP 64) aims to ensure advertising is compatible with the desired amenity and visual character of an area, provides effective communication in suitable locations and is of high quality design and finish. Clause 8 and Clause 13 of SEPP 64 prevents development consent from being granted to signage unless the consent authority is satisfied that it is consistent with the objectives of the SEPP and has satisfied the assessment criteria specified in Schedule 1. Due to the extent of change to the approved signage, an assessment against SEPP No. 64 in this case is not warranted. The conclusions made under the recent modification approved (DA-2014/45/03) still stand.

Botany Bay Local Environmental Plan 2013

The provisions of the Botany Bay Local Environmental Plan (BBLEP) 2013 have been considered in the assessment of the Modification Application and the following information is provided:

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Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
Landuse Zone	Yes	The site is zoned B5 – Business Development under the BBLEP 2013.
Is the proposed use/works permitted with development consent?	Yes	The application was approved as a hotel development which continues to be permissible subject to Council's consent.
Does the proposed use/works meet the objectives of the zone?	Yes	The proposed development is consistent with the following objectives of the B5 Business Development zone:  - To enable a mix of business and warehouse uses, and bulky goods premises that require a large floor area, in locations that are close to, and that support the viability of centres.
What is the height of the building?	Yes	The maximum permissible height is 44 metres in accordance with the BBLEP 2013.
Does the height of the building comply with the maximum building height?		The proposed modification to the does not alter the approved height of 29.97 metres (RL 36.37).
What is the proposed FSR?	<b>No – Refer to Note 1</b>	The maximum permissible FSR for the subject site is 3:1 (4,506sqm).
Does the FSR of the building comply with the maximum FSR?		DA-14/45 was approved with an FSR of 3.19:1 (4,836sqm).  DA-14/45/03 was approved with an FSR of 3.38:1 (5,079sqm)  The current proposal seeks an FSR of 3.46:1 (5,197sqm)
Is the site listed in Schedule 5 as a heritage item or within a Heritage Conservation Area?	N/A	The subject site is not heritage listed nor is it within a heritage conservation area.
The following provisions in Part 6 of BBLEP apply– <ul style="list-style-type: none"><li>6.1 – Acid Sulfate Soils</li><li>6.2 – Earthworks</li></ul>	N/A	There is no substantial change to the conclusions approved in DA-14/45.

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Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
<ul style="list-style-type: none"> <li>6.3 – Stormwater Management</li> <li>6.8 – Airspace Operations</li> <li>6.9 – Development in areas subject to aircraft noise</li> </ul>		

#### Note 1 – Variation to the FSR development standard

Discussion in regards to the increase in gross floor area by 118sqm from the approved development has been addressed in modification No. 1 above. The application is a modification therefore a Clause 4.6 variation is not required to be submitted as part of the application. The proposal adopts a similar building footprint, setbacks and landscaped area to what was approved in DA-14/45. The slight increase to the approved FSR will have no adverse impacts to the surrounding streetscape or to the amenity of the adjoining developments. Further the additional FSR is provided wholly within the approved building footprint with no increase to the approved building height. Therefore the slight increase in GFA is acceptable.

#### 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 modified proposal has been assessed against the relevant controls contained in the Botany Bay Development Control Plan 2013 (BBDP 2013) and the following information has been provided:

An assessment against Clause 3A.2 of the BBDP 2013 has been provided below.

Part	Control	Proposed	Complies
3A.2 Parking Provisions	<p>C2 – Car parking provisions shall be provided in accordance with Table 1.</p> <p>Hotels: 1 space for manager; plus 1 space/2 employees; plus 1 space/1.5 rooms; plus 1 taxi pick up/drop off/100 rooms; 2 coach pick-up and set down spaces</p> <p>Additional car parking must be provided for other licensed parts of the use as stipulated in this section of the DCP.</p>	The proposal was approved with a total of 71 car parking spaces. The subject application will lose five car parking spaces which the applicant has stated will be accommodated in the addition on the adjoining site at 10-12 Sarah Street.	<b>No - Refer to modification No. 2 discussion above</b>

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	Note: If development is within 400m from Mascot Station or efficient shuttle bus service is provided, the parking requirement can be reduced to 1 per 2.5 bedrooms		
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*Part 3D – Signage*

This section of the DCP contains controls relating to signage on development. An assessment of the signage proposed has been carried out against SEPP 64 above which prevails over this section of the DCP. The signage proposed is acceptable.

*Part 3J – Aircraft Noise and OLS*

The application was referred to SACL both in the parent application and as part of the proposed modification. The development is located within a 25-30 ANEF Contour and a revised acoustic report has been provided with the submission of the application. The conclusions and conditions imposed from SACL have not changed as the height of the development is retained as approved.

*Part 3N – Waste Minimisation and Management*

An amended waste management plan has been submitted as part of this application however there is no substantial changes proposed other than the relocation of the waste rooms on the ground floor as well as the location of the loading dock. The waste management plan is acceptable.

*Part 6 – Mascot Business Development Precinct*

The site is located within the Mascot Business Development Precinct. Due to the scale of the works proposed as part of this application, an assessment against the controls within Part 6 is not warranted as the conclusions remain the same as approved under DA-2014/45 and any subsequent DAs.

*Part 7F – Hotel and Motel Accommodation*

The following controls have been assessed for the modified hotel development on the site:

Control	Response	Complies
C1 – The maximum stay permitted is 3 months.	A revised plan of management has been submitted with the application and is acceptable.	Yes
C2 – The main access point is to be located at the main street frontage of the property. Access Points should be avoided at the boundaries of the property where and impact on noise or privacy could result for adjoining residences.	The access points to the development are off Sarah Street as approved under DA-14/45.	Yes

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C4 – The minimum size for a visitor's room is 5.5m <sup>2</sup> for the bedroom floor area for each person staying within the room.	The size of the rooms are 20sqm. Accessible rooms are larger around 28-30sqm.	Yes
C7 – A small kitchenette is permitted if adequate cupboards and shelves are provided	The rooms do not contain kitchenettes however the applicant has suggested that tea and coffee making facilities are provided only.	Yes
C9- Bathrooms must be provided in accordance with the Building Code of Australia.	All rooms have separate bathrooms that have been designed in accordance with the BCA requirements.	Yes
C10 – The design and operation of hotel and motel accommodation must take into account possible noise impacts on adjacent properties and the surrounding area.	The modified design has carefully orientated the different uses on each level to manage noise impacts arising from high noise environment.	Yes
C11 – A Plan of Management (POM) is required to be submitted. The POM is a written report which describes how the ongoing operation of hotel and motel accommodation will be managed to reduce its impact upon the amenity of surrounding properties.	A plan of management has been submitted with the modified application and has been appropriately been conditioned.	Yes
C12- The building is to comply with Parts C, D, and E of the BCA	A BCA capability statement has been included as part of the application which demonstrates compliance with the BCA.	Yes
C13 – Each room is to comply with Parts C, D E and F5 of the BCA so as to ensure there is adequate fire safety in the building and adequate sound insulation between each room.	A BCA capability statement has been included as part of the application which demonstrates compliance with the BCA.	Yes

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

The proposed development is not inconsistent with the relevant provisions of the *Environmental Planning and Assessment Regulation 2000*.

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

The proposed modifications relates to amendments to an approved hotel development by increasing the GFA, reducing car parking, puncturing walls on the western façade to integrate the development to the west, signage amendments and modification of conditions and as such, it is considered that the proposed amendment will have no significant adverse environmental, social or economic impacts on the locality. The proposed modifications will

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have no additional environmental impacts beyond those considered by Council during the assessment and determination of DA-2014/45.

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

The suitability of the site was addressed in the original approval of DA-2014/45.

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

In accordance with Part 2 – Advertising and Notification of the Botany Bay Development Control Plan (BBDCP) 2013, the modification application was notified for twenty-eight (28) days between 17 December 2018 to 14 January 2019. No submissions were received as part of the notification period.

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

The proposed amendments will have no significant adverse impact upon the public interest.

## Conclusion

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The Section 4.55(1A) Application seeking to modify Development Consent No. 14/45 to modify an approved hotel to facilitate the integration with adjacent addition at 10-12 Sarah Street Mascot at 2-8 Sarah Street, Mascot, has been assessed in accordance with the relevant requirements of the *Environmental Planning and Assessment Act 1979*.

The proposal is substantially the same development maintaining the approved hotel land use and is consistent with the approved bulk and scale. There is no change to the approved height with a minor increase in the overall FSR from 3.38:1 to 3.46:1. The minor FSR has no visible amenity impacts beyond that which was approved. The proposal continues to achieve similar amenity outcomes to the approved development with respect to overshadowing, visual, acoustic and traffic impacts. The internal layouts, room sizes and dimensions are similar that approved. The loss of five car parking spaces will be compensated in the addition adjoining the site and being assessed concurrently under DA-2018/319.

The modifications put forward for amendment by the applicant in addition to a number of other conditions that relate to the current proposal, have been amended accordingly within the conditions of consent. The modifications predominantly relate to the wording of the conditions being updated to reflect the amended plans in addition to modifying the total indicative car parking numbers, solar panels and public domain timing.

Therefore, the Section 4.55(1A) Modification Application is recommended for approval subject to the conditions (as amended) in the attached Schedule of Consent Conditions.

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## Attachment

### Schedule 1 – Conditions of Consent

**Premises: 2-8 Sarah Street, Mascot**

**DA No: BDA-2014/45/A**

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**GENERAL CONDITIONS**

- 1 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	Dated Received by Council
<del>Architectural Plans, Elevations and Sections and Drawing No.:</del> <del>DA0.00 Cover Sheet (Issue A)</del> <del>DA0.01 Site Analysis &amp; Demolition Plan (Issue A)</del> <del>DA0.02 Site Plan (Issue A)</del> <del>DA1.00 Basement Carpark (Issue A)</del> <del>DA1.01 Ground Floor Plan (Issue A)</del> <del>DA1.02 Level 1 Carpark (Issue A)</del> <del>DA1.03 Level 2-7 Typical Plan (Issue A)</del> <del>DA1.04 Level 8 – Sky Restaurant (Issue A)</del> <del>DA1.05 Roof Plan (Issue A)</del> <del>DA2.01 Section AA (Issue A)</del> <del>DA2.02 North Elevation (Issue A)</del> <del>DA2.03 South Elevation (Issue A)</del> <del>DA2.04 East Elevation (Issue A)</del> <del>DA2.05 West Elevation (Issue A)</del> <del>DA3.02 Shadow Diagram 9am Jun21 Proposed</del> <del>DA3.04 Shadow Diagram 12pm Jun21 Proposed</del> <del>DA3.06 Shadow Diagram 3pm Jun21 Proposed</del> <del>DA4.01 Schedule of Finishes</del>	Fox Johnston	24 June 2014
Site Plan- Existing- Rev <del>14</del> 16		<del>Dated 3 August 2018;</del> <del>Received 6 August 2018</del>

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Drawing No.	Author	Dated Received by Council
		<del>Dated 3 August 2018;</del> <del>Received 6 August 2018</del> Dated 13 November 2018; Received 23 November 2018
Site Plan- Proposed- Rev <del>14</del> 16		<del>Dated 3 August 2018;</del> <del>Received 6 August 2018</del> Dated 13 November 2018; Received 23 November 2018
Basement Plan- Rev <del>14</del> 16		<del>Dated 3 August 2018;</del> <del>Received 6 August 2018</del> Dated 13 November 2018; Received 23 November 2018
Ground Plan- Rev <del>14</del> 16		<del>Dated 3 August 2018;</del> <del>Received 6 August 2018</del> Dated 13 November 2018; Received 23 November 2018
Level 1 Plan- Rev <del>14</del> 16	SJB Architects	<del>Dated 3 August 2018;</del> <del>Received 6 August 2018</del> Dated 13 November 2018; Received 23 November 2018
Level 2 Plan- Rev <del>14</del> 16		<del>Dated 3 August 2018;</del> <del>Received 6 August 2018</del> Dated 13 November 2018; Received 23 November 2018
Typical Plan (Levels 3-7)- Rev <del>13</del> 16		<del>Dated 3 August 2018;</del> <del>Received 6 August 2018</del> Dated 13 November 2018; Received 23 November 2018
Level 8 Plan- Rev <del>14</del> 16		<del>Dated 3 August 2018;</del> <del>Received 6 August 2018</del> Dated 13 November 2018; Received 23 November 2018
Roof Plan- Rev <del>14</del> 16		<del>Dated 3 August 2018;</del> <del>Received 6 August 2018</del> Dated 13 November 2018; Received 23 November 2018
North Elevation- Rev <del>14</del> 16		<del>Dated 3 August 2018;</del> <del>Received 6 August 2018</del> Dated 13 November 2018; Received 23 November 2018
		<del>Dated 3 August 2018;</del> <del>Received 6 August 2018</del> Dated 13 November 2018; Received 23 November 2018

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Drawing No.	Author	Dated Received by Council
South Elevation- Rev <del>14</del> 16		<del>Dated 3 August 2018;</del> <del>Received 6 August 2018</del> Dated 13 November 2018; Received 23 November 2018
East Elevation- Rev <del>13</del> 16		<del>Dated 3 August 2018;</del> <del>Received 6 August 2018</del> Dated 13 November 2018; Received 23 November 2018
West Elevation- Rev <del>14</del> 16		<del>Dated 3 August 2018;</del> <del>Received 6 August 2018</del> Dated 13 November 2018; Received 23 November 2018
Typical Section- Rev <del>14</del> 16		<del>Dated 3 August 2018;</del> <del>Received 6 August 2018</del> Dated 13 November 2018; Received 23 November 2018
GFA Plans- Sheet 1 of 2- Rev <del>14</del> 16		<del>Dated 3 August 2018;</del> <del>Received 6 August 2018</del> Dated 13 November 2018; Received 23 November 2018
GFA Plans- Sheet 2 of 2- Rev <del>14</del> 16		<del>Dated 3 August 2018;</del> <del>Received 6 August 2018</del> Dated 13 November 2018; Received 23 November 2018
Finishes Schedule- Rev <del>14</del> 16		<del>Dated 3 August 2018;</del> <del>Received 6 August 2018</del> Dated 13 November 2018; Received 23 November 2018
LD-DA001- Material Finishes- Rev B	Scott Carver	Dated 3 July 2018; Received 6 August 2018
LD-DA002- Planting Palette- Rev A		Dated 8 June 2018; Received 8 6 August 2018
LD-DA003- Planting Schedule- Rev B		Dated 3 July 2018; Received 6 August 2018
LD-DA100- Ground Floor Landscape General Arrangement- Rev C		Dated 3 July 2018; Received 6 August 2018

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Drawing No.	Author	Dated Received by Council
LD-DA110-Llevel 2 landscape general arrangement- Rev A		Dated 8 June 2018; Received 8 6 August 2018
LD-DA200- North Elevation- Rev A		Dated 8 June 2018; Received 8 6 August 2018
LD-DA210- East Elevation- Rev B		Dated 3 July 2018; Received 6 August 2018
Landscape Plans DA01 – Ground Floor DA02 – Typical Level & Schedule	JILA	28 February 2014
Stormwater Drainage Plans, Drawing Nos.: SW01 Cover Sheet Rev A SW02 Concept Stormwater Design Ground Floor Sheet 1 Rev A SW03 Concept Stormwater Design Ground Floor Sheet 2 Rev A SW04 Erosion & Sediment Control Plan Rev A SW05 Concept Stormwater Design Details Rev A	IGS	February 2014
CI-000-01- Cover Sheet- Rev A	Wood and Grieve Engineering	Received 15 June 2018
CI-070-01- Sediment and Erosion Control Plan- Rev B		Dated 14 June 2018; Received 15 June 2018
CI-076-01- Sediment and Erosion Control Details- Rev A		Dated 6 June 2018; Received 15 June 2018
CI-520-01- Stormwater Management Plan - Basement Floor- Rev C		Dated 14 June 2018; Received 15 June 2018
CI-520-02- Stormwater Management Plan - Ground Floor- Rev C		Dated 14 June 2018; Received 15 June 2018
CI-520-03- Stormwater Management Plan - First Floor- Rev C		Dated 14 June 2018; Received 15 June 2018

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Drawing No.	Author	Dated Received by Council
CI-526-01- Stormwater Management Details- Rev A		Dated 6 June 2018; Received 15 June 2018

(DA-14/45/03) (**BDA-2014/45/A**)

Document(s)	Author	Date received by Council
Statement of Environmental Effects	ABC Planning URBIS	<del>11 March 2014 updated 26 June 2014</del> Dated 12 June 2018; Received 15 June 2018
<del>Construction Management Plan/</del> Traffic Management Plan	Construction Rescue Services	11 March 2014
Construction Management Plan	Taylor	Dated 28 May 2018; Received 15 June 2018
Waste Management Plan	<del>Fox Johnston Pty Ltd</del> <b>Foresight Environmental</b>	<del>11 March 2014</del> <del>Dated 8 June 2018;</del> <del>Received 15 June 2018</del> <b>Received 23 November 2018</b>
Preliminary Geotechnical Investigation Report NO. E22020GA	Environmental Investigations Australia	11 March 2014
BCA Capability Report	Vic Lilli & Partners Blackett, Maguire and Goldsmith	11 March 2014 <del>Dated 6 June 2018;</del> <del>Received 15 June 2018</del> <b>Dated 16 November 2018;</b> <b>Received 23 November 2018</b>
Traffic Impact Assessment	Traffix Ason group	<del>11 March 2014 -updated 19 June 2014</del> <del>Dated 6 June 2018;</del> <del>Received 15 June 2018</del> <b>Dated 19 November 2018;</b> <b>Received 23 November 2018</b>
Acoustic Report	Acoustic Logic	17 April 2014
Acoustic Statement	WSP	Dated 29 May 2018; Received 15 June 2018
ESD & Energy Efficient Report	SLR Cundall	11 March 2014 Dated 8 June 2018; Received 15 June 2018

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Document(s)	Author	Date received by Council
MitchelBrandtman Quantity Surveyors Report	MitchelBrandtmanTr affix	Revised – 30 June 2014
Qualitative Wind Turbulence Report	SLR	<del>20 June 2014</del> Dated 7 June 2018; Received 15 June 2018
Plan of Management	-	<del>Dated June 2018; Received 15 June 2018</del> Dated October 2018; Received 23 November 2018
Gross Floor Area Calculations	- SDG	<del>Dated 14 June 2018; Received 15 June 2018</del> Dated 15 November 2018; Received 23 November 2018
Design Verification Statement	- SJB Architects	Dated 13 June 2018; Received 15 June 2018
Demolition Workplan	- Mann Group NSW	Dated 10 May 2018; Received 15 June 2018
Arborist Report	- The Ents Tree Consultancy	Dated 3 August 2018; Received 6 August 2018
Parking Statement	- ASON Group	Dated 6 August 2018; Received 6 August 2018
<b>Addendum Letter relating to conditions</b>	<b>Urbis</b>	<b>Dated 20 February 2019; Received 1 March 2019</b>
<b>Section 4.55(1A) Statement of Environmental Effects</b>	<b>Urbis</b>	<b>Dated 22 November 2018; Received 23 November 2018</b>
<b>Solar System</b>	<b>Wood and Grieve Engineers</b>	<b>Dated 19 February 2019; Received 1 March 2019</b>

(DA-14/45/03) **(BDA-2014/45/A)**

No construction works (including excavation) shall be undertaken prior to the issue to the Construction Certificate.

- 2 The applicant must prior to the ~~release of the stamped plans~~ issue of the construction certificate, pay the following fees:

- |     |                           |                                       |
|-----|---------------------------|---------------------------------------|
| (a) | Builders Security Deposit | \$100,000.00;                         |
| (b) | Development Control       | \$1,350.00;                           |
| (c) | Tree Maintenance Bond     | \$3,000.00                            |
| (d) | Section 94 Contribution   | <del>\$136,731.72</del> \$161,986.76. |

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Note:

- (i) Condition 2(a) has been assessed on the basis that construction site access is only permitted from Sarah Street.
- (ii) ~~The Section 94 Contribution is to be paid prior to the issue of the Occupation Certificate. 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.~~

(DA-14/45/03)

- 3 This Consent relates to land in Lot 1 DP 236339; Lot 2 DP 236339; Lot 3 DP236339; Lot 4 DP 236339; Lot 1 DP 262142; Lot 2 1 DP 262141 DP 1232424 and as such, building works must not encroach on to adjoining lands or the adjoining public place, other than public works required by this consent. (DA-14/45/03)
- 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:
    - The consent authority; or,
    - An accredited certifier; and,
  - (b) The person having the benefit of the development consent:
    - Has appointed a principal certifying authority; and
    - Has notified the consent authority and the Council (if the Council is not the consent authority) of the appointment; and,
    - 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
  - (a) All building work must be carried out in accordance with the provisions of the Building Code of Australia; and
  - (b)
    - (i) The basement car park must be designed and built as a "fully tanked" structure; and
    - The limitations of the BCA Performance Provision FP1.5 do not apply to the Class 7 part of the building.
- 6 No signage, other than ***signage shown on approved amended plans or*** signage permitted as exempt or complying development, shall be installed or displayed at the premises without a development application being lodged with Council and consent thereto being given by Council in accordance with Council's guidelines and SEPP 64. (DA-14/45/03)

#### **CONDITIONS IMPOSED BY AN EXTERNAL AUTHORITY**

- 7 The following conditions are imposed by the NSW Roads and Maritime Services (RMS).

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- (a) Any proposed buildings or structures must be erected clear of Robey and O'Riordan Street corridors (unlimited in height and depth) and the identified easement;
- (b) Access to the RMS easement is not to be denied;
- (c) The integrity of the easement is not to be compromised

**Note:** While no part of the subject property is required under any current project approved by Roads and Maritime Services (RMS), the property is within an area under investigations for the widening of O'Riordan Street. Any possible effect on individual properties has not been determined at this time. Any enquiries in regard to this investigation should be referred to Kate Lunny on Tel: 8849 2214 or by email: [Kate.Lunny@rms.nsw.gov.au](mailto:Kate.Lunny@rms.nsw.gov.au)

- (d) The developers should be aware of the potential for the existing and future road traffic noise impact from O'Riordan Street to the development on the subject site. The developer should provide and maintain noise attenuation measures in accordance with EPS's Environmental Criteria for Road Traffic noise. RMS will not provide noise mitigation for future residences on the subject land. RMS's Environmental Noise Management Manual provides practical advice in selecting noise mitigation treatments;
- (e) The developer is to submit detailed documents and geotechnical reports relating to the excavation of the site and support structures to RMS for approval in accordance with Technical Direction (GTD2012/001);
- (f) Council should ensure that post development storm water discharge from the subject site into the RMS drainage system does not exceed the pre development discharge;

Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system are to be submitted to the RMS for approval, prior to the commencement of any works. Details should be forwarded to:-

The Sydney Asset Management  
PO Box 973  
Parramatta CBD NSW 2124

A plan checking fee may be payable and a performance bond may be required before the RMS's approval is issued. With regard to the Civil Works requirement please contact the RMS's Project Engineer, External Works Tel: 8849 2144 or Fax: 8849 2766;

- (g) The layout of the proposed car parking areas and access driveways associated with the subject development (including grades, turn paths, sight distance requirements, aisle widths, aisle lengths, and parking bay dimensions) should be in accordance with AS2890.1-2004;
- (h) Off street parking shall be designed and constructed in accordance with AS2890.1-2004;
- (i) All work associated with the proposed development shall be at no cost to RMS.

8 The following conditions are imposed by Ausgrid:

- (a) The Applicant shall make provision for a substation(s). The size and type of substation(s) required cannot be confirmed until a completed Connection Application with load details has been received by Ausgrid;

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**Note:** Connections to Ausgrid's network are governed by Chapter 5A of the National Electricity Rules. Under these rules, a binding contract may be formed only after a connection application is lodged and Ausgrid has made a connection offer in response to that application. Accordingly Ausgrid cannot make any representation concerning electricity supply to your development. A duly completed connection application should be lodged as soon as possible to allow Ausgrid to respond to your Council's conditions of consent and to ensure electricity supply is available when your development is ready to be connected.

- 9 The following conditions are imposed by NSW Office of Water:

General

- (a) An authorisation shall be obtained from NSW Office of Water for the take of groundwater as part of the activity. Groundwater shall not be pumped or extracted for any purpose other than temporary construction dewatering at the site identified in the development application. The authorisation shall be subject to a currency period of 12 months from the date of issue and will be limited to the volume of groundwater take identified in the authorisation.
- (b) The design and construction of the building must prevent any take of groundwater after the authorisation has lapsed by making any below-ground levels that may be in contact with groundwater watertight for the anticipated life of the building. Waterproofing of below-ground levels must be sufficiently extensive to incorporate adequate provision for reasonably foreseeable high water table elevations to prevent potential future inundation.
- (c) Construction methods and material used in and for construction shall be designed to account for the likely range of salinity and pollutants which may be dissolved in groundwater, and shall not themselves cause pollution of the groundwater.

Prior to excavation

- (d) Measurements of groundwater levels beneath the site from a minimum of three monitoring bores shall be taken. These measurements should be included in a report provided to the NSW Office of Water in support of the dewatering licence application, along with a schedule and indicative level predictions for the proposed ongoing water level monitoring from the date of consent until at least two months after the cessation of pumping shall be included in the report.
- (e) A reasonable estimate of the total volume of groundwater to be extracted shall be calculated and a report provided to the NSW Office of Water. Details of the parameters (e.g. permeability predicted by slug-testing, pump-testing or other means) and calculation method shall be included in the report submitted to the NSW Office of Water in support of the dewatering licence.
- (f) A copy of a valid development consent for the project shall be provided in the report to the NSW Office of Water.
- (g) Groundwater quality testing shall be conducted on a suitable number of samples using a suitable suite of analytes and completed by a NATA-certified laboratory, with the results collated and certificates appended to a report supplied to the NSW Office of Water. Samples must be taken prior to the substantial commencement of dewatering, and a schedule of the ongoing testing throughout the dewatering activity shall be included in the report. Collection and testing and interpretation of results must be done by suitably

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qualified persons and NATA certified laboratory identifying the presence of any contaminants and comparison of the data against accepted water quality objectives or criteria.

- (h) The method of disposal of pumped water shall be nominated (i.e. reinjection, drainage to the stormwater system or discharge to sewer) and a copy of the written permission from the relevant controlling authority shall be provided to the NSW Office of Water. The disposal of any contaminated pumped groundwater (sometimes referred to as "tailwater") must comply with the provisions of the Protection of the Environment Operations Act 1997 and any requirements of the relevant controlling authority.
- (i) Contaminated groundwater (i.e. above appropriate NEPM 2013 investigation thresholds) shall not be reinjected into any aquifer without the specific authorisation of the NSW Environment Protection Authority (any such discharge would be regulated through a licence issued under the Protection of the Environment Operations Act 1997 [POEO Act]). The reinjection system design and treatment methods to remove contaminants shall be nominated and a report provided to the NSW Office of Water. The quality of any pumped water that is to be reinjected must be compatible with, or improve the intrinsic or ambient groundwater in the vicinity of the reinjection site.

During excavation

- (j) Engineering measures designed to transfer groundwater around the basement shall be incorporated into the basement construction to prevent the completed infrastructure from restricting pre-existing groundwater flows.
- (k) Piping, piling or other structures used in the management of pumped groundwater shall not create a flooding hazard. Control of pumped groundwater is to be maintained at all times during dewatering to prevent unregulated off-site discharge.
- (l) Measurement and monitoring arrangements to the satisfaction of the NSW Office of Water are to be implemented. Monthly records of the volumes of all groundwater pumped and the quality of any water discharged are to be kept and a report provided to the NSW Office of Water after dewatering has ceased. Daily records of groundwater levels are to be kept and a report provided to the NSW Office of Water after dewatering has ceased.
- (m) Pumped groundwater shall not be allowed to discharge off-site (e.g. adjoining roads, stormwater system, sewerage system, etc.) without the controlling authorities approval and/or owners consent. The pH of discharge water shall be managed to be between 6.5 and 8.5. The requirements of any other approval for the discharge of pumped groundwater shall be complied with.
- (n) Dewatering shall be undertaken in accordance with groundwater-related management plans applicable to the excavation site. The requirements of any management plan (such as acid sulfate soils management plan or remediation action plan) shall not be compromised by the dewatering activity.
- (o) The location and construction of groundwater extraction works that are abandoned are to be recorded and a report provided to the NSW Office of Water after dewatering has ceased. The method of abandonment is to be identified in the documentation.
- (p) Access to groundwater management works used in the activity is to be provided to permit inspection when required by the NSW Office of Water under appropriate safety procedures.

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Following excavation

- (q) All monitoring records must be provided to the NSW Office of Water after the required monitoring period has ended together with a detailed interpreted hydrogeological report identifying all actual resource and third party impacts.

10 The following conditions are imposed by RailCorp and must be complied with:

- (a) If required by Sydney Trains, prior to the commencement of works and prior to the issue of the Occupation Certificate, 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 deterioration during construction to be observed. The submission of a detailed dilapidation report will be required unless otherwise notified by Sydney trains;
- (b) 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".
- (c) 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.
- (d) If required by Sydney Trains, prior to the issue of a Construction Certificate a Risk Assessment/Management Plan and detailed Safe Work Method Statements (SSWMS) for the proposed works are to be submitted to Sydney Trains for review and comment on the impacts on rail corridor. The Principle 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.
- (e) 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 for the development and must comply with all Sydney Trains requirements. 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.
- (f) If required by Sydney Trains, a track/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 Principle 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 track monitoring plan, and if required, that it has been endorsed.
- (g) All works are to be undertaken in accordance with the details, methodology, advice, undertakings and recommendations detailed in the following documents:
  - Excavation Methodology for proposed Development in Proximity to Rail Tunnel – Hotel International 2-8 Sarah Street, Mascot by Taylor Thomson Whitting (NSW) Pty Ltd, document no 141353 dated December 2014;

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- Douglas Partners memorandum dated 4 March 2015 "Response to TfNSW Comments 2-8 Sarah Street, Mascot".

11 The following conditions are imposed by the Sydney Airport Corporation Limited (SACL) and must be complied with:

- (a) The PROPERTY DEVELOPMENT at 2-8 SARAH STREET MASCOT 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 this Corporation.
- (b) The Civil Aviation Safety Authority (CASA) have no objection to the proposed development to a maximum height of 36.37 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 the above height, a new application must be submitted. 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. SACL advises that approval to operate construction equipment (ie cranes) should be obtained prior to any commitment to construct. Information required by SACL prior to any approval is to include:
  - the location of any temporary structure or equipment, i.e. construction cranes, planned to be used during construction relative to Mapping Grid of Australia 1994 (MGA94);
  - the swing circle of any temporary structure/equipment used during construction;
  - the maximum height, relative to Australian Height Datum (AHD), of any temporary structure or equipment ie. construction cranes, intended to be used in the erection of the proposed structure/activity;
  - the period of the proposed operation (ie. construction cranes) and desired operating hours for any temporary structures.
- (e) 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.
- (f) For further information on Height Restrictions please contact Mr Peter Bleasdale on 02 9667 9246.
- (g) 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 point.
- (h) The height of the prescribed airspace at the site is 51.0 metres above Australian Height Datum (AHD). In accordance with Regulation 9 of the Airports (Protection of Airspace) regulations Statutory Rules 1996 No 293, "a thing to be used in erecting the building, structure or thing would, during the erection of the building, structure or thing, protrude into PANS OPS airspace for the Airport, cannot be approved.

Bird and obstacle Hazard Management

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- (i) The area in which the proposed development is located in the vicinity of Sydney (KS) Airport. To minimise the potential for bird habitation and roosting, the Proponent must ensure that non-bird attracting plant species are used in any landscape design.
- (j) 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.
- (k) All trees to be planted shall not be capable of intruding into the Obstacle Limitation Surface when mature.

Planning for Aircraft Noise and Public Safety Zones

**Note:** 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 the land planning tool for Sydney Airport was endorsed by Airservices on 13 March 2009 (Sydney Airport 2029 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.

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

- 12 Prior to the issue of any Construction Certificate, at the proposed point of construction site entry, photographic survey showing the existing conditions of Council's infrastructure shall be submitted to Council and Principal Certifying Authority.  
  
The survey shall detail the physical conditions and identify any existing damages to the roads, kerbs, gutters, footpaths, driveways, street trees, street signs and any other Council assets fronting the property and extending to a distance of 50m from the development. Failure to do so may result in the applicant/developer being liable for any construction related damages to these assets. Any damage to Council's infrastructure during the course of this development shall be restored at the applicant's cost.
- 13 Prior to the issue of a the relevant Construction Certificate and subject to the approval of the Civil Aviation Safety Authority (CASA), the applicant is to provide roof-mounted solar collector panels below a height of RL51m AHD to the rooftop **are** area of the building. ~~The collectors shall collect sufficient electricity to supply at least 20% of the building's energy requirements.~~ Details of the panel system **and demonstration that the use of available roof space has been optimised** are to be provided with the Construction Certificate, ~~including the approval of CASA. (BDA-2014/45/A)~~
- 14 A Construction Management Program shall be submitted to, and approved in writing by the Council prior to the issue of a Construction Certificate. The program shall detail:
  - (a) The proposed method of access to and egress from the site for construction vehicles, including access routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic

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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.

**Note:** A crane may require prior approval from Sydney Airports Corporation.

The location of any Construction Zone (if required) approved by Council's Traffic Committee, including a copy of that approval.

- 15 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 O'Riordan St is required, the applicant is to submit documentary evidence to the Principle 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.

- 16 Prior to the release of the Construction Certificate, the following required section(s) are to be submitted to and approved by Council:
  - (a) All driveways/access ramps/vehicular crossings shall conform with Australian Standards AS 2890.1.
  - (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.
- 17 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.
- 18 Prior to the issue of any Construction Certificate, detail design and construction plans in relation to stormwater management and disposal system for the development shall be submitted to the Principal Certifying Authority for approval.

(The detail drawings and specifications shall be prepared by a suitably qualified and experienced civil engineer and to be in accordance with Council's Development Control Plan 'Stormwater Management Technical Guidelines', AS/NSZ 3500 – Plumbing and Drainage Code and the BCA. All drawings shall correspond with the approved architectural plans.)

The plans shall incorporate but not be limited to the following:

  - (a) Provision of an On-site Infiltration system in accordance with but not limited to Part 5 of the SMTG. A part infiltration, part OSD system may be considered in exceptional circumstances when it can be demonstrated to Council that all other options to regulate the discharge from the site have been exhausted,
  - (b) Infiltration rates shall be determined by a suitably qualified geotechnical engineer and shall be part of the geotechnical report submitted to Council or alternatively the rate of 0.25L/m<sup>2</sup>/s shall be used,
  - (c) Provision of a minimum 10kL rainwater tank collection system for internal reuse in accordance with Section 4 of Botany Bay's SMTG,
  - (d) No pump-out shall be used to drain seepage from the basement due to the elevated water table level. That is the basement shall be designed as a "fully tanked" structure,
  - (e) The pump-out can only be utilized to dispose runoff that may enter the basement carpark from driveway access to the basement,
  - (f) The pump out system from the basement carpark proposed shall discharge to the on-site stormwater infiltration system,
  - (g) Incorporate a Stormwater Quality Improvement system to ensure compliance with Section 16 of Botany Bay's SMTG,

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- (h) The water quality improvement system and WSUD strategy proposal shall be designed to capture and treat at least 85% flows generated from the site.
  - (i) Any proposed discharge to Council and/or RMS Kerb and Gutter shall be limited to 10L/s. If a higher rate is proposed, a connection shall be made to RMS/Council's underground stormwater drainage system. Any connection to a Sydney Water or RMS stormwater system will require specific approval from the relevant organisation, and
  - (j) The submission of detailed calculations including computer modelling where required to support the proposal.
- 19 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.
- 20 The measures in the acoustical report prepared by Acoustic Logic, dated 17th April 2014, 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.
- 21 An Erosion and Sediment Soil and Water Management Plan (ESCP) shall be prepared in accordance with the Landcom Managing Urban Stormwater – Soils and Construction 4th Edition (2004) and submitted to the Principal Certifying Authority prior to the release of the Construction Certificate.
- This plan shall be implemented prior to commencement of any site works or activities. All controls in the plan shall be maintained at all times during the construction works. A copy of the ESCP shall be kept on-site at all times and made available to Council Officers on request.
- 22 A sufficient area shall be provided onsite to enable separate stockpiling of excavated materials for sampling and analysis prior to removal or reuse on site. Details of this area shall be provided in the Erosion and Sediment Control Plan (ESCP) prior to the release of the construction certificate.
- This plan shall incorporate and reference the construction environmental management plan and address site limitations.
- 23
- (a) As part of this development, the Ausgrid power and lighting poles along Sarah, O'Riordan and Robey Streets will need to be decommissioned and new underground and above ground infrastructure shall be provided as specified by Ausgrid or any other affected service provider. The location of the new electrical pillars and new lighting poles shall be confirmed with Council prior to the issue of the Construction Certificate.
  - (b) Any costs in the relocation, adjustment, and provision of land or support of services as requested by the service authorities and Council are to be the responsibility of the developer.

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- 24 A Stage 3 – Remedial Action Plan (RAP) shall be prepared by a suitably qualified and experienced contaminated land consultant and in accordance with:
- (a) NSW Office of Environment and Heritage (OEHS) '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.
- 25
- (a) The RAP shall incorporate all findings and recommendations and address any data gaps identified in the Phase 1 Preliminary Site Assessment and Phase 2 Detailed Site Assessment for the site, specifically it shall:
    - (i) Outline a regime to delineate the extent of the identified fibrous cement sheeting;
    - (ii) Incorporate a regime for analysis of soil down-gradient of the fuel tank and associated pipework to a depth of at least 3.5 metres below ground level;
    - (iii) Outline the removal of the lead hotspot identified, as well as the known underground storage tank (UST) and all associated pipework and infrastructure; and
    - (iv) Outline testing for Environmental Investigation Levels in landscaping areas.
  - (b) The RAP shall clearly state proposed clean-up objectives, and demonstrate how the site will be made suitable for the proposed residential use.
  - (c) The RAP shall be submitted to Council for review and concurrence 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.
- 26 The landscape areas shown on the landscape plan dated ~~28.02.14~~ 3.7.2018 prepared by Scott Carver shall be the subject of detailed landscape construction documentation (plans and specifications) that are to be submitted to and approved by Council. The landscape documentation is to be prepared by a suitably qualified Landscape Architect, in accordance with Council's Landscape DCP. The detailed (construction level) plan shall include, but not be limited to: (DA-14/45/03)
- (a) A site plan showing building envelopes, paved areas and areas to be landscaped.
  - (b) A planting plan at 1:100 scale showing all plant locations, groupings and centres. There is to be a dense 3-tier planting of trees, shrubs and groundcovers in all landscaped areas.
  - (c) A plant schedule listing all plants by botanical name, total plant numbers, plant spacings, pot sizes and staking.
  - (d) Specifications detailing soil and mulch finishes, root barriers, irrigation, edging and other landscape hardworks such as retaining walls.
  - (e) Areas of paving, schedule of materials, edge treatments and sectional construction details.

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- (f) All fencing, privacy screening and pergolas – elevations and materials.
  - (g) Details of other landscape elements such as furniture, pedestrian lighting, sculpture and water features. Provide sectional construction details and elevations.
  - (h) Planter box on slab sectional details. Planter box depths to be in accordance with Council's Landscape DCP.
  - (i) Trees shall be used extensively throughout the site – particularly in the setbacks. Trees must be of an appropriate scale to complement and scale with the building form and to pedestrianize landscaped open spaces. Trees to be predominantly native, evergreen species using open canopy evergreens or selected deciduous for solar penetration. Additional trees shall be provided along the setback at the corner of Robey St & O'Riordan Street.
  - (j) Show the location of electrical kiosks and fire booster valves. Comply with conditions relating to their location and treatment.
- 27 Prior to the issue of a Construction Certificate, the applicant is to submit payment for a Street Tree Maintenance Bond of \$3,000. The duration of the Bond shall be limited to a period of 12 months after planting of the new street trees. At the completion of the 12 month period the Bond shall be refunded pending a satisfactory inspection of the tree by Council. If the tree is found to be dead or dying then Council will forfeit all or part of the bond to replace or maintain the tree, unless the Applicant undertakes this work.
- 28 Prior to the issue of a Construction Certificate, a public domain improvements plan shall be submitted for approval by Council. The Plan shall be undertaken by a suitably experienced Landscape Architect and shall include but not be limited to new street tree planting, footpath paving, lighting. The Plan shall be in accordance with Council's City Identity Program, Landscape DCP and any other Council specification or requirement. Civil drawings shall be included detailing levels and detailed footpath construction sections in accordance with Council's Engineering Services requirements. The plan shall include the following improvements:
- (a) Street trees shall be installed in the two western sections of the Sarah Street naturestrip as follows:
    - (i) Four (4) x *Corymbia maculata*, min. height 2.5 metres and pot size 200 litre, shall be installed in the Sarah Street nature strip at 7-8 metre centres.
    - (ii) Trees shall be sourced from a reputable supplier that grows to NATSPEC.
    - (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, and mulched with leaf mulch to a depth of 100mm. The trees are to be staked in accordance with Council's Landscape DCP and NATSPEC recommendations.
    - (v) The tree pits shall include *Dianella 'Breeze'* understory planting.

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- (vi) The Applicant is required to obtain a Council inspection of new trees prior to the planting to ensure plant stock is suitable and post planting prior to the maintenance period commencing.
  - (vii) Rigid polyethylene sheet type tree root barriers shall be installed alongside the kerb and footpath edge for all new street trees for a depth of 900mm, for 3 metres each side of the tree centre and shall be located 150mm inward of the footpath and kerb edge, or any other built element. Root deflectors/directors surrounding the rootball are not permissible. The Applicant is required to contact Council's Landscape Architect for an inspection of root barriers located within the public domain prior to backfilling and turfing.
  - (b) Unit paved footpaths to Council's Landscape Architect's specification.
    - (i) Sarah Street – 3 metres wide with planted street tree pits as per above
    - (ii) O'Riordan Street – 3 metres wide
    - (iii) Robey Street – 1.5 metres wide (plus retention of existing pedestrian barrier)
    - (iv) All footpaths to be adjacent to kerb.
  - (c) On Sarah Street adjacent to the development reconstruct:
    - (i) existing Kerb and Gutter for the full length of the property in accordance with Council Infrastructure Specifications;
    - (ii) ~~half width of the road asphalt, in accordance with Council's Infrastructure Specifications. (BDA-2014/45/A)~~
  - (d) Construction hold points and Council inspections are required at the following points:
    - (i) after formwork installation and to prior pouring the concrete blinding slab,
    - (ii) at the commencement of paving works, and
    - (iii) at final completion.
- 29 Planter boxes constructed over a concrete slab shall be built in accordance with the following requirements:
- (a) Ensure soil depths in accordance with Council's Landscape DCP. The base of the planter must be screeded to ensure drainage to a piped 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

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- a proprietary brand filter fabric and backfill with an imported lightweight soil suitable for planter boxes compliant with AS 4419 and AS 3743.
- (e) Finish externally with a suitable paint, render or tile to co-ordinate with the colour schemes and finishes of the building.
- 30 The Applicant shall submit to Council details of the construction and fit out of the food premises. Such details must demonstrate compliance with the following requirements:
- (a) the Food Act 2003,
  - (b) Food Regulations 2004;
  - (c) the Food Standards Code as published by Food Standards Australia and New Zealand; and
  - (d) the Australian Standard AS 4674-2004: Construction and fit out of food premises.
- Details to be submitted to the Principal Certifying Authority prior to the release of the Construction Certificate.
- 31 Prior to the issue of the Construction Certificate the required Long Service Levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act 1986 has to be paid. The Long Service Levy is payable at 0.35% of the total cost of the development, however this is a State Government Fee and can change without notice.

**CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE COMMENCEMENT OF ANY DEVELOPMENT AT WORK**

- 32 The Development is to be constructed to meet the requirements detailed in the approved acoustic report (Acoustic Logic, Dated 30th January 2014), and the following construction noise requirements:
- (a) 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) Construction period of 4 weeks and under:  
the L<sub>10</sub> 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 20 dB(A).
  - (c) Construction period greater than 4 weeks and not exceeding 26 weeks:  
the L<sub>10</sub> sound pressure level measured over a period of not less than 15 minutes when the construction site is in operation must not exceed the background level by more than 10 dB(A).
  - (d) Time Restrictions
    - (i) Monday to Friday 07:00 am to 06:00 pm
    - (ii) Saturday 07:00 am to 04:00 pm
    - (iii) No Construction to take place on Sundays or Public Holidays.
  - (e) All possible steps should be taken to silence construction site equipment.

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- (f) Throughout the construction period, Council's warning sign for soil and water management shall be displayed on the most prominent point of the building site, visible to both the street and site workers. A free copy of the sign is available from Council's Customer Service Counter.
- 33 All management measures recommended and contained within the erosion and sediment Control Plan (ESCP) submitted as part of the construction certificate shall be implemented in accordance with the *Landcom Managing Urban Stormwater – Soils and Construction 4<sup>th</sup> 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.
- 34 Erosion and sediment control devices shall be installed and functioning prior to the commencement of any demolition, excavation or construction works upon the site in order to prevent sediment and silt from site works (including demolition and/or excavation ) being conveyed by stormwater into public stormwater drainage system, natural watercourses, bushland and neighbouring properties. In this regard, all stormwater discharge from the site shall meet the legislative requirements and guidelines.
- 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.
- 35 Where any shoring is to be located on or is supporting Council's property, or any adjoining private property, engineering drawings certified as being adequate for their intended purpose by an appropriately qualified and practising structural 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.
- 36
- (a) The applicant shall arrange with NSW Road and Maritime Services (RMS) for any required Road Occupancy Licence prior to commencement of any road works; and
- (b) The applicant shall submit documentary evidence to the Principal Certifying Authority that the required Section 138 Consent under the Roads Act, 1993 has been issued by the Roads and Maritime Service (RMS).
- 37 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:
- (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;

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- (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;
- (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 Engineers for approval, which may impose special conditions that shall be strictly adhered to by the applicant(s)).

- 38 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.
- 39 A sign must be erected in a prominent position on any work site on which work involved in the erection 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

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- (e) any such sign is to be removed when the work has been completed.

40 All works carried out on the public roads shall be inspected and approved by Council's engineer. Documentary evidence of compliance with Council's requirements shall be obtained prior to proceeding to the subsequent stages of construction, encompassing not less than the following key stages:

- (a) Initial pre-construction on-site meeting with Council's engineers to discuss concept and confirm construction details, traffic controls and site conditions/constraints prior to commencement of the construction of the civil works associated with the road widening;
- (b) Prior to placement of concrete (kerb and gutter and footpath);
- (c) Prior to construction and placement of road pavement materials; and
- (d) Final inspection.

**Note:** Council's standard inspection fee will apply to each of the above set inspection key stages. Additional inspection fees may apply for additional inspections required to be undertaken by Council.

#### **DURING WORKS**

41 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 Environmental Protection Authority (NSW EPA) guidelines under the Contaminated Land Management Act 1997;
- (c) State Planning Policy 55 (SEPP 55) – Remediation of Land;
- (d) Any recommendations contained in the Environmental Investigations (10 March 2014) '*Baxter International Hotel – Environmental Site Assessment – 2-8 Sarah Street, Mascot*';
- (e) The remedial Action Plan (RAP) required to be submitted prior to the issue of the Construction Certificate.

42 Any material containing asbestos found on site during the demolition process shall be removed and disposed of in accordance with:

- (a) WorkCover NSW requirements. An appropriately licensed asbestos removalist and must complete all asbestos works if they consist of the removal of more than 10m<sup>2</sup> 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.

43 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.

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- 44 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.
- 45 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.
- 46 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;
  - (b) Protection of the Environment Operations Act 1997; and
  - (c) Protection of the Environment Operations (Waste) Regulation 2005.
- 47 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.
- 48 During demolition, excavation, 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.
- 49 The following shall be complied with at all times:
  - (a) The applicant shall conduct all construction and related deliveries wholly on site. If any use of Council's road reserve is required then separate applications are to be made at Council's Customer Services Department;
  - (b) Construction operations such as brick cutting, washing tools or brushes and mixing mortar shall not be carried out on public roadways or footways or in any other locations, which could lead to the discharge of materials into the stormwater drainage system or onto Council's lands;
  - (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; and

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- (e) Shaker pads shall 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.
- 50 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.
- 51 If an excavation associated with the proposal extends below the level of the base of the footings of a building on an adjoining allotment of land or the common boundary fence the person causing the excavation to be made:
- (a) Must preserve and protect the building/ fence from damage; and,
  - (b) If necessary, underpin and support such building in an approved manner;
  - (c) Must at least be 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of the intention to do so to the owner of the adjoining allotment of land and, furnish particulars of the excavation to the owner of the building being erected or demolished;
  - (d) Any retained existing structures and or services on this and adjoining properties are not endangered during any demolition excavation or construction work associated with the above project. The applicant is to provide details of any shoring, 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 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.
- 52 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.
- 53 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.
- 54 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 Principal contractor shall ensure that all practical means are applied to minimise dust and odour from the site. This includes:

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- (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;
- (g) Keeping excavated surfaces moist.

55 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.

56

- (a) All imported fill shall be validated in accordance with Department of Environment and Conservation approved guidelines to ensure that it is suitable for the proposed development from a contamination perspective. Imported fill shall be accompanied by documentation from the supplier, which certifies that the material is suitable for the proposed residential/recreational land use and not contaminated based upon analyses of the material;
- (b) Any soil disposed of offsite shall be classified in accordance with the procedures in the Department of Environment and Climate Change Waste Classification Guidelines (2008), prior to being disposed of to a NSW approved landfill or to a recipient site;
- (c) Any material containing asbestos found on site during excavation shall be removed and disposed of in accordance with:
  - (i) WorkCover NSW requirements. An appropriately licensed asbestos removalist must complete all asbestos works if they consist of the removal of more than 10sqm of bonded asbestos and/or any friable asbestos;
  - (ii) Protection of the Environment Operations Act 1997;
  - (iii) Protection of the Environment Operations (Waste) Regulation;
  - (iv) DECC Waste Classification Guidelines 2008.

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

57 Section 94 Contributions are required to be paid in accordance with Condition 2(d) above, the City of Botany Bay being satisfied that the proposed development will increase demand for services and facilities within the area, and in accordance with Council's Section 94 Contribution Plans 2005-2010 a sum of \$136,731.72 \$161,986.76 listed below towards the provision of services is to be paid to Council prior to the issuing of an Occupation any Construction Certificate either interim or final.

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(i)	Community Facilities	<del>\$14,504.00</del>	\$17,182.96
(ii)	Administration	<del>\$2,352.00</del>	\$ 2,786.43
(iii)	Shopping Centre Improvements	<del>\$10,528.00</del>	\$12,472.57
(iv)	Open Space & Recreation	<del>\$97,720.00</del>	\$115,769.37
(v)	Transport Management	<del>\$11,627.72</del>	\$13,775.42
(DA-14/45/03)			

58 Prior to the issue of the Occupation Certificate:

- (a) Replace all the existing above ground electricity and telecommunication cables to underground cables that adjoin the site and road reserve area fronting both Sarah Street, O'Riordan Street and Robey Street in accordance with the guidelines and requirements of the relevant utility authorities and Ausgrid. The applicant shall bear all the cost of the construction and installation of the below ground cables and any necessary adjustment works. These works and payments shall be completed prior to the issue of the Occupation Certificate; and
- (b) Provide appropriate and suitable street lighting to a high decorative standard to both street frontages of the site together with those internally publicly accessible paths, spaces and corridors, so to provide safety and illumination for residents of the development and pedestrians in the area. All street lighting shall comply with relevant electricity authority guidelines and requirements.

59 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.

60 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.

61 Prior to the issue of the 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.

62 Prior to the issue of the Occupation Certificate the Workplace travel Plan needs to be updated to address its implementation strategy and success measures.

63

- (a) Prior to the issue of the Occupation Certificate a Stage 4 – Site Validation Report (SVR) shall be prepared by a suitably qualified contaminated land consultant and shall be in accordance with:
  - (i) NSW Office of Environment and Heritage (PEH) 'Contaminated Sites – Guidelines for Consultants Reporting on Contaminated Sites';
  - (ii) NSW Environment Protection Authority (NSW EPA) approved guidelines under the Contaminated Land Management Act 1997; and

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- (iii) State Environmental Planning Policy 55 (SEPP55) – Remediation of Land; and
  - (b) The site validation report shall provide a notice of completion of remediation works, whether there are ongoing site management requirements and a clear statement of the suitability of the likely proposed site use. The report shall be submitted to the Principal Certifying Authority (and the Council if the Council is not the Principal Certifying Authority for review and concurrence). The report is to be submitted after completion of remediation works and prior to the issue of the Occupation Certificate.
- 64
  - (a) 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 clearly demonstrating that the site is suitable for the proposed development. This shall be provided prior to the release of the Occupation Certificate; and
  - (b) Any conditions imposed on the SAS shall form part of this consent. The accredited site auditor shall provide Council with a copy of the Site Audit Report (SAR) and the Site Audit Statement (SAS) prior to the issuing of the Occupational Certificate.

**Note:** 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.
- 65 Prior to the issue of the Occupation Certificate the applicant must submit to the Principal Certifying Authority an acoustic report to verify that the measures stated in the acoustical assessment report prepared by Acoustic Logic Consultancy Pty Ltd, updated and received by Council 17 April 2014 have been carried out and certify that the construction meets AS2021-2000 and AS3671-1989 and specified indoor sound levels. 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 Australia Acoustical Consultants).
- 66 Prior to the issue of the Occupation Certificate, documentation from a suitably qualified engineer shall be submitted to the Principal Certifying Authority certifying that the loading dock, pick-up/drop-off zone, car parking areas (including queuing area, turning area and disabled parking area), driveways and vehicular access paths have been constructed generally in accordance with the approved construction plan(s) and comply with AS2890.1, AS2890.2 and AS2890.6 requirements. The internal parking facilities shall be clearly designated, sign posted and line marked. Signage and line marking shall comply with the current Australian Standards.
- 67 Prior to the issue of the Occupation Certificate, minimum of ~~sixty-nine (69)~~ **seventy-one (71) sixty-six (66)** off-street car parking bays shall be provided to the development in accordance with the approved architectural plans. (DA-14/45/03)(**BDA-2014/45/A**)

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- 67A Eight (8) car spaces are to be allocated to staff with the remaining spaces allocated to the patrons. (DA-14/45/03)
- 68 Prior to the issue of the Occupation Certificate the construction of the stormwater drainage system of the proposed development shall be 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', AS/NSZ 3500 – Plumbing and Drainage Code and the BCA. Certification from a Professional Engineer shall be provided to the Principal Certifying Authority.
- 69 Prior to the issue of the Occupation Certificate a sign shall be erected within or adjacent to the garbage room encouraging residents to recycle and not place recyclables into waste bins. The sign shall be a minimum of A3. Details of an acceptable wording for the sign are available from Council's Internet site at <http://www.botanybay.nsw.gov.au>.
- 70 Prior to the issue of the Occupation Certificate the operator shall enter into a commercial contract for the collection of trade waste and recyclables arising from the premises. A copy of all contracts and receipts shall be kept on the premises and made available to Council Officers on request.
- 71 In order to ensure that the constructed rainwater re-use and OSD/absorption system 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 system. The standard wording of the terms of the Positive Covenant and Restriction on the Use of Land are available in Council. The relative location of the system, in relation to the building footprint, shall be shown on a scale sketch, attached as an annexure to the plans/forms. Proof of registration shall be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate.
- 72 Prior to the issue of the 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.
- 73 Prior to the issue of the Occupation Certificate 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.
- 73A *Prior to the issue of any Occupation Certificate, suitable service easements shall be created on the subject lots of the development benefiting 10-12 Sarah Street. A right of way easement(s) for vehicular access and an easement(s) to drain water for stormwater drainage shall be provided over the lots of 2-8 Sarah Street, benefiting the lots of 10-12 Sarah Street. The service easements are to be covered by a Section 88B Instrument, which may only be varied or extinguished with the consent of Bayside Council. These provisions are to be put into effect prior to the release of the Occupation Certificate. (BDA-2014/45/A)***

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**73B** *Prior to occupation, a positive covenant pursuant to the Conveyancing Act 1919 shall be created on the title of the lots that contain the mechanical car lift facility to provide for the maintenance of the mechanical car lift facility. (BDA-2014/45/A)*

74 At the completion of landscaping on the site and public domain areas, the Applicant is required to obtain a Certificate of Compliance from the Landscape Consultant to certify that the landscaping has been installed in accordance with the Council approved landscape plan. The Certificate is to be submitted to the City of Botany Bay Council prior to the Issue of an Occupation Certificate and to address the following:

- (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) Any electrical kiosk, fire booster assembly or similar utilities must be located in an unobtrusive location away from vehicle and pedestrian entrances to the property and not within the landscaped street setback. The utilities must be screened by a built screen enclosure and/or landscaping so as not to reduce the visual amenity of the development or the streetscape and public domain. The location of, and screening treatment surrounding these utilities is to be approved by Council's Landscape Architect prior to their installation.
- (c) New street trees shall be maintained by the Owner for the duration of the landscape bond period after planting. Maintenance includes periodic watering at a frequency to sustain adequate growth, annual feeding and weed removal but does not include trimming or pruning of the trees under any circumstances.
- (d) Upgrade the public domain by the reconstruction of ~~half the road pavement~~, kerb and gutter, footpath, drainage system, street trees, landscaping and any associated works for the street frontage Robey Street, Sarah Street and O'Riordan Street of the site, at the applicant's expense. All improvements shall be in accordance with specifications and requirements from Council's landscape and engineering sections, the approved civil works construction plans and landscape plans, and Condition ~~27~~ 28 of this Consent.

**(BDA-2014/45/A)**

75

- (a) 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;
- (b) Condition Numbers 57 to 74 of this consent are pre-conditions to the issue of the Occupation Certificate.

**CONDITIONS WHICH MUST BE SATISFIED DURING THE ONGOING USE OF THE DEVELOPMENT**

76 A shuttle bus required to service the Hotel must be provided to transport occupants to and from the development site to the Sydney Airport. Should the shuttle bus no longer

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be provided, for whatever reason a separate development application shall be submitted to Council to provide an alternative travel and parking arrangement for the use.

- 77 The bus zone and pick-up/drop-off zone shown on the approved architectural plans shall be set aside for bus and pick-up/drop-off purpose only and shall not be used for other purposes. No vehicles shall be permitted to park in these areas.
- 78 The Food Business must appoint at least one trained Food Safety Supervisor. The person nominated must obtain a Food Safety Supervisor Certificate that is current (by completing Food Safety Supervisor training with a registered training organisation (RTO) approved by the NSW Food Authority or by submitting an FSS certificate request form). The certificate must be kept on the premises at all times.
- In the event that the person appointed as Food Safety Supervisor leaves the business another person within the organisation must be appointed as a Food Safety Supervisor and must undertake all required training to gain certification.
- 79 The operations of the premises shall be conducted in such a manner as not to interfere with or materially affect the amenity of the neighbourhood by reason of noise, vibration, odour, fumes, vapour, steam, soot, ash, dust, particulate matter, waste water, waste products or other impurities which are a nuisance or injurious to health.
- 80 The use of the premises shall not give rise to air impurities in contravention of the Protection of the Environment Operations Act 1997 and shall be controlled in accordance with the requirements of this Act.
- 81
- (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 LA<sub>90</sub> 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.
- 82 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.

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All solid and liquid waste that is collected during maintenance shall be disposed of in a manner that complies with the appropriate Environmental Guidelines.

83

- (a) The approved Waste Management Plan for the site prepared by ~~(Fox Johnston,~~ dated 8 June 2018) shall be complied with at all times during demolition works, construction works, and use of the premises; and
- (b) The building owner shall be provided with at least one copy of the waste management plan. The approved Waste Management Plan shall be complied with at all times.

84

All waste and recycling containers shall be stored in the designated waste storage area. The waste containers shall not be over filled and the lids kept closed at all times except when material is being put in them. The Owners Corporation or building owner shall be responsible for the following:

- (a) Where waste and recycling containers need to be moved to the street;
- (b) Movement of the waste and recycling containers to the footpath for collections, and the return of waste and recycling containers to the on site waste storage area;
- (c) Refuse containers are to be returned to the waste storage area on the same day as the refuse is collected;
- (d) Cleaning and maintaining the waste storage area, any drainage installations and waste collection containers;
- (e) Providing and maintaining signage and information to uses to encourage recycling;
- (f) No waste or waste containers shall be placed on the public way (including: footpaths, roadways, and reserves) at any time.

85

The operation of the development and movements of vehicles shall comply with the following requirements:

- (a) The largest size of vehicle accessing the development shall be restricted to MRV;
- (b) Garbage collection and loading and unloading activities associated with the delivery shall take place wholly within the loading dock;
- (c) Qualified traffic controllers shall be present when the delivery/service vehicle reverses to the loading dock;
- (d) No deliveries to the premises shall be made direct from a public places, public streets or any road related areas (eg. footpath, nature strip, road shoulder, road reserve etc);
- (e) Vehicular manoeuvring area shall be kept clear at all times. All vehicles shall be parked in the marked parking bays;
- (f) Maximum number of delivery vehicles on-site shall be limited to one (1).

86

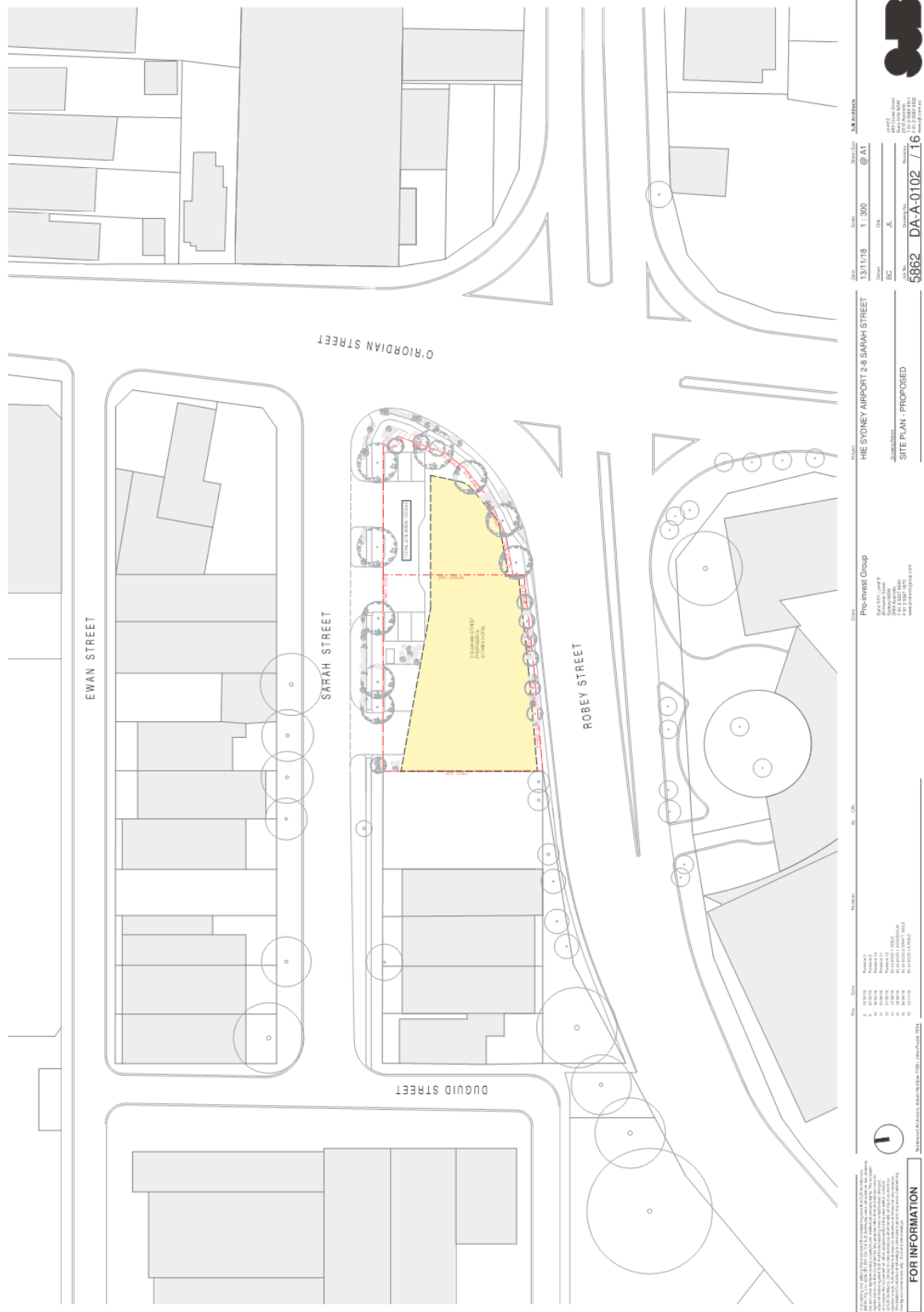
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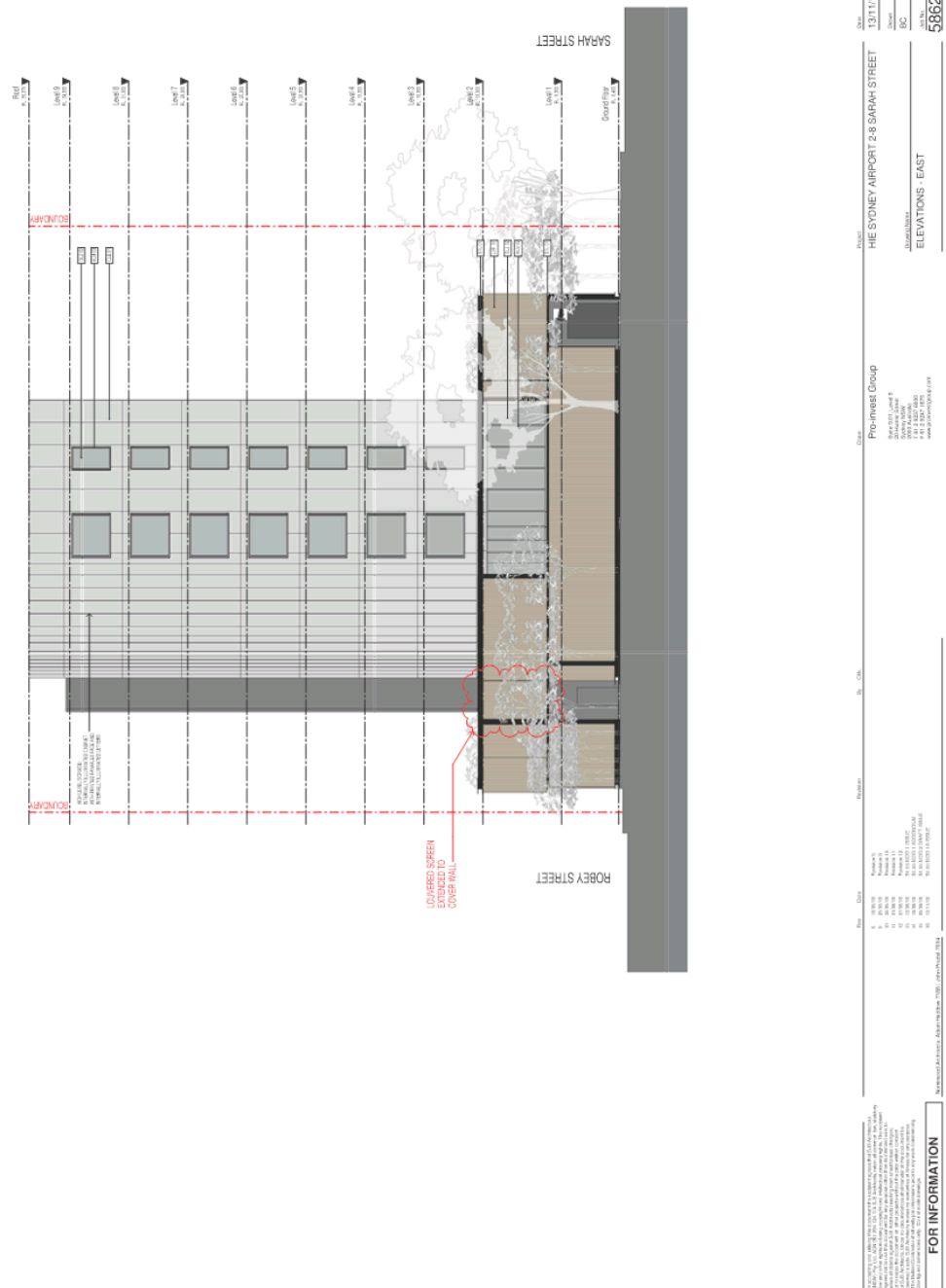
- (a) The operations of the site must at all times fully comply with the requirements of the approved Plan of Management for the site; and
  - (b) At all times the approved Workplace Travel Plan shall be fully complied with.
- 87 Should the external fabric of the building(s), walls to landscaped areas and like constructions be subject to graffiti or similar vandalism, then within seven (7) days of this occurrence, the graffiti must be removed and the affected surface(s) returned to a condition it was in before defilement.
- 88 For the purpose of inhibiting or preventing the growth of micro organisms that are liable to cause Legionnaires' Disease, all cooling towers, evaporative condensers, evaporative coolers, and warm water systems shall be designed, installed and maintained in accordance with the requirements of Public Health (Microbial Control) Regulation 2000 and the Public Health (Microbial Control) Amendment (Miscellaneous) Regulation 2003, under the Public Health Act 1991. All waste water from the cooling tower/humidifier/evaporative cooler/warm water system shall be discharged to sewer under a Trade Waste Agreement from Sydney Water.
- 89 The applicant being informed that this approval shall be regarded as being otherwise in accordance with the information and particulars set out and described in the Development Application registered in Council's records as Development Application No. 14/45 dated as 11 March 2014 and amended on 26 June 2014 and further amended by DA-14/45/03 dated 15 June 2018 **and further amended by BDA-2014/45/A dated 23 November 2018** and that any alteration, variation, or extension to the use, for which approval has been given, would require further Approval from Council. (DA-14/45/03)(**BDA-2014/45/A**)

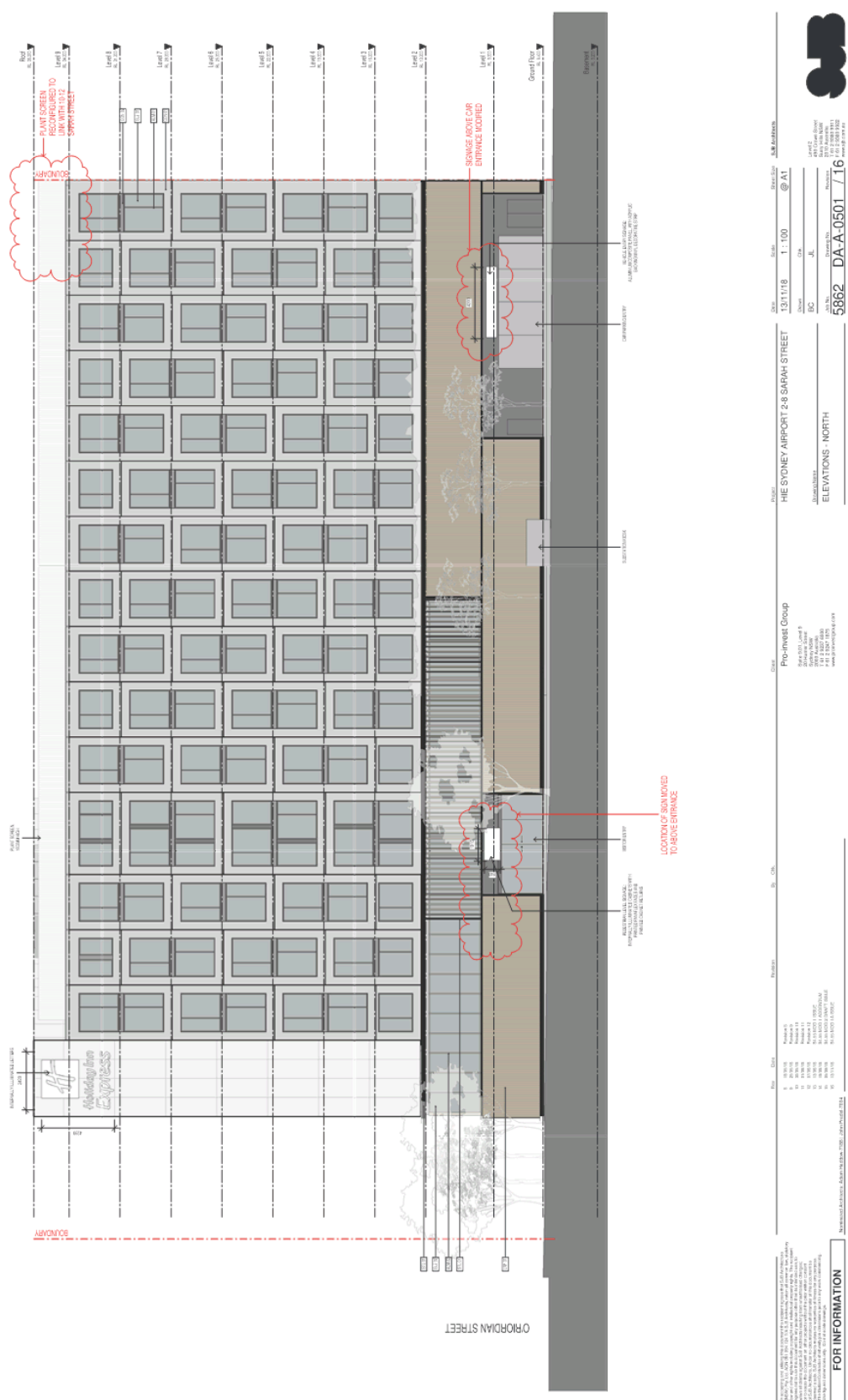
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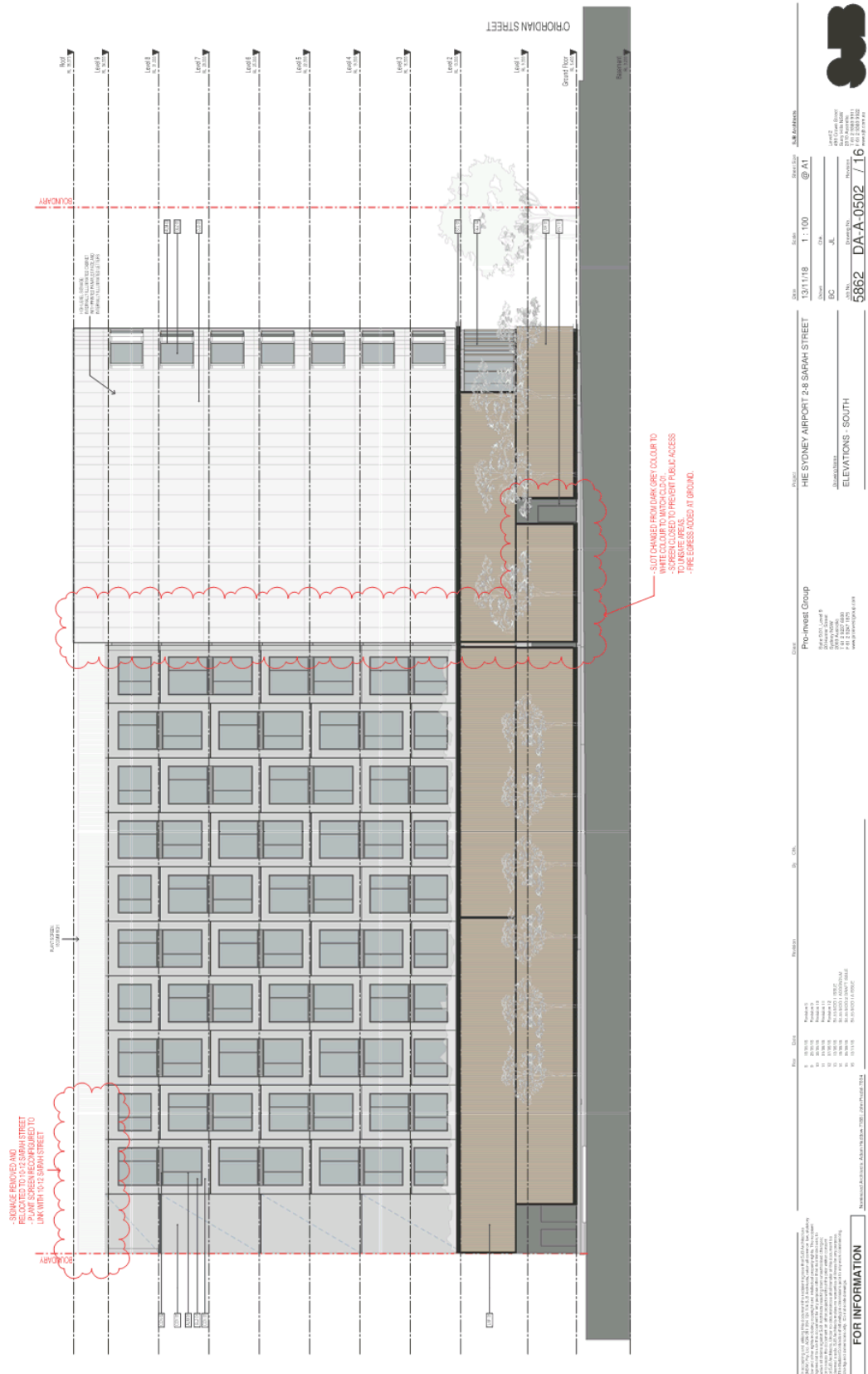
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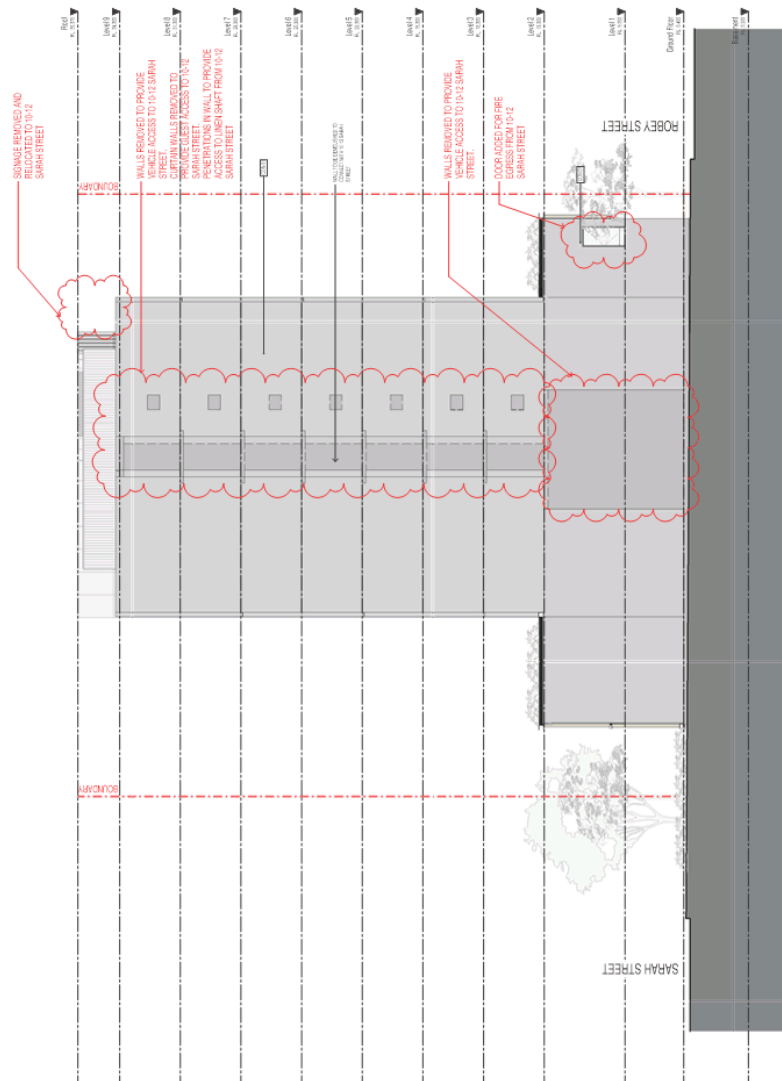


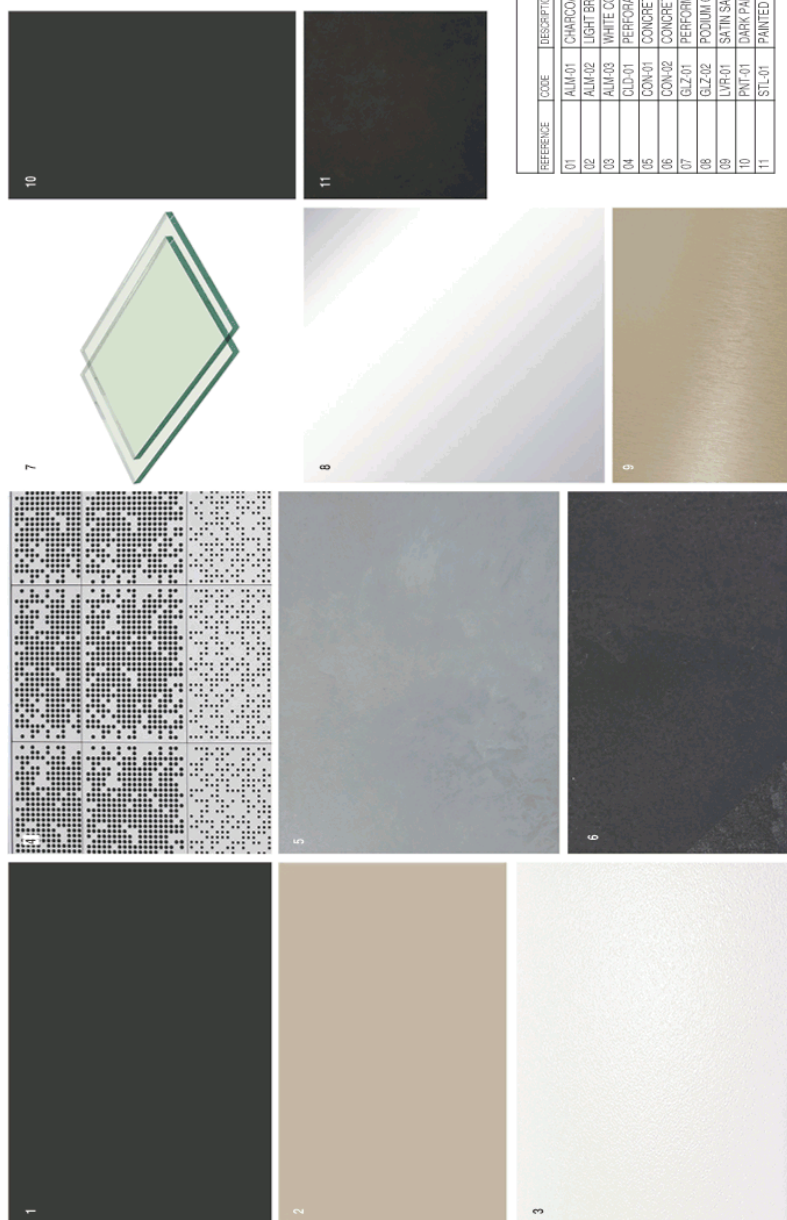








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Finish Schedule		
REFERENCE	CODE	DESCRIPTION
01	ALM-01	CHARCOAL COLOUR POWDERCOAT FINISH TO ALUMINIUM
02	ALM-02	LIGHT BRASS COLOUR FINISH TO ALUMINIUM
03	ALM-03	WHITE COLOUR POWDERCOAT FINISH TO ALUMINIUM
04	CLD-01	PERFORATED ALUMINIUM CLADDING
05	CON-01	CONCRETE BLOCK FINISH
06	CON-02	CONCRETE LOCK WITH DARK PAINT FINISH
07	GLZ-01	PERFORMANCE GLAZING
08	GLZ-02	Podium GLAZING
09	LVR-01	SATIN SANDSTONE ALUMINIUM FINISH
10	PNT-01	DARK PAINT FINISH
11	STL-01	PAINTED STEEL

the 1990s, the number of people who have been convicted of child sexual offenses has increased significantly. In the United States, the number of child sexual abuse cases reported to law enforcement has increased from approximately 100,000 in 1990 to over 200,000 in 2000. This increase has led to a growing concern among the public and policymakers about the effectiveness of current child protection laws and the need for more effective strategies to prevent and respond to child sexual abuse.

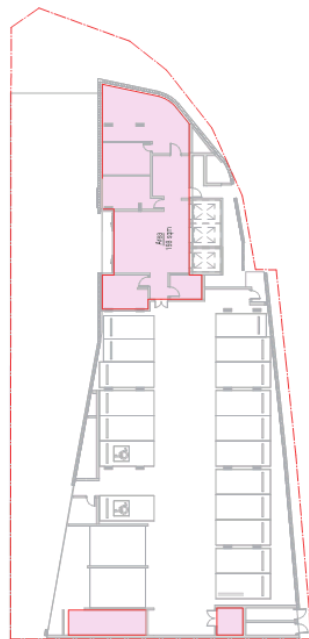
**FOR INFORMATION**

**Pro-invest Group**  
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Sydney NSW  
2000 Australia  
T 61 2 9227 6830  
F 61 2 9247 1875  
www.proinvestgroup.com

# THE SYDNEY AIRPORT 2-8 SARAH STREET

Name	Grade	Email
JC	3/1/18	@A1
Name	Club	
JC	JL	
Job No.	Diameter No.	Level 2
		494 Green Street
		23706 Aurora, IL
		Tel: 219-253-1311

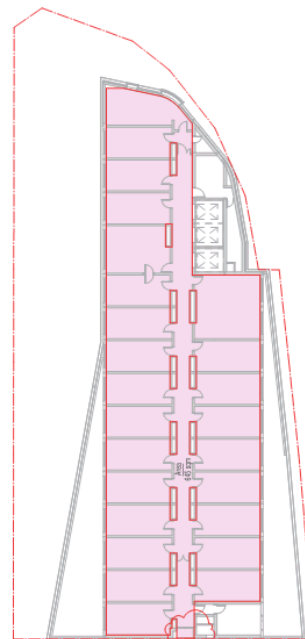




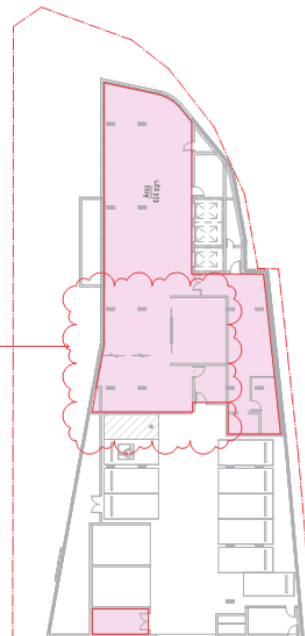
Ground Floor



Basement



Level 2



Level 1

GFA INCREASED AS A  
RESULT OF CORRIDOR  
EXTENSION TO  
CONNECT TO 10-12

CHANGE OF A DUE TO INCREASE IN GREAT  
ROOM TO ACCOMMODATE MEETING ROOMS  
AND STUDY ROOM

**Project:** HIE STONEY AIRPORT 2-8 SARAH STREET

**Client:** Prominvest Group

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**Scale:** 1:200

**Sheet:** 131118

**Project No.:** 2

**Client No.:** 5662

**Project Name:** DA-A-2021 / 16

**Author:** JAL

**Check:** JAL

**Drawn by:** JAL

**Scale:** 1:200

**Sheet:** 131118

**Project No.:** 2

**Client No.:** 5662

**Project Name:** DA-A-2021 / 16

**Project:** HIE STONEY AIRPORT 2-8 SARAH STREET

**Client:** Prominvest Group

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**Project No.:** 2

**Client No.:** 5662

**Project Name:** DA-A-2021 / 16

**Author:** JAL

**Check:** JAL

**Drawn by:** JAL

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**Sheet:** 131118

**Project No.:** 2

**Client No.:** 5662

**Project Name:** DA-A-2021 / 16

**Project:** HIE STONEY AIRPORT 2-8 SARAH STREET

**Client:** Prominvest Group

**Drawn by:** [Blank]

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**Sheet:** 131118

**Project No.:** 2

**Client No.:** 5662

**Project Name:** DA-A-2021 / 16

**Author:** JAL

**Check:** JAL

**Drawn by:** JAL

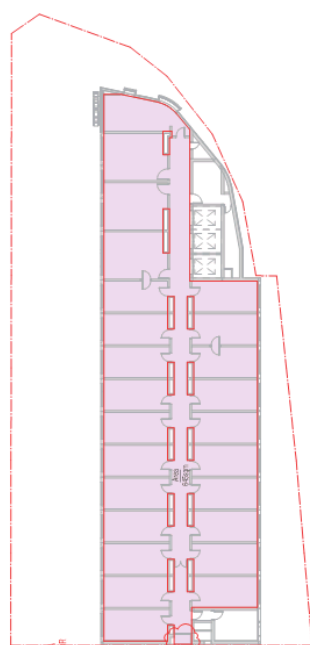
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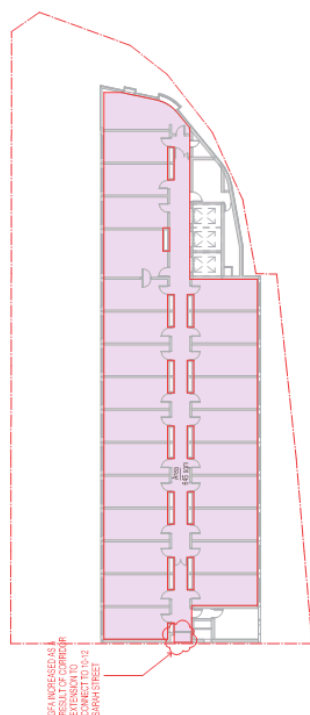
**Project No.:** 2

**Client No.:** 5662

**Project Name:** DA-A-2021 / 16



### Level 8



Level 3-7

[illegible]



**TOWER 2, LEVEL 23  
DARLING PARK, 201 SUSSEX ST  
SYDNEY NSW 2000**

URBIS.COM.AU  
Urbis Pty Ltd  
ABN 50 105 256 228

22 November 2018

Ms Meredith Wallace  
General Manager  
Bayside Council  
PO BOX 21  
Rockdale NSW 2216

Dear Ms Wallace,

We refer to the abovementioned development application (DA) for a hotel, which was granted modified consent by the Sydney Eastern City Planning Panel on 4 September 2018. The approved modified works were described as:

*Section 4.55(2) Application to modify Development Consent No. 14/45 to modify an approved hotel including internal reconfiguration, increase number of rooms to 178, external façade changes, increase in floor space, new signage, car parking, landscaping and relocation of the substation, and modification of conditions including timing of fee payment.*

On behalf of Pro Invest (the applicant), we now seek approval to a further modification to the development consent, to enable the integration of the approved hotel at 2-8 Sarah Street with an addition (that is, an extension) proposed to be located on the adjoining land at 10-12 Sarah Street (subject to a separate DA). This Section 4.55(1A) modification application therefore seeks to amend the approved plans for 2-8 Sarah Street, to permit the integration of the proposed hotel addition on the adjoining site. Both the Section 4.55(1A) application and the separate DA for the adjoining site are to be lodged and assessed concurrently.

SJB Architects have designed the modification, and prepared the amended Architectural Plans which are attached to this SEE. Key amendments to to facilitate the integration of the two buildings include:

- An increase in the size of the Level 1 'Great Room', to include a study room and meeting rooms.
- A reduction of five car parking spaces from 71 to 66 spaces (however, noting that the five lost spaces will instead be incorporated in the proposed hotel addition on the adjoining site);
- A penetration in the western wall of the car park on ground and level 1 to provide vehicle access to adjoining site's car park;
- A penetration in the western wall on all other levels of the building to provide guest access to rooms located on the adjoining site.

This modification will therefore enable the seamless integration of the two sites and will result in a single operational Holiday Inn Express Hotel across the combined site at 2-12 Sarah Street. A full list of amendments is provided in the **Section 3.1** of this SEE, on the Schedule of Changes and shown on the amended Architectural Plans.

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In support of the proposed s4.55(1A) application, please find attached the following:

- A completed Section 4.55(1A) application form and Owners Consent;
- A Cheque for \$1,472.00 made payable to Bayside Council;
- Amended Traffic Impact Assessment prepared by the ASON Group;
- Amended Architectural Plans prepared by SJB Architects;
- Amended BCA Capability Statement prepared by Blackett Maguire and Goldsmith;
- Amended GFA Statement prepared by SDG;
- Amended Plan of Management prepared by Pro Invest;
- Amended Operation Waste Management Plan prepared by Foresight Environmental;
- A digital file containing the application.

Pre-lodgement discussions have occurred. The applicant provided draft plans and information to Council in September 2018 in relation to the proposed extension of the approved hotel onto 10-12 Sarah Street. The project team also provided Council with plans demonstrating the integration of the proposed addition through minor modifications to the approved design of 2-8 Sarah Street (the subject of this S4.55(1A)).

The intent was to present the proposal to Council and seek feedback in relation to the design rationale, the proposed planning pathway and the merits associated with this approach. Council issued feedback on the 5 November 2018 which was generally positive and supportive of the proposal, and which confirmed the following in relation to this application:

- In terms of the proposed **planning pathways**, upon review of legal advice provided by Pro-invest, Council agreed it will consider a new DA for the extension at 10-12 Sarah Street as well as a modification of the existing consent at 2-8 Sarah Street to enable integration of the development. Council acknowledged construction works have already commenced at 2-8 Sarah Street, therefore approving one DA across the two sites would have implications for the current consent.
- Accordingly, in a follow up email dated 6 November 2018, Angela Lazaridis of Council confirmed the modification to integrate the two sites can be submitted as a **Section 4.55(1A)** application.

The site is subject to modified development consent DA-2014/045/03 for the demolition of existing structures and the erection of a hotel with associated car parking.

The consent as currently modified permits:

- Demolition of all existing structures on the site including the at-grade carpark;
- Construction of:

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- A nine (9) storey hotel comprising 178 rooms (including 9 accessible rooms) above basement, ground and first floor car parking for 71 cars;
- External ground level to contain loading dock, entry to car lifts, substation adjacent to Sarah Street, landscaping, Porte Cochere plus six (6) at-grade parking spaces, with all vehicular access off Sarah Street;
- Single basement level to contain 34 parking spaces including two (2) accessible parking spaces and six (6) small car spaces, mechanical services and plant room, sprinkler tank, staff dining and change room, sprinkler/hydrant pump room and various storerooms;
- Ground floor to contain hotel lobby, administrative offices, and 23 parking spaces including two (2) accessible parking spaces, a linen storeroom, waste/bin room, sprinkler/hydrant pump room and fire booster;
- Level 1 to contain the 'Great Room' comprising a reception, lounge, bar and restaurant buffet areas as well as kitchen including beverage and cold storerooms. In addition, parking area to contain 14 parking spaces;
- Level 2 to 9 to contain 178 hotel rooms;
- Building name signage for the Holiday Inn Express hotel;
- Landscaping and associated site works; and
- A shuttle bus service including an on-site drop off/pick up zone for up to a 52-seater bus with vehicle entry and exit points along Sarah Street.

**Table 1** provides a summary comparison of the key aspects of approved DA2014/045, the subsequently approved Section 4.55(2) modification (DA2014/045/03) and finally the proposed Section 4.55(1A) application required to integrate the combined site.

A confirmation that the modification is substantially the same development, and is of minimal environmental impact, is provided at **Section 3** of this letter.

Table 1 – Comparison Table: DA-2014/045 vs DA-2014/045/03 vs Proposed Section 4.55(1A)

Item	Control	Approved DA-2014/045	DA 2014/045/03 as Currently Modified	Proposed Section 4.55(1A)	Complies
Site area	-	1,514sqm	1,502sqm	1,502sqm	-
No. of hotel rooms	-	169 rooms	178 rooms	178 rooms	-
No. of levels	-	9	9	9	-
GFA	-	4,603sqm	5,079 sqm	5,197 sqm	-

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Item	Control	Approved DA-2014/045	DA 2014/045/03 as Currently Modified	Proposed Section 4.55(1A)	Complies
<b>Basement</b>	-	1,268sqm	1,268sqm	1,268sqm	-
<b>Botany LEP 2013</b>					
<b>Zoning</b>	B5 Business Development	Hotel or motel accommodation	Hotel or motel accommodation	Hotel or motel accommodation	Yes
<b>Building height</b>	44 metres	29.97 metres	29.97 metres	29.97 metres	Yes
<b>FSR</b>	3:1	3.19:1	3.38:1	3.46:1	No
<b>Botany DCP 2013</b>					
<b>Car Parking</b>	With an efficient shuttle bus service between the hotel, Sydney Airport and the City, the parking requirement can be reduced to 1 per 2.5 bedrooms.	69 spaces. A shuttle bus service will be provided	71 spaces including 4 accessible spaces. This represented a shortfall of 1 space. No extra parking for employees. A shuttle bus service will be provided	66 spaces including 4 accessible spaces (however, noting that the five lost spaces will instead be incorporated in the proposed addition on the adjoining site)	Minor non-compliance of 0.2 spaces.

This Section 4.55(1A) application relates to 2-8 Sarah Street, Mascot. The site is irregular in shape and is made up of the following legally described lots:

- Lot 1 in Deposited Plan 1232424: 286.2sqm
- Lot 1 in Deposited Plan 262142: 185.3sqm
- Lot 1 in Deposited Plan 236339: 265.6sqm
- Lot 2 in Deposited Plan 236339: 265.6sqm
- Lot 3 in Deposited Plan 236339: 252.9sqm
- Lot 4 in Deposited Plan 236339: 246.6sqm

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The site has a total area of 1,502sqm and is located within a prominent corner site with frontages to Sarah Street, Robey Street and O'Riordan Street. At the time the original DA was approved, the site area was 1,514sqm, however part of the site has been subsequently acquired by RMS for road widening purposes.

The site has a frontage of 67.84 metres to Sarah Street, an irregular eastern frontage to O'Riordan Street, a southern frontage of 18.30 metres (as the longest continuous frontage) along Robey Street with the remainder curving along the eastern boundary and a western boundary of 29.82 metres.

The subject site is located in close proximity to Sydney Airport and has excellent access to a variety of public transport options, making it an ideal location for hotel development. The site is located approximately 8 kilometres south of Sydney CBD and is proximate to Sydney Domestic Airport (200m to the south), Sydney International Airport (2km to the west), Mascot Train Station (800m to the north) and Botany Road (750m to the east). Figure 1 provides a location map of the site.

Figure 1 – Location Map (subject site edged in blue, site for addition to hotel edged in red)



Source: Urbis

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As outlined in **Section 1** of this SEE, this minor modification application (a S4.55(1A)) seeks to permit the integration of the proposed addition at 10-12 Sarah Street with the approved hotel at 2-8 Sarah Street. the modification

Specifically, the application seeks to make the following key changes to the approved hotel development:

- An increase in the size of the 'Great Room', to include a study room and meeting rooms;
- Minor increase in GFA (118sqm) and associated increase in FSR from 3.19:1 to 3.46:1;
- A reduction of five car parking spaces from 71 to 66 spaces (however, noting that the five lost spaces will instead be incorporated in the proposed addition on the adjoining site);
- A penetration in the western wall of the car park on ground and level 1 to provide vehicle access to adjoining sites' car park; and
- A penetration in the western wall on all other levels of the building to provide guest access to rooms located on the adjoining site.

For more details, refer to the attached Architectural Plans and Design Statement prepared by SJB. The following table provides a detailed schedule of all proposed changes required to be made to the plans to allow for the integration of the two sites'.

Table 2 – Proposed Schedule of Changes

Drawing	Drawing name	Rev	Date	Proposed Modification
DA-A-0201	PLAN - BASEMENT	16	13.11.18	- Sprinkler Tank removed for coordination
DA-A-0202	PLAN - GROUND	16	13.11.18	- Portion of western wall to be removed to connect to 10-12 Sarah Street - Screen closed behind lift core to prevent public access to unsafe areas - Door added behind lift core for fire egress - Grid lines modified to incorporate 10-12 Sarah Street - Sprinkler Tank removed for coordination - Vehicle control barrier added
DA-A-0203	PLAN - LEVEL 1	16	13.11.18	- Portion of western wall to be removed to connect to 10-12 Sarah Street - Door added to south western fire stair to provide egress from 10-12 Sarah Street

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				<ul style="list-style-type: none"> <li>- Great Room to be extended to include study room and meeting rooms</li> <li>- 5 car spaces removed</li> <li>- 1 Accessible car space replaces 1 car space</li> <li>- Grid lines modified to incorporate 10-12 Sarah Street</li> <li>- Louvered screen extended to cover wall</li> </ul>
DA-A-0204	PLAN - LEVEL 2	16	13.11.18	<ul style="list-style-type: none"> <li>- Window in western façade removed for access to 10-12 Sarah Street</li> <li>- Penetration added in western façade to provide access to linen shaft from 10-12 Sarah Street</li> <li>- Grid lines modified to incorporate 10-12 Sarah Street</li> </ul>
DA-A-0205	PLAN - LEVEL 3 - 7	16	13.11.18	<ul style="list-style-type: none"> <li>- Window in western façade removed for access to 10-12 Sarah Street</li> <li>- Penetration added in western façade to provide access to linen shaft from 10-12 Sarah Street</li> <li>- Grid lines modified to incorporate 10-12 Sarah Street</li> </ul>
DA-A-0206	PLAN - LEVEL 8	16	13.11.18	<ul style="list-style-type: none"> <li>- Window in western façade removed for access to 10-12 Sarah Street</li> <li>- Penetration added in western façade to provide access to linen shaft from 10-12 Sarah Street</li> <li>- Grid lines modified to incorporate 10-12 Sarah Street</li> </ul>
DA-A-0207	PLAN - ROOF	16	13.11.18	<ul style="list-style-type: none"> <li>- Parapet on western edge of roof removed to provide level access to 10-12 Sarah Street</li> <li>- Plant screen reconfigured to link with 10-12 Sarah Street</li> <li>- Signage on south western edge of building relocated to 10-12 Sarah Street</li> <li>- Grid lines modified to incorporate 10-12 Sarah Street</li> </ul>

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DA-A-0501	DA-A-0501 ELEVATION - NORTH	16	13.11.18	<ul style="list-style-type: none"> <li>- Plant screen reconfigured to link with 10-12 Sarah Street</li> <li>- Signage above car park entry modified</li> <li>- Signage at hotel entrance changed from screen to above door</li> </ul>
DA-A-0502	ELEVATION - SOUTH	16	13.11.18	<ul style="list-style-type: none"> <li>- Plant screen reconfigured to link with 10-12 Sarah Street</li> <li>- Signage on south western edge of building relocated to 10-12 Sarah Street</li> <li>- Slot changed from dark grey colour to white colour to match CLD-01</li> <li>- Screen behind lift core closed to prevent public access to unsafe areas</li> <li>- Fire egress added at ground level</li> </ul>
DA-A-0503	ELEVATION - East	16	13.11.18	<ul style="list-style-type: none"> <li>- Louvered screen extended to cover wall</li> </ul>
DA-A-0504	ELEVATION - WEST	16	13.11.18	<ul style="list-style-type: none"> <li>- Signage on south western edge of building relocated to 10-12 Sarah Street</li> <li>- Wall on western façade removed to provide access to 10-12 Sarah Street</li> <li>- Window on western façade removed to provide guest access to 10-12 Sarah Street</li> <li>- Door added to south western fire stair to provide egress from 10-12 Sarah Street</li> </ul>
DA-A-2021	ADDITIONAL DRAWINGS - GFA - SHEET 1 OF 2	16	13.11.18	<ul style="list-style-type: none"> <li>- Increase in GFA on level 1 due to increase in Great Room to incorporate meeting rooms and study room</li> </ul>

The following plans (overleaf) provide a visual summary of the above schedule of changes and demonstrate how the proposed addition at 10-12 Sarah Street will be integrated with the approved hotel site at 2-8 Sarah Street through a series of minor modifications.

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Figure 2 – Proposed minor modifications to enable integration of the two sites



Picture 1 - North Elevation (Approved 2-8 Sarah Street)



Picture 2 – North Elevation (Proposed modified)

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Picture 3 – North Elevation (10-12 on the right)

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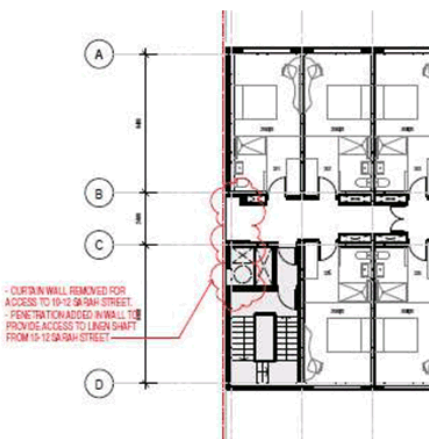
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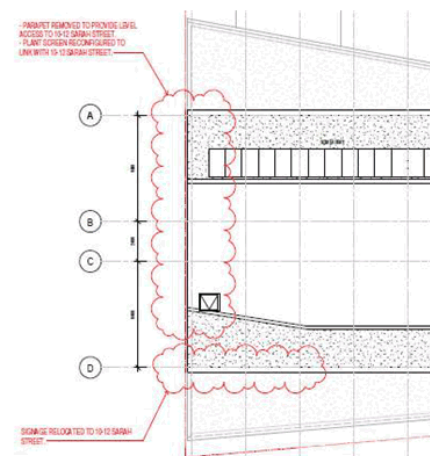
Picture 4 – Ground level integration with 10-12 Sarah  
Source: SJB Architects



Picture 5 – Level 1 integration with 10-12 Sarah  
Source: SJB Architects



Picture 6 – Level 2- 8 typical integration with 10-12 Sarah  
Source: SJB Architects



Picture 7 – Roof plan integration with 10-12 Sarah  
Source: SJB Architects

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The following is a list of the conditions relevant to DA 2014/045/03 that require modification or deletion:

#### GENERAL CONDITIONS

*1. 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 ... ..*

Amended to

**[Update list to include all plans, reports, authors and dates where relevant to reflect the approved modified documents.]**

#### CONDITION 74(D)

Condition 74(d) is considered to be unclear and also contains an error. Condition 74 is reproduced in full below:

*74 At the completion of landscaping on the site and public domain areas, the Applicant is required to obtain a Certificate of Compliance from the Landscape Consultant to certify that the landscaping has been installed in accordance with the Council approved landscape plan. The Certificate is to be submitted to the City of Botany Bay Council prior to the Issue of an Occupation Certificate and to address the following:*

*(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) Any electrical kiosk, fire booster assembly or similar utilities must be located in an unobtrusive location away from vehicle and pedestrian entrances to the property and not within the landscaped street setback. The utilities must be screened by a built screen enclosure and/or landscaping so as not to reduce the visual amenity of the development or the streetscape and public domain. The location of, and screening treatment surrounding these utilities is to be approved by Council's Landscape Architect prior to their installation.*

*(c) New street trees shall be maintained by the Owner for the duration of the landscape bond period after planting. Maintenance includes periodic watering at a frequency to sustain adequate growth, annual feeding and weed removal but does not include trimming or pruning of the trees under any circumstances.*

*(d) Upgrade the public domain by the reconstruction of half the road pavement, kerb and gutter, footpath, drainage system, street trees, landscaping and any associated works for the street frontage Robey Street, Sarah Street and O'Riordan Street of the site, at the applicant's expense. All improvements shall be in accordance with specifications*

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*and requirements from Council's landscape and engineering sections, the approved civil works construction plans and landscape plans, and Condition 27 of this Consent.*

Condition 74(d) requires the developer to obtain a Certificate of Compliance to certify that the public domain works have been installed in accordance with the Council approved landscape plan prior to the issue of an Occupation Certificate. Three concerns with the current wording are as follows:

- Firstly, the condition could be interpreted to require "reconstruction of half the road pavement...for the street frontage Robey Street, Sarah Street and O'Riordan Street of the site". However, Condition 28, which details the required public domain works, requires the developer only to reconstruct the Sarah Street kerb, gutter and half road pavement (28(c)), with only the footpaths to be paved on O'Riordan and Robey Street. In order to eliminate uncertainty, Condition 28 should be amended to clarify that the scope of public domain works are limited by Condition 28 of the consent.
- Secondly, the reference to Condition 27 appears to be in error. This may have intended to refer to Condition 28 – which would in part address the concern raised above.
- Thirdly, due to the passage of time since the original consent was granted, some of the public domain works may not be required or should be delayed to avoid futile works. This is due to scheduled RMS upgrade works to Robey and O'Riordan Streets. The contractors are working with RMS on this matter however timing is not confirmed, and a concern is that this may delay the issue of an Occupation Certificate. For this reason, we request that Condition 74(d) be amended to facilitate the potential for Council's landscape and engineering sections to agree to an alternative (deferred or modified) timeframe or method for delivery of public domain works, which could be triggered if necessitated by RMS.

The proposed modification is justifiable for the following reasons:

- The modification will facilitate the integration of two sites resulting in a single operational Holiday Inn Express Hotel across the combined site (2-12 Sarah Street). This is a superior outcome to a stand-alone hotel being developed on the adjoining site as vehicle access and servicing can be shared, thereby reducing the potential for streetscape and amenity impacts.
- The modification will contribute to the provision of additional visitor accommodation on the adjoining land in a highly suitable location close to Sydney Airport and public transport.
- The modification is consistent with Council's vision and objectives for the Mascot Business Development Precinct.
- The modification is consistent with the objectives of the applicable local and state planning policies. The proposal meets the objectives and intent of the *Botany Bay Local Environmental Plan 2013* and achieves a high level of consistency with the key planning controls within *Botany Bay Development Control Plan 2013*. Where the proposal does not fully comply with a numeric provision, it is considered that the objectives and intent of the numeric provision has been met and therefore achieves compliance.
- The modification is in the public interest. All impacts to amenity and the surrounding environment have been minimised and the proposal is considered to positively contribute to the surrounding streetscape and built environment.



This modification application has been prepared in accordance with the relevant requirements of Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979*.

The proposed modifications have been assessed with regard to its environmental impact, taking into account the potential implications arising from the proposed modifications.

A detailed assessment of environmental impacts is provided at Section 6.6 of this letter, where it is confirmed that the proposed amendments will result in minimal environmental or impacts for the reasons outlined therein.

The NSW Land and Environment Court has established several precedents as to what may be considered as being "substantially the same development", and what should be factored into the consideration of this threshold test. The consideration of this test should not only include the physical characteristics of the approved and modified schemes, but also the nature and magnitude of the impacts of the developments. In these respects, the modified scheme should be "essentially or materially" the same as that originally approved.

**Table 1** in this SEE provides a numerical comparison with the previously approved scheme.

The proposal as modified is considered substantially the same development for the following reasons:

- The modified proposal maintains the approved hotel land use and the nature and essence of the approved development remains substantially the same;
- The modified proposal is consistent with the approved bulk and scale of DA-2014/045 and DA-2014/045/03 and is contained within the approved building envelope;
- There is no change to the envelope and only a slight increase to the approved FSR. The minor FSR variation from that approved has no external impacts beyond that already approved and is due to an increase in the size of level 1 guest common areas, and the enclosure of the indented window on each guest room floorplate due to the continuation of the hallways to connect into the adjoining hotel addition. The increase in size to the 'Great Room' and the provision of additional meeting rooms have been included so to provide future hotel guests with additional amenities in an expanded hotel format.
- The modification does not result in an increase in the intensity of development with no increase in guest rooms or parking spaces proposed to the subject site.
- The loss of five car spaces will be offset by the provision of 33 additional spaces on the adjoining site (10-12 Sarah Street), which is five more than would be required for the number of rooms proposed on that site.
- No change is proposed to the use of the site, the built form, materials, landscaping or public domain works.

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On this basis, the modified schemes is considered essentially and materially the same as that which has been previously modified, and where further modifications are proposed, substantially the same as that which was originally approved. As such, the modified proposal remains substantially the same development.

The matters referred to in Section 4.15(1) of the Act must be considered in the assessment of the proposed modifications. The Section 4.15 Assessment is provided in the following sections.

#### **State Environmental Planning Policies**

The proposed modifications are minor in nature and do not give rise to any additional issues that have not already been considered.

#### **Botany Bay Local Environmental Plan 2013**

The proposed modifications do not impact the approved use of the site as a 'hotel', which is permissible with consent in the B5 Business Development zone.

The proposed GFA will increase slightly from 5,079sqm to 5,197sqm (an increase of 118sqm of GFA), as indicated in the updated GFA Statement prepared by SDG, accompanying this application. The increase in GFA is primarily to accommodate an enlarged 'Great Room' and provide additional areas for hotel guests.

The maximum FSR permitted across the site is 3:1 which equates to a permissible GFA of 4,506sqm. The modified proposal has a total gross floor area (GFA) of 5,197sqm, which equates to a total FSR of 3.46:1. Whilst the modified proposal exceeds the FSR control 3:1, it is noted that the approved DA-2014/045/03 had an FSR of 3.38:1 which was also in breach of the FSR control.

Notwithstanding the variation, the minor noncompliance to the FSR standard will have no discernible visual or amenity impacts to the surrounding streetscape to adjoining developments. Solar access, privacy and views will be maintained, and the minor non-compliance will not result in any additional impacts to adjoining properties.

Further, despite the slight increase to FSR under the modified proposal, the additional FSR is provided wholly within the approved building footprint with no increase to the approved building height of 29.97 metres. The building height therefore remains unchanged and well below the 44 metres LEP height limit.

The proposed modification does not give rise to any additional inconsistencies with the *Botany Bay LEP 2013*.

None relevant to the modification.

The proposed modifications do not raise any additional inconsistencies in compliance with the provisions of the *Botany Bay DCP 2013*. The reduction in car parking spaces will be made good by incorporating these in the adjoining hotel addition.

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None relevant to the proposal.

None relevant to the proposal.

### 6.6.1. Overall

The likely impacts of the proposal have been assessed in the following subsection of the this SEE, and throughout the report and accompanying documents.

This assessment concludes that the proposed development will not have any significant detrimental environmental, social and economic impacts on the locality or wider community. Ongoing operation of the hotel is unlikely to cause any additional undue impacts in relation to noise, solar access, air quality, traffic and drainage. The design is considered appropriate in terms of bulk, scale and materiality and the proposal will result in a unified and continuous hotel building integrated across the two sites. The site is not subject to any environmental hazards and there are no wilderness areas, endangered or threatened species identified on the site. The modified hotel will not result in any additional loss of views for adjacent developments and the design is considered to appropriate to address the majority of the existing conditions of DA-2014/045/03. The site is not subject to any environmental hazards and there are no wilderness areas, endangered or threatened species identified on the site.

### 6.6.2. Built Form and Design

The proposal as modified seeks to integrate the proposed addition at 10-12 Sarah Street with the approved hotel development at 2-8 Sarah Street. Accordingly, a number of minor modifications to the approved built form will be required. Notwithstanding, these modifications are considered minor and will have no additional environmental impact to the amenity of surrounding developments. The proposal as modified maintains the approved building height and building envelope of the site and therefore the bulk and scale of the building remains as per DA2014/045/03.

### 6.6.3. Gross Floor Area and Floor Space Ratio

The proposed modification includes an increase in the size of the 'Great Room' in order to cater for additional hotel guest rooms with in the proposed adjoining addition to the hotel, resulting in increased GFA. Also, the enclosure of the indented window on each guest room floor due to the continuation of the hallways to connect into the adjoining hotel addition results in a small GFA increase.

The GFA will increase by 118sqm of GFA resulting in an increase in FSR on the site from 3.37:1 to 3.38:1. The FSR as originally approved was 3.19:1.

Despite this increase, the proposal remains substantially the same development as that which was originally approved, including as previously modified. The additional GFA is located entirely within the approved building envelope (as modified). The further increase in GFA is a minor intensification and will provide a somewhat enlarged front of house area to services the additional guest rooms on the adjoining site.

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The further increase in GFA does not raise any matters of significance that were not previously addressed in the Clause 4.6 variation submitted with the original DA. For the original DA, which had an FSR of 3.19:1, Council and the JRPP accepted that the FSR development standard had been virtually abandoned through decisions of the consent authority and further, that the development met the objectives of the development standard and the zone notwithstanding the variation, and was in the public interest. In minutes dated 22 July 2014, the JRPP endorsed the Clause 4.6 variation request, as follows:

- 1) *The Panel resolves unanimously to accept the recommendation of the planning assessment report to approve the application...*
- 2) *The principal reasons for the Panel's decision are:*
  - a) *The variation of Floor Space Ratio control is minor and has been justified under cl 4.6 of the Botany LEP 2013...."*

In addition, the further increase in FSR in the current application does not raise any additional issues compared with the assessment of the previously approved modification, where Council's August 2018 assessment report notes that:

*The application did not require a Clause 4.6 variation to be provided as part of the assessment as the proposal is part of a modification application. Nevertheless, the applicant notes that the modified proposal adopts a similar building footprint, setback and landscaped area to the approved DA-14/45. The slight increase to the approved FSR will have no adverse impacts to the surrounding streetscape or to the amenity of the adjoining developments. Overshadowing, privacy and view loss will be maintained as per existing.*

The Sydney Eastern City Planning Panel supported this position, providing the following reasons for the approval of the modification application:

- The modified proposal is substantially the same as the approved proposal
- The modified building has similar bulk and scale to the approved building.
- The additional floor space has no additional discernible visual or amenity impacts.

As for the current modification application, the proposed additional GFA results in no additional discernible visual or amenity impacts. Further, despite the loss of five car parking spaces, these spaces will be relocated to within the proposed adjoining addition to the hotel, therefore resulting in no net loss in car parking.

#### **6.6.4. Access and Parking**

A Traffic Impact Assessment has been prepared by Ason Group and is attached to this SEE.

The proposed modification to allow for the integration of the two sites will result in the loss of five spaces on 2-8 Sarah Street. However, these spaces will be picked up within the proposed addition at 10-12 Sarah Street, and the proposal will deliver a net increase of 27 parking spaces which equates to a total car parking provision of 98 spaces for the extended hotel.

The following table provides a summary of the progressive parking provisions of the proposal against the approved hotel on 2-8 Sarah Street.

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Table 3 – Parking Summary

	Approved 2- 8 Sarah Street	Extended Hotel (Proposed 10-12 Sarah Street plus <u>modified</u> 2-8 Sarah Street)	Net change
No. of hotel rooms	178	247	+69 rooms
Car parking spaces	71	98	+27 spaces
Car lift	Yes	Yes	Nil

The proposal will maintain the approved the vehicular access, pedestrian access and Porte Cochere as approved. The car park will have direct pedestrian access between the two sites. Car park lifts are located within the approved hotel to provide access to the general car parking area which has been spread over 3 levels. This remains consistent with the previously approved system.

#### 6.6.5. Hotel Operations

An updated Plan of Management and Operational Waste Management Plan have been prepared and are attached to this SEE. In terms of waste, the modification does not seek to amend the approved loading dock, garbage store room or waste management procedures.

The proposed addition to the approved hotel (subject to a separate DA) will result in an increase in the number of guest rooms from 178 to 247 rooms and therefore the Plan of Management submitted with DA 2014/045/03 has been updated to reflect the increase of 69 rooms. Notwithstanding the proposed expansion on the adjoining site, the approved hotel will maintain the same operations including:

- A total of 30 staff will be employed at the extended hotel, including 20 permanent staff and 10 contract cleaning staff.
- A hotel manager will be on duty at all times to address any concerns guests, visitors or staff have.
- A 24-shuttle bus service to Sydney Airport will be provided. The service will drop off and pick up guests waiting at a zone provided in the hotel's driveway (approved at 2-8 Sarah St).
- Guests are not permitted to stay longer than 3 months.

Further details regarding the hotel's objectives, operational details, rules, security details, maintenance of fire safety and complaint recording is outlined the amended Plan of Management attached to this SEE.

#### 6.6.6. BCA

An updated BCA Capability Statement is attached to this SEE and confirms that the approved hotel as modified will continue to comply the relevant provisions contained in the BCA, NCC and DDA.



It is considered that the following social and economic benefits will be realised by the modified proposal:

- The proposal will provide an expanded hotel which is considered compatible with the surrounding land uses.
- The development will contribute to the provision of temporary local jobs during the construction phase and ongoing local jobs during the operational phase.
- The proposal will contribute to meeting the increasing demand for visitor accommodation beds in the vicinity of Sydney Domestic and Internal Airport, improving availability and affordability of beds and contributing to economic development and tourism.
- The modified proposal maintains a compatible hotel land use associated with the B5 zone.
- The modified proposal will contribute to the provision of temporary local jobs during the construction phase and ongoing local jobs during the operational phase.
- The modified proposal will contribute to meeting the increasing demand for visitor accommodation beds in the vicinity of Sydney Domestic and Internal Airport, improving availability and affordability.

The proposed modification remains suitable for the subject site for the following reasons:

- The site is zoned B5 Business Development which permits the provision of Tourist and Visitor Accommodation land uses on the site.
- The size and shape of the site is suitable for the proposed addition to the approved hotel and will not create any adverse bulk or scale impacts. Further, the addition does not result in any loss of amenity to adjacent properties.
- The application will permit the proposed addition at 10-12 Sarah Street to be integrated with the approved hotel site at 2-8 Sarah Street through a series of minor modifications.
- The design is considered appropriate in terms of bulk, scale and materiality and the proposal will result in a unified and continuous hotel building integrated across the two sites.
- The site is located in Mascot, in a gateway airport location. The proposal will provide an enlarged hotel with additional guest rooms in close proximity to Sydney Airport and Mascot Train Station.
- The site is not located within an area recognised as being subject to any specific natural hazards.

Accordingly, the subject site is considered well suited to accommodate the proposal.

It is considered that the proposed modifications do not contravene the public interest, and the proposal remains in the public interest for the following reasons:

- The modified proposal results in substantially the same development to that approved in DA2014/045 and subsequent DA2014/045/03, and the modification is of minimal environmental impact.

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- The proposed modifications do not raise any additional non-compliances with respect to the applicable development standards contained within the *Botany Bay LEP 2013* and *Botany Bay DCP 2013*. Where the proposal includes a departure from the Botany LEP and DCP controls, justification has been provided.
- All impacts to amenity have been minimised and the modified proposal is considered to positively contribute to the surrounding streetscape and built environment. The proposed modifications do not generate any additional adverse impacts in relation to acoustics, overshadowing, privacy, traffic or loss of view.
- The modified proposal positively responds to the current and future character of the area, and will provide additional accommodation beds within close proximity to Sydney Airport and various employment precincts and public transport routes.

As outlined above, the proposed modifications to the approved development application are minor in nature and will continue to result in substantially the same development, as the development for which consent was originally granted. The proposed modifications will enable the integration of the approved hotel at 2-8 Sarah Street with the proposed addition (that is, an extension) located on the adjoining land at 10-12 Sarah Street.

The modified proposal is contained within the approved building envelope. There is no change to the approved height and only a slight increase to the approved GFA. The minor FSR variation from that approved has no discernible visual nor amenity impacts beyond that already approved.

The impacts of the proposed modifications have been assessed with consideration given to the original development consent and are of minimal environmental consequence. The nature and essence of the development remains substantially the same as that originally and as previously modified.

Based upon the above, it is concluded that the proposed modifications are suitable for approval pursuant to the provisions of Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979*.

We conclude that the proposal represents a commendable development outcome that respects and responds to the site location and the amenity of surrounding developments. The modified proposal therefore is considered well-worthy of Council support and approval.

If you have any questions please don't hesitate to contact me on (02) 8233 9970.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Alison Brown".

Alison Brown  
Director

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**Bayside Local Planning Panel**

**9/04/2019**

Item No	<b>6.5</b>
Application Type	Addition to a hotel development
Application No	DA-2018/319
Lodgement Date	23/11/2018
Property	<b>10-12 Sarah Street, Mascot</b>
Ward	Mascot
Owner	Pro-Invest Australian Hospitality Opportunity (ST) Pty Ltd
Applicant	Pro-Invest Australian Hospitality Opportunity (ST) Pty Ltd
Proposal	Addition to an approved nine (9) storey hotel at 2-8 Sarah Street, comprising of 69 rooms, above ground parking and business identification signage.
No. of Submissions	Nil
Cost of Development	\$9,428,679
Report by	Michael McCabe, Director City Futures

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**Officer Recommendation**

1. That the Panel is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) of Botany Bay Local Environmental Plan 2013 and that the proposed development is in the public interest as it is consistent with the objective of the FSR Standard and the objectives for the B5 Business Development zone.
  2. That the Panel APPROVES Development Application No. 2018/319 for the addition to approved nine (9) storey hotel at 2-8 Sarah Street, comprising of 69 rooms, above ground parking and business identification signage at 10-12 Sarah Street Mascot.
-

## Location Plan



## Attachments

- 1 Planning Assessment Report [↓](#)
- 2 Clause 4.6 variation to FSR Development Standard [↓](#)
- 3 Site Plan [↓](#)
- 4 Northern Elevation Plan [↓](#)
- 5 Southern Elevation Plan [↓](#)
- 6 Western Elevation Plan [↓](#)
- 7 Schedule of Colours and Finishes [↓](#)
- 8 Photomontage 1 [↓](#)
- 9 Photomontage 2 [↓](#)
- 10 Traffic Report [↓](#)

# BAYSIDE COUNCIL

## Planning Assessment Report

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### Application Details

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<b>Application Number:</b>	2018/319
<b>Date of Receipt:</b>	23 November 2018
<b>Property:</b>	10-12 Sarah Street Mascot Lot 18 and 19 in DP 1248251
<b>Owners:</b>	Pro-Invest Australian Hospitality Opportunity (ST) Pty Ltd
<b>Applicant:</b>	Pro-Invest Australian Hospitality Opportunity (ST) Pty Ltd
<b>Proposal:</b>	Addition to approved nine (9) storey hotel at 2-8 Sarah Street, comprising of 69 rooms, above ground parking and business identification signage.
<b>Recommendation:</b>	Approval, subject to conditions of consent
<b>Value:</b>	\$9,428,679.00
<b>No. of submissions:</b>	Nil
<b>Author:</b>	Angela Lazaridis, Senior Development Assessment Planner
<b>Date of Report:</b>	26 March 2019

### Key Issues

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Bayside Council received Development Application No. 2018/319 on 23 November 2018 seeking consent for an addition to approved nine (9) storey hotel at 2-8 Sarah Street, comprising of 69 rooms, above ground parking and business identification signage at 10-12 Sarah Street Mascot.

The application was placed on public exhibition for a forty (40) day period from 7 December to 16 January 2019. No submissions were received during the public notification period.

Key issues in the assessment of the development application includes floor space ratio and car parking. The proposal seeks an FSR of 3.47:1 which is a 16% variance to the FSR control of 3:1. The applicant has provided a Clause 4.6 variation to justify the variance which is discussed in greater detail in the report below.

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

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It is RECOMMENDED:

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1. That the Panel is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) of Botany Bay Local Environmental Plan 2013 and that the proposed development is in the public interest as it is consistent with the objective of the FSR Standard and the objectives for the B5 Business Development zone; and
2. That the Panel approve Development Application No. 2018/319 for the addition to approved nine (9) storey hotel at 2-8 Sarah Street, comprising of 69 rooms, above ground parking and business identification signage at 10-12 Sarah Street Mascot.

## Background

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### History

The site is now currently vacant however was previously approved as a commercial premises by RSL cabs. The building was demolished due to a fire occurring on site.

On 5 November 2018, a pre-DA meeting was held at Council to discuss the proposal in particular relating to the planning pathway between the development on both the subject site and at 2-8 Sarah Street, whether the application would require a design review panel meeting, car parking and FSR non-compliance.

#### Relevant History of adjoining site at 2-8 Sarah Street

- DA-2014/45- The adjoining site at 2-8 Sarah Street is subject to development consent DA-2014/045/03 for the demolition of existing structures and the erection of a hotel with associated car parking. The original DA was granted deferred commencement consent by the Joint Regional Planning Panel on 22 July 2014 and the consent became operational from 12 August 2015.
- DA-2014/45/02- A subsequent Section 96(2) application was lodged with Bayside Council on 23 January 2017, which remained undetermined. A change in land ownership (to Pro-invest) necessitated revisions to the approved scheme and the Section 96(2) application was withdrawn.
- DA-2014/45/03- A subsequent Section 4.55(2) was subsequently submitted, and consent was granted by the Sydney Central Planning Panel on 4 September 2018

#### Development Application History

- 7 December 2018- The development application was placed on public notification where notification ended on 16+ January 2019. No submissions were received.
- 1 March 2019- amended landscape plan and arborist report was provided to address changes to the landscaping and exclude the landscaped area along Robey Street as the development forms part of another site.

### Proposal

The applicant seeks consent for the following proposal:

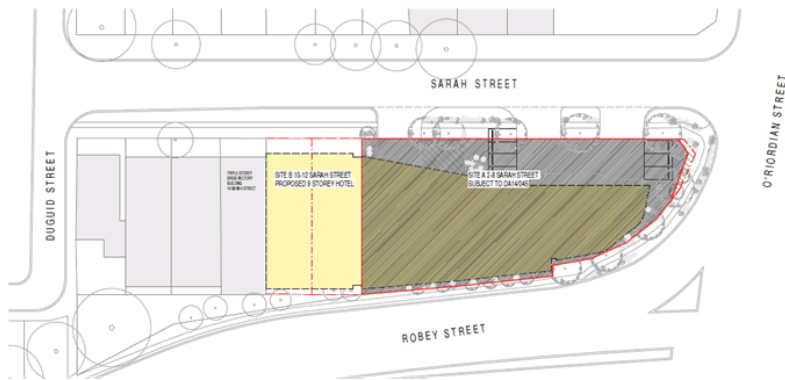
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- Demolition of the ground slab and removal of any trees on and adjacent to the site;
- Construction of a nine (9) storey hotel building comprising of 69 rooms above ground and first floor car parking for 32 car spaces. No basement level of external access proposed with access from 2-8 Sarah Street;
- Building name signage for the Holiday Inn Express Hotel (relocated sign from 2-8 Sarah Street); and
- Landscaping and associated works.

Functionally and operationally, the proposed building is an extension of the adjoining approved hotel. The proposed building on the subject site will not have any vehicle or pedestrian access, nor hotel service areas, significant plant rooms or mechanical equipment as these elements are provided for and approved on the adjoining 2-8 Sarah Street site. As such the proposed building will contain only additional car parking spaces and hotel room accommodation and will ultimately result in the operation of a single integrated hotel development across the two sites.

The below figures demonstrates the proposed development:



**Figure 1. Proposed Site Plan (showing 2-8 Sarah Street hatched in grey)**



**Figure 2. Proposed Roof Plan (showing 2-8 Sarah Street hatched in grey)**

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Figure 3. Proposed Northern Elevation (showing 2-8 Sarah Street hatched in grey)

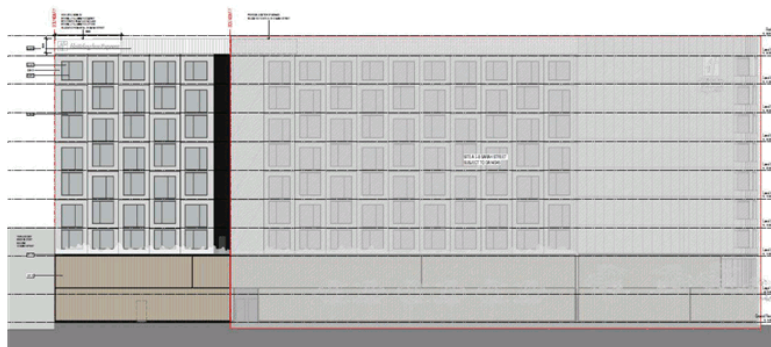


Figure 4. Proposed Southern Elevation (showing 2-8 Sarah Street hatched in grey)

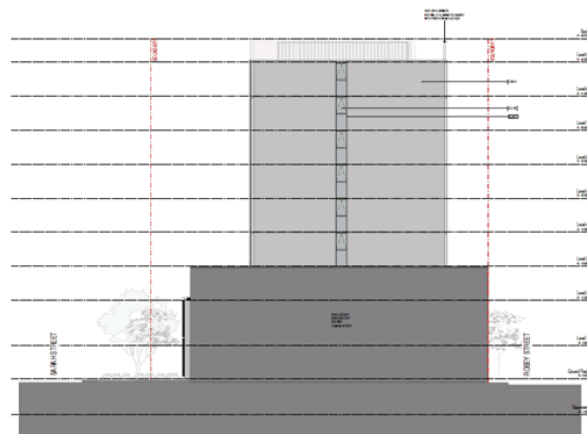


Figure 5. Proposed Western Elevation

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Figure 6. Photomontage of the site from the north-eastern side of O'Riordan Street



Figure 7. Photomontage of the site from the south-eastern side of O'Riordan Street

### Site Description

The site is identified as 10-12 Sarah Street Mascot and comprises of two lots which are legally known as Lot 18 and 19 in DP 1339. The site is located on the southern side of Sarah Street between Duguid Street to the west and O'Riordan Street to the east. Robey Street bounds the rear of the site. The site has a site area of 545.4sqm and a street frontage along Sarah Street of 18.29 metres. The site is generally flat and access is provided off Sarah Street only.

The site is currently vacant land comprising of a concrete slab and limited vegetation. The site was previously occupied by a two storey commercial building by 'RSL cabs'. A triangular area of land directly to the south of the site, separating the site from Robey Street, is privately owned and does not form part of the site.

Sites surrounding the development include the Stamford Hotel and commercial building to its south, hotel development that is under construction and will form part of this development

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application, a two storey commercial building is contained on 14 Sarah Street. Directly across the street contains a number of commercial and light industrial buildings with one being a café/food production warehouse.

The site is in close proximity to Sydney Airport, Mascot Station and the Botany Goods Line. The site is affected by the 25-30 ANEF Contour.



Figure 8. Locality Plan

### Statutory Considerations

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

#### S.4.15(1) - Matters for Consideration – General

##### 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 (Vegetation in Non-Rural Areas) 2017

The State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP) regulates the clearing of native vegetation on urban land and land zoned for environmental conservation/management that does not require development consent and applies to the Sydney and Newcastle metropolitan areas. The aims of the policy are (a) to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and (b) to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.

The Vegetation SEPP repeals clause 5.9 and 5.9AA of the Standard Instrument - Principal Local Environmental Plan and substantially reproduces the effect of these clauses in the

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Vegetation SEPP. Council will continue to regulate the clearing of vegetation (including native vegetation below the BOS thresholds through the DCP.

The landscape plans as originally lodged indicated removal of trees and landscaping works within the triangle land to the south of the site. This included the planting of six new trees along the Robey Street frontage as well as other minor landscaping elements. The landscape plans have now been amended so that no works are proposed to the privately-owned piece of triangle land. The proposal seeks to remove only two trees from the site.

Five (5) trees located on adjoining land will be retained and protected for the duration of the works. This includes the retention and protection of the tree located in the Council nature strip to the north of the site along the Sarah Street frontage, and all trees on the triangle land. The four (4) trees located on the triangle land will be retained and protected during construction works. These trees will have minimal disturbances to their projected structural root zones or tree protection zones. There are no disturbances planned for the trees projected structural root zone. The disturbance calculated for the projected tree protection zone (TPZ) is 10%, which is acceptable for this species at this age. The reason the disturbance is so low is that the majority of the works will occur within the existing building footprint and there will only be a small section excavated within the projected tree protection zone.

An arborist report and landscape plans were submitted with the development application. There are no issues with the proposed tree removal, retention or replacement trees subject to appropriate conditions of consent.

#### **State Environmental Planning Policy (Infrastructure) 2007**

*State Environmental Planning Policy (Infrastructure) 2007* (ISEPP 2007) was gazetted on 21 December 2007. The aim of the SEPP is to facilitate the effective delivery of infrastructure across the State by identifying matters to be considered in the assessment of development adjacent to particular types of infrastructure development, such as classified roads, and providing for consultation with relevant public authorities about certain development during the assessment process or prior to development commencing.

In terms of Clause 86, the DA for 2-8 Sarah Street (DA-2014/045/03) was referred to Sydney Trains due to the location and excavation proposed close to the airport rail link tunnel. However, the subject DA does not involve any significant excavation works (no basement is proposed) and is located outside the zone of influence of the tunnel (approximately 75m from the tunnel), and as such concurrence from Sydney Trains will not be required.

In relation to noise, the application is accompanied by a preliminary environmental noise impact assessment prepared by WSP. This preliminary assessment provides the following in relation to external noise intrusion relevant to the ISEPP 2007:

- In terms of rail traffic noise and vibration, the proposed site is located approx. 75 metres from the airport passenger underground railway line and approx. 110 metres to the nearest railway. Therefore, clause 87 does not apply and no rail noise and vibration assessment is required in accordance with the NSW ISEPP.
- In terms of road traffic noise, as O'Riordan Street in the vicinity of the site carries more than 20,000 vehicles per day, the ISEPP traffic noise intrusion criteria (clause 102) applies to the development. It is noted that the ISEPP does not provide internal noise criteria for commercial hotel developments. However, road traffic noise levels are intended to be controlled to meet the internal noise levels recommended in AS/NZS 2107:2016.

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- Clause 101 does not apply to the application as the proposal does not involve seek to provide vehicle access to a classified road. Therefore, whilst it is anticipated that the RMS will be consulted during the assessment, concurrence from the RMS will not be required.

Preliminary noise and vibration impacts impacting the development were modelled based on industry guidelines using conservative factors. WSP concludes that based on the modelling, the proposed development will have limited acoustic impacts, and with implementation of typical noise control measures, can be designed to achieve applicable compliance with noise criteria requirements and the internal noise amenity recommendations as outlined in this report.

#### State Environmental Planning Policy No. 64 – Advertising and Signage

State Environmental Planning Policy No. 64 – Advertising and Signage (SEPP 64) aims to ensure advertising is compatible with the desired amenity and visual character of an area, provides effective communication in suitable locations and is of high quality design and finish. Clause 8 and Clause 13 of SEPP 64 prevents development consent from being granted to signage unless the consent authority is satisfied that it is consistent with the objectives of the SEPP and has satisfied the assessment criteria specified in Schedule 1.

The proposal involves the relocation of a single internally illuminated business identification sign to be located beneath the parapet of the southern façade of the building. The sign measures 1.5 metres x 6.9 metres and was approved on the outer edge of the building at 2-8 Sarah Street (DA-14/45). An assessment of the proposed signage against the SEPP 64 assessment criteria has been undertaken and summarised in the table below. This assessment demonstrates that the proposed signage satisfies the relevant provisions of SEPP 64, including achieving the aims and objectives of the policy.

Assessment Criteria	Comment	Complies
<u>Character of the Area</u> Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located? Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	The proposed high-level signage is compatible with the existing and future character of the area. The scale and location of the signage is consistent with existing signage on other hotel developments as well as consistent with the approved signage at 2-8 Sarah Street located within the vicinity of Sydney Airport.  The locality is transitioning from a historically light industrial area to a medium density mixed use zone and the proposed signage is appropriate with the mixed-use vision for Mascot.	Yes
<u>Special Areas</u> Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	The site is not located in a special area. The signage will not detract from the amenity or visual quality of nearby residential land uses. The signage is of a scale and appearance that is compatible with the existing built form of Mascot. The proposed high-level signage will be located in line with Level 9 of the hotel building ensuring that it does not visually detract from the streetscape.	Yes

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<p><u>Views and Vistas</u> Does the proposal obscure or compromise important views? Does the proposal dominate the skyline and reduce the quality of vistas? Does the proposal respect the viewing rights of other advertisers?</p>	<p>The high-level signage will sit flush against the facade of the hotel building and will not obscure or compromise any important views.</p> <p>All signage has been designed to sit below the roof line. The signs are also not of a bulk or scale that would impede any view from the street.</p> <p>The signage is of a scale and height consistent with existing signage on other development in the surrounding locality. The signage will not adversely impact on views or vistas from other properties, nor will it impede the visibility of other signage.</p>	Yes
<p><u>Streetscape, setting and landscape</u> Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape? Does the proposal contribute to the visual interest of the streetscape, setting or landscape? Does the proposal reduce clutter by rationalising and simplifying existing advertising? Does the proposal screen unsightliness? Does the proposal protrude above buildings, structures or tree canopies in the area or locality?</p>	<p>The proposed signage is compatible with the scale of the surrounding streetscape, setting and character of the light industrial and commercial land uses along Robey Street and O'Riordan Street.</p> <p>The signage will therefore complement the existing signage in the wider precinct, with no adverse impacts on the streetscape.</p> <p>The proposal will not contribute to visual clutter as the signage panels are unified in appearance.</p> <p>The signage will not protrude above structures or tree canopies</p>	Yes
<p><u>Site and building</u> Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located? Does the proposal respect important features of the site or building, or both? Does the proposal show innovation and imagination in its relationship to the site or building, or both?</p>	<p>The proposed sign is consistent with what has already been approved for 2-8 Sarah Street and is appropriately sized and sited with consideration to the existing and proposed built form of Mascot. The proposed sign will not visually detract from the hotel building as it will not protrude above the building line and be appropriately softened. The sign will utilise modern technology and be built with contemporary materials that are consistent with the current and future context of the site.</p>	Yes
<p><u>Associated devices and logos with advertisements and advertising structures</u> Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?</p>	<p>All lighting will be concealed within the signage structure.</p>	Yes

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<b>Illumination</b> Would illumination result in unacceptable glare? Would illumination affect safety for pedestrians, vehicles or aircraft? Would illumination detract from the amenity of any residence or other form of accommodation? Can the intensity of the illumination be adjusted, if necessary? Is the illumination subject to a curfew?	The proposed signage will be internally lit and will comply with the relevant standards and conditions of consent with respect to illumination. The illumination is not proposed to be subject to a curfew.	Yes
<b>Safety</b> Would the proposal reduce the safety for any public road? Would the proposal reduce the safety for pedestrians or bicyclists? Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	The signage is affixed to the building and is of a static display. It will not reduce safety or interfere with sightlines.	Yes

The proposal satisfies the assessment criteria under SEPP No. 64 therefore the signage proposed is acceptable.

#### 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 site has been predominantly used for commercial/industrial purposes in the past. Clause 7 of State Environmental Planning Policy No. 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. While there is no excavation proposed for a basement car parking level, the application was referred to Council's Environmental Scientist for comment. Additional information in the form of a Stage 2 detailed site investigation report was requested and was provided on 1 March 2019. The investigation encountered the following:

- Filling – concrete pavement/slab, underlain by sand filling with gravels to depths of 0.7 m to 1.8 m;
- Sand – loose to very dense sand to depths of 14.0 m to 15.5 m, some thin layers of clayey/ peaty sand;
- Clays – very soft to soft silty clay to depths of 16.9 m to 17.0 m in BH401 and BH402, underlain by stiff to hard clay to 22.3 m to 23.0 m depth;
- Bedrock – hard shaly clay and extremely low strength shale from depths of 22.3 m to 23.0 m, grading to medium and high strength shale/laminite from depths of 24.7 m to 25.4 m to the base of the bores at 28.2 m and 29.7 m depth.
- Groundwater was observed at depths of 2.4 m to 2.9 m (RL 3.0 m to RL 3.9 m AHD).

After a review of the report by the Environmental Scientist, there were no objections to the proposal and appropriate conditions of consent have been imposed within the consent. Therefore SEPP No. 55 has been satisfied and the site is suitable for the proposed use.

#### Botany Bay Local Environmental Plan 2013

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Botany Bay Local Environmental Plan 2013 has been considered in the assessment of the Development Application and the following information is provided:

Relevant Clauses Principal Provisions of Botany Bay Local Environmental Plan 2013	Compliance Yes/No	Comment
Land use Zone	Yes	The site is zoned B5 – Business Development zone under the Botany Bay Local Environmental Plan 2013.
Is the proposed use/works permitted with development consent?	Yes	The proposed use as a hotel development is permissible with Council's consent under the Botany Bay Local Environmental Plan 2013.
Does the proposed use/works meet the objectives of the zone?	Yes	The proposed development is consistent with the following objectives of the B5 Business Development zone: <ul style="list-style-type: none"> <li>To enable a mix of business and warehouse uses, and bulky goods premises that require a large floor area, in locations that are close to, and that support the viability of centres.</li> </ul>
What is the height of the building?	-	A maximum height of 44 metres applies to the subject site.
Does the height of the building comply with the maximum building height?	Yes	Proposed max height: 29.97 metres (RL 36.37)  The maximum height of the development complies with Council's requirements under the Botany Bay Local Environmental Plan 2013.
What is the proposed Floor Space Ratio?	-	The maximum Floor Space Ratio requirement is 3:1 (1,636.23sqm).
Does the Floor Space Ratio of the building comply with the maximum Floor Space Ratio?	No – Refer to Note 1	<u>Proposed max GFA:</u> 1,895sqm <u>Proposed max FSR:</u> 3.47:1

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Relevant Clauses Principal Provisions of Botany Bay Local Environmental Plan 2013	Compliance Yes/No	Comment
		The Floor Space Ratio of the development does not comply with Council's requirements under the Botany Bay Local Environmental Plan 2013. A clause 4.6 variation has been provided with the development application and is discussed below.
Is the site within land marked "Area 3" on the Floor Space Ratio Map?  If so, does it comply with the sliding scale for Floor Space Ratio in Clause 4.4A?	N/A	The site is not located in an Area 3 zone.
Is the land affected by road widening?	N/A	The subject site is not affected by road widening.
Is the site listed in Schedule 5 as a heritage item or within a Heritage Conservation Area?	N/A	The site is not a heritage item, is not located within a heritage conservation area or is within the vicinity of a heritage item.
The following provisions in Part 6 of Botany Bay Local Environmental Plan apply– <ul style="list-style-type: none"> <li>6.1 – Acid Sulfate Soils</li> </ul>	Yes	The site is located within a Class 2 ASS zone. The proposed development is not seeking to excavate other than footings for the development. The application was accompanied by an acid sulfate soils management plan. Appropriate conditions have been imposed in the consent.
<ul style="list-style-type: none"> <li>6.2 – Earthworks</li> </ul>	Yes	The proposal does not seek significant excavation other than footings.
<ul style="list-style-type: none"> <li>6.3 – Stormwater Management</li> </ul>	Yes	The development application was accompanied by stormwater drainage

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Relevant Clauses Principal Provisions of Botany Bay Local Environmental Plan 2013	Compliance Yes/No	Comment
<ul style="list-style-type: none"> <li>6.8 – Airspace Operations</li> </ul>	Yes	plans prepared by Wood and Grieve Engineers which demonstrate that the proposal will connect to the approved stormwater system at 2-8 Sarah Street and Council's drainage system.  The proposal was referred to SACL for comments as the development has a building height of RL36.37. SACL provided had no objections to the proposal subject to conditions of consent.
<ul style="list-style-type: none"> <li>6.9 – Development in areas subject to aircraft noise</li> </ul>	Yes	The site falls within the 25-30 ANEF contour. The development provided an acoustic report prepared by WSP. Appropriate conditions have been imposed in the consent.
<ul style="list-style-type: none"> <li>6.16 – Design Excellence</li> </ul>	Acceptable	The proposal seeks a design identical to the development at 2-8 Sarah Street to align the buildings together. As the development application for 2-8 Sarah Street was subject to a design review panel, it was not considered that the subject development application be presented to a design review panel for consideration.

#### Note 1 – Variation to the floor space ratio standard

The site allows a maximum FSR of 3:1 (1,636.23sqm) as required under the FSR map within the BBLEP 2013. The proposal seeks a FSR of 3.47:1 (1,895qm) which is a variance of 258.77sqm or 16%.

In the general context of the subject site and the adjoining site at 2-8 Sarah Street, the applicant has provided the following table of how the FSR will be spread across the two sites. An assessment of the non-compliance to the FSR will only be assessed on the current site while the modification application to 2-8 Sarah Street will consider the further exceedance to FSR on that site.

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	Subject DA 10-12 Sarah St	DA 2014/045 as Currently Modified 2-8 Sarah St	Proposed Further Modification Concurrent with the subject DA 2-8 Sarah St	Total Combined site
Site area	545.4 sqm	1,502 sqm	1,502 sqm	2,047.4 sqm
GFA	1,895 sqm	5,079 sqm	5,197 sqm	7,092 sqm
FSR	3.47:1	3.38:1	3.46:1	3.46:1

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

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

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

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

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

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

***"6.3.1. Clause 4.6(3)(a) – Compliance with the Development Standard is Unreasonable or Unnecessary in the Circumstances of the Case***

*The common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary are listed within the 'five-part test' outlined in Wehbe v Pittwater [2007] NSWLEC 827. These tests are outlined in Section 2.2 of this letter (paragraphs [17]-[21].*

*An applicant does not need to establish all of the tests or 'ways'. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way*

*The development is justified against two of the Wehbe tests as set out below.*

*Test 1: The objectives of the development standard are achieved notwithstanding non-compliance with the standard.*

*The proposed development achieves the objectives of the development standard as outlined within Table 4.*

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*Table 2 – Assessment of Achievement of Objectives of Floor Space Ratio standard*

Development Standard Objective	Achievement of Objective
(a) to establish standards for the maximum development density and intensity of land use,	The proposed hotel addition has a density and intensity of land use which is highly comparable to an FSR compliant scheme. As an extension to a building, the development does not contain plant rooms, lift cores or stairwells which would normally result in a reduction in GFA within the same building envelope.
(b) to ensure that buildings are compatible with the bulk and scale of the existing and desired future character of the locality,	The locality is subject to considerable change and the planning controls in the locality allow a greater bulk and scale than was historically the case. To this end, the hotel addition continues the built form of the approved hotel on the adjacent site as demonstrated in Section 4 of this report. Further, it is highly compatible with the bulk and scale of the desired future character of the locality, despite the non-compliance.
(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,	The site is part of an area that is undergoing a substantial transformation, and does not have a visual relationship with areas that 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,	The building will not adversely impact streetscape, skyline or landscape views when viewed from adjoining roads or public places, despite the non-compliance.
(e) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,	There will be no adverse impact on the use or enjoyment of adjoining properties, and the relationship with the public domain will be substantially enhanced, despite the non-compliance.
(f) to provide an appropriate correlation between the size of a site and the extent of any development on that site,	Notwithstanding the FSR non-compliance, the building form is appropriate to the size of the site and the setbacks are consistent with the built form of the adjacent hotel, as illustrated in Section 4.2.
(g) to facilitate development that contributes to the economic growth of Botany Bay.	The proposal will contribute to meeting the increasing demand for visitor accommodation beds in the vicinity of Sydney Domestic and Internal Airport, improving availability and affordability of beds and contributing to economic development and tourism within Bayside LGA. The non-compliance will marginally enhance the contribution to the local economy.

*In summary, the objectives of the development standard are achieved notwithstanding non-compliance with the standard.*

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

*Not relied upon.*

*Test 3: The underlying objective or purpose of the standard would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable*

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*Not relied upon.*

*Test 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*

*In June 2014, the then Botany Bay Council's assessment report to the JRPP for the adjoining hotel (DA14/45, Ref 2014SYE045) included a discussion outlining the applicant's Clause 4.6 request, and stated that:*

*"... the floor space ratio control within the Botany Bay Local Environmental Plan 2013 has been consistently varied over time by Council in recognition of a need to meet the demands for housing and commercial development in the area. The proposed floor space ratio is not inconsistent with the extent of variations to which consent has previously been provided. The following table provides a list of those variations approved by Council, the JRPP and the NSW Land & Environment Court. "*

*Table 1 - List comparison table of other approved DA's FSR variations*

Address	FSR Control	Approved FSR (BBLEP 2013)	Approval Date
210 O'Riordan Street, Mascot	3:1	7:1 (approved under BLEP 1995)	29 March 2009
214 Coward Street (JRPP Application)	3.2:1	4.05:1	16 December 2010
230 Coward Street (aka 25 John Street)	3.2:1	3.6:1	23 August 2006
3-9 Church Avenue	3.2:1	1.9:1	21 May 2008
10-14 Church Avenue & 619-629 Gardeners Road (JRPP Application)	3.2:1	2.27:1	3 August 2011
7 Bourke Street & 30-32 John Street	3.2:1	3.75:1	13 January 2011
24-26 John Street	3.2:1	3.1:1	6 September 2009
8 Bourke Road & 37 Church Avenue	3.2:1	3.82:1	13 May 2009
208-210 Coward Street (JRPP Application)	3.2:1	4:1	5 December 2011
103-105 O'Riordan Street (JRPP Application)	3.2:1	3.1:1	20 June 2012
5 Haran Street (Court Approved)	3.2:1	3.1:1	June 2013
2-4 Haran Street (JRPP Application)	3.2:1	4:1	August 2013

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*In minutes dated 22 July 2014, the JRPP endorsed the Clause 4.6 variation request, as follows:*

*1) The Panel resolves unanimously to accept the recommendation of the planning assessment report to approve the application...*

*2) The principal reasons for the Panel's decision are:*

*a) The variation of Floor Space Ratio control is minor and has been justified under cl 4.6 of the Botany LEP 2013...."*

*Both Council and the JRPP accepted that decisions made in the past resulted in the virtual abandonment of the control. Although the table overleaf was prepared in 2014, it remains entirely relevant to the satisfaction of Test 4, because the development standards applying to the site (FSR and height) have not changed since this time.*

*Test 5: The zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary.*

*Not relied upon.*

**6.3.2. Clause 4.6(3)(b) - Are there Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard?**

*There are sufficient environmental planning grounds to justify the proposed variations to the development standard, including the following:*

- The development comprises an addition to an approved adjoining hotel building and is consistent in scale and form with the approved hotel. The approved hotel exceeds the FSR by a similar proportion to the exceedance proposed.*
- As such, strict compliance with the development standard on the subject site would result in an incongruous building form of the addition compared with the approved hotel.*
- As an addition to an approved hotel, the development will have reduced environmental impacts compared with a complying stand-alone development on the subject site. The development takes advantage of vehicular access points, plant and equipment, and services infrastructure already approved as part of the adjacent hotel, and is a superior outcome. As such, supporting the contravention of the development standard promotes the orderly and economic use and development of land.*
- Further, as an extension to a building, the development does not contain plant, lift cores or stairwells which would normally result in a reduction in GFA within the same building envelope.*
- The development supports good design and amenity within the built environment. Further, the scale and form is consistent with the changing character of the area*
- The development is consistent with previous Council staff recommendations and Regional Panel approvals to exceed floor space ratio in the immediate vicinity.*
- The development achieves the objectives of the development standard as outlined in Section 6.3.1, and is also consistent with those objectives as outlined in Section 6.3.3.*

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- The development is consistent with the objectives of the zone as set out in Section 6.3.3.

In conclusion, there are sufficient environmental planning grounds to justify convening the development standard.

**6.3.3. Clause 4.6(4)(a)(ii) – 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?**

The proposed development is consistent with the objectives of the development standard as outlined within Table 4.

Table 3 – Assessment of Consistency with Objectives of Floor Space Ratio standard

Development Standard Objective	Consistency with Objective
(a) to establish standards for the maximum development density and intensity of land use	The proposed hotel addition has a density and intensity of land use which is highly comparable to an FSR compliant scheme. As an extension to a building, the development does not contain plant rooms, lift cores or stairwells which would normally result in a reduction in GFA within the same building envelope.
(b) to ensure that buildings are compatible with the bulk and scale of the existing and desired future character of the locality,	The locality is subject to considerable change and the planning controls in the locality allow a greater bulk and scale than was historically the case. To this end, the hotel addition continues the built form of the approved hotel on the adjacent site (refer Section 4) and is highly compatible with the bulk and scale of the 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,	The site is part of an area that is undergoing a substantial transformation, and does not have a visual relationship with areas that 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,	The building will not adversely impact streetscape, skyline or landscape views when viewed from adjoining roads or public places.
(e) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,	There will be no adverse impact on the use or enjoyment of adjoining properties, and the relationship with the public domain will be substantially enhanced
(f) to provide an appropriate correlation between the size of a site and the extent of any development on that site	The building form is appropriate to the size of the site and the setbacks are consistent

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	<i>with the built form of the adjacent hotel as illustrated in Section 4.</i>
<i>(g) to facilitate development that contributes to the economic growth of Botany Bay.</i>	<i>The proposal will contribute to meeting the increasing demand for visitor accommodation beds in the vicinity of Sydney Domestic and Internal Airport, improving availability and affordability of beds and contributing to economic development and tourism within Bayside LGA.</i>

*The proposal is also consistent with the land use objective that applies to the site under BBLEP 2013. The site is located within B5 Business Development Zone .*

*Table 4 – Assessment of Compliance with Land Use Zone Objectives*

<i>Objective</i>	<i>Consistency with Objective</i>
<i>To enable a mix of business and warehouse uses, and bulky goods premises that require a large floor area, in locations that are close to, and that support the viability of, centres.</i>	<i>The proposed development is consistent with the objective of the zone as it provides a non-residential business use, hotel accommodation servicing both business and leisure travellers on a disused site in close proximity to Mascot Town Centre, Sydney Airport and Mascot train station. Hotel or motel accommodation is a type of tourist and visitor accommodation and is permitted with consent in the B5 zone.</i>

*The proposal is considered to be in the public interest as the development is consistent with the objectives of the development standard, and the land use objectives of the zone."*

Officers Comment:

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

The applicant has assessed the development against two of the Wehbe tests- Test 1 and 4. In regards to Test 1, the applicant has adequately satisfied the objectives of the standard achieved are notwithstanding non-compliance with the standard.

The applicant has also carried out an assessment against Test 4 which uses examples of surrounding developments to demonstrate that the development standard has been virtually abandoned. It is noted that the examples the applicant has stated were approved under the Botany LEP 1995 therefore a different instrument to the current one that is being assessed. Also, the majority of the examples approved are for residential flat buildings which are different from a hotel development. Therefore Council does not support this justification under Test 4. As the applicant has adequately justified the variation under Test 1, Council is satisfied with the Clause 4.6 variation.

It is noted that the proposal is for a hotel addition therefore the development generally provides more yield than what a residential flat building within the same bulk and built form would

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comprise. While the applicant has not provided current examples of approved developments that depart from the development standard, the following examples were approved under the BBLEP 2013 with a variation:

- 2-8 Sarah Street Mascot (DA-2014/45/03) - 3.38:1 (approved as modification)
- 113 Baxter Road Mascot (DA-2013/266)- 3.48:1
- 289 King Street Mascot (DA-2012/87)- 3.22:1

The proposal also seeks an FSR which is commensurate with the site and the proposed changes that will be assessed under the modification application for 2-8 Sarah Street (DA-2014/45). It is considered that the additional FSR/GFA will have no discernible visual amenity impacts to the surrounding streetscape or to adjoining developments. Solar access, visual privacy and views will be maintained. The proposal is also significantly under the maximum building height that is allowable on the site of 44 metres with the development proposing a total of 29.97 metres to match the approved development at 2-8 Sarah Street. The additional FSR, as stated in the discussion above, the scale and form of the development is consistent with the changing character of the area and has the advantage of vehicular access points, plant rooms, and services infrastructure of the adjoining property thereby not creating any negative impact on the bulk of the development, the traffic generated from multiple vehicle access points and promotes the orderly and economic use of the development.

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

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

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

There are no current Draft EPIs applicable to this development

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

##### **Botany Bay Development Control Plan 2013**

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

##### *Part 3A –Parking and Access*

<b>Part</b>	<b>Control</b>	<b>Proposed</b>	<b>Complies</b>
<b>3A.2. Parking Provisions of Specific Uses</b>	1 space for manager, A space/1.5 rooms plus; 1 taxi pick-up and set-down space/100 rooms;	The proposal provides a total of 32 car parking spaces to accommodate the additional rooms. It is key to note that the adjoining site that forms part of	<b>No – Refer to Note 2</b>

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Part	Control	Proposed	Complies
	<p>plus 2 coach pick up and set down spaces</p> <p>If shuttle is provided, the car parking rate is 1 space/2.5 rooms</p> <p><b>Total car parking required: 46 car parking spaces (no shuttle)</b>  <b>28 car parking spaces (shuttle)</b></p>	this development has approval for a shuttle bus.	
<b>3A.3.1 - Car Park Design</b>	<b>C1</b> – All off-street parking facilities shall be designed in accordance with current Australian Standards AS2890.1 and AS2890.6. The design of off-street commercial vehicle facilities shall be in accordance with AS2890.2.	This has been conditioned in the consent however the plans show compliance.	Yes
<b>3A.3.2 – Small Cars</b>	<b>C13</b> Parking spaces for small cars will only be permitted as visitor parking spaces or parking facilities that open to the general public. The number of parking spaces for small cars (as defined in AS2890.1) shall not exceed 5% of the total car parking spaces provided by the development.	One small car parking space is proposed. This is in addition to the 12 small car parking spaces that were approved at 2-8 Sarah Street from the overall 98 car parking spaces (addition of current proposal and approved adjoining development). As the hotel is utilised predominantly for visitors, this partially meets the control.	<b>No – Refer to Note 2</b>
<b>3A.3.4 On-site Loading and Unloading</b>	<b>C1</b> 0-199 rooms = 2 courier vans, 1 SRV space and 1 MRV space	Loading and unloading will be carried out from the dedicated loading bay approved on 2-8 Sarah Street. Appropriate conditions relating to reciprocal right of way over the two sites have been imposed in the consent	Yes

#### Note 2 – Car parking departures

The proposal provides a total of 32 car parking spaces on the site. When considering both the subject and adjoining site, the overall number of car parking spaces associated with the development results in 98 spaces. The proposal generates a total of 69 additional rooms which would require 46 car parking spaces on the basis of 1 space per 1.5 rooms. However under DA-2014/45, a shuttle bus service was provided which further reduces the car parking rate for

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hotel rooms to 1 space per 2.5 rooms. Therefore the proposal would require 28 spaces. The proposal complies in this regard however falls short of one car parking space for the overall development. Under DA-2014/45/03 which modified the car parking at 2-8 Sarah Street, a shortfall of one car parking space was considered and found acceptable for the development. This proposal does not seek to further reduce the car parking for the overall site.

The shortfall in car parking has been addressed in the traffic report prepared by Arson Group as well as Council's Development Engineer who has no issue with the one car parking space shortfall for the overall site.

As there is no increase in the amount of staff that was approved as part of DA-2014/45 at 2-8 Sarah Street and associated with the hotel development, the current proposal does not require any car parking space for staff.

In regards to small car parking spaces, the proposal seeks to provide one small car spaces. This is in addition to the 12 small car parking spaces that were approved as part of DA-2014/45 at 2-8 Sarah Street. The applicant has provided the following justification for the small car parking space and the overall impact of both buildings:

*"An increased proportion of Small Car spaces is proposed to support Environmentally Sustainable Design initiatives; whereby Green Star credits are available for developments that provide in excess of 15% Small Car spaces. Further, a 'small car' represents the 35th percentile of vehicle sizes in the market. Accordingly, a small car space can accommodate more than 5% of typical passenger vehicles, and the proposed 12 small car spaces (equivalent to 13.0% of the overall provision) is considered supportable."*

Council's Development Engineer has reviewed the justification for the small car space and has provided the following:

*There is an excess amount of small car spaces greater than the maximum 5% that is allowable however, considering there is an ESD improvement in providing small car spaces, the increase is considered acceptable.*

Therefore considering the hotel development in totality and the arguments that have been presented above, the shortfall in the car parking space in addition to the increase in the inclusion of the small car space within the proposal is acceptable.

#### *Part 3C – Access and Mobility*

The development application was accompanied by a BCA Capability Statement which was prepared by Blackett, Maguire and Goldsmith who have made recommendations which should be carried out with the development. The proposal provides for a fire egress onto Robey Street which is contained wholly within their site and leads to 2-8 Sarah Street. The building will require compliance with the DDA and the BCA and this has been appropriately conditioned.

#### *Part 3D – Signage*

See the assessment under SEPP No. 64 – Advertising and Signage above as it supersedes this section of the DCP.

#### *Part 3G- Stormwater Management*

The proposed hotel extension will incorporate a number of stormwater and sediment mitigation measures as outlined in the Civil Plans prepared by Wood and Grieve Engineers and contained at Appendix L. The drainage system for the site will discharge into the drainage

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system for the 2–8 Sarah Street development which has been sized to cater for the additional flows from 10–12 Sarah Street. Measures to address stormwater impacts include a gravity system to all roof areas, basement pump out system, an onsite detention tank with discharge infiltration, various pits, downpipes, a large rainwater tank, grated drains and rainwater piping including a connection to Council's stormwater system. The proposal was reviewed by Council's Development Engineer who had no issues subject to conditions imposed in the consent.

#### *Part 3J – Aircraft Noise and OLS*

The provisions of Australian Standard AS2021-2000 have been considered in the assessment of the development application, as the subject site is located within the 25-30 ANEF contour. Residential development in these areas is considered unacceptable under Table 2.1 of Australian Standard AS2021-2000 unless an acoustic report is submitted to Council, which demonstrates that the proposed dwelling can achieve the requirements under Table 3.3 of AS2021-2000.

An acoustic report prepared by WSP and dated 21 November 2018 has been prepared to accompany the development application.

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

The development also falls within the windshear map located within the DCP therefore wind turbulence was considered. The development application was referred to CASA for comments and has stated that it is unlikely that the windshear criteria would be breached by building induced wind effects. The risk from building induced wind effects is likely to occur only when prevailing winds require the use of Runway 34L and Runway 34R. CASA notes that Runway 07/25 is unlikely to be operational under these prevailing wind conditions.

#### *Part 3K – Contamination*

Refer to SEPP No. 55 – Remediation of Land above as contamination and suitability of the site has been discussed in this section.

#### *Part 3L – Landscaping and Tree Management*

Refer to the Vegetation SEPP for discussion relating to existing trees and landscaping on the site.

#### *Part 3N – Waste Minimisation and Management*

A waste management plan has been submitted as part of the development application. The plans demonstrate that there is no garbage rooms proposed as part of the subject proposal and the addition will rely on the existing approved garbage rooms and garbage collection method approved in DA-2014/45 at 2-8 Sarah Street.

#### *Part 6 – Employment Zones*

##### *Part 6.2.4- Mascot Business Development Precinct*

The site is located within the Mascot Business Development Precinct and an assessment against the controls within this section has been carried out as follows:

Controls	Response	Complies
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<p>C1 Development is to encourage a higher public transport (including walking and cycling) use and include strategies to encourage and promote car sharing and car pooling strategies.</p> <p>In this respect a Workplace Travel Plan is to be lodged with the development application. The Workplace Travel Plan shall establish measurable targets to achieve the mode share targets stated in the Mascot Town Centre Precinct TMAP - maximum car mode share: 65% by 2021 and 57% by 2031.</p>	<p>The proposal is located in close proximity to Sydney Airport. The proposal is also located within 800 metres of Mascot Train Station and a number of local bus stops. Accordingly, the proposal will encourage both public transport and active transport modes such as walking and cycling. The addition to the approved hotel will also utilise the arrangements approved in the hotel development at 2-8 Sarah Street by maintaining the provision of a shuttle bus service, providing direct service for hotel guests and staff to the Airport and thereby minimising the reliance on private vehicles and reducing the hotel's impact on the surrounding road network.</p>	Yes
<p>C2 Developments, including alterations and additions shall:</p> <ul style="list-style-type: none"> <li>i. Improve the appearance of buildings, particularly along the roads which serve a gateway function to Sydney Airport and the Sydney CBD; and</li> <li>ii. Comply with Sydney Airport's regulations in regard to safety, lighting and height of buildings</li> </ul>	<p>The proposal is considered to be attached to a site that is located at a key airport gateway location. The proposal seeks to replicate the same variety of materials and finishes that was approved at 2-8 Sarah Street to ensure that the overall design compliments the streetscape. Appropriate landscaping in the building setbacks will soften the overall appearance of the hotel and this is demonstrated in the amended landscaped plans. A Design Statement prepared by SJB outlines the design intent and vision for the proposed addition. The proposal will comply with the Sydney Airport's regulation with regard to safety and lighting.</p> <p>The development application has been referred to SACL who raised no objections to the proposed maximum height of 29.97 metres, subject to conditions to be imposed on any consent. The proposal is also consistent with the height approved at 2-8 Sarah Street.</p>	Yes
<p>C6 Development within 25 metres of either side of the centre line of the Airport Line Tunnel is to be referred to RailCorp.</p>	<p>The subject site does not fall within the zone of influence of the Airport Line Tunnel therefore no referral to Sydney Trains is required. Additionally no basement or excavation other than footings is proposed.</p>	N/A
<p>C7 Development shall be designed and constructed in accordance with Australian Standard AS 2021 (Acoustic</p>	<p>An acoustic report has been provided with the subject application. Appropriate conditions of consent have been incorporated.</p>	Yes

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Aircraft Noise Intrusion- Building siting and Construction).		
C8 The introduction of noise abatement measure to achieve compliance with current AS 2021 must be done in a manner that does not compromise the architectural design of a building or impact on the character of an existing streetscape.	Noise abatement measures are incorporated into the architectural design as proposed. Relevant conditions have been included within the consent.	Yes
C9 All development that is in, or immediately adjacent to, the rail corridor or a busy road must be designed in accordance with NSW Department of Planning 'Development Near Rail Corridors and Busy Roads – Interim Guidelines, December 2008'.	The proposal has been designed in accordance with NSW Department of Planning 'Development Near Rail Corridors and Busy Roads – Interim Guidelines, December 2008'.	Yes

Additionally, the development has taken into consideration the general controls that apply to employment zones within the DCP and the development has been assessed against the relevant controls as below:

Part	Control	Response	Complies
6.3.2 - Building and Site Layout	C1 A site analysis plan is to be lodged with the Development Application in accordance with the Council's Development Application Guide.	A site plan has been provided with the development application.	Yes
	C2 Through careful site arrangements new building works must: (i) Address the street and highlight any non-industrial aspects (ie office section) of the development; (ii) Avoid long blank walls of warehouse units facing the street and long continuous roof lines; and (iii) Provide regular modulation to the façade or division of massing.	The proposal has been designed to address the street. Where the two buildings meet, appropriate articulation is proposed including a vertical slot to express and define the break and which will reinforce a vertical interpretation of the building.	Yes
	C4 Setbacks are to be deep soil zones	The setbacks include deep soil areas	Yes

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	C5 Setbacks are to maximise the retention of existing trees and their root systems and may need to be variable to achieve this (includes trees on adjoining properties).	The proposal seeks to plant a number of new trees. Any remaining tree will be appropriately maintained during construction.	Yes
	C6 Internal spaces are to be designed to satisfy the operational requirements of the particular land use whilst providing a safe and convenient work environment.	The internal spaces of the hotel have been designed to meet the operational requirements of the hotel brand.	Yes
	C8 New buildings and the creation of new industrial units within close proximity to residential areas are to be designed to minimise any adverse effects on the amenity of residential areas by way of overshadowing, overlooking, lighting, dust, noise or fumes.	The proposal is not located close to any residential dwellings. Notwithstanding, the addition has been designed to mitigate any adverse effects of the amenity of surrounding development.	Yes
	C9 Adequate waste removal handling and minimisation facilities are to be provided on site for all development to ensure these facilities are not utilising car parking areas.	The proposal will utilise the approved waste and loading facilities provided at the adjoining approved hotel at 2-8 Sarah Street. Within the approved hotel, a garbage room is provided next to the car park entrance with a separate door providing direct access to the loading and delivery area. The garbage room is sized appropriately to accommodate a range of waste and recycling streams from the extended hotel	Acceptable
	C10 For new development all loading and unloading facilities and the majority of car parking required for the development is to be provided at the rear or at the side of any buildings.	Parking for the proposed addition is provided over two levels (Ground and Level 1) which will enable easy integration with the approved parking levels of the adjoining site. The proposal will make use of the approved loading zone located on the adjoining site at 2-8 Sarah Street.	Yes

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	C15 Building entrances are to be clearly defined and located so that visitors can readily distinguish the public entrance to each building. Access to each entrance is to be provided by a safe direct route, avoiding potential conflict with vehicles manoeuvring on site.	The proposed addition will utilise the vehicular access, pedestrian access and Porte Cochere provided in the approved hotel, with a seamless connection provided between the two sites. The proposed addition to the car park will have direct pedestrian access into the approved hotel lobby and Great Room/lounge area.	Yes
6.3.4 - Building Design and Appearance	C1 The maximum building height is indicated in the Building Height Map attached to the Botany Bay Local Environmental Plan 2013	The proposal provides a maximum building height of 29.97 metres which is well below the 44 metre height limit of the LEP 2013.	Yes
	C3 Compliance with the Civil Aviation Safety Authority requirements.	The proposal is below the height limit. The application was referred to CASA for wind turbulence however they did not raise any issues with the proposal.	Yes
	C4 The maximum height of a building must be consistent with the height of other buildings in the immediate vicinity	The proposal provides a maximum building height of 29.97 metres which below the 44-metre height limit of the LEP 2013, and is identical to the adjoining approved development.	Yes
	C6 All rooftop or exposed structures including lift motor rooms, plant rooms, etc., together with air conditioning, ventilation and exhaust systems, are to be suitably screened and integrated with the building in order to ensure a properly integrated overall appearance.	All plant equipment will be suitably screened and integrated with the overall building appearance to reduce visual impact.	Yes
	C7 All development applications involving external building works must be accompanied by a schedule of finishes and a detailed colour scheme for all external walls.	The development application was accompanied by a schedule of materials. The materials to be incorporated within the proposal are identical to the approved building at 2-8 Sarah Street.	Yes

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	C10 Walls of new development must make use of non-reflective colours and materials to avoid glare.	The proposed materials are considered to be nonreflective and will therefore avoid glare.	Yes
	C11 All elevations of a building fronting a public place, or visible from a rail line, public place or proposed road, must be constructed of face brickwork or other decorative facade treatment to Council's satisfaction	The proposal involves an extension to an approved hotel, and therefore externally, the extension will mirror the materiality of the adjoining building. The proposed materials are therefore considered suitable.	Yes
	C25 Entry to basement parking areas should be through security access via the main building.	The proposal will utilise the approved access arrangements provided in the adjoining site, 2-8 Sarah Street. This includes car lifts to access the onsite car parking areas.	Yes
6.3.5 - Setbacks	C1 Setbacks are to be in accordance with the following: Front setback – 9 metres Side setback – 2 metres Rear setback – nil to 3 metres	Proposed:  Front setback = 3 metres Side setbacks = nil side setbacks Rear setbacks = 1.2 metres to Robey Street  Notwithstanding, the numerical non-compliance, the proposed setbacks are consistent with the surrounding development and the adjoining approved hotel development at 2-8 Sarah Street. The nil side setback to the western boundary satisfies Design Review Panel feedback for the adjoining building where a nil setback was preferred to a 2m setback. The rear setback to Robey Street is consistent with the adjoining site (2-8 Sarah Street) and, as there is a triangular parcel of land that separates the site from Robey Street as the rear setback is actually slightly more than 1.2	Acceptable

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		metres. The front setback is consistent with existing development to the west of the site and is therefore considered acceptable	
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*Part 7F – Hotel and Motel Accommodation*

The following controls have been assessed for the modified hotel development on the site:

Control	Response	Complies
C1 – The maximum stay permitted is 3 months.	A plan of management has been submitted with the application and is acceptable and conditioned within the consent.	Yes
C2 – The main access point is to be located at the main street frontage of the property. Access Points should be avoided at the boundaries of the property where and impact on noise or privacy could result for adjoining residences.	The access points to the development are off Sarah Street as approved under DA-14/45 at 2-8 Sarah Street. A modification application under this development application is concurrently being assessed to allow for the approved development to accommodate and join the subject proposal.	Yes
C4 – The minimum size for a visitor's room is 5.5m <sup>2</sup> for the bedroom floor area for each person staying within the room.	The size of the bedroom floor area are 12-16sqm. Accessible rooms are larger around 18sqm.  The overall size of the rooms are 20sqm with accessible bedrooms between 28-29sqm.	Yes
C7 – A small kitchenette is permitted if adequate cupboards and shelves are provided	The rooms do not contain kitchenettes however the applicant has suggested that tea and coffee making facilities are provided only.	Yes
C9- Bathrooms must be provided in accordance with the Building Code of Australia.	All rooms have separate bathrooms that have been designed in accordance with the BCA requirements.	Yes
C10 – The design and operation of hotel and motel accommodation must take into account possible noise impacts on adjacent properties and the surrounding area.	The modified design has carefully orientated the different uses on each level to manage noise impacts arising from high noise environment. The proposal seeks hotel rooms from Level 2 to 8 and car parking from ground and Level 1.	Yes

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C11 – A Plan of Management (POM) is required to be submitted. The POM is a written report which describes how the ongoing operation of hotel and motel accommodation will be managed to reduce its impact upon the amenity of surrounding properties.	A plan of management has been submitted with the modified application and has been appropriately been conditioned.	Yes
C12- The building is to comply with Parts C, D, and E of the BCA	A BCA capability statement has been included as part of the application which demonstrates compliance with the BCA.	Yes
C13 – Each room is to comply with Parts C, D E and F5 of the BCA so as to ensure there is adequate fire safety in the building and adequate sound insulation between each room.	A BCA capability statement has been included as part of the application which demonstrates compliance with the BCA.	Yes

#### *Part 8 – Character Precinct*

The site is bound by Sarah Street to the north, O’Riordan Street to the east, Robey Street to the south and Duguid Street to the west. The proposal is for an addition to the approved development at 2-8 Sarah Street to the east. The development proposal has demonstrated that the scale, materiality and setbacks of the subject development application are identical to the proposal that was approved under DA-2014/45 for 2-8 Sarah Street.

The immediate area is undergoing transition from predominantly commercial and industrial warehouses to more modern commercial buildings and hotel developments. The increased density in the area is reflective of the site and surrounding sites proximity to Sydney Kingsford Smith Airport. New hotel developments have been approved and constructed or in the process of being constructed to service the growing demands for tourist and visitor accommodation in Sydney and in close proximity to the airport. Given the proposal involves an addition to an approved hotel on the adjoining site, the proposal is appropriate when considering the existing character of the area.

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

The proposed development is 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 significant adverse environmental, social or economic impacts in the locality.

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

The subject site is currently vacant with its previous use as a commercial warehouse building used for the purposes of a taxi base. A Stage 2 contamination report prepared by Douglas Partners has been submitted with the development application which concludes that the site can be made suitable for the proposed use based on carrying out the recommendations contained within the report as well as the conditions that were imposed by Council's Environmental Scientist.

The site is located within a 25-30 ANEF contour and is affected by traffic noise. In this regard, the applicant has submitted an acoustic report which demonstrates that the development can meet the acoustic requirements of both affectations.

The proposed development is permissible in the zone and satisfies the objectives of the zone. The proposed development has been lodged as a standalone development application however the building will be attached to the adjoining approved hotel development at 2-8 Sarah Street. The proposal for the reasons above and discussed in the report result in a suitable development for the site and the immediate area.

**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 forty (40) day period from 7 December 2018 to 16 January 2019. No objections were received as part of the notification period.

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

It is considered that granting approval to the proposed development will have significant adverse impact on the public interest.

**Section 7.11 Contributions**

It is considered that the proposed development will increase the demand for public amenities within the area, and in accordance with Council's Section 7.11 Contribution Plan 2016. The site is located within the Mascot Station Precinct Area therefore contributions are based on the number of workers generated by the use.

The applicant has provided the following commentary regarding to the contributions:

“

- *The original DA for the hotel at 2-8 Sarah Street was subject to a condition requiring the payment of Section 94 contributions.*
- *The report to the JRPP indicated that notwithstanding employment estimates provided by the applicant at that time (10 FTE staff), Council's own employment estimate was for 56 staff. The Section 94 contribution was based on 56 staff.*
- *Holiday Inn Express' operations team advises that the total number of staff to be employed across the extended hotel site (that is, including both 2-8 and 10-12 Sarah Street), would be 30, to include the following:*

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- *Hotel Management and administration/service colleagues: 15 full-time equivalent staff members (20 individuals)*
- *Hotel cleaning contractors (outsourced provider): 8 full-time equivalent staff members (10 individuals)*
- *Therefore, despite the extension of the hotel by 69 rooms, the number of staff remains well below the number of staff for which contributions have already been made in relation to hotel employees.*

*Based on the evidence that more than adequate contributions have already been made, coupled with the fact that the development proposes an extension to an approved hotel (and not a new stand-alone development), we submit that there is no basis to impose further contributions on the development application."*

The rationale of the applicant is supported by Council as a calculation between the two development applications results in the subject development application having a lesser contribution under the Section 7.11 Contribution Plan 2016 than the contribution that was required to be paid to Council under DA-14/45 for 2-8 Sarah Street under the Section 94 Contributions Plan 2005-2010. In this instance, the 7.11 contribution for this development application is not warranted.

## Conclusion

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Development Application No. 2018/319 was received on 23 November 2018 for an addition to an approved nine (9) storey hotel at 2-8 Sarah Street, comprising of 69 rooms, above ground parking and business identification signage at 10-12 Sarah Street, Mascot.

The development departs from the FSR requirement of 3:1 by proposing a maximum FSR of 3.47:1. The applicant has provided a Clause 4.6 variation to address this issue and it is considered that the variation is well founded in this case.

Other key issues relating to car parking has been addressed in the report above and have been found to be acceptable when considering the aspects of the site and the adjoining approved hotel development.

The development is suitable for the site as an addition to the adjoining hotel development, and will merge with it accordingly. The proposal is also consistent with the objectives of the B5 Business Development zone, the height controls and the general scale of developments within the immediate vicinity. The proposal will provide an enlarged hotel with additional guest rooms in close proximity to Sydney Kingsford Smith Airport and responds to the current and future character of the area. For these reasons, the development application is recommended for approval subject to conditions of consent in the attached Schedule.

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## Attachment

### Schedule 1 – Conditions of Consent

**Premises: 10-12 Sarah Street, Mascot**

**Da No.: DA-2018/319**

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**SCHEDULE OF CONSENT CONDITIONS****GENERAL CONDITIONS**

- The development is to be carried in accordance with the following plans listed below and endorsed with Council's stamp, except where amended by other conditions of this consent.

Drawing No.	Author	Dated/Received
DA-AR-0001- Cover- Rev 3	SJB Architects	Dated 16 November 2018; Received 23 November 2018
DA-AR-0102- Site Plan- Proposed- Rev 3		Dated 16 November 2018; Received 23 November 2018
DA-AR-0201- Plan- Basement- Rev 3		Dated 16 November 2018; Received 23 November 2018
DA-AR-0202- Plan Ground- Rev 3		Dated 16 November 2018; Received 23 November 2018
DA-AR-0203- Plan- Level 1- Rev 3		Dated 16 November 2018; Received 23 November 2018
DA-AR-0204- Plan- Level 2- Rev 3		Dated 16 November 2018; Received 23 November 2018
DA-AR-0205- Plan- Level 3-7- Rev 3		Dated 16 November 2018; Received 23 November 2018
DA-AR-0206- Plan- Level 8- Rev 2		Dated 16 November 2018; Received 23 November 2018
DA-AR-0207- Plan- Roof- Rev 3		Dated 16 November 2018; Received 23 November 2018
DA-AR-0501- Elevation- North- Rev 3		Dated 16 November 2018; Received 23 November 2018
DA-AR-0502- Elevations- South- Rev 3		Dated 16 November 2018; Received 23 November 2018
DA-AR-0503- Elevations- East- Rev 3		Dated 16 November 2018; Received 23 November 2018
DA-AR-0504- Elevations- West- Rev 3		Dated 16 November 2018; Received 23 November 2018
DA-AR-0601- Sections- Typical- Rev 3		Dated 16 November 2018; Received 23 November 2018

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Drawing No.	Author	Dated/Received
DA-AR-2012- Additional Drawings- GFA- Rev 3		Dated 16 November 2018; Received 23 November 2018
DA-AR-2540- Finishes Schedule- Rev 3		Dated 16 November 2018; Received 23 November 2018
LD-DA001- Materials Finishes- Rev 1	Scott Carver	Dated 24 January 2019; Received 1 March 2019
LD-DA002- Planting Palette- Rev 2		Dated 24 January 2019; Received 1 March 2019
LD-DA003- Planting Schedule- Rev 2		Dated 24 January 2019; Received 1 March 2019
LD-DA004- Ground Floor Landscape General Arrangement- Rev 2		Dated 24 January 2019; Received 1 March 2019
LD-DA111- Level 2 Landscape General Arrangement- Rev 1		Dated 24 January 2019; Received 1 March 2019

Reference Document(s)	Author	Dated/Received
Acid Sulfate Soil Management Plan	Douglas Partners	Dated 20 November 2018; Received 23 November 2018
Addendum Package and Additional Information	Urbis	Dated 20 February 2019; Received 1 March 2019
Arborist Report	The Ents Tree Consultancy	Dated 17 September 2018; Received 23 November 2018
BCA Capability Statement	Blackett, Maguire and Goldsmith	Dated 16 November 2018; Received 23 November 2018
Certificate of Design- Stormwater Management	Wood and Grieve Engineers	Received 23 November 2018
Civil Engineering Works- CI-000-10, CI-050-10, CI-070-10, CI-076-10, CI-500-10, CI-520-10 and CI-526-10	Wood and Grieve Engineers	Dated 16 November 2018; Received 23 November 2018
Clause 4.6 variation request- Botany Bay LEP 2013- Clause 4.4 Floor Space Ratio	Urbis	Dated 21 November 2018; Received 23 November 2018
Construction Management	HIEX Hotel Mascot	Dated 14 November 2018; Received 23 November 2018
Design Verification Statement	SJB Architects	Dated 13 November 2018; Received 23 November 2018

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Reference Document(s)	Author	Dated/Received
Detailed Site (Contamination) Investigation	Douglas Partners	Dated February 2019; Received 1 March 2019
Environmental Sustainable Design Report	Cundall	Dated 15 November 2018; Received 23 November 2018
Geotechnical Desktop Study	Douglas Partners	Dated 19 November 2018; Received 23 November 2018
GFA Statement	SDG Land Development Solutions	Dated 19 November 2018; Received 23 November 2018
Noise Impact Assessment Report	WSP	Dated 21 November 2018; Received 23 November 2018
Operational Waste Management Plan	Foresight Environmental	Dated 15 November 2018; Received 23 November 2018
Plan of Management	-	Dated October 2018; Received 23 November 2018
Preliminary Site Investigation	Douglas Partners	Dated October 2018; Received 23 November 2018
QS Report	WT Partnership	Dated 18 September 2018; Received 23 November 2018
Qualitative Environmental Wind Assessment	SLR	Dated 19 November 2018; Received 23 November 2018
Statement of Environmental Effects	Urbis	Dated 22 November 2018; Received 23 November 2018
Stormwater Management Plan	Wood and Grieves Engineers	Dated 16 November 2018; Received 23 November 2018
Survey Plan	SDG Land Development Solutions	Dated 31 August 2018; Received 23 November 2018
Traffic Impact Assessment	Ason Group	Dated 16 November 2018; Received 23 November 2018
Wind Turbulence Report	SLR	Dated 19 November 2018; Received 23 November 2018

2. This Consent relates to land in Lot 18 and 19 in DP 1339, and as such, building works must not encroach on to adjoining lands or other public places, except as otherwise permitted by this consent.
3.
  - a) All building work must be carried out in accordance with the provisions of the Building Code of Australia;

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- b) All plumbing stacks, vent pipes and the like shall be kept within the building and suitably concealed from view. This Condition does not apply to the venting to atmosphere of the stack above roof level;
- c) All air conditioning units shall be appropriately treated to ensure that they are concealed from view and compliant with Australian Standard AS1668.2. If they are located on balconies or in public, they are to be appropriately screened;
- d) The provision of disabled access throughout the development is required and shall be in compliance with the Building Code of Australia Part D3 "Access for People with Disabilities" and Australian Standard AS1428.1 (2001) – Design for Access and Mobility – Part 1 General Requirements for Access – Buildings. This requirement shall be reflected on the Construction Certificate plans.
- 4. All costs associated with these development conditions shall be borne by the applicant. If, when actioning these conditions Council's solicitor is required to act on behalf of Council, then Council's solicitor's fees and charges shall also be borne by the Applicant.
- 5. The consent given does not imply that works can commence until such time that: -
  - a) Detailed plans and specifications of the building have been endorsed with a Construction Certificate by: -
    - i) The consent authority; or,
    - ii) An accredited certifier; and,
  - b) The person having the benefit of the development consent: -
    - i) Has appointed a principal certifying authority; and,
    - ii) Has notified the consent authority and the Council (if the Council is not the consent authority) of the appointment; and,
    - iii) The person having the benefit of the development consent has given at least 2 days notice to the Council of the person's intention to commence the erection of the building.
- 6. The development is approved as an addition to the approved hotel development at 2-8 Sarah Street under DA-2014/45 and any subsequent modification applications. All vehicle access and waste collection is to be carried out from the adjoining site.
- 7. No signage, other than signage shown on approved plans or signage permitted as exempt or complying development, shall be installed or displayed at the premises without a development application being lodged with Council and consent thereto being given by Council in accordance with Council's guidelines and SEPP No. 64.

**CONDITIONS IMPOSED BY AN EXTERNAL AUTHORITY**

- 8. The following conditions are imposed by the Sydney Airport Corporation Limited (SACL) and must be complied with:

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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 36.5 metres Australian Height Datum (AHD).
  - c) In his 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, Peter Bleasdale has no objection to the erection of this development to a maximum height of 36.5 metres AHD.
  - d) The approved height is inclusive of all lift over-runs, vents, chimneys, aerials, TV antennae, construction cranes etc.
  - e) Should you wish to exceed this height a new application must be submitted.
  - f) 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.
  - g) Construction cranes may be required to operate at a height significantly higher than that of the proposed development and consequently, may not be approved under the Airports (Protection of Airspace) Regulations.
  - h) Sydney Airport advises that approval to operate construction equipment (ie cranes) should be obtained prior to any commitment to construct.
  - i) "Prescribed airspace" includes "the airspace above any part of either an Obstacle Limitation Surface (OLS) or Procedures for Air Navigation Services – Aircraft Operations (PANS-OPS) surface for the airport (Regulation 6(1)).
  - j) The height of the prescribed airspace at this location is 51 metres above AHD.
  - k) Planning for Aircraft Noise and Public Safety Zones
  - l) 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).
  - m) 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.
9. The following conditions are imposed by **Sydney Water** 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.

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- 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](http://www.sydneywater.com.au) > Plumbing, building and developing > Developing > Land development or telephone 13 20 92.

10. The following comments are imposed by **NSW Police** as follows:

- a) The building site should be secured with durable fencing at all times whilst construction is taking place, to prevent theft and malicious damages and to deter undesirable persons from entering the site.
- b) CCTV and adequate lighting shall be installed and operational around the perimeter of the construction during construction phase and to be permanently fixed once building is completed.
- c) CCTV and adequate lighting to also be installed in above ground parking spaces and at entry and exit points.

**CONDITIONS WHICH MUST BE SATISFIED PRIOR TO COMMENCEMENT OF DEMOLITION WORKS OR ANY DEVELOPMENT OR WORK**

- 11. A dilapidation survey shall be undertaken of all properties and/or Council infrastructure, including but not limited to all footpaths, kerb and gutter, stormwater inlet pits, and road carriageway pavements, in the vicinity which could be potentially affected by the construction of this development. Any damage caused to other properties during construction shall be rectified. A copy of the dilapidation survey and an insurance policy that covers the cost of any rectification works shall be submitted to the Principal

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Certifying Authority prior to issue of the Construction Certificate. The insurance cover shall be a minimum of \$10 million.

12. A sign must be erected in a prominent position on any work site on which work involved in the erection 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.
13. 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 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, and
  - g) Permit to use any part of Council's road reserve or other Council lands.
14. All contractors shall comply with the following during all stages of demolition and construction:
  - a) 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.

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- b) 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.
  - c) 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.
  - d) 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.
  - e) 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.
15. 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 Organization 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.
16. 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.
17. Council's warning sign for soil and water management must be displayed on the most prominent point on the building site, visible to both the street and site workers. The sign must be displayed throughout construction. A copy of the sign is available from Council.
18. 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 Council. Copies of the guidelines are available from Council.
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 practising 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.

20. Should any hazardous materials be identified a Work Management Plan completed in accordance with AS2601 – Demolition of Buildings shall be submitted to the Principal Certifying Authority prior to the any excavation for the building or structure. The report shall contain details regarding the type of hazardous material and the proposed methods of containment and disposal.
21. Hazardous or intractable 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 and Climate Change and Water and with the provisions of:
  - a) New South Wales Occupational Health and Safety Act, 2000;
  - b) The Occupational Health and Safety (Hazardous Substances) Regulation 2001;
  - c) The Occupational Health and Safety (Asbestos Removal Work) Regulation 2001;
  - d) Protection Of the Environment Operations Act 1997 (NSW); and
  - e) Department of Environment and Climate Change Waste Classification Guidelines (2008).

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

22. The required Long Service Levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act 1986 has to be paid. The Long Service Levy is payable at 0.35% of the total cost of the development, however this is a State Government Fee and can change without notice.
23. The applicant must prior to the release of the Construction Certificate, pay the following fees:
 

a) Development Control Fee	\$3,081.00
b) Footpath Crossing deposit	\$7,809.83 (see below)
c) Street Tree Maintenance Bond	\$3,000.00 (see below)
24. Prior to the issue of any Construction Certificate, the applicant shall lodge a Footpath Crossing deposit of **\$7,809.83** (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 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,

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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.

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

- a) The proposed method of access to and egress from the site for construction vehicles, including access routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or public reserves being allowed,
- b) The proposed phases of construction works on the site and the expected duration of each construction phase,
- c) The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken,
- d) The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process,
- e) The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site,
- f) The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period,
- g) The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site,
- h) The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an Accredited Certifier (Structural Engineering), or equivalent,
- i) Proposed protection for Council and adjoining properties, and
- j) The location and operation of any on site crane. Please note that a crane may require prior approval from Sydney Airports Corporation.

The location of any Construction Zone (if required) approved by Council's Traffic Committee, including a copy of that approval.

27. A detailed Traffic Management Plan for the pedestrian and traffic management of the site, Botany Road and King Street during construction shall be prepared and submitted to the relevant road authority (Council or Roads and Maritime Services) for approval. The plan shall:

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- a) be prepared by a RMS accredited consultant,
- b) nominate a contact person who is to have authority without reference to other persons to comply with instructions issued by Council's Traffic Engineer or the Police, and
- c) if required, implement a public information campaign to inform any road changes well in advance of each change. The campaign may be required to be approved by the Traffic Committee.

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

28. Prior to the release of the Construction Certificate, the following required section(s) are to be submitted to and approved by the Principal Certifier.
  - a) All driveways/access ramps/vehicular crossings shall conform to Australian Standards AS/NZS 2890.1:2004 and Council requirements.
  - b) All accessible parking spaces shall comply with AS/NZS2890.6:2009,
  - c) 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.
29. Prior to the release of the Construction Certificate, details shall be submitted to the Principal Certifying Authority on the proposed method of any exhaust ventilation from the car park. The exhaust ventilation needs to be ventilated away from the property boundaries of the adjoining buildings, and in accordance with the provisions of AS1668.1 and AS1668.2.
30. Prior to the release of the Construction Certificate, a plan (written and/or diagrammatic) shall be submitted and approved by the Engineering and Regulatory Services Department, showing the method of access of building materials and plant to the property, and storage location on the property during construction and shall include all existing structures.
31. 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/plumbing-building-developing/building/sydney-water-tap-in/index.htm>
32. Prior to the issue of any Construction Certificate, an application for Frontage Works (Public Domain Frontage Works Construction Application) shall be made to Council's Customer Service Centre prior to issue of the Construction Certificate. All boundary

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frontage works, egress paths, driveways and fences shall comply with the approval. A fee is payable to Council.

33. Prior to the issue of a Construction Certificate, a public domain improvements plan shall be submitted for approval by Council. The Plan shall be undertaken by a suitably experienced Landscape Architect and shall include but not be limited to new street tree planting, footpath paving (segmental/other), street tree pit treatments and tree guards, street furniture, in ground landscaping, irrigation, lighting. The Plan shall be in accordance with Council's City Identity Program, Landscape DCP and any other Council specification or requirement. Civil drawings shall be included detailing levels and detailed footpath construction sections in accordance with Council's Engineering Services requirements. Contact Council's Landscape Architect for further details of specific requirements in preparation of the plan.
34. Design certification, prepared by a suitably qualified engineer shall be submitted to Principal Certifying Authority certifying the car parking area shown on the construction plans has been designed in accordance with AS 2890.1, AS2890.2, and AS2890.6.
35. Prior to the issue of any Construction Certificate, the applicant shall contact "Dial Before You Dig" to obtain a utility service diagram for, and adjacent to the property. The sequence number obtained from "Dial Before You Dig" shall be forwarded to Principal Certifying Authority. All utilities within the work zone shall be protected during construction.

Any adjustments or damage to public utilities/services as a consequence of the development and associated construction works shall be restored or repaired at the applicant's expense.

36. To ensure that utility authorities and Council are advised of any effects to their infrastructure by the development, the applicant shall:
  - 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:
    - a. The additional load on the system; and
    - b. The relocation and/or adjustment of the services affected by the construction.
  - c) As part of this development, the Ausgrid power and lighting poles along Sarah Street and Robey Street will need to be decommissioned and new underground and above ground infrastructure shall be provided as specified by Ausgrid and any other affected service provider. The location of the new electrical pillars and new lighting poles shall be confirmed with Council prior to the issue of the Construction Certificate.

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

37. Prior to the issue of any Construction Certificate, detailed design and construction plans in relation to stormwater management and disposal system for the development shall

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be submitted to the Principal Certifying Authority for approval. The detail drawings and specifications shall be prepared by a suitably qualified and experienced civil engineer and to be in accordance with Council's Development Control Plan 'Stormwater Management Technical Guidelines', AS/NZS 3500 – Plumbing and Drainage Code and the BCA. All drawings shall correspond with the approved architectural plans.

The plans shall incorporate but not be limited to the following:

- a) Provision of an On-site Infiltration system for the entire facility designed in accordance with but not limited to Part 5 of the SMTG. A part infiltration, part OSD system may be considered in exceptional circumstances when it can be demonstrated to Council that all other options to regulate the discharge from the site have been exhausted,
- b) Infiltration rates shall be determined by a suitably qualified geotechnical engineer and shall be part of the geotechnical report submitted to Council or alternatively the rate of 0.25L/m<sup>2</sup>/s shall be used,
- c) The 10kL rainwater tank shall be connected for internal reuse for the entire development in accordance with Section 4 of Botany Bay's SMTG,
- d) Incorporate a Stormwater Quality Improvement system to ensure compliance with Section 16 of Botany Bay's SMTG,
- e) The water quality improvement system and WSUD strategy proposal shall be designed to capture and treat at least 85% flows generated from the site.
- f) Any proposed discharge to Council and/or RMS Kerb and Gutter shall be limited to 10L/s. If a higher rate is proposed, a connection shall be made to RMS/Council's underground stormwater drainage system. Any connection to a Sydney Water or RMS stormwater system will require specific approval from the relevant organisation, and
- g) The submission of detailed calculations including computer modelling to support the proposal.

Design Certification, in the form specified in Botany DCP Part 10 Stormwater Management Technical Guidelines page 6 part (i), must be submitted with the detailed plans.

38. 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:
  - 1) identify each item of plant and equipment;
  - 2) the following additional criteria adopted by City of Botany Bay Council:
    - 1) 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).
    - 2) 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.

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- 3) 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.
- 4) 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.

39. The external walls of the building including attachments must comply with the relevant requirements of the National Construction Code (NCC) . Prior to the issue of a Construction Certificate and Occupation Certificate the Certifying Authority and Principal Certifying Authority must:
  - a) Be satisfied that suitable evidence is provided to demonstrate that the products and systems 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.
40. Prior to the issue of any Construction Certificate, the Development is to be constructed to meet all recommendations and requirements that have been detailed in the acoustic report provided by WSP dated 21 November 2018. The measures as detailed in the acoustic assessment report prepared by WSP, 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.

The work detailed in the report includes:

- a) The roof/ceiling must be constructed as per Table 3 of the report,
- b) All external walls need to be constructed as per Table 4 of the report,
- c) Glazing to all windows and glazed door systems are to be as per Table 5 of the report.
- d) Acoustically treated mechanical ventilation must be provided to this premise for it to comply with current guidelines.

**Note:** In many cases the applicant chooses to install air conditioning to meet mechanical ventilation requirements above. If they do, it will require consideration of the noise from the air conditioner (advice concerning noise from air conditioners is attached below).

41. Prior to the issue of a Construction Certificate, the applicant is to submit payment for a Street Tree Maintenance Bond of \$3,000. The duration of the Bond shall be limited to a period of 12 months after planting of the new street trees. At the completion of the 12 month period the Bond shall be refunded pending a satisfactory inspection of the tree

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by Council. If the tree is found to be dead or dying then Council will forfeit all or part of the bond to replace or maintain the tree, unless the Applicant undertakes this work.

42. The landscape areas shown on the landscape plans prepared by Scott Carver and dated 16 November 2018 shall be the subject of detailed landscape construction documentation (plans and specifications) that are to be submitted to and approved by Council. The landscape documentation is to be prepared by a suitably qualified Landscape Architect, in accordance with Council's Landscape Technical Specifications. The detailed (construction level) plan shall include, but not be limited to:
- (a) Landscape setback proposed along Sarah Street shall provide a mixed planting of low shrubs and groundcovers and canopy trees. Shrubs and groundcovers shall have a maximum mature height of 900mm and canopy over shall be supplied with four (4) to five (5) Australian native canopy trees with 1.5 metre clear trunk. The trees are to be a minimum mature height of eight (8) metres.
  - (b) All trees shall be planted in advance form, with a minimum pot size of 100 Litres.
  - (c) A site plan showing building envelopes, paved areas and areas to be landscaped.
  - (d) A planting plan at 1:100 scale showing all plant locations, groupings and centres. There is to be a dense 3-tier planting of trees, shrubs and groundcovers in all landscaped areas.
  - (e) A plant schedule listing all plants by botanical name, total plant numbers, plant spacings, pot sizes and staking.
  - (f) Specifications detailing soil and mulch finishes, root barriers, irrigation, edging and other landscape hardworks such as retaining walls.
  - (g) Areas of paving, schedule of materials, edge treatments and sectional construction details.
  - (h) All fencing, privacy screening and pergolas – elevations and materials.
  - (i) Details of other landscape elements such as furniture, pedestrian lighting, sculpture and water features. Provide sectional construction details and elevations.
  - (j) Planter box on slab sectional details. Planter box depths to be in accordance with Council's Landscape DCP.
  - (k) Trees shall be used extensively throughout the site – particularly in the setbacks. Trees must be of an appropriate scale to complement and scale with the building form and to pedestrianize landscaped open spaces. Trees to be predominantly native, evergreen species using open canopy evergreens or selected deciduous for solar penetration. Additional trees shall be provided along the setback at the corner of Robey St & O'Riordan Street.
  - (l) Show the location of electrical kiosks and fire booster valves. Comply with conditions relating to their location and treatment.

#### **DURING WORKS**

43. If the work involved in the construction of a building:

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- a) likely to cause pedestrians or vehicular traffic in a public place to be obstructed or rendered inconvenient; or,
  - b) involves the enclosure of a public place:
    - i) a hoarding or fence must be erected between the work site and the public place.
    - ii) If necessary an awning is to be erected sufficient to prevent any substance from or in connection with the work falling into the public place.
    - iii) The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to person(s) in the public place.
    - iv) Any such hoarding, fence or awning is to be removed when the work has been completed.
  - c) Suitable consent shall be obtained from Council prior to the erection of any hoarding at the property.
- 44. The land to which this Consent relates must be fenced and enclosed to protect the entry or access to the land and site by lawful persons. The fencing must be in place before demolition works commence.
- 45. 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.
- 46. 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) Inspections of the Sarah Street road reserve prior and during the construction of the new road pavement,
  - e) Final inspection of driveway layback and adjacent kerb and gutter,
  - f) Final inspection of Council's kerb and gutter,
  - g) Final inspection of Council's footpath,
  - h) Final Inspection of new road pavement on Sarah Street.
- 47. 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.
- 48. 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

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lead to the discharge of materials into the stormwater drainage system or onto Council's lands.

49. 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.
50. 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.
51. The approved Waste Management Plan shall be complied with at all times during demolition, construction and on-going use of the site.
52. 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.
53.
  - 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) 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 Council prior to the Issue of an Occupation Certificate.
54. 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.
55. 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*.

**a) Level Restrictions**

Construction period of 4 weeks and under:

the  $L_{10}$  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 20 dB(A).

Construction period greater than 4 weeks and not exceeding 26 weeks:

the  $L_{10}$  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).

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**b) Time Restrictions**

Construction/demolition work shall be limited to the following hours:

Monday to Friday: 07:00 am to 06:00 pm

Saturday: 08:00 am to 01:00 pm

No Construction to take place on Sundays or Public Holidays.

**c) Silencing**

All possible steps should be taken to silence construction site equipment.

56. 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:

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 condition must be in place before work commences.

57. 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.

58. 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.

59. 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.

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60. 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.
61. 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.
62. 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;
  - (b) Protection of the Environment Operations Act 1997; and
  - (c) Protection of the Environment Operations (Waste) Regulation 2005.
63. 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.
64. During excavation, 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.
65. The following shall be complied with at all times:
  - a) The applicant shall conduct all construction and related deliveries wholly on site. If any use of Council's road reserve is required then separate applications are to be made at Council's Customer Services Department;
  - b) Construction operations such as brick cutting, washing tools or brushes and mixing mortar shall not be carried out on public roadways or footways or in any other locations, which could lead to the discharge of materials into the stormwater drainage system or onto Council's lands;
  - 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; and

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- e) Shaker pads shall 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.
- 66. 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.
- 67.
  - a) The Applicant is required to obtain a Council inspection of new trees prior to the planting to ensure plant stock is suitable and post planting prior to the maintenance period commencing.
  - b) A rigid polyethylene sheet type tree root barriers shall be installed alongside the kerb and footpath edge for all new street trees for a depth of 900mm, for 3 metres each side of the tree centre and shall be located 1500mm inward of the footpath and kerb edge, or any other built element. Root deflectors/directors surrounding the rootball are not permissible. The Applicant is required to contact Council's Landscape Architect for an inspection of root barriers located within the public domain prior to backfilling and turfing.
- 68. Planter boxes constructed over a concrete slab shall be built in accordance with the following requirements:
  - (a) Ensure soil depths in accordance with Council's Landscape DCP. The base of the planter must be screeded to ensure drainage to a piped 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.
  - (e) Finish externally with a suitable paint, render or tile to co-ordinate with the colour schemes and finishes of the building.
- 69. 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,

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- (b) If necessary, underpin and support such building in an approved manner;
  - (c) Must at least be 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of the intention to do so to the owner of the adjoining allotment of land and, furnish particulars of the excavation to the owner of the building being erected or demolished;
  - (d) Any retained existing structures and or services on this and adjoining properties are not endangered during any demolition excavation or construction work associated with the above project. The applicant is to provide details of any shoring, piling, 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 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.
70. 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.
71. 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.
72. 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 Principal 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;
  - g) Keeping excavated surfaces moist.
73. 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.
74. 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.

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75. 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. Appropriate records must be retained to support this.
76. 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.
77. 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.

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

78. Prior to the issue of the Occupation Certificate:
- a) Replace all the existing above ground electricity and telecommunication cables to underground cables that adjoin the site and road reserve area fronting both Sarah Street and Robey Street in accordance with the guidelines and requirements of the relevant utility authorities and Ausgrid. The applicant shall bear all the cost of the construction and installation of the below ground cables and any necessary adjustment works. These works and payments shall be completed prior to the issue of the Occupation Certificate; and
  - b) Provide appropriate and suitable street lighting to a high decorative standard to both street frontages of the site together with those internally publicly accessible paths, spaces and corridors, so to provide safety and illumination for residents of the development and pedestrians in the area. All street lighting shall comply with relevant electricity authority guidelines and requirements.
79. 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.
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.
81. Prior to occupation a Chartered Professional Engineer shall certify that the stormwater system has been constructed in accordance with the approved plans and as required by Botany Bay Stormwater Management Technical Guidelines. The certificate shall be in the form specified in Botany Bay Stormwater Management Technical Guidelines and

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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 (including the works on the adjacent development). A copy of the certificate and works-as-executed plan(s) shall be supplied to the Principal Certifying Authority and Bayside Council.

82. Prior to the issue of the 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.
83. Prior to the issue of Final Occupation Certificate, the applicant shall carry out the following works:
  - a) On Sarah St, adjacent to development, reconstruct existing Kerb and Gutter for the full length of the property in accordance with Council Infrastructure Specifications,
  - b) On Sarah St, adjacent to development, demolish existing concrete footpath and construct new paved footpath as per Council's Infrastructure and Landscape Architect specifications,
  - c) On Sarah St, adjacent to development, reconstruct half width of road asphalt, in accordance with Council's Infrastructure Specifications,
  - d) On Robey St, adjacent to development, demolish existing concrete footpath and construct new paved footpath as per Council's Infrastructure and Landscape Architect specifications.
84. 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.
85. Prior to the issue of the Occupation Certificate the Workplace travel Plan needs to be updated to address its implementation strategy and success measures.
86. Prior to the issue of the Occupation Certificate the applicant must submit to the Principal Certifying Authority an acoustic report to verify that the measures stated in the acoustical assessment report prepared by Acoustic Logic Consultancy Pty Ltd, updated and received by Council 17 April 2014 have been carried out and certify that the construction meets AS2021-2000 and AS3671-1989 and specified indoor sound levels. 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 Australia Acoustical Consultants).
87. Prior to the issue of the Occupation Certificate, documentation from a suitably qualified engineer shall be submitted to the Principal Certifying Authority certifying that the loading dock, pick-up/drop-off zone, car parking areas (including queuing area, turning area and disabled parking area), driveways and vehicular access paths have been constructed generally in accordance with the approved construction plan(s) and comply with AS2890.1, AS2890.2 and AS2890.6 requirements. The internal parking facilities shall be clearly designated, sign posted and line marked. Signage and line marking shall comply with the current Australian Standards.

88. Prior to the issue of the 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.
89. Prior to the issue of the Occupation Certificate 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.
90. 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.
91. 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.
92. The landscaped areas on the property shall be installed in accordance with the Council approved landscape documentation, the conditions of development approval and Council's BBDCP at all times. 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 Council prior to the Issue of an Occupation Certificate.
- 93.
- a) A notice of requirement shall be obtained from the Water Board;
  - b) A Certificate under Section 73 of the Water Board (Corporation) Act 1994 shall be obtained and submitted to Council for each stage of construction to ensure that the developer has complied with all relevant Sydney Water requirements, including appropriate connections, correctly sized amplifications, procurement of trade waste agreements, where necessary, and the payment of developer charges.
- Note: Immediate application should be made to Sydney Water for this Certificate to avoid problems in servicing the development.
94. 32 off-street car spaces shall be provided in accordance with the submitted plan and shall be sealed and linemarked to Council's satisfaction.
95. At the completion of landscaping on the site and public domain areas, 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 Council prior to the Issue of an Occupation Certificate and to address the following:
- 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

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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) If required, any electrical kiosk, fire booster assembly or similar utilities must be located in an unobtrusive location away from vehicle and pedestrian entrances to the property and not within the landscaped street setback. The utilities must be screened by a built screen enclosure and/or landscaping so as not to reduce the visual amenity of the development or the streetscape and public domain. The location of, and screening treatment surrounding these utilities is to be approved by Council's Landscape Architect prior to their installation.
  - c) New street trees shall be maintained by the Owner for the duration of the landscape bond period after planting. Maintenance includes periodic watering at a frequency to sustain adequate growth, annual feeding and weed removal but does not include trimming or pruning of the trees under any circumstances.
  - d) Upgrade the public domain by the reconstruction of half the road pavement, kerb and gutter, footpath, drainage system, street trees, landscaping and any associated works for the street frontage Robey Street and Sarah Street and of the site, at the applicant's expense. All improvements shall be in accordance with specifications and requirements from Council's landscape and engineering sections, the approved civil works construction plans and landscape plans, and Condition 27 of this Consent.
96. Prior to the issue of any Occupation Certificate, suitable service easements shall be created on the subject lots of the development at 2-8 Sarah Street benefiting 10-12 Sarah Street. A right of way easement(s) for vehicular access and an easement(s) to drain water for stormwater drainage shall be provided over the lots of 2-8 Sarah Street, benefiting the lots of 10-12 Sarah Street. The service easements are to be covered by a Section 88B Instrument, which may only be varied or extinguished with the consent of Bayside Council. These provisions are to be put into effect prior to the release of the Occupation Certificate.
97. 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**

98. The operations of the premises shall be conducted in such a manner as not to interfere with or materially affect the amenity of the neighbourhood by reason of noise, vibration, odour, fumes, vapour, steam, soot, ash, dust, particulate matter, waste water, waste products or other impurities which are a nuisance or injurious to health.
99. The use of the premises shall not give rise to air impurities in contravention of the Protection of the Environment Operations Act 1997 and shall be controlled in accordance with the requirements of this Act.
- 100.

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- (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 LA<sub>90</sub> 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.
101. 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.
102. Council's footway (area between property boundary and street kerb) is to be kept clean, tidy, washed and maintained at the applicant's expense.
103. The hotel development shall at all times be operated in accordance with the approved Plan of Management submitted to Council on Received 23 November 2018.
104. A shuttle bus required to service the Hotel must be provided to transport occupants to and from the development site to the Sydney Airport. Should the shuttle bus no longer be provided, for whatever reason a separate development application shall be submitted to Council to provide an alternative travel and parking arrangement for the use.
- 105.
- a) The approved Waste Management Plan for the site prepared by Foresight Environmental shall be complied with at all times during demolition works, construction works, and use of the premises; and
  - b) The building owner shall be provided with at least one copy of the waste management plan. The approved Waste Management Plan shall be complied with at all times.
106. All waste and recycling containers shall be stored in the designated waste storage area. The waste containers shall not be over filled and the lids kept closed at all times except when material is being put in them. The Owners Corporation or building owner shall be responsible for the following:
- a) Where waste and recycling containers need to be moved to the street;
  - b) Movement of the waste and recycling containers to the footpath for collections, and the return of waste and recycling containers to the on site waste storage area;

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- c) Refuse containers are to be returned to the waste storage area on the same day as the refuse is collected;
  - d) Cleaning and maintaining the waste storage area, any drainage installations and waste collection containers;
  - e) Providing and maintaining signage and information to uses to encourage recycling;
  - f) No waste or waste containers shall be placed on the public way (including: footpaths, roadways, and reserves) at any time.
107. The operation of the development and movements of vehicles shall comply with the following requirements:
- a) The largest size of vehicle accessing the development shall be restricted to MRV;
  - b) Garbage collection and loading and unloading activities associated with the delivery shall take place wholly within the loading dock;
  - c) Qualified traffic controllers shall be present when the delivery/service vehicle reverses to the loading dock;
  - d) No deliveries to the premises shall be made direct from a public places, public streets or any road related areas (eg. footpath, nature strip, road shoulder, road reserve etc);
  - e) Vehicular manoeuvring area shall be kept clear at all times. All vehicles shall be parked in the marked parking bays;
  - f) Maximum number of delivery vehicles on-site shall be limited to one (1).
- 108.
- a) The operations of the site must at all times fully comply with the requirements of the approved Plan of Management for the site; and
  - b) At all times the approved Workplace Travel Plan shall be fully complied with.
109. Should the external fabric of the building(s), walls to landscaped areas and like constructions be subject to graffiti or similar vandalism, then within seven (7) days of this occurrence, the graffiti must be removed and the affected surface(s) returned to a condition it was in before defilement.

# **CLAUSE 4.6 VARIATION REQUEST**

## **BOTANY BAY LEP 2013 CL 4.4 FLOOR SPACE RATIO**

**10-12 SARAH STREET,  
MASCOT**

21 NOVEMBER 2018  
PREPARED FOR PRO-INVEST

**URBIS**

**URBIS STAFF RESPONSIBLE FOR THIS REPORT WERE:**

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Report Number	Final for lodgement

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## 1. INTRODUCTION

This Clause 4.6 variation request has been prepared by Urbis on behalf of Pro-invest, the applicant for a development application comprising an extension (ie an addition) to an approved hotel on adjoining land. The subject site is 10-12 Sarah Street, Mascot. The approved hotel on adjoining land is known as 2-8 Sarah Street.

The request seeks to vary the Floor Space Ratio development standard prescribed for the subject site under Clause 4.4 of the *Botany Bay Local Environmental Plan 2013* (BBLEP 2013).

The variation request is made pursuant to Clause 4.6 of the BBLEP 2013.

## 2. ASSESSMENT FRAMEWORK

### 2.1. CLAUSE 4.6 OF BOTANY BAY LOCAL ENVIRONMENTAL PLAN 2013

Clause 4.6 of BBLEP 2013 includes provisions that allow for exceptions to development standards in certain circumstances. The objectives of Clause 4.6 are:

- *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Clause 4.6 provides flexibility in the application of planning provisions by allowing the consent authority to approve a development application that does not comply with certain development standards, where it can be shown that flexibility in the particular circumstances of the case would achieve better outcomes for and from the development.

In determining whether to grant consent for development that contravenes a development standard, Clause 4.6 requires that the consent authority consider a written request from the applicant, which demonstrates that:

- a) *Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- b) *There are sufficient environmental planning grounds to justify contravening the development standard.*

Furthermore, the consent authority must be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone, and the concurrence of the Secretary has been obtained.

In deciding whether to grant concurrence, subclause (5) requires that the Secretary consider:

- a) *Whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- b) *The public benefit of maintaining the development standard, and*
- c) *Any other matters required to be taken into consideration by the Secretary before granting concurrence.*

[Note: Concurrence is assumed pursuant to *Planning Circular No. PS 18-003 Variations to Development Standards* dated 21 February 2018].

This document forms a Clause 4.6 written request to justify the contravention of the Floor Space Ratio development standard in Clause 4.4. The assessment of the proposed variation has been undertaken in accordance with the requirements of the BBLEP 2012, Clause 4.6 Exceptions to Development Standards.

### 2.2. NSW LAND AND ENVIRONMENT COURT: CASE LAW

Several key New South Wales Land and Environment Court (NSW LEC) planning principles and judgements have refined the manner in which variations to development standards are required to be approached.

The correct approach to preparing and dealing with a request under clause 4.6 is neatly summarised by Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118:

*[13] The permissive power in cl 4.6(2) to grant development consent for a development that contravenes the development standard is, however, subject to conditions. Clause 4.6(4) establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard.*

*[14] The first precondition, in cl 4.6(4)(a), is that the consent authority, or the Court on appeal exercising the functions of the consent authority, must form two positive opinions of satisfaction under cl 4.6(4)(a)(i) and (ii). Each opinion of satisfaction of the consent authority, or the Court on appeal, as*



to the matters in cl 4.6(4)(a) is a jurisdictional fact of a special kind: see *Woolworths Ltd v Pallas Newco Pty Ltd* (2004) 61 NSWLR 707; [2004] NSWCA 442 at [25]. The formation of the opinions of satisfaction as to the matters in cl 4.6(4)(a) enlivens the power of the consent authority to grant development consent for development that contravenes the development standard: see *Corporation of the City of Enfield v Development Assessment Commission* (2000) 199 CLR 135; [2000] HCA 5 at [28]; *Winten Property Group Limited v North Sydney Council* (2001) 130 LGERA 79; [2001] NSWLEC 46 at [19], [29], [44]-[45]; and *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 at [36].

- [15] The first opinion of satisfaction, in cl 4.6(4)(a)(i), is that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by cl 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl 4.6(3)(a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b)). The written request needs to demonstrate both of these matters.
- [16] As to the first matter required by cl 4.6(3)(a), I summarised the common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary in *Wehbe v Pittwater Council* at [42]-[51]. Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary.
- [17] The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: *Wehbe v Pittwater Council* at [42] and [43].
- [18] A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: *Wehbe v Pittwater Council* at [45].
- [19] A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: *Wehbe v Pittwater Council* at [46].
- [20] A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: *Wehbe v Pittwater Council* at [47].
- [21] A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: *Wehbe v Pittwater Council* at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in *Wehbe v Pittwater Council* at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.
- [22] These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.
- [23] As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.

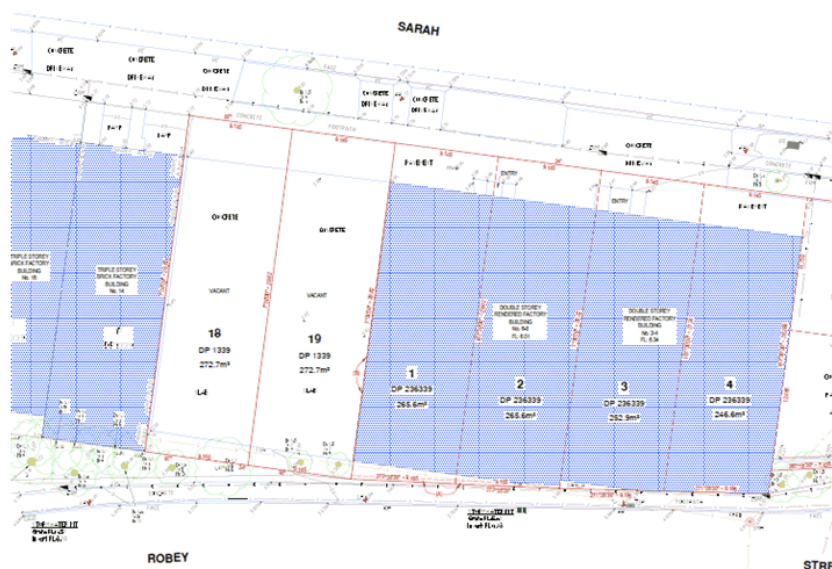
- [24] The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31].
- [25] The consent authority, or the Court on appeal, must form the positive opinion of satisfaction that the applicant's written request has adequately addressed both of the matters required to be demonstrated by cl 4.6(3)(a) and (b). As I observed in *Randwick City Council v Micaul Holdings Pty Ltd* at [39], the consent authority, or the Court on appeal, does not have to directly form the opinion of satisfaction regarding the matters in cl 4.6(3)(a) and (b), but only indirectly form the opinion of satisfaction that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3)(a) and (b). The applicant bears the onus to demonstrate that the matters in cl 4.6(3)(a) and (b) have been adequately addressed in the applicant's written request in order to enable the consent authority, or the Court on appeal, to form the requisite opinion of satisfaction: see *Wehbe v Pittwater Council* at [38].
- [26] The second opinion of satisfaction, in cl 4.6(4)(a)(ii), is that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out. The second opinion of satisfaction under cl 4.6(4)(a)(ii) differs from the first opinion of satisfaction under cl 4.6(4)(a)(i) in that the consent authority, or the Court on appeal, must be directly satisfied about the matter in cl 4.6(4)(a)(ii), not indirectly satisfied that the applicant's written request has adequately addressed the matter in cl 4.6(4)(a)(ii).
- [27] The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).
- [28] The second precondition in cl 4.6(4) that must be satisfied before the consent authority can exercise the power to grant development consent for development that contravenes the development standard is that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (cl 4.6(4)(b)). Under cl 64 of the *Environmental Planning and Assessment Regulation 2000*, the Secretary has given written notice dated 21 February 2018, attached to the *Planning Circular PS 18-003* issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.
- [29] On appeal, the Court has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), without obtaining or assuming the concurrence of the Secretary under cl 4.6(4)(b), by reason of s 39(6) of the *Court Act*. Nevertheless, the Court should still consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41].

### 3. SITE AND LOCALITY

#### 3.1. SITE LOCATION AND CONTEXT

The 545.5 sqm site is rectangular in shape with dual frontage of 18.29 metres to Sarah Street and Roby Street. It comprises Lot 18 and Lot 19 in DP 1339.

Figure 1 – Survey Plan



Source: SDG

Figure 2 – Aerial photograph of site



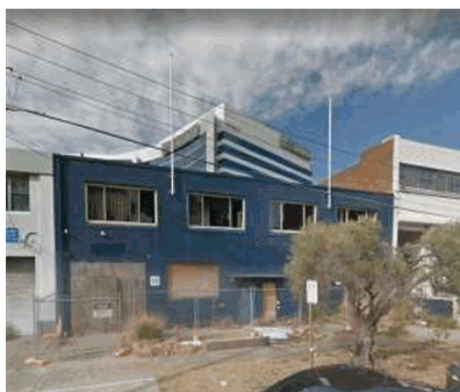
Source: SIX Maps

The site is in a prominent location near to Sydney Airport and has excellent access to a variety of public transport options, making it an ideal location for hotel development. The site is located approximately 8 kilometres south of Sydney CBD and is proximate to Sydney Domestic Airport (200m to the south), Sydney International Airport (2km to the west), Mascot Train Station (800m to the north) and Botany Road (750m to the east).

## 3.2. EXISTING DEVELOPMENT

The site is currently vacant land comprising of a ground level concrete slab and contains is largely devoid of vegetation, except for two palm trees. Until recently the site was occupied by a 2-storey building used for commercial purposes by 'RSL Cabs'. Public pedestrian footpaths run along Sarah Street and Roby Street frontages. The site has two existing concrete driveways providing access from Sarah Street.

Figure 3 – Existing development on site



Picture 1 – Street view prior to demolition

Source: Google Earth



Picture 2 – Street view following demolition

Source: Google Earth

## 3.3. SURROUNDING DEVELOPMENT

The local area, part of the Mascot Station precinct, is experiencing rapid change with a number of mid to high-rise hotel and residential developments emerging in the vicinity of the subject site.

The surrounding neighbourhood has historically been characterised by light industry and a large portion of land is still made up of predominately underutilised light industrial sites. Notwithstanding this, the area is currently under transition, with the area earmarked for increased density. This factor, in addition to its proximity to Sydney Airport has resulted in the construction of a number of large-scale hotels in the area to service the growing demands for tourist and visitor accommodation in Sydney, particularly close to the airport.

Surrounding development includes:

- To the east of the site is 2-8 Sarah Street which has development consent for the construction of a nine (9) storey hotel comprising 178 rooms above basement, ground and first floor car parking for 71 cars. Construction of the hotel is currently underway, and the subject DA comprises an extension to the hotel.
- To the north of the site across Sarah Street is 'Patchett's Pies' (food production and sales), 'Atlas Car and Truck Rentals' premises and various other light industrial/commercial properties.
- To the south of the site across Roby Street is Stamford Plaza which is a 13-storey hotel development located on the corner of O'Riordan Street.
- Further to the south east of the site is the 9-storey Quest Serviced Apartments development.
- To the west of the site are various light industrial/commercial properties including offices for 'RSL Cabs'.



A detailed description of the site is provided in the Statement of Environmental Effects prepared by Urbis, accompanying the development application.

### 3.4. PLANNING CONTEXT

Pro-invest have recently obtained a modified development consent for a hotel development on the adjoining site at 2-8 Sarah Street (DA-2014/045/03), and now seek approval to an addition (that is, an extension) to the approved hotel, onto the subject site, being 10-12 Sarah Street (refer Figure 4). To achieve integration of the proposed addition at 10-12 Sarah Street with the approved hotel, a further minor modification application (a S4.55(1A)) will be lodged to amend the approved plans on 2-8 Sarah Street, to permit the integration of the proposed hotel addition. This modification application is to be lodged and assessed concurrently with the subject DA proposal.

Figure 4 – Subject Site outlined in red (adjoining site 2-8 Sarah Street in blue)



Source: SJB Architects

The proposal for 10-12 Sarah Street is of the same height and adopts a similar building footprint, setbacks and landscaped area to the hotel approved under DA-14/45. The approved hotel (as currently modified) has an FSR of 3.38:1, however the further s4.55(1A) application lodged concurrently proposes to increase the FSR of 2-8 Sarah Street to 3.46:1. The proposed FSR on the subject site will therefore be similar (3.47:1) to the adjoining building, and the overall FSR across the combined site will equate to 3.46:1.

It should be recognised that as an extension to a building, the development does not contain plant rooms, lift cores or stairwells which would normally result in a reduction in GFA within the same building envelope.

Further, as an addition to an approved hotel, the development will have reduced environmental impacts compared with a complying stand-alone development on the subject site. The development takes advantage of vehicular access points, plant and equipment, and services infrastructure already approved as part of the adjacent hotel, and is a superior outcome. use and development of land.

## 4. THE PROPOSED DEVELOPMENT

### 4.1. DEVELOPMENT OVERVIEW

The proposal involves an addition (that is, an extension) to the adjoining approved hotel, onto the subject site at 10-12 Sarah Street. The proposed development for which consent is sought comprises the following:

- Demolition of ground slabs and removal of trees on and adjacent to site;
- Construction of a nine (9) storey building comprising 69 rooms above ground and first floor car parking for 32 cars:
  - No basement level or external access proposed, with 16 spaces on each of ground and first floor being accessed from 2-8 Sarah Street;
  - Level 2 to 9 to contain 69 hotel rooms, accessed from to 2-8 Sarah Street;
- Building name signage for the Holiday Inn Express hotel (relocated sign from 2-8 Sarah Street); and
- Landscaping and associated site works.

Functionally and operationally, the proposed building is an extension of the adjoining approved hotel at 2-8 Sarah Street. The proposed building on the subject site will not have any vehicle or pedestrian access, nor hotel service areas, significant plant rooms or mechanical equipment as these elements are provided for and approved on the adjoining hotel site. As such the proposed building will contain only additional car parking spaces and hotel room accommodation and will ultimately result in the operation of a single integrated hotel development across the two sites.

The proposed gross floor area (GFA) is 1,895sqm, resulting in FSR of 3.47:1. The FSR across the combined hotel site will be 3.46:1.

Key aspects of the proposal are discussed in greater detail in the Statement of Environmental Effects prepared by Urbis and the Architectural Plans prepared by SJB accompanying the DA.

### 4.2. MASSING AND BUILT FORM

The following extracts from the set of plans and elevations accompanying the DA illustrate the proposed massing and built form. Notably:

- The podium footprint is consistent with the alignment established by the adjoining approved hotel building.
- The upper level setback is similarly consistent with the alignment established by the adjoining approved hotel building.
- The height of the building is below the statutory height limit of 44m (29.97 proposed). This height is consistent with that established by the adjoining approved hotel building.

In conclusion, the massing and form of the building is guided justified by the adjoining approved hotel building, which is appropriate because the proposed development comprises an addition to the approved building on the adjoining site

Figure 5 – Ground Floor Plan

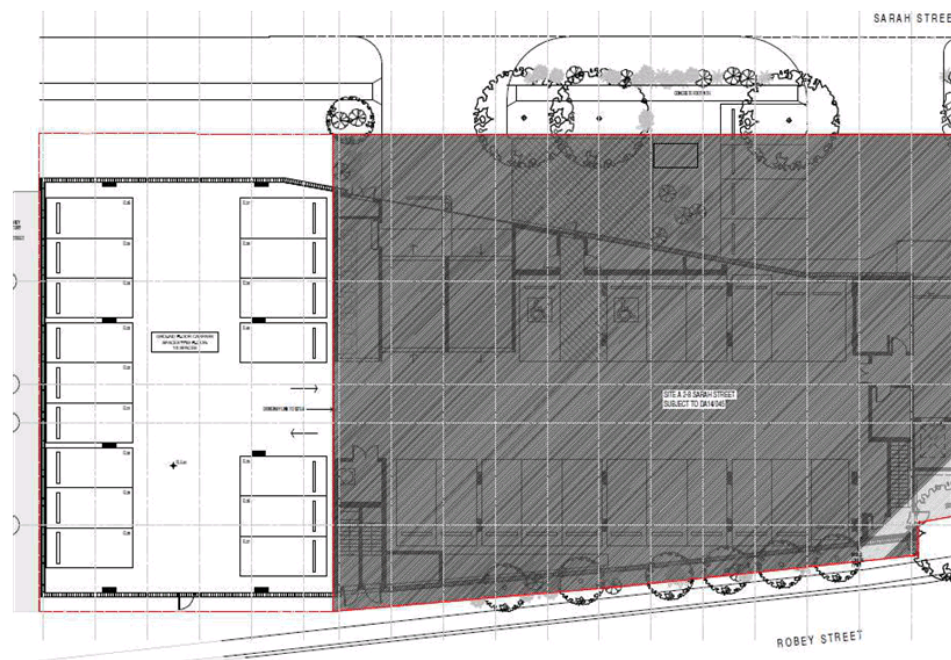
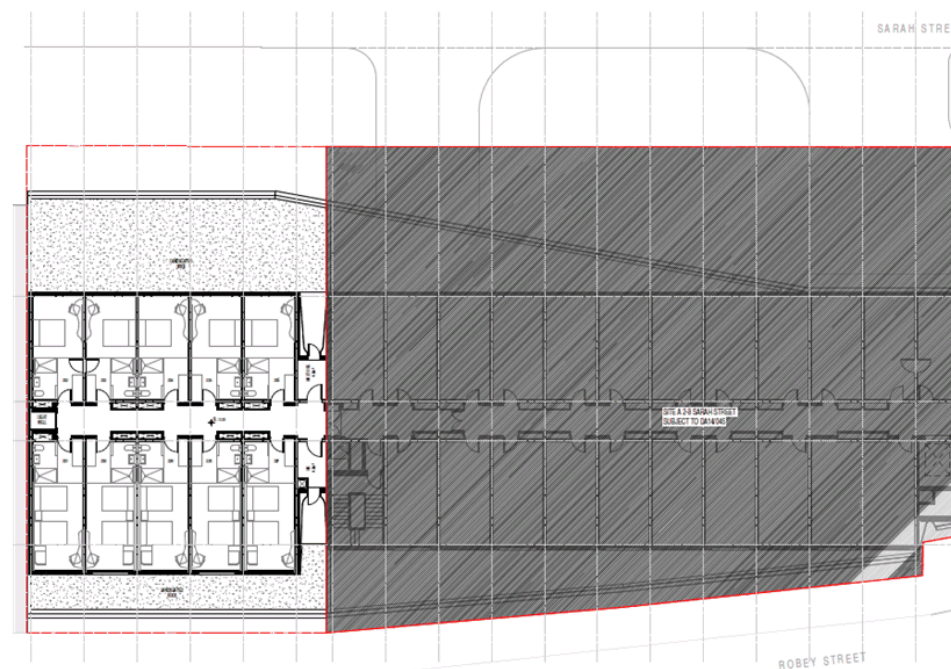


Figure 6 – Level 2 Floor Plan



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THE PROPOSED DEVELOPMENT 9



Figure 7 – Northern Elevation showing integration with adjoining approved hotel



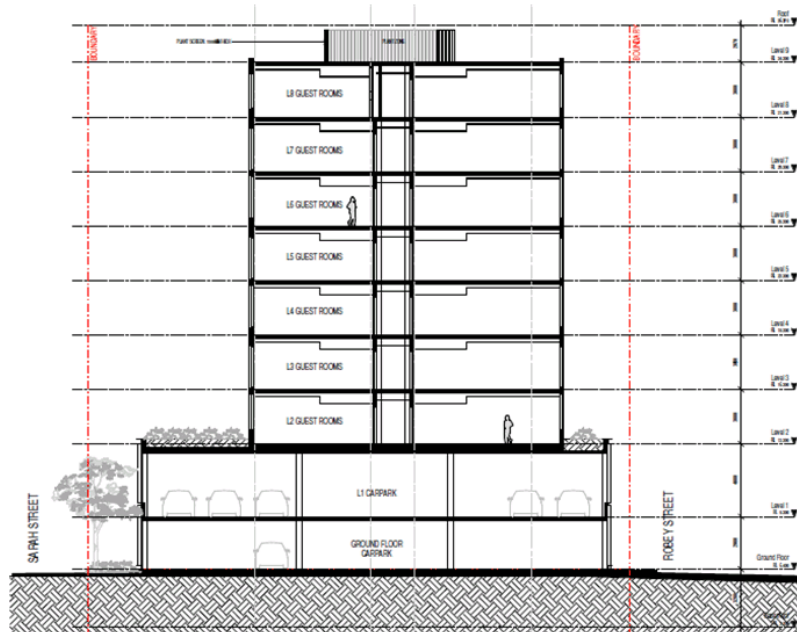
Picture 3 - North Elevation (10-12 Sarah Street on the right)



Picture 4 - North Elevation (Approved 2-8 Sarah Street)



Figure 8 – Section



### 4.3. URBAN DESIGN AND ARCHITECTURE

The proposed addition seeks to seamlessly incorporate the extension into the existing design and fabric of the adjoining approved hotel at 2-8 Sarah Street. The addition will result in a more elegant proportion to the elevations. Where the two buildings meet, appropriate articulation is proposed including a vertical slot to express and define the break and which will reinforce a vertical interpretation of the building.

The Design Statement prepared by SJB accompanying the DA, provides the following description:

*Externally, the extension mirrors the materiality of 2-8 Sarah Street. The 2-storey podium is clad in the same manner with metal louvres providing light and ventilation to the car parking levels. The guest levels employ the same expressed concrete look construction as the adjacent site. The southern facing guest rooms step out towards the boundary to further break the horizontal mass on the upper portion of the building along Robey Street. This continues the stepping language from the south facade of 2-8 Sarah street.*

The proposed addition will be thoughtfully integrated with the building at 2-8 Sarah Street continuing the pattern of articulation to create visual interest and reduce the perceived bulk and scale of the development. Overall it is considered that the proposed addition to 2-8 Sarah Street is sympathetic to the original design.

Setbacks have been selected and landscaping designed to seamlessly integrate the proposed addition with the approved building, as illustrated on the renders below.

Figure 9 – Artist's impression of proposal looking south towards O'Riordan Street showing 10-12 Sarah St addition



Picture 5 – Looking south towards O'Riordan Street showing 10-12 Sarah St addition.

Source: SJB Architects



Picture 6 – Looking west down Robey Street showing 10-12 Sarah Street in addition.

Source: SJB Architects

No adverse shadow impacts on sensitive receivers arise from the building as demonstrated in the diagrams within the set of architectural plans accompanying the DA. Nor do any adverse amenity impacts arise on the public domain or streetscape.

## 5. EXTENT OF CONTRAVENTION

### 5.1. VARIATION TO FLOOR SPACE RATIO

The maximum floor space ratio under BBLEP 2013 is 3:1m. The proposed development has an FSR of 3.47:1, which contravenes the standard by 0.47:1 (15.7%).

### 5.2. VARIATION OF FLOOR SPACE RATIO WHEN COMBINED WITH 2-8 SARAH STREET

The proposal will comprise an addition to an approved hotel at 2-8 Sarah Street. We therefore set out below an analysis of the FSR of the individual and combined sites. This is provided for information purposes only.

Table 1 – Numeric comparison of applications

	Subject DA 10-12 Sarah St	DA 2014/045 as Currently Modified 2-8 Sarah St	Proposed Further Modification Concurrent with the subject DA 2-8 Sarah St	Total Combined site
Site area	545.4 sqm	1,502 sqm	1,502 sqm	2,047.4 sqm
GFA	1,895 sqm	5,079 sqm	5,197 sqm	7,092 sqm
FSR	3.47:1	3.38:1	3.46:1	3.46:1

## 6. CLAUSE 4.6 VARIATION REQUEST: HEIGHT OF BUILDINGS

The following sections of the report provide an assessment of the request to vary the development standard relating to the maximum height of buildings in accordance with Clause 4.6 of BBLEP 2013.

### 6.1. CLAUSE 4.4 FLOOR SPACE RATIO

The maximum floor space ratio under BBLEP 2013 is 3:1.

The objectives of the floor space ratio development standard as per subclause 4.4(1) of BBLEP 2013 are:

- (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.*

### 6.2. KEY QUESTIONS

#### Is the Planning Control a Development Standard?

The floor space ratio control prescribed under Clause 44 of the BBLEP 2013 is a development standard capable of being varied under Clause 4.6 of BBLEP 2013.

#### Is the Development Standard Excluded from the Operation of Clause 4.6?

The development standard is not excluded from the operation of Clause 4.6 as it does not listed within Clause 4.6(6) or Clause 4.6(8) of BBLEP 2013.

#### What is the Underlying Object or Purpose of the Standard?

The objectives of the standard are clearly established in the relevant LEP as set out in Section 6.1 of this letter.

### 6.3. CONSIDERATIONS

#### 6.3.1. Clause 4.6(3)(a) – Compliance with the Development Standard is Unreasonable or Unnecessary in the Circumstances of the Case

The common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary are listed within the 'five-part test' outlined in *Wehbe v Pittwater [2007] NSWLEC 827*. These tests are outlined in Section 2.2 of this letter (paragraphs [17]-[21]).

An applicant does not need to establish all of the tests or 'ways'. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

The development is justified against **two** of the Wehbe tests as set out below.

***Test 1: The objectives of the development standard are achieved notwithstanding non-compliance with the standard***

The proposed development achieves the objectives of the development standard as outlined within Table 4.

Table 2 – Assessment of Achievement of Objectives of Floor Space Ratio standard

Development Standard Objective	Achievement of Objective
(a) to establish standards for the maximum development density and intensity of land use,	The proposed hotel addition has a density and intensity of land use which is highly comparable to an FSR compliant scheme. As an extension to a building, the development does not contain plant rooms, lift cores or stairwells which would normally result in a reduction in GFA within the same building envelope.
(b) to ensure that buildings are compatible with the bulk and scale of the existing and desired future character of the locality,	The locality is subject to considerable change and the planning controls in the locality allow a greater bulk and scale than was historically the case. To this end, the hotel addition continues the built form of the approved hotel on the adjacent site as demonstrated in Section 4 of this report. Further, it is highly compatible with the bulk and scale of the desired future character of the locality, despite the non-compliance.
(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,	The site is part of an area that is undergoing a substantial transformation, and does not have a visual relationship with areas that 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,	The building will not adversely impact streetscape, skyline or landscape views when viewed from adjoining roads or public places, despite the non-compliance.
(e) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,	There will be no adverse impact on the use or enjoyment of adjoining properties, and the relationship with the public domain will be substantially enhanced, despite the non-compliance.
(f) to provide an appropriate correlation between the size of a site and the extent of any development on that site,	Notwithstanding the FSR non-compliance, the building form is appropriate to the size of the site and the setbacks are consistent with the built form of the adjacent hotel, as illustrated in Section 4.2.
(g) to facilitate development that contributes to the economic growth of Botany Bay.	The proposal will contribute to meeting the increasing demand for visitor accommodation beds in the vicinity of Sydney Domestic and Internal Airport, improving availability and affordability of beds and contributing to economic development and tourism within Bayside LGA. The non-compliance will marginally enhance the contribution to the local economy.

In summary, the objectives of the development standard are achieved notwithstanding non-compliance with the standard.



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

Not relied upon.

**Test 3: The underlying objective or purpose of the standard would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable**

Not relied upon.

**Test 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**

In June 2014, the then Botany Bay Council's assessment report to the JRPP for the adjoining hotel (DA14/45, Ref 2014SYE045) included a discussion outlining the applicant's Clause 4.6 request, and stated that:

*"... the floor space ratio control within the Botany Bay Local Environmental Plan 2013 has been consistently varied over time by Council in recognition of a need to meet the demands for housing and commercial development in the area. The proposed floor space ratio is not inconsistent with the extent of variations to which consent has previously been provided. The following table provides a list of those variations approved by Council, the JRPP and the NSW Land & Environment Court. "*

Table 1 - List comparison table of other approved DA's FSR variations

Address	FSR Control	Approved FSR (BBLEP 2013)	Approval Date
210 O'Riordan Street, Mascot	3:1	7:1 (approved under BLEP 1995)	29 March 2009
214 Coward Street (JRPP Application)	3.2:1	4.05:1	16 December 2010
230 Coward Street (aka 25 John Street)	3.2:1	3.6:1	23 August 2006
3-9 Church Avenue	3.2:1	1.9:1	21 May 2008
10-14 Church Avenue & 619-629 Gardeners Road (JRPP Application)	3.2:1	2.27:1	3 August 2011
7 Bourke Street & 30-32 John Street	3.2:1	3.75:1	13 January 2011
24-26 John Street	3.2:1	3.1:1	6 September 2009
8 Bourke Road & 37 Church Avenue	3.2:1	3.82:1	13 May 2009
208-210 Coward Street (JRPP Application)	3.2:1	4:1	5 December 2011
103-105 O'Riordan Street (JRPP Application)	3.2:1	3.1:1	20 June 2012
5 Haran Street (Court Approved)	3.2:1	3.1:1	June 2013
2-4 Haran Street (JRPP Application)	3.2:1	4:1	August 2013

In minutes dated 22 July 2014, the JRPP endorsed the Clause 4.6 variation request, as follows:

- 1) *The Panel resolves unanimously to accept the recommendation of the planning assessment report to approve the application...*
- 2) *The principal reasons for the Panel's decision are:*
  - a) *The variation of Floor Space Ratio control is minor and has been justified under cl 4.6 of the Botany LEP 2013...."*

Both Council and the JRPP accepted that decisions made in the past resulted in the virtual abandonment of the control. Although the table overleaf was prepared in 2014, it remains entirely relevant to the satisfaction of Test 4, because the development standards applying to the site (FSR and height) have not changed since this time.

***Test 5: The zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary***

Not relied upon.

### **6.3.2. Clause 4.6(3)(b) - Are there Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard?**

There are sufficient environmental planning grounds to justify the proposed variations to the development standard, including the following:

- The development comprises an addition to an approved adjoining hotel building and is consistent in scale and form with the approved hotel. The approved hotel exceeds the FSR by a similar proportion to the exceedance proposed.
- As such, strict compliance with the development standard on the subject site would result in an incongruous building form of the addition compared with the approved hotel.
- As an addition to an approved hotel, the development will have reduced environmental impacts compared with a complying stand-alone development on the subject site. The development takes advantage of vehicular access points, plant and equipment, and services infrastructure already approved as part of the adjacent hotel, and is a superior outcome. As such, supporting the contravention of the development standard promotes the orderly and economic use and development of land.
- Further, as an extension to a building, the development does not contain plant, lift cores or stairwells which would normally result in a reduction in GFA within the same building envelope.
- The development supports good design and amenity within the built environment. Further, the scale and form is consistent with the changing character of the area.
- The development is consistent with previous Council staff recommendations and Regional Panel approvals to exceed floor space ratio in the immediate vicinity.
- The development achieves the objectives of the development standard as outlined in Section 6.3.1, and is also consistent with those objectives as outlined in Section 6.3.3.
- The development is consistent with the objectives of the zone as set out in Section 6.3.3.

In conclusion, there are sufficient environmental planning grounds to justify convening the development standard.

### 6.3.3. Clause 4.6(4)(a)(ii) – 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?

The proposed development is consistent with the objectives of the development standard as outlined within Table 4.

Table 3 – Assessment of Consistency with Objectives of Floor Space Ratio standard

Development Standard Objective	Consistency with Objective
(a) to establish standards for the maximum development density and intensity of land use,	The proposed hotel addition has a density and intensity of land use which is highly comparable to an FSR compliant scheme. As an extension to a building, the development does not contain plant rooms, lift cores or stairwells which would normally result in a reduction in GFA within the same building envelope.
(b) to ensure that buildings are compatible with the bulk and scale of the existing and desired future character of the locality,	The locality is subject to considerable change and the planning controls in the locality allow a greater bulk and scale than was historically the case. To this end, the hotel addition continues the built form of the approved hotel on the adjacent site (refer Section 4) and is highly compatible with the bulk and scale of the 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,	The site is part of an area that is undergoing a substantial transformation, and does not have a visual relationship with areas that 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,	The building will not adversely impact streetscape, skyline or landscape views when viewed from adjoining roads or public places.
(e) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,	There will be no adverse impact on the use or enjoyment of adjoining properties, and the relationship with the public domain will be substantially enhanced
(f) to provide an appropriate correlation between the size of a site and the extent of any development on that site,	The building form is appropriate to the size of the site and the setbacks are consistent with the built form of the adjacent hotel as illustrated in Section 4.
(g) to facilitate development that contributes to the economic growth of Botany Bay.	The proposal will contribute to meeting the increasing demand for visitor accommodation beds in the vicinity of Sydney Domestic and Internal Airport, improving availability and affordability of beds and contributing to economic development and tourism within Bayside LGA.



The proposal is also consistent with the land use objective that applies to the site under BBLEP 2013. The site is located within B5 Business Development Zone .

Table 4 – Assessment of Compliance with Land Use Zone Objectives

Objective	Consistency with Objective
To enable a mix of business and warehouse uses, and bulky goods premises that require a large floor area, in locations that are close to, and that support the viability of, centres.	<p>The proposed development is consistent with the objective of the zone as it provides a non-residential business use, hotel accommodation servicing both business and leisure travellers on a disused site in close proximity to Mascot Town Centre, Sydney Airport and Mascot train station.</p> <p>Hotel or motel accommodation is a type of tourist and visitor accommodation and is permitted with consent in the B5 zone.</p>

The proposal is considered to be in the public interest as the development is consistent with the objectives of the development standard, and the land use objectives of the zone.

#### **6.3.4. Clause 4.6(5)(a) - Would Non-Compliance Raise any Matter of Significance for State or Regional Planning?**

The proposed non-compliance with the floor space ratio development standard will not raise any matter of significance for State or regional environmental planning.

#### **6.3.5. Clause 4.6(5)(b) - Is There a Public Benefit of Maintaining the Planning Control Standard?**

The proposed development achieves the objectives of the building height development standard and the land use zoning objectives despite the non-compliance, and the contravention has been demonstrated to be appropriate and supportable in the circumstances of the case. There would be no public benefit in maintaining the development standard in this case.

#### **6.3.6. Clause 4.6(5)(c) – Are there any other matters required to be taken into consideration by the Secretary before granting concurrence?**

Concurrence can be assumed. Nevertheless, there are no known additional matters that need to be considered within the assessment of the Clause 4.6 request and prior to granting concurrence, should it be required.

## DISCLAIMER

This report is dated 21 November 2018 and incorporates information and events up to that date only and excludes any information arising, or event occurring, after that date which may affect the validity of Urbis Pty Ltd's (**Urbis**) opinion in this report. Urbis prepared this report on the instructions, and for the benefit only, of Pro-invest (**Instructing Party**) for the purpose of Clause 4.6 Variation Request (**Purpose**) and not for any other purpose or use. To the extent permitted by applicable law, Urbis expressly disclaims all liability, whether direct or indirect, to the Instructing Party which relies or purports to rely on this report for any purpose other than the Purpose, and to any other person which relies or purports to rely on this report for any purpose whatsoever (including the Purpose).

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All surveys, forecasts, projections and recommendations contained in or associated with this report are made in good faith and on the basis of information supplied to Urbis at the date of this report, and upon which Urbis relied. Achievement of the projections and budgets set out in this report will depend, among other things, on the actions of others over which Urbis has no control.

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This report has been prepared with due care and diligence by Urbis and the statements and opinions given by Urbis in this report are given in good faith and in the reasonable belief that they are correct and not misleading, subject to the limitations above.

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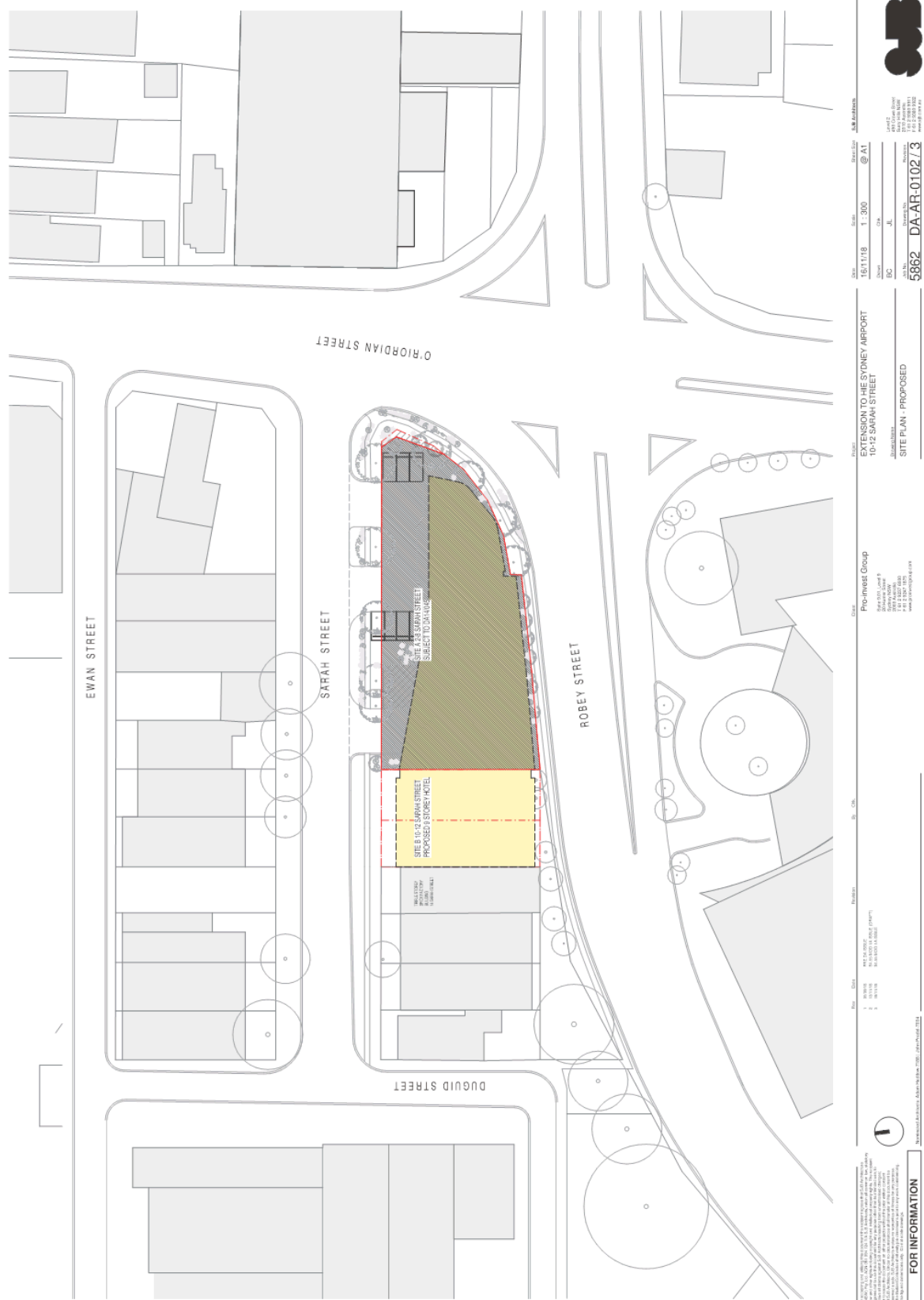
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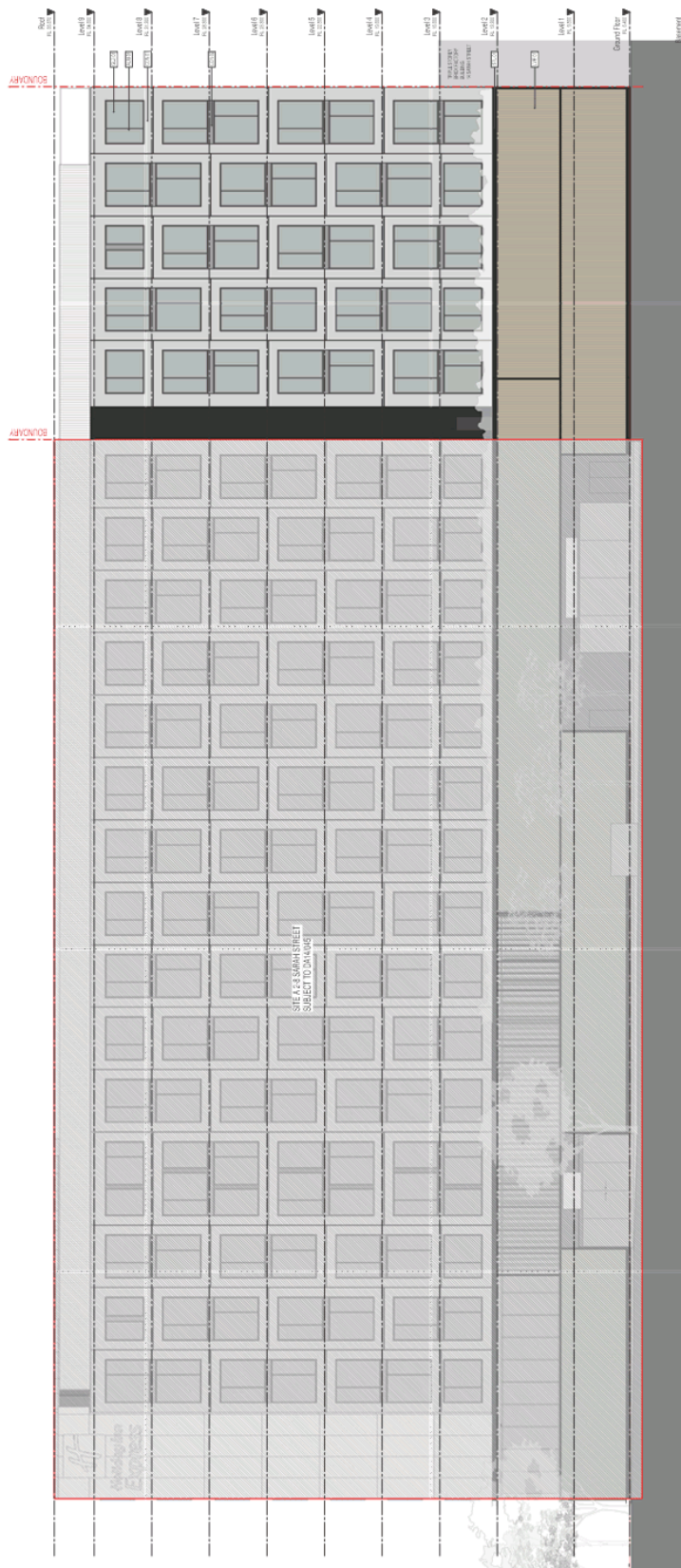
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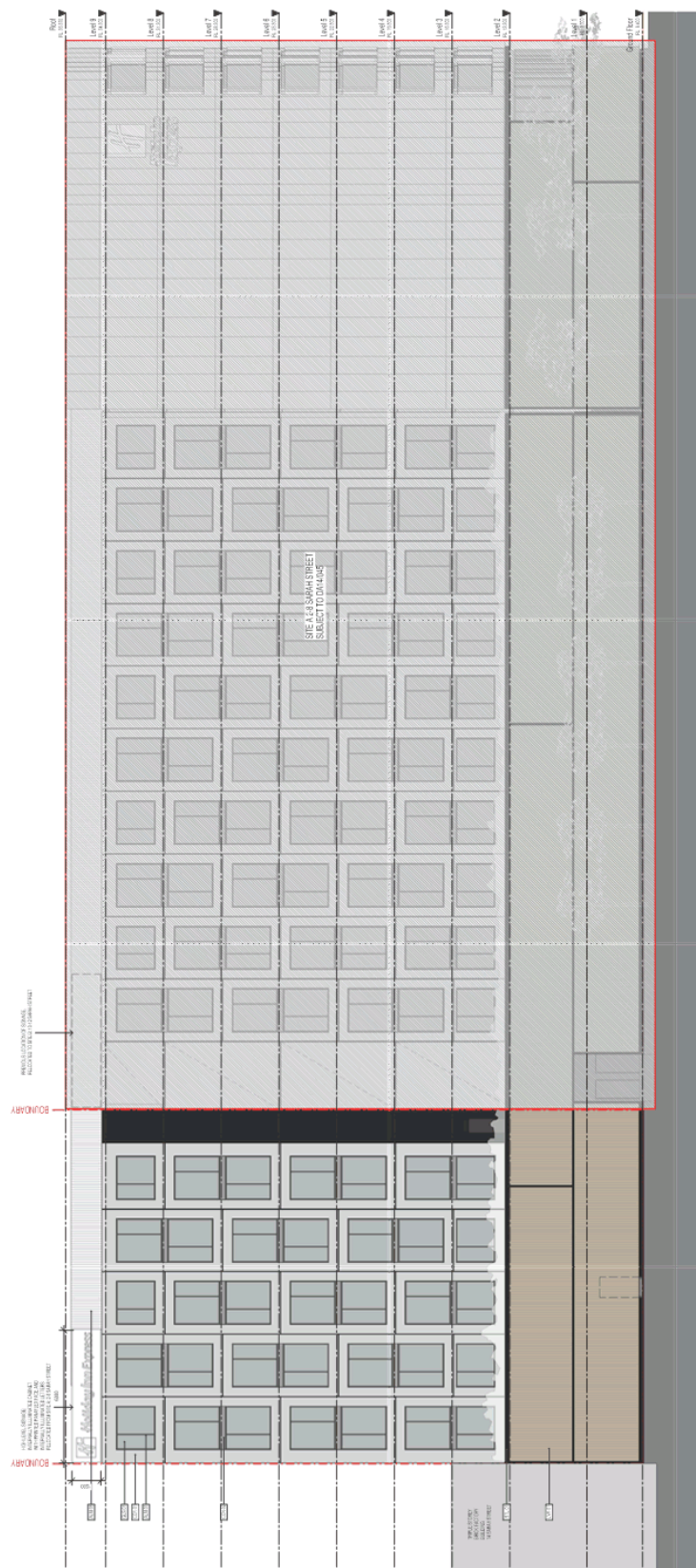
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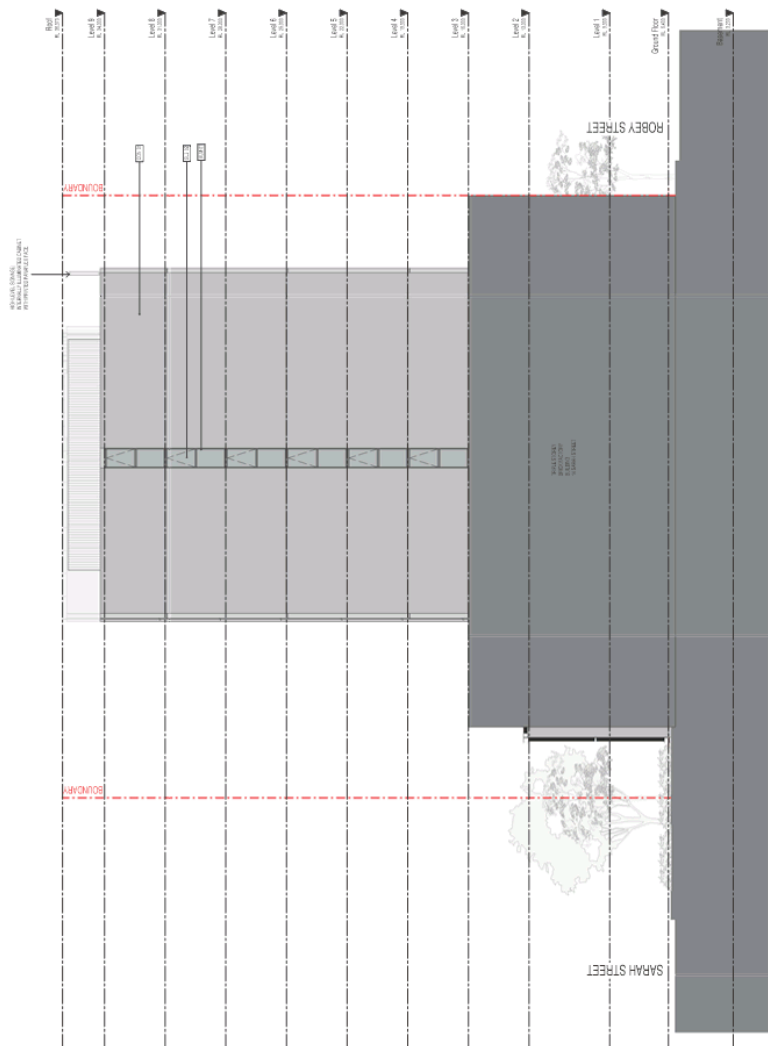
<p><b>FOR INFORMATION</b></p> <p>For further information, please contact the Council's Planning and Development Department on 02 9550 6000 or visit the Council's website at <a href="http://www.bayside.nsw.gov.au">www.bayside.nsw.gov.au</a>.</p>		<p><b>Project:</b> DESIGNATION TO THE SYDNEY AIRPORT 10-12 SARAH STREET ELEVATION - NORTH</p>		<p><b>Client:</b> Pro-Invest Group 10-12 Sarah Street Sydney NSW 1585 P.O. Box 1000 Sydney NSW 1585 Phone: 02 9550 6000 Fax: 02 9550 6001</p>		<p><b>Scale:</b> 1:100 <b>Sheet:</b> 1 of 1 <b>Drawn:</b> JL <b>Checked:</b> JL</p>		<p><b>Project No:</b> 5862 <b>DA No:</b> DA-AR-050173</p>		<p><b>Author:</b> JLB <b>Reviewer:</b> JLB <b>Approved:</b> JLB <b>Date:</b> 09/04/2019</p>	
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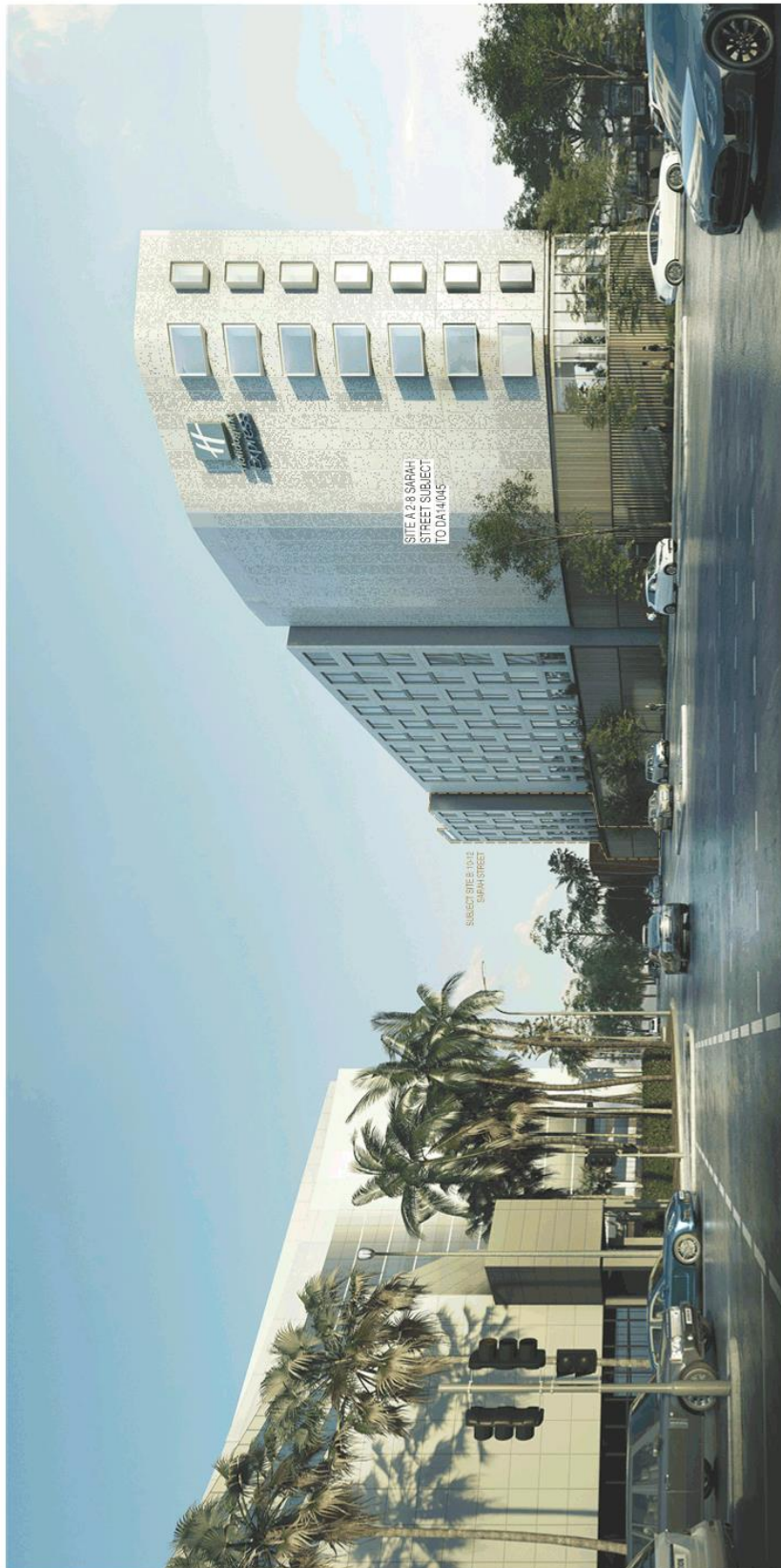
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**PRO-INVEST GROUP**

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<p><b>Project Name:</b> PROPOSED 10-12 SARAH STREET, SYDNEY AIRPORT</p> <p><b>Project Number:</b> 5862 DA-AR-2051/3</p>	<p><b>Project Location:</b> 10-12 SARAH STREET, SYDNEY AIRPORT</p> <p><b>Project Status:</b> PERSPECTIVES - SHEET 2 OF 2</p>	<p><b>Project Owner:</b> PROPOSED GROUP</p> <p><b>Project Manager:</b> PROPOSED GROUP</p>	<p><b>Project Date:</b> 10/10/2019</p> <p><b>Project Version:</b> 1.0</p>





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1. This is a preliminary rendering of the proposed development. It is not intended to represent the final design or construction. The design is subject to change without notice. The rendering is for informational purposes only and should not be used for any other purpose.

2. The rendering is based on the information provided by the applicant. The Council is not responsible for the accuracy or completeness of the information.

3. The rendering is not a guarantee of the final outcome. The final outcome may differ from the rendering due to various factors, including but not limited to, changes in design, construction, and environmental conditions.

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## Traffic Impact Assessment

Holiday Inn Express - Hotel Development  
2 – 12 Sarah Street, Mascot

Ref: 0765r01v2  
19/11/2018

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## Document Control

**Project No:** 0765r01v2

**Project:** Holiday Inn Express – Hotel Development

**Client:** Pro-Invest Development c/- TSA Management

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-	11/09/2018	Draft	J. Laidler	
Issue I	24/10/2018	Issue I	J. Laidler	
Issue I	16/11/2018	Issue II	J. Laidler	

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## Appendices

Appendix A: Swept Path Analysis & Design Commentary

Appendix B: Car Lift Queuing Analysis



## 1 Introduction

### 1.1 Overview

Ason Group has been engaged By TSA Management, to prepare a Traffic Impact Statement (TIS) report to support a new Development Application (DA) in relation to a consolidated hotel development at 2-12 Sarah Street, Mascot (the Site). This submission comprises a Section 4.55 modification submission (MOD) to the approved hotel development at 2 – 8 Sarah Street, Mascot and a new DA in relation to the expansion of the hotel to include 10-12 Sarah Street. Whilst technically two separate applications, this report will consider the consolidated hotel as a single new DA submission for simplicity. The overall development proposes construction of a 247-room hotel with 98 car parking spaces; accessed via Sarah Street.

The Site is located within the Bayside (LGA) and is therefore subject to that's Council's controls.

### 1.2 Background – Existing Approval

A detailed description of the approved development is included in the Statement of Environmental Effects, prepared separately by Urbis. In summary, the approved DA (DA14/45) relates to the demolition of all existing buildings and the construction of Hotel, with basement car parking at 2 – 8 Sarah Street. The following summarises key aspects of that Proposal:

- 178 room Hotel
- Provision of 71 car parking spaces; and
- Vehicular access from Sarah Street, including porte-cochere, loading and car park accesses.

Reference should be made to the previous DA plans, prepared by SJB Architects. A reduced copy of the relevant ground floor plan from the approved DA is reproduced for context below.

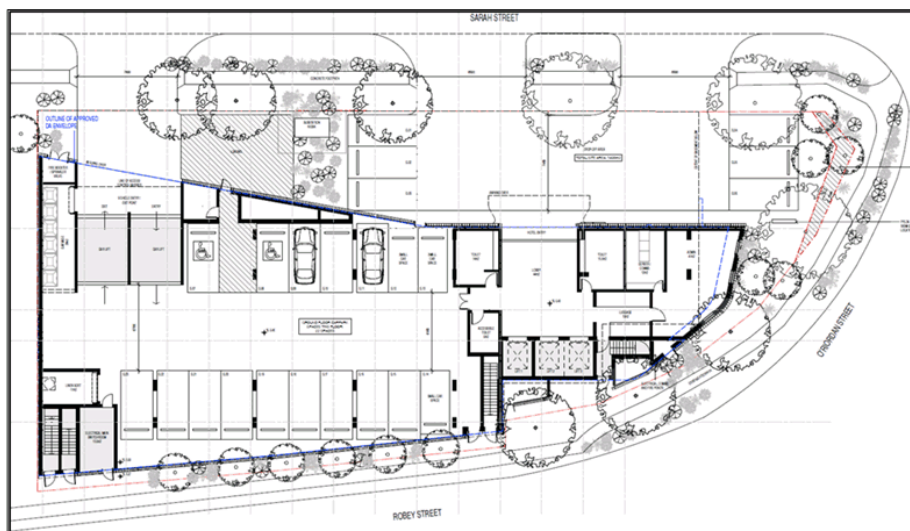


Figure 1: Approved Site Plan

### 1.3 Site Details

The site lies approximately 600 metres northeast of Sydney's Domestic Airport Railway Station, or 800 metres south of Mascot Airport. It is irregular in configuration with a site area of approximately 2,050m<sup>2</sup>. The site is bound by Sarah Street and Robey Street form the northern and southern site frontages, respectively. Warehouses and Hotel are located to the north and south of the Site respectively. The Site includes the following properties:

Table 1: Property Addresses

Address	Deposited Plan
2-4 Sarah Street, Mascot	Lot 1 in DP 262142
	Lot 1 in DP 1232424
	Lot 3 in DP236339
	Lot 4 in DP 236339
6 Sarah Street, Mascot	Lot 1 in DP236339
	Lot 2 in DP236339
8 Sarah Street, Mascot	Lot 18 in DP1339
10 & 12 Sarah Street, Mascot	Lot 19 in DP1339



A Site Plan is presented in Figure 2 which provides an appreciation of the site and existing conditions.



Figure 2: Site Plan

#### 1.4 Study Purpose

In general, the purpose of this report is to:

- assess the impacts of the proposed modifications (net change) with regard to the previously approved scheme in terms of:
  - traffic generation; and
  - relevant parking requirements.
- review of the proposed changes to the car park design and commentary with regard to compliance with relevant Australian Standards. It is expected that further detailed review and coordination will still occur as part of subsequent Construction Certificate documentation and, accordingly, this design review will focus on key fundamental aspects such as site access and overarching car park management principles associated with the proposed car lift operations.



## 1.5 References

In preparing this report, Ason Group has referred to the following key documents:

- Botany Bay Development Control Plan 2013 (DCP)
- Botany Bay Local Environmental Plan 2013 (LEP)
- *Traffic Impact Assessment, Holiday Inn Express – Hotel Development, 2-8 Sarah Street, Mascot* (the TIA), prepared by Ason Group (ref: 0617r01v1) and dated 06 June 2018.

In addition, this TIA also refers to the following general guidelines and Standards:

- Roads and Maritime Services (RMS), *Guide to Traffic Generating Developments*, 2002 (RMS Guide).
- Roads and Maritime Services (RMS), *Guide to Traffic Generating Developments Updated Traffic Surveys*, 2013. (TDT2013/04a)
- Standards Australia, *AS/NZS 2890.1: 2004 Parking Facilities Part 1: Off-street car parking* (AS2890.1)
- Standards Australia, *AS/NZS 2890.02: 2002 Parking Facilities Part 2: Off-street commercial vehicle facilities* (AS2890.2)
- Standards Australia, *AS/NZS 2890.3: 2015 Parking Facilities Part 3: Bicycle parking* (AS2890.3)
- Standards Australia, *AS/NZS 2890.5: 1993 Parking Facilities Part 5: On-street parking* (AS2890.5)
- Standards Australia, *AS/NZS 2890.6: 2009 Parking Facilities Part 6: Off-street parking for people with disabilities* (AS2890.6)



2 Overview of Proposal

2.1 Summary of Proposed Development

This DA seeks amendments to the previously approved development as part of an expanded hotel. The proposed land-use and general character of the development remains substantially the same, with the following changes made.

Table 2: Development Comparison Table

Variable	Approved MOD Scheme	Proposed DA Scheme	Net Change
No. of Hotel Rooms	178	247	+69
Car Parking Spaces	71	98	+27
Car Lift	Yes	Yes	-

Reference should be made to the plans prepared by SJB Architects, which are submitted separately. A reduced copy of the relevant plans is reproduced at a reduced scale for context below.

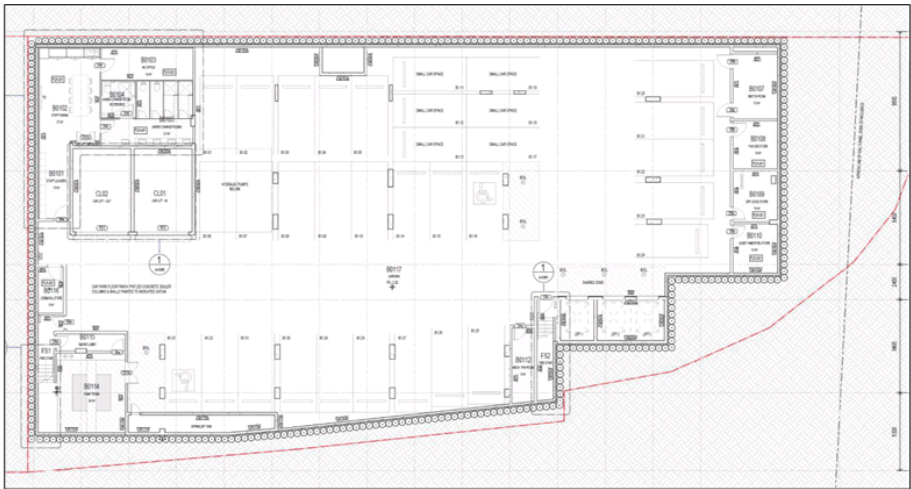


Figure 3: Basement Level Car Park Layout

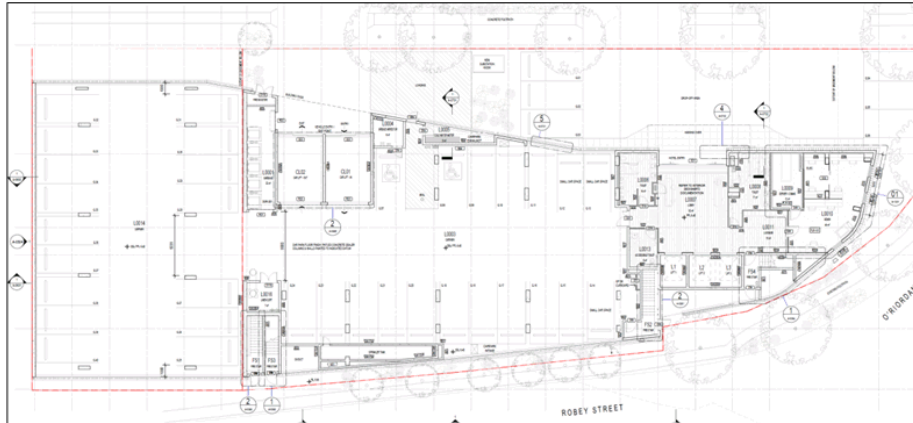


Figure 4: Ground Level Car Park Layout



Figure 5: Level 1 Car Park Layout



## 2.2 Site Access Arrangements

The proposal generally retains the previously adopted access strategy with a porte-cochere and car park access provided to Sarah Street.

As previously approved for 2-8 Sarah Street, a car lift is to provide access to the general car parking area which has been spread over 3 levels. This remains consistent with the previously approved system of a car lift for the proposed development at 2-12 Sarah Street.

## 2.3 Servicing and Waste Collection Strategy

Servicing and waste collection will remain unchanged from the previous Ason Group report (0617r01v1). It is proposed to service the development on-site using Small Rigid Vehicles (SRV), up to 6.4 metres in length.

Access to the on-site loading area is provided via the Sarah Street frontage.



### 3 Parking Requirements

#### 3.1 Car Parking

##### 3.1.1 General Provisions

The previously approved development provided car parking at the following rate:

- 1 space per 2.5 rooms

This is in accordance with Council's DCP for Hotel developments, served by a regular shuttle bus service.

Application of the above rate to the proposed development yield results in a requirement of:

- 99 car parking spaces (rounding up to the nearest whole number in accordance with the DCP)

A total provision of 98 spaces is proposed, which is considered supportable for the following reasons:

- The RMS *Guide to Traffic Generating Developments* recommends a car parking rate of 1 space per 4 rooms for hotel uses, resulting in an anticipated demand of only 62 spaces. On this basis, the 98 spaces proposed is expected to readily accommodate all parking demands on-site.
- Consistency with Council controls applied to other areas of the LGA. In this regard, other areas within the Bayside LGA have applicable parking controls based on the above RMS Guide rates. Accordingly, a similar parking provision for a comparable Hotel in another area of the same LGA (potentially less well served by proximity to rail and the airport) would therefore be deemed acceptable. For example, the Kogarah DCP – if applied to this development – would only require 62 spaces as per the above.
- A parking survey of an existing hotel in the locality was undertaken on Thursday 6<sup>th</sup> September 2018 at the Felix Hotel, Mascot (150 room hotel). The parking accumulation survey indicated that there were no more than 27 vehicles within the car park at any time throughout the key peak periods between 6:45 – 10:00AM and 2:45 – 6:00PM, comprising:
  - 25 vehicles within the on-site car park (capacity of 60 spaces)
  - 2 vehicles occupying the porte-cochere at any one time.

Extrapolating the observed (total) 27 space demand for a 247-room hotel would indicate a demand for approximately 45 spaces, rounding up, of which 42 vehicles would be within the proposed on-site car park. On this basis, the 98 spaces proposed are expected to readily accommodate all parking demands on-site.





Accordingly, the projected hotel parking demands are anticipated to be significantly lower than required by the DCP. Indeed, projected demands (42 spaces) is expected to be much closer to the RMS Guide recommended provision (62 spaces) than that nominally required if applying the rate (99 spaces based on 1 space per 2.5 rooms) approved as part of the previous approval for 2-8 Sarah St, Mascot.

In summary, the proposed car parking provision (98 spaces) is deemed appropriate for a hotel of this nature in this location.

### 3.1.2 Accessible Parking

Table D3.5 of the National Construction Code stipulates that accessible parking should be provided at the following rate for a Class 3 building (rounded up to the next whole number):

- *To be calculated by multiplying the total number of carparking spaces by the percentage of:*
  - *Accessible sole-occupancy units to the total number of sole-occupancy units; OR*
  - *Accessible bedrooms to the total number of bedrooms.*

Of the 247 rooms proposed, a total of 11 rooms are designated as accessible rooms.

Accordingly, the development requires provision of 5 accessible parking spaces, as follows:

$$\text{Accessible spaces} = \frac{\text{accessible rooms}}{\text{total rooms}} \times \text{total car spaces} = \frac{11}{247} \times 98 \text{ spaces} = 5 \text{ accessible spaces}$$

A total of 5 accessible spaces are provided in compliance with this requirement.

### 3.1.3 Small Car Spaces

Botany DCP - Part 3A.2 - Control C5 states:

*Parking spaces for small cars will only be permitted as visitor parking spaces or parking facilities that open to the general public. The number of parking spaces for small cars (as defined in AS2890.1) shall not exceed 5% of the total car parking spaces provided by the development.*

However, it is noted that an increased proportion of Small Car spaces is proposed to support Environmentally Sustainable Design initiatives; whereby Green Star credits are available for developments that provide in excess of 15% Small Car spaces.

It is also noted that a 'Small Car' represents the 35<sup>th</sup> percentile of vehicle sizes in the market. Accordingly, a Small Car space can accommodate more than 5% of typical passenger vehicles.



Accordingly, the proposed 12 Small Car spaces (equivalent to 13.0% of the overall provision) is considered supportable.

#### 3.1.4 Car Share Parking

There is no specific requirement for car share spaces for Hotels within the RMS Guide or the Botany DCP. As such, dedication of on-site car parking for use by Car Share operators is not proposed as part of this DA.

Referring to City of Sydney research, it is generally acknowledged that a single Car Share space replace the demand of up to 12 standard car parking spaces. In this regard, provision of Car Share space(s) on-site could reduce the nominal on-site car parking demands substantially. There are examples of other Hotels providing on-site Car Share parking, including the Holiday Inn at Bourke Street, Mascot which includes a GoGet 'pod' with 2 vehicles.

Notwithstanding, provision of Car Share parking on-site is not proposed as part of this DA application.

#### 3.2 Bicycle Parking

The currently approved MOD plans did not indicate, nor do the current Conditions of Consent require, provision of on-site bicycle parking. Accordingly, there is no bicycle parking to be provided under this application.

#### 3.3 Motorcycle Parking

Dedicated motorcycle parking was not included in the previous approval, therefore will not be included within this DA proposal.





## 4 Traffic Assessment

### 4.1 Traffic Generation

A traffic generation survey was undertaken at the Felix Hotel (121 Baxter Road, Mascot) on Thursday, 06 September 2018, to ascertain the traffic generating characteristics of a similar hotel from which to undertake refined traffic generation analysis. This included separate reviews of the porte cochere (drop-off) and on-site car park demands. Surveys were conducted between 6:45-10:00AM and 2:45-6:00PM; with the peak hourly results for respective AM and PM peak periods summarised below.

**Table 3: Surveyed Traffic Generation - Felix Hotel, Mascot (150 rooms)**

Scheme	Peak Traffic Generation (veh/hr)		
	Car Park	Porte Cochere	Total
AM	6	10	16
PM	6	4	10

Notes: 1 vehicle in and 5 vehicles out in the AM peak. 3 vehicles in and 3 vehicles out in the PM peak

The Felix Hotel is a 150-room hotel with a porte-cochere and a 60-space car park for both patrons and staff. Observed porte-cochere traffic volumes primarily related to taxis and other vehicles using the porte-cochere.

Accordingly, the following generation rates were extrapolated and are to be adopted from the surveyed results:

- 0.107 trips per unit in the AM peak.
- 0.067 trips per unit in the PM peak.

These surveyed rates are significantly lower than typically recommended by the RMS Guide and reflects the nature of hotels in this locality which predominantly service airport commuters.

Application of the surveyed results to the current proposal, with 247 rooms, is presented in the table below.



Table 4: Development Traffic Generation – Proposed 247 Room Hotel

Scheme	Peak Traffic Generation (veh/hr)		
	Car Park	Porte Cochere	Total
AM	10	16	26
PM	10	7	17

Notes: 2 vehicles in and 8 vehicles out in the AM peak. 5 vehicles in and 5 vehicles out in the PM peak

From the above it is evident that the total traffic generated by the proposed hotel will be in the order of 26 veh/hr. It is also noteworthy that traffic volumes using the proposed car lift during peak periods is expected to be limited to the following;

- AM peak 10 veh/hr
- PM peak 10 veh/hr

#### 4.2 Traffic Impacts

The additional traffic generated by the development (using the currently approved traffic generation rates) is minor and will have no measurable impact on the operation of the external road network. Furthermore, the survey of a similar hotel in Mascot indicates that the traffic generation will be even lower. Indeed, the proposal results in approximately 1 additional vehicle movement every 2 minutes during the morning and 1 additional vehicle approximately every 4 minutes in the evening peak periods.

Noting the separation of carpark and Porte Cochere volumes, there will be approximately 1 additional vehicle every 6 minutes in both the AM and PM peaks utilising the carpark access.



## 5 Design Commentary

### 5.1 Relevant Design Standards

The site access, car park and loading areas have been designed to comply with the following relevant Australian Standards:

- AS2890.1 for car parking areas;
- AS2890.2 for commercial vehicle loading areas;
- AS2890.3 for bicycle parking.
- AS2890.6 for accessible (disabled) parking.

It is expected that any detailed construction drawings in relation to any modified areas of the car park or site access would comply with these Standards.

### 5.2 Site Access

The primary vehicular access is to service less than 100 User Class 2 parking spaces, with access to a local road. Accordingly, a Category 2 driveway is required by AS2890.1; requiring a combined width of between 6.0 – 9.0 metres. The access proposed complies with this requirement. It also serves to provide access to the on-site loading bay and, accordingly, the final driveway width has been derived on the basis of swept path analysis. A copy of this analysis is included in Appendix B.

The porte-cochere is to be provided and is designed to accommodate access by up to 8.8 metre rigid vehicles (MRV) in accordance with the existing Conditions of Consent. This 'design vehicle' is considered more than sufficient to cater for the type of small shuttle buses likely to serve the development.

Visual splays (2.0m x 2.5m) to pedestrians at the site boundary are required at the vehicular egress. No permanent obstructions to sight lines shall occur within this splay area, with any landscaping to remain below 0.5 metres in height (at all times).



### 5.3 Internal Design

A detailed review of the car park and related areas will be undertaken, with the following characteristics noteworthy:

- Parking spaces are generally designed in accordance with a User Class 2, as nominated by AS2890.1 for Hotel parking. This requires a space width of 2.5 metres.
- A number of spaces are designed as Small Car spaces, for which the Standards permit a reduced width of 2.3 metres and length of 5.0 metres.
- Dead-end aisles are to be provided with the required 1.0m aisle extension in accordance with Figure 2.3 of AS2890.1.
- All “accessible” (disabled) parking spaces are to comply with AS2890.6, which requires:
  - Space width of 2.4 metres adjacent to a Shared Area of 2.4 metres; and
  - Minimum headroom of 2.5 metres above the space and associated Shared Area.
- The car park has several non-compliances with regards to columns encroaching within the parking space envelopes. These non-compliances are relatively minor and are expected to be addressed during the CC phase of the development providing receipt of appropriate conditions of consent.

### 5.4 Car Park Management

#### 5.4.1 General

Car parking is separated into two separate functional areas:

- Porte-cochere for short-term drop-off, check-in and shuttle bus pick-up/drop-off; and
- General car park for staff and guest parking.

Access to the ground level spaces is achieved by driving through the open car lift doors, whilst the platform is ‘locked’ into position in default mode and does not require the use of the car lift itself. The process for using the car lift to access the Level 1 or the Basement car parking is explained in further detail in Section 5.4.2.

It is expected that those guests and visitors who drive and are arriving to the Hotel for the first time will park temporarily within the porte-cochere area. Once checked-in at reception, guests will receive a swipe-card (or code), be allocated a parking space and given instructions on how to use the proposed car lift.



The limited number of staff (and other regular users) allocated with on-site parking will be familiar with on-site access and parking arrangements, negating the need to visit reception on arrival.

Reference should be made to the car park access process prepared by SJB Architects which provides a detailed overview of the process.

#### 5.4.2 Car Lift Operations

Two (2) car lifts are proposed, with a single lift dedicated to each entry and exit movement direction to simplify use of the lifts. This also provides a backup so that at least one lift shall remain operational during any infrequent maintenance. Scheduled maintenance would occur outside of peak business times when traffic flows are minimal.

Both car lifts shall be located at ground level as the default setting. The operation of the car lift is summarised as follows:

##### 5.4.2.1 Entry

- Vehicle approaches and takes ticket from Ticket Machine
- Car lift doors shall open to allow
  - entering vehicles to access the car lift, or
  - traverse through to access the internal ground level car park.
- On arrival to the car lift, swiping the reader (or entering a code) will initiate the car lift process, whereby the system shall take the car to the appropriate car park level, depending on the allocated parking space.
- Upon egress from the car lift, drivers will proceed to the allocated parking space as normal.
- The doors will then close and the car lift will return to ground level.

##### 5.4.2.2 Exit

- It is anticipated that a number of loop detectors will be provided within the Basement and Level 1 car parks to "call" a lift, when exiting the site.
- In this regard, guests are to pack all luggage and only call a lift when ready to depart the car park.
- Upon activation, all lift roller doors will move to the required level.
- The door will then open at the required level allowing the vehicle to enter the car lift.
- After closing of the doors and unlocking of the platform, the lift returns to ground level whereby the vehicle will be free to exit the site, as normal.



- The egress car lift is then in the default position, allowing:
  - vehicle to exit from the ground level car park; or
  - Waiting to be called to Level 1 of the Basement for the next egress movement.

### 5.5 Queuing Analysis

The proposed car lift is setback from the Sarah Street frontage and provides storage capacity for 1 vehicle, clear of the Sarah Street kerb.

Having regard for the traffic generation outlined in Section 4.1, a steady-state queuing analysis has been undertaken to confirm sufficient queue storage is provided to cater for peak loads. A copy of this analysis is included in **Appendix B**.

In summary, the following queues (excluding vehicle within the lift itself) are anticipated at the site access during respective peak periods:

- AM peak 2 vehicles
- PM peak 2 vehicles

Faster door and lift operation speeds would reduce this queuing requirement.

Notwithstanding, it is evident that there is sufficient queuing distance between the ticket machine and Sarah Street kerb (~10m) to prevent peak queues obstructing traffic movements within Sarah Street.

## 6 Conclusions

The key findings of this Traffic Impact Assessment are:

- This submission comprises a Section 4.55 modification submission (MOD) to the approved hotel development at 2 – 8 Sarah Street, Mascot and a new DA in relation to the expansion of the hotel to include 10-12 Sarah Street. Whilst technically two separate applications, this report will consider the consolidated hotel as a single new DA submission for simplicity. The overall development proposes construction of a 247-room hotel with 98 car parking spaces; accessed via Sarah Street.
- This report seeks to assess the impacts of the proposed modifications with regards to the previously approved scheme in terms of traffic generation and parking requirements. A total of 99 car parking spaces (including 11 accessible spaces) are required, having regard for the previously approved rates. In response, 98 car parking spaces are proposed.
- The projected hotel parking demands are anticipated to be significantly lower than required by the DCP. The projected demands (42 spaces) is expected to be much closer to the RMS Guide recommended provision (62 spaces) than that nominally required if applying the rate (99 spaces based on 1 space per 2.5 rooms) approved as part of the previous approval for 2-8 Sarah St, Mascot.
- The proposal will result in a net increase of a single bicycle parking space. Whilst not indicated on the plans, this space can be provided within the landscaped areas close to the building entry, if required by Council. It is noted that the approved plans did not make any provision for on-site bicycle parking.
- Surveys of other Hotels in the locality resulted in the following traffic generation rates during peak periods:
  - AM peak            0.107 vehicles per hour per room
  - PM peak            0.067 vehicles per hour per room
- The proposal – resulting in 247 rooms - would generate the following traffic during peak periods:
  - AM peak            26 veh/hr
  - PM peak            17 veh/hr
- This equates to approximately 1 additional vehicle movement every 2 minutes during the morning peak and 1 additional vehicle approximately every 4 minutes in the evening peak periods.



- Noting the separation of carpark and port cochere, the traffic generation of the carpark access would be as follows;
  - AM peak 10 veh/hr
  - PM peak 10 veh/hr
- This equates to an increase of 1 vehicle every 6 minutes and therefore will have no material impact on the surrounding road network.
- A car lift is proposed to provide access to Basement and Level 1 car parking areas.
- Preliminary analysis indicates that this may result in queues of 1 vehicle during peak periods. Approximately 4 metres of queuing distance is provided between the car lift ticket machine and the site boundary. Notwithstanding, the car lift is sufficiently off-set (~11m) from the Sarah Street carriageway such that all vehicles can be accommodated without impacting on passing traffic.
- The access and car park design has generally been designed having regard for relevant Australian Standards (AS2890 series). A standard condition of consent requiring compliance with AS2890 would be considered sufficient to ensure that any minor changes to the plans, if required during further detailed design coordination, could be undertaken as part of detailed Construction Certificate documentation.

In summary, the Proposal is supportable on traffic planning grounds and will not result in any adverse impacts on the surrounding road network or the availability of on-street parking.

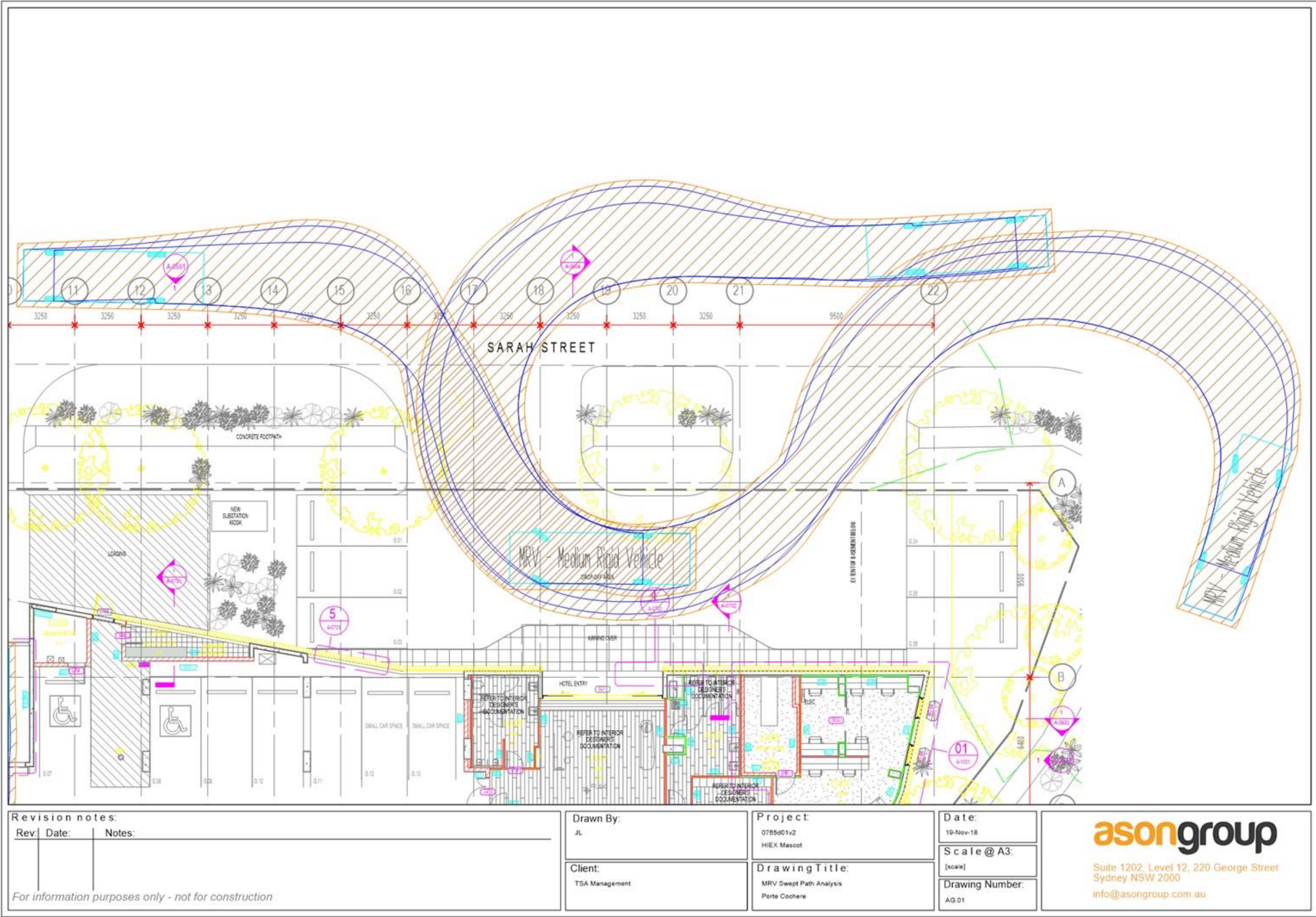


## Appendix A

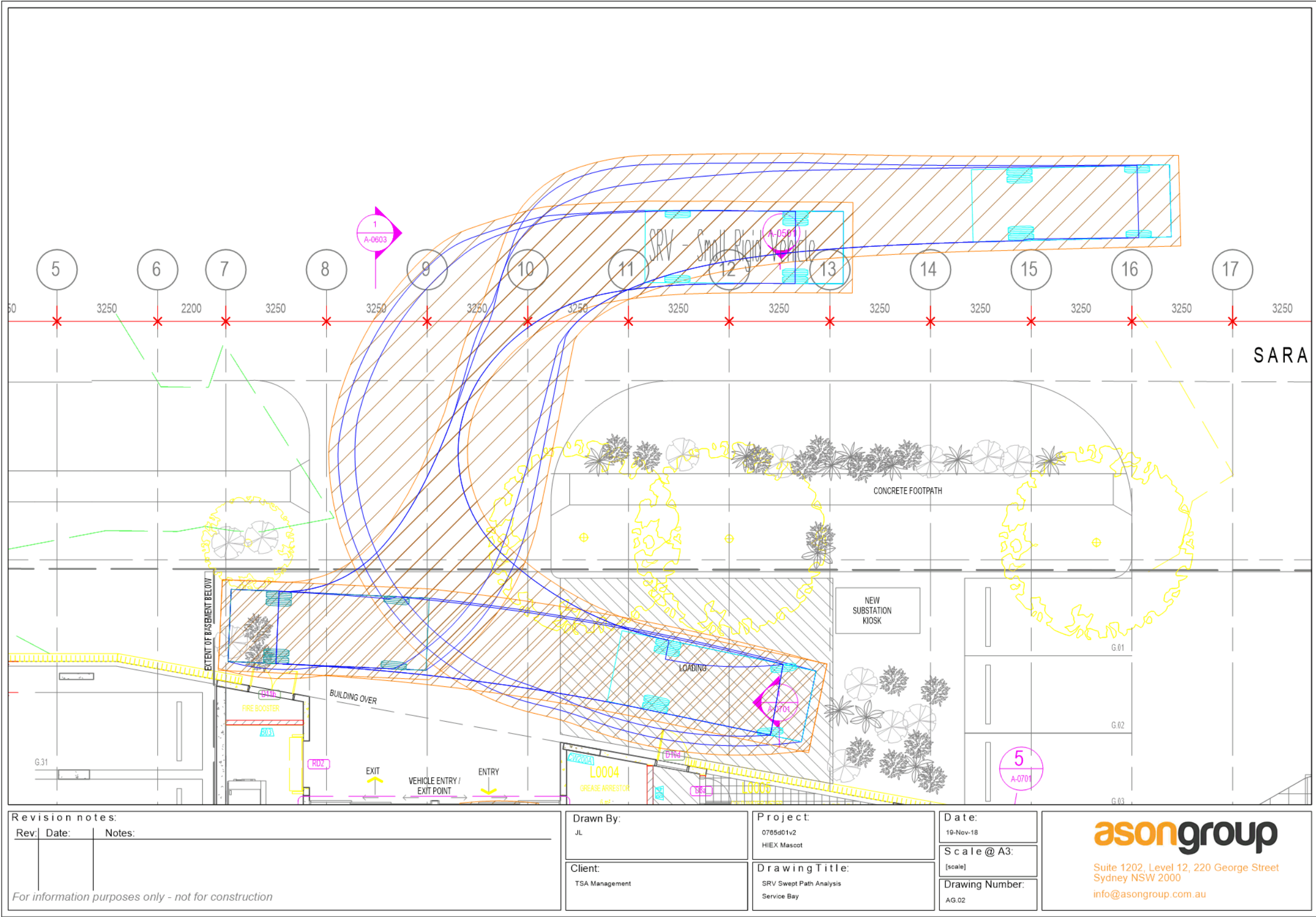
### Swept Paths

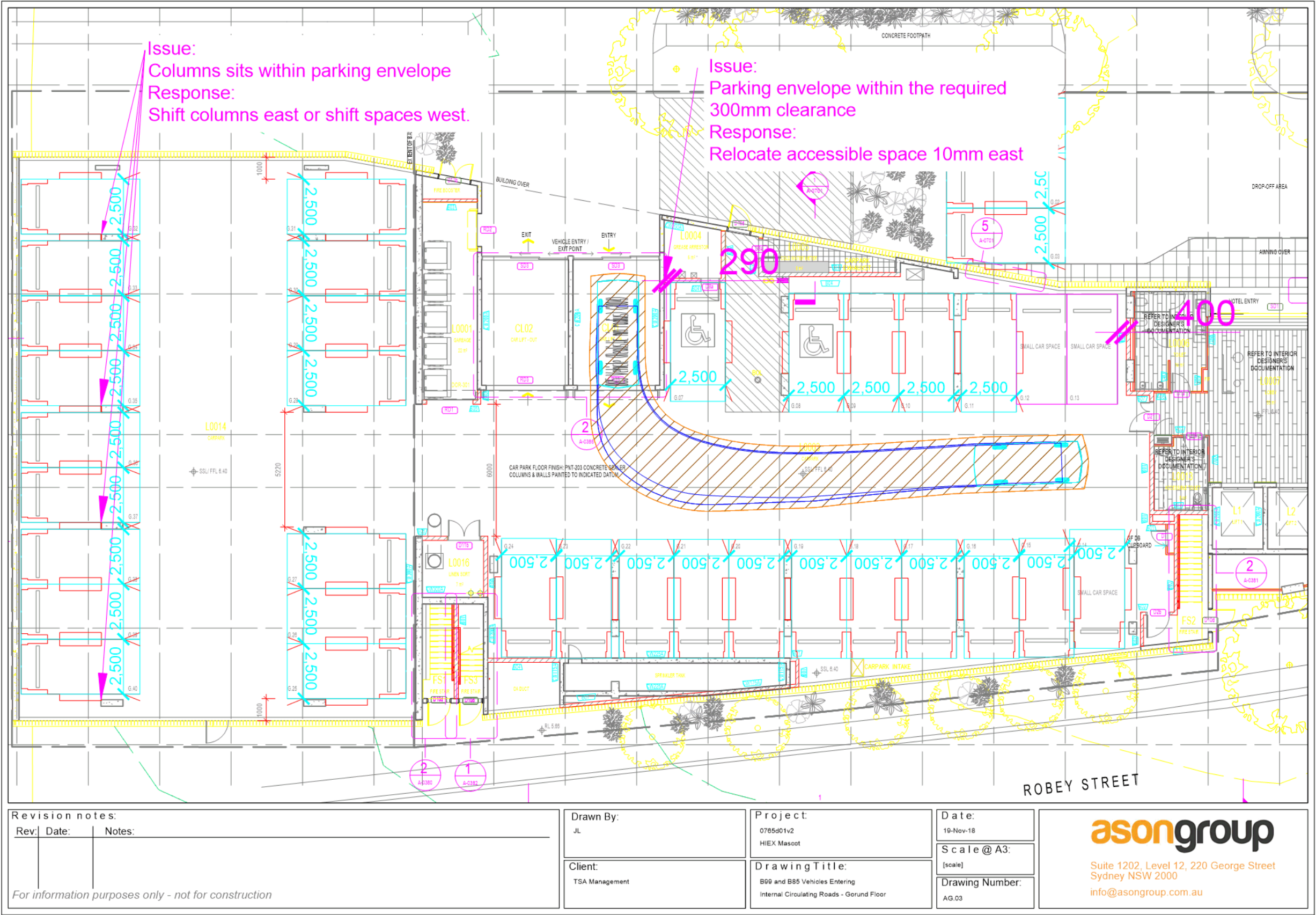
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2-12 Sarah Street, Mascot | S4.55 Submission - Traffic Impact Assessment  
Issue II | 19/11/2018

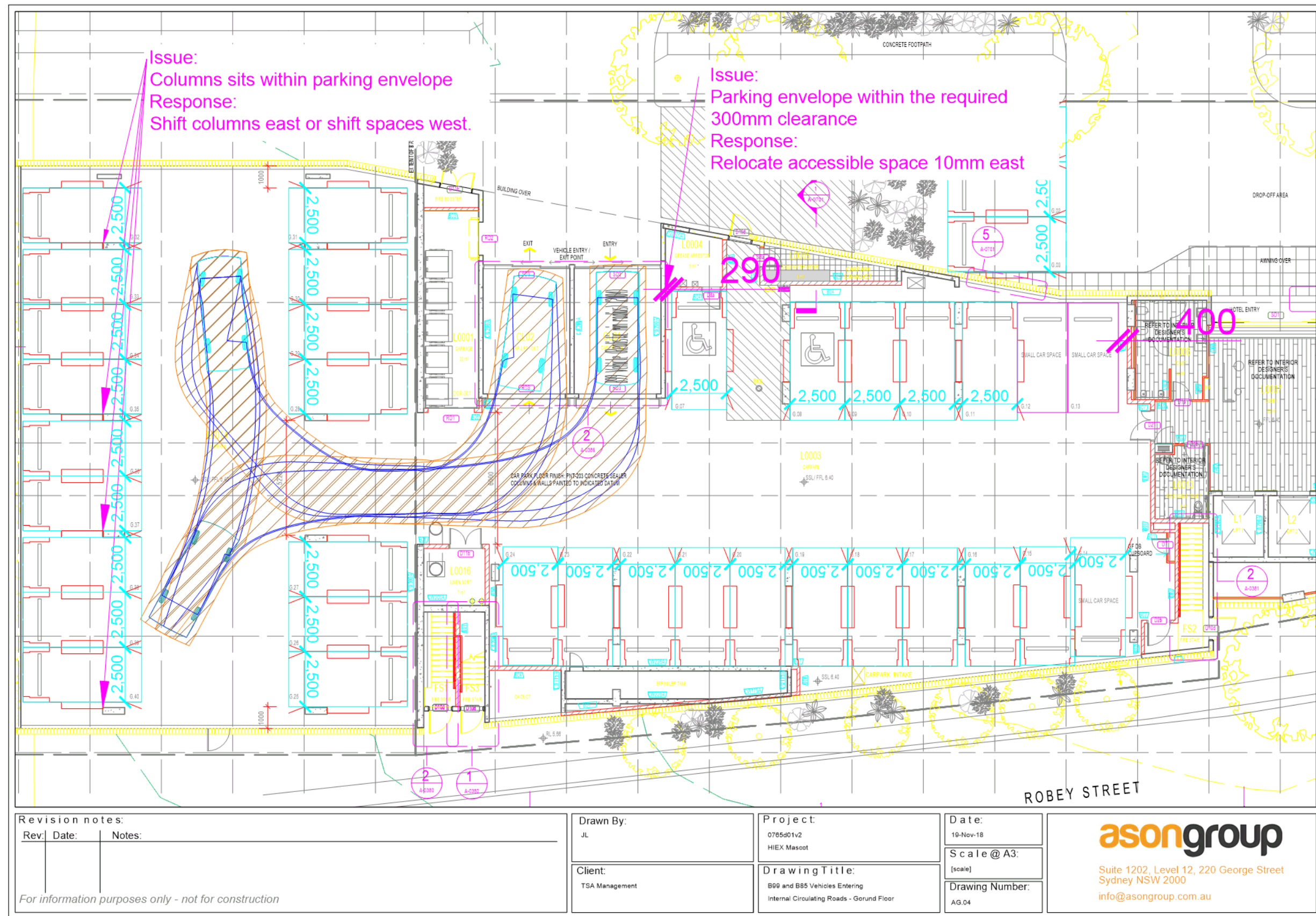


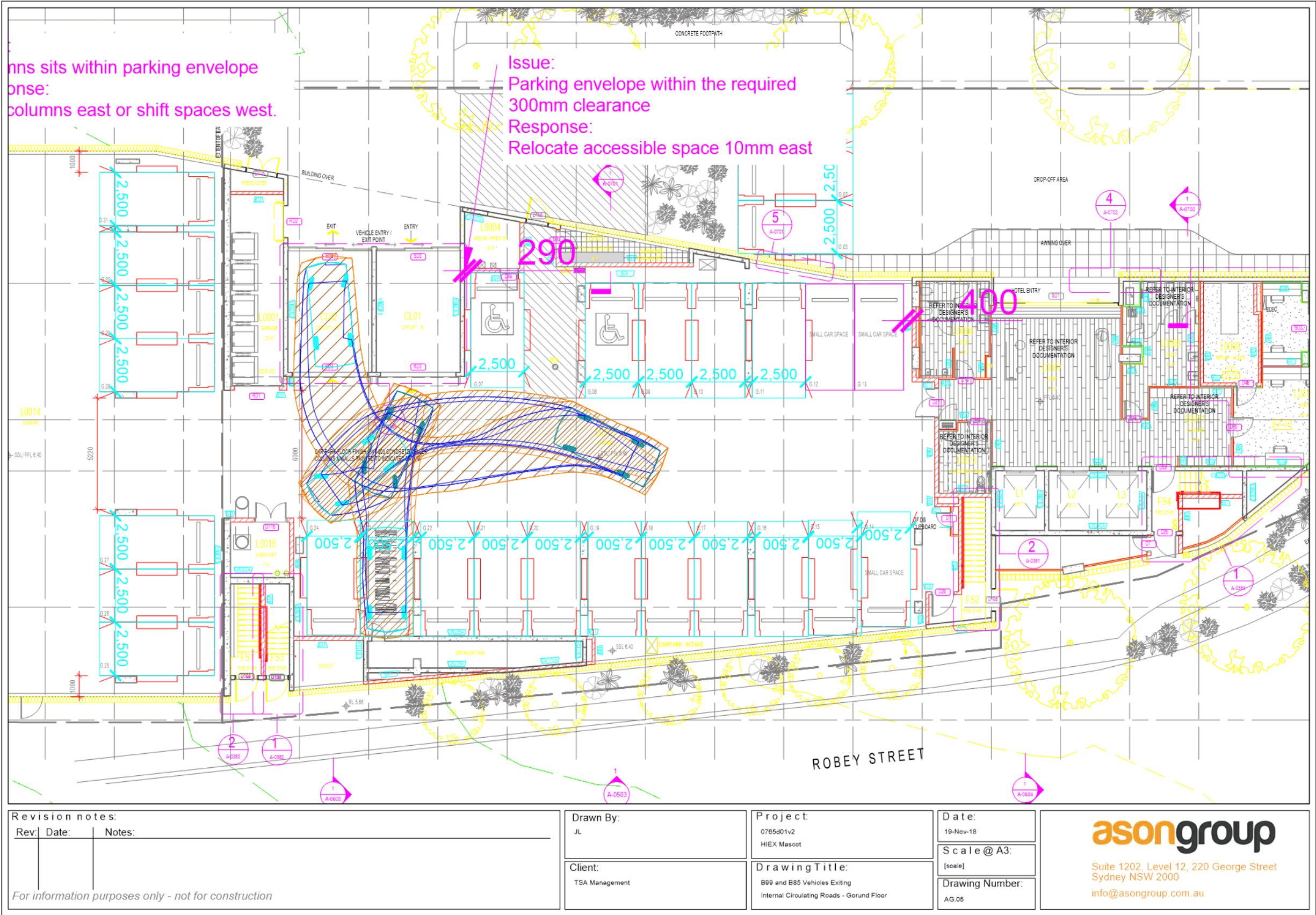




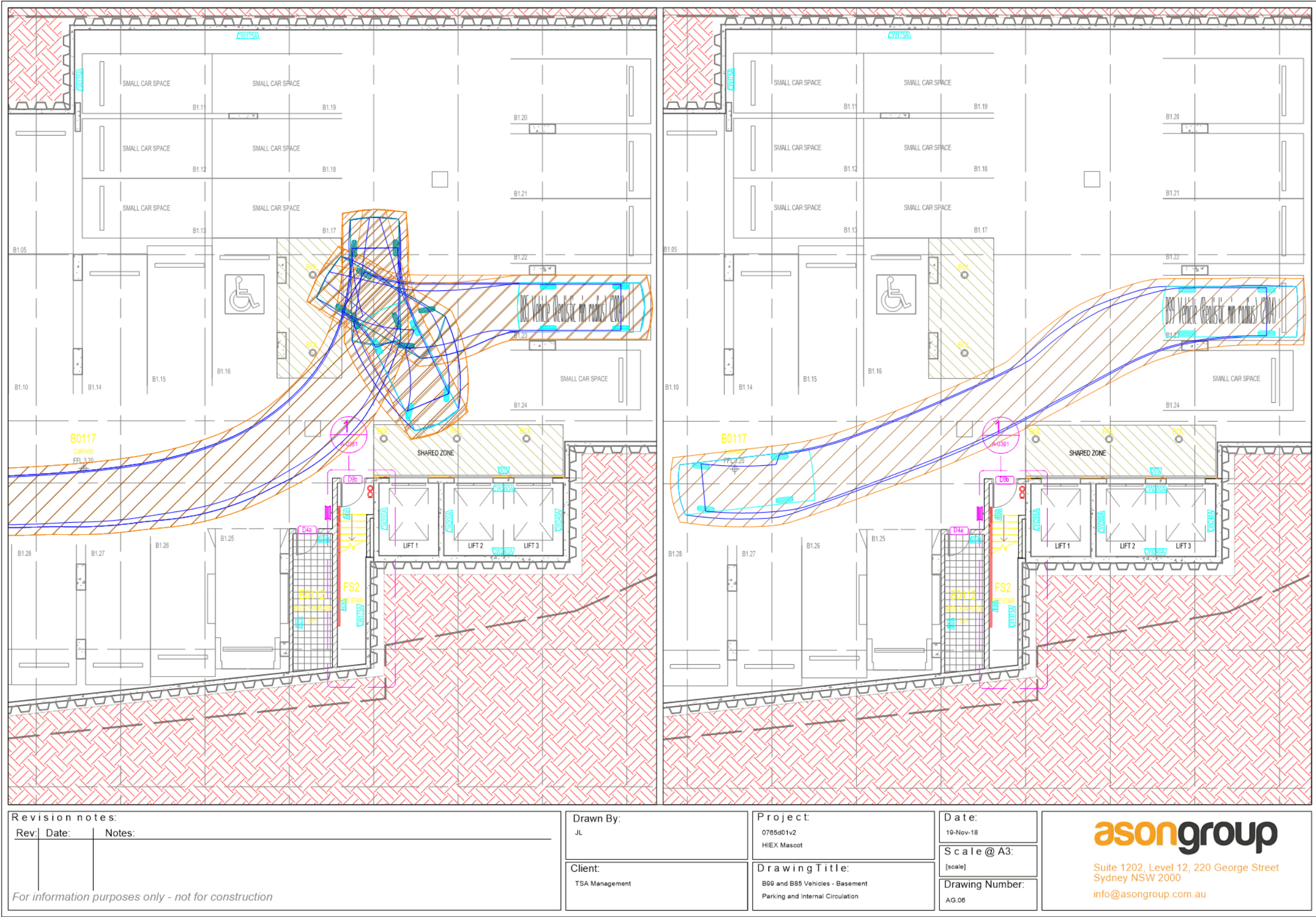




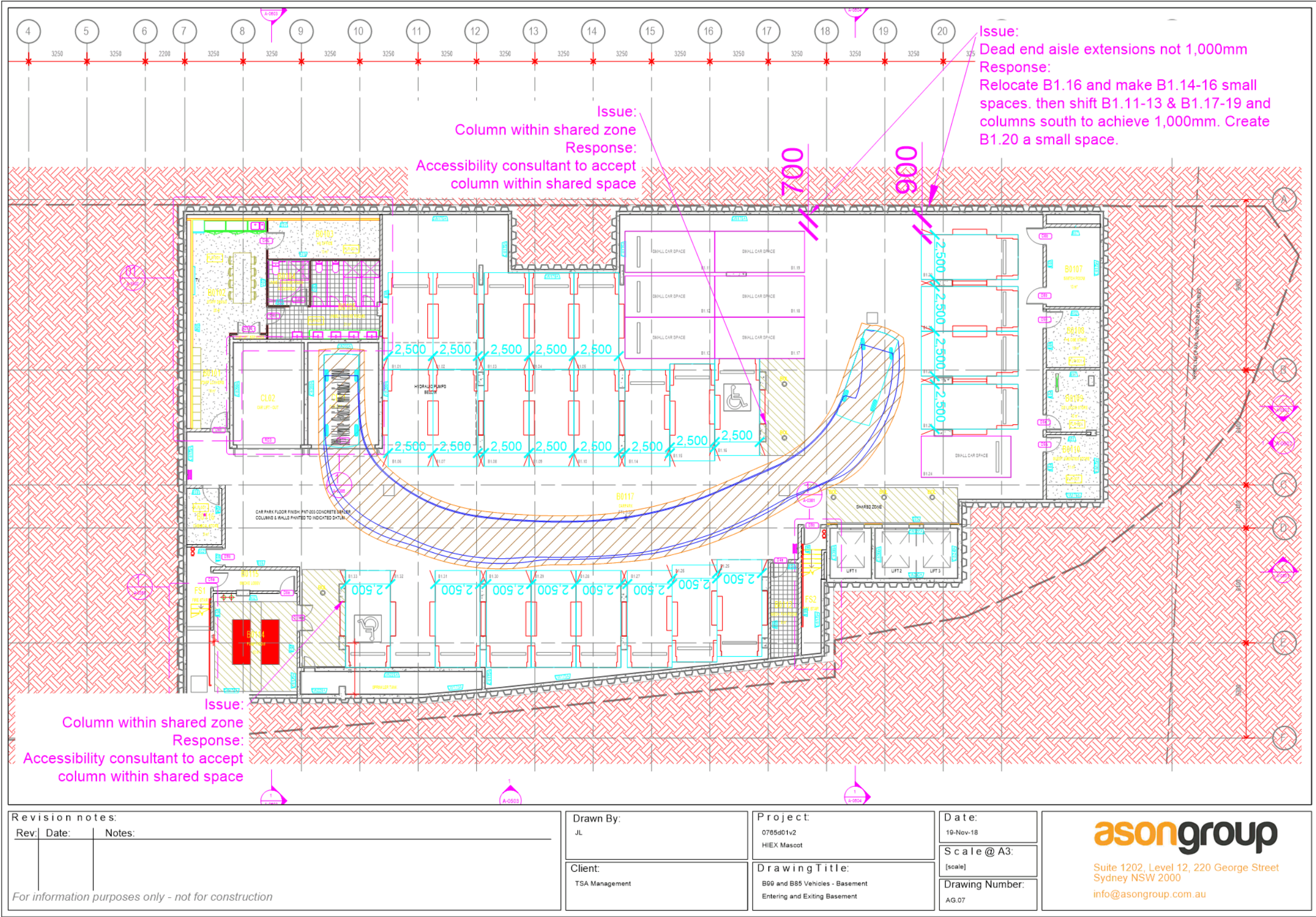




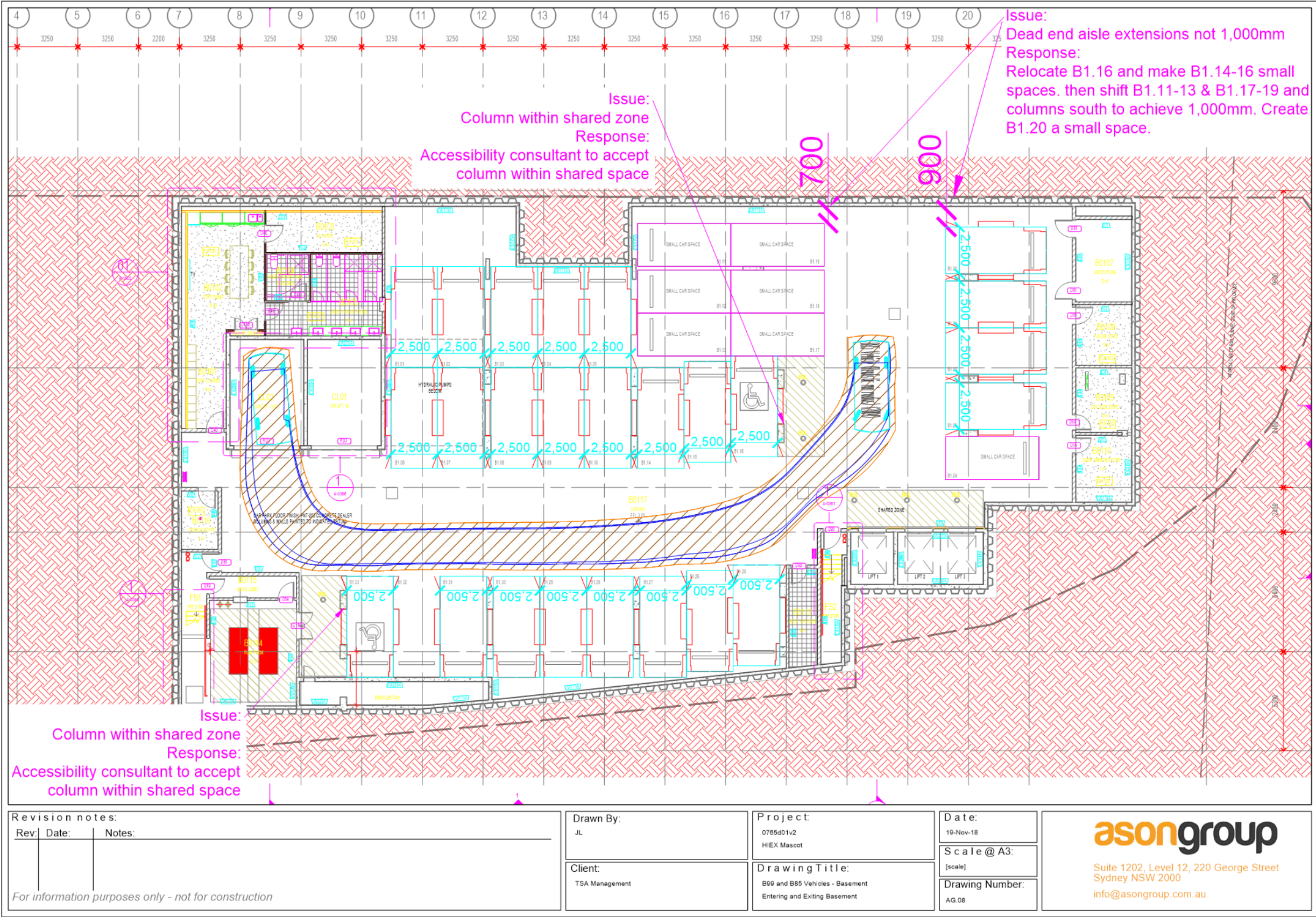




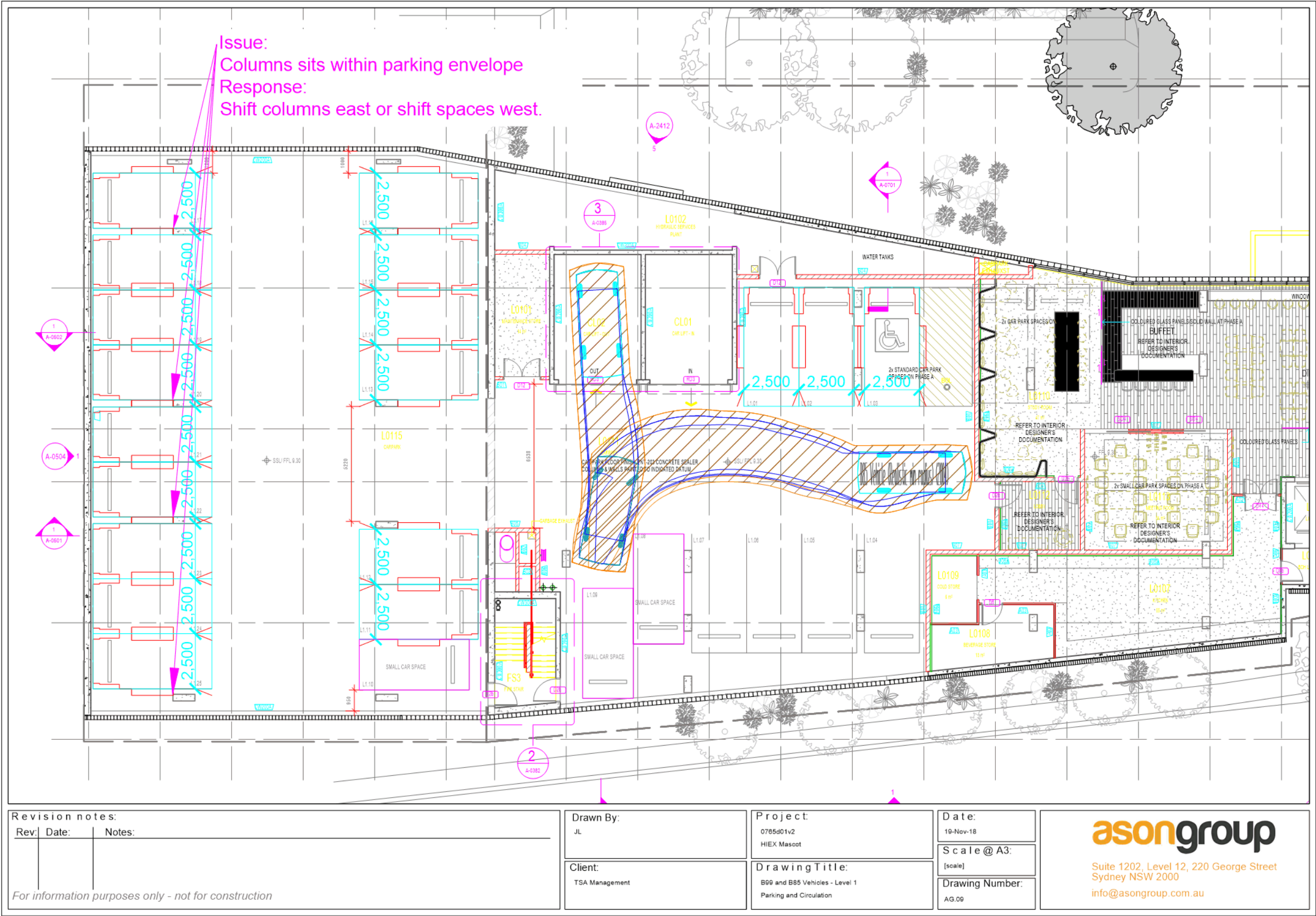


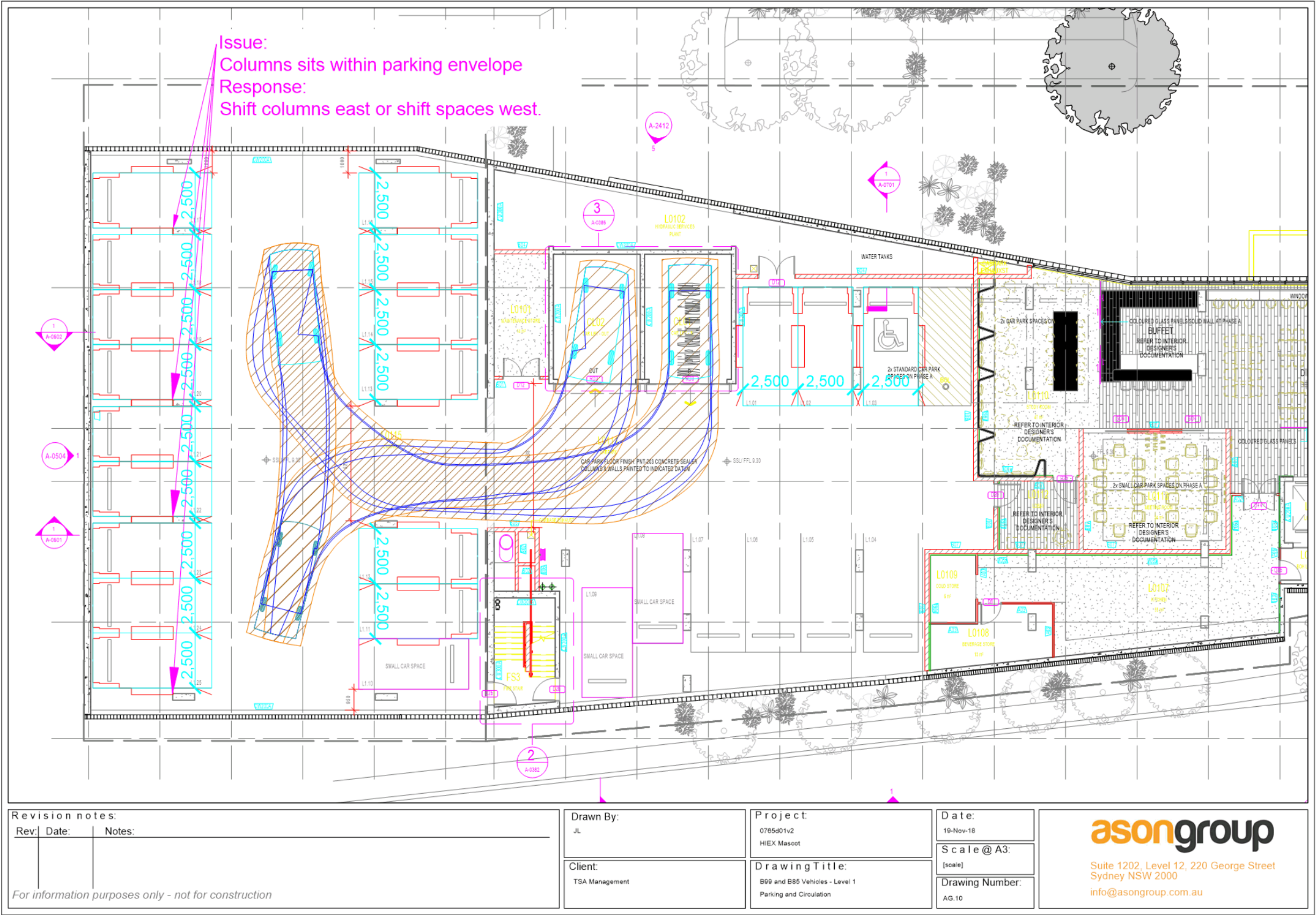












## Appendix B

### Car Lift Queuing Analysis

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2-12 Sarah Street, Mascot | S4.55 Submission - Traffic Impact Assessment  
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**Variable Inputs**

Additional Proposed Arrivals (veh/hr)	5
Peak Flow Factor (Typically 95% in SIDRA)	100%
<b>Key Timings</b>	
Generation of Ticket	5
Door Opening (Typically 3-15 seconds)	4
User Activate Lift	3
Load / Unload from Platform	3
Platform Locking Time	5
Lift Speed (m/s) (Range 0.03 - 0.15)	0.15
Level Change (m)	3.2
Total Spaces Served	92
Effective Service Time	101.652

**Ground Level**

<b>Total Service Time</b>	<b>3196</b>
No. of Spaces	34
Level Difference	0
Service Time	94
Generation of Ticket	5
Door Opening	4
Load	3
Activate Lift	3
Door Closing	4
Platform Unlock	5
Lift Travel (to destination level)	22
Platform Lock	5
Door Opening	4
Unload	3
Door Closing	4
Platform Unlock	5
Lift Travel (to Ground)	22
Platform Lock	5

**Basement 1**

<b>Total Service Time</b>	<b>3531</b>
No. of Spaces	33
Level Difference	3.2
Service Time	107
Load	3
Activate Lift	3
Door Closing	4
Platform Unlock	5
Lift Travel (to destination level)	22
Platform Lock	5
Door Opening	4
Unload	3
Door Closing	4
Platform Unlock	5
Lift Travel (to Ground)	22
Platform Lock	5
Door Closing (to default mode)	

**Queuing Theory Factors**

average arrival rate (r)	5.000
average service rate (s)	35.415
utilisation factor (p)	0.141
mean queue (E(m))	0.023

\*r=(veh/hr)

\*s=3600/(Total Average Time)

\*p=r/s if p &lt; 1, then queue is 'stable'

\*E(m)=(p/(1-p))-p

Probability of More than (n) Vehicles in System [P(n>N)]	
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\*Pr(n&gt;N) = p^(N+1)

No. Vehicles in System (n)	Probability (%)	Effective Queue Length (m)
0	14.1%	0
1	2.0%	6
2	0.3%	12
3	0.0%	18
4	0.0%	24
5	0.0%	30
6	0.0%	36
7	0.0%	42
8	0.0%	48
9	0.0%	54
10	0.0%	60

&lt;&lt; Design queue length = 1 vehicles

NOTE: "vehicle in system" includes car lift, hence "queue" length will be less.

**Level 1**

<b>Total Service Time</b>	<b>2625</b>
No. of Spaces	25
Level Difference	2.9
Service Time	105
Load	3
Activate Lift	3
Door Closing	4
Platform Unlock	5
Lift Travel (to destination level)	22
Platform Lock	5
Door Opening	4
Unload	3
Door Closing	4
Platform Unlock	5
Lift Travel (to Ground)	22
Platform Lock	5
Door Closing (to default mode)	

0765r01v2

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**Bayside Local Planning Panel**

**9/04/2019**

Item No	<b>6.6</b>
Application Type	Development Application
Application No	DA-2018/1169
Lodgement Date	14/09/2018
Property	<b>3-5 Queen Street, Botany</b>
Ward	Botany Bay
Owner	Mr Clive Hillier & Sandra Monk
Applicant	Botany Terraces Pty Ltd
Proposal	Demolition of existing structures, Torrens Title subdivision into five (5) lots, construction of two (2) semi-detached dwellings, three (3) attached dwellings, swimming pool, and two (2) cabanas.
No. of Submissions	Seven (7)
Cost of Development	\$2,017,939
Report by	Michael McCabe, Director City Futures

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**Officer Recommendation**

1. That the Bayside Local Planning Panel is not satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) of the Botany Bay Local Environmental Plan 2013 in regards to Clause 4.4A- Floor space ratio.
  2. That the Development Application No. DA-2018/1169 for the demolition of existing structures, Torrens Title subdivision into five (5) lots, construction of five (5) attached dwellings, swimming pool and two (2) cabanas at 3-5 Queen Street, Botany, be REFUSED pursuant to Section 4.6(1)(b) of the *Environmental Planning and Assessment Act 1979* (EPA Act) and is recommended for refusal subject to the following reasons:
    - a) 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, size, density, inconsistent with local character and subdivision pattern and would adversely impact upon the amenity of the locality.
    - b) The proposed development, pursuant to the provisions of Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, results in an undesirable and unacceptable impact on the streetscape and adverse impact on the surrounding built environment.
    - c) 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 satisfy Clause 4.4A of the Botany Bay Local Environmental Plan 2013 relating to non-compliance with the floor space ratio development standard of 0.5:1. Council is not satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) of the Botany Bay Local Environmental Plan 2013 in regards to floor space ratio.
-

- d) 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 following sections of the Botany Bay Development Control Plan 2013 with respect to the following:
- i) Part 3A – Car Parking and Access. The proposed development does not comply with the requirements of Part 3A.3.1 C28 and Part 4A.7 C2 relating to compliant vehicular access and loss of on-street parking;
  - ii) Part 3E – Subdivision & Amalgamation. The proposed development does not comply with the requirements of Part 3E.2.2 regarding consistency with the prevailing subdivision pattern in the street;
  - iii) Part 3G – Stormwater Management. The proposed development does not comply with Part 10 – Stormwater Management Technical Guidelines 5.2 (i) & (ii) and does not provide sufficient detail as to the on-site detention system proposed on the site;
  - iv) Part 3J – Aircraft Noise and OLS. The proposed development does not comply as an acoustic report was not provided with the development application, preventing an accurate assessment or aircraft noise impacts;
  - v) Part 3L – Landscaping and Tree Management. The proposed development does not comply as insufficient information was provided regarding the swimming pool and rainwater tanks to be utilized for irrigation, and the proposed driveways will impact upon the existing street trees within the nature strip.
  - vi) Part 4A.2.8 - Building Setbacks. The proposed development does not comply with the minimum side setback requirements imposed in control 1 and 9, and is inconsistent with the dominant pattern along the street.
  - vii) Part 4A.4.1 – Visual Privacy. The proposed development does not comply with control 1, 2, 3, 4, and 5, as it will pose overlooking impacts upon the adjoining properties.
  - viii) Part 4A.3 – Solar Access. The proposed development does not comply with control 1 regarding to the minimum sunlight required for proposed and adjoining properties.
  - ix) Part 7O – Swimming Pools. The proposed development does not comply with Part 7O.2.4, Part 7O.2.13, and Part 7O.2.21 as insufficient information was provided relating to pool fence details and rainwater tank provisions.
  - x) Part 8 – Character Precincts. The proposed development does not comply as it is inconsistent with the desired future character of the Botany Precinct.
- e) 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.
- f) Pursuant to the provisions of Section 4.15(1)(b) and Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, insufficient information has been provided by the applicant to allow a proper and thorough assessment of the impacts of the proposed development and the suitability of the site for the development.
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- g) 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 subdivision pattern, visual privacy, solar amenity, excessive density, and car parking impacts on adjoining /nearby properties.
- h) Pursuant to the provisions of Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not considered to be in the public interest as it is likely to set an undesirable precedent, and is inconsistent with the existing and desired future character of the locality resulting in an overdevelopment of the site, creating a medium density environment in a low density context.
3. That the objectors be informed of the Bayside Local Planning Panel's decision.

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## Location Plan



- 7 Elevation Shadow Diagrams [↓](#)
- 8 Statement of Environmental Effects [↓](#)
- 9 Site Analysis Plan [↓](#)
- 10 Streetscape Analysis 1 [↓](#)
- 11 Streetscape Analysis 2 [↓](#)
- 12 Streetscape Analysis 3 [↓](#)
- 13 Streetscape Analysis 4 [↓](#)
- 14 Finishes Schedule [↓](#)
- 15 Photomontage [↓](#)
- 16 Clause 4.6 Variation Statement [↓](#)

# BAYSIDE COUNCIL

## Planning Assessment Report

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### Application Details

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<b>Application Number:</b>	2018/1169
<b>Date of Receipt:</b>	14 September 2018
<b>Property:</b>	3-5 Queen Street Botany Lot B DP 150047, Lot C DP 150047
<b>Owners:</b>	Clive Hillier & Sandra Monk
<b>Applicant:</b>	Botany Terraces Pty Ltd
<b>Proposal:</b>	Demolition of existing structures, Torrens Title subdivision into five (5) lots, construction of two (2) semi-detached dwellings, three (3) attached dwellings, swimming pool and two (2) cabanas.
<b>Recommendation:</b>	Refusal, subject to reasons of refusal below
<b>Value:</b>	\$2,017,939.00
<b>No. of submissions:</b>	Seven (7) Submissions
<b>Author:</b>	Ana Trifunovska, Development Assessment Planner
<b>Date of Report:</b>	26 March 2019

### Key Issues

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Bayside Council received Development Application No. 2018/1169 on 14 September 2018 seeking consent for the demolition of existing structures, Torrens Title subdivision into five (5) lots, construction of five (5) attached dwellings, swimming pool and two (2) cabanas at 3-5 Queen Street, Botany.

The application was placed on public exhibition for a 14 day period from the 20<sup>th</sup> September 2018 until the 5<sup>th</sup> October 2018. Seven (7) submissions were received in response.

Key issues in the assessment of the development application include non-compliances with the FSR development standard within the Botany Bay Local Environmental Plan 2013, and non-compliances with the BBDCP 2013 requirements for subdivision pattern, vehicular access, setbacks, solar access, stormwater management, aircraft noise attenuation and streetscape presentation.

The key issue is the non-compliance with the prevailing subdivision pattern which subsequently impacts upon other issues such as streetscape presentation, solar access, setbacks and vehicular access. The proposed design is not compatible with the existing built form or prevailing subdivision pattern in the area and therefore is not consistent with the desired future character for the Botany Character Precinct.

In accordance with the Botany Bay Local Environmental Plan 2013, the proposal does not comply with the maximum 0.5:1 FSR development standard as the proposal seeks an overall

Item	Bayside Planning Panel Meeting
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FSR of 0.61:1. The applicant provided a Clause 4.6 variation for the FSR, however Council does not support the variation.

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 refusal, subject to the reasons of refusal in the attached schedule.

### Recommendation

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It is RECOMMENDED:

1. That the Bayside Local Planning Panel is not satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) of the Botany Bay Local Environmental Plan 2013 in regards to Clause 4.4A- Floor space ratio;
2. That the Development Application No. 2018/1169 for the demolition of existing structures, Torrens Title subdivision into five (5) lots, construction of five (5) attached dwellings, swimming pool and two (2) cabanas at 3-5 Queen Street, Botany, be REFUSED pursuant to Section 4.6(1)(b) of the *Environmental Planning and Assessment Act 1979* (EPA Act) and is recommended for refusal subject to the following reasons:
  - a) 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, size, density, inconsistent with local character and subdivision pattern and would adversely impact upon the amenity of the locality.
  - b) The proposed development, pursuant to the provisions of Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, results in an undesirable and unacceptable impact on the streetscape and adverse impact on the surrounding built environment.
  - c) 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 satisfy Clause 4.4A of the Botany Bay Local Environmental Plan 2013 relating to non-compliance with the floor space ratio development standard of 0.5:1. Council is not satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) of the Botany Bay Local Environmental Plan 2013 in regards to floor space ratio.
  - d) 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 following sections of the Botany Bay Development Control Plan 2013 with respect to the following:
    - i) Part 3A – Car Parking and Access. The proposed development does not comply with the requirements of Part 3A.3.1 C28 and Part 4A.7 C2 relating to compliant vehicular access and loss of on-street parking;

- ii) Part 3E – Subdivision & Amalgamation. The proposed development does not comply with the requirements of Part 3E.2.2 regarding consistency with the prevailing subdivision pattern in the street;
  - iii) Part 3G – Stormwater Management. The proposed development does not comply with Part 10 – Stormwater Management Technical Guidelines 5.2 (i) & (ii) and does not provide sufficient detail as to the on-site detention system proposed on the site;
  - iv) Part 3J – Aircraft Noise and OLS. The proposed development does not comply as an acoustic report was not provided with the development application, preventing an accurate assessment or aircraft noise impacts;
  - v) Part 3L – Landscaping and Tree Management. The proposed development does not comply as insufficient information was provided regarding the swimming pool and rainwater tanks to be utilized for irrigation, and the proposed driveways will impact upon the existing street trees within the nature strip.
  - vi) Part 4A.2.8 - Building Setbacks. The proposed development does not comply with the minimum side setback requirements imposed in control 1 and 9, and is inconsistent with the dominant pattern along the street.
  - vii) Part 4A.4.1 – Visual Privacy. The proposed development does not comply with control 1, 2, 3, 4, and 5, as it will pose overlooking impacts upon the adjoining properties.
  - viii) Part 4A.3 – Solar Access. The proposed development does not comply with control 1 regarding to the minimum sunlight required for proposed and adjoining properties.
  - ix) Part 7O – Swimming Pools. The proposed development does not comply with Part 7O.2.4, Part 7O.2.13, and Part 7O.2.21 as insufficient information was provided relating to pool fence details and rainwater tank provisions.
  - x) Part 8 – Character Precincts. The proposed development does not comply as it is inconsistent with the desired future character of the Botany Precinct.
- e) 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.
  - f) Pursuant to the provisions of Section 4.15(1)(b) and Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*, insufficient information has been provided by the applicant to allow a proper and thorough assessment of the impacts of the proposed development and the suitability of the site for the development.
  - g) 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 subdivision pattern, visual privacy, solar amenity, excessive density, and car parking impacts on adjoining /nearby properties.

- h) Pursuant to the provisions of Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, the proposed development is not considered to be in the public interest as it is likely to set an undesirable precedent, and is inconsistent with the existing and desired future character of the locality resulting in an overdevelopment of the site, creating a medium density environment in a low density context.

3. That the objectors be informed of the Bayside Local Planning Panel's decision.

## Background

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### History – Approved Development

There is no recent town planning history on the site.

However, a Pre-DA was lodged on the 7 August 2018. A meeting was not held as the application was withdrawn.

#### Development Application History

- 14 September 2018 – Development Application was lodged with Council.
- 20 September 2018 – 5 October – Development Application was publicly notified.
- 15 October 2018 – Preliminary comments from the original Pre-DA were sent to the applicant.
- 19 November 2018 – Meeting was held with the applicant to discuss concerns and amendments.
- 4 December – Amended plans were submitted to Council addressing concerns discussed in the meeting.
- 28 February 2018 – The applicant was informed that the proposal would not be supported.

### Description of Proposal

The development application seeks consent for the demolition of existing structures, Torrens Title subdivision into five (5) lots, construction of two (2) semi-detached dwellings, three (3) attached dwellings, swimming pool, and two (2) cabanas at 3-5 Queen Street, Botany.

The specifics of the proposal are as follows:

- Demolition of all structures on the site including the rear shed structures and above ground swimming pool;
- The Torrens Title subdivision of the existing two (2) lots into five (5) lots;
- The construction of five x two storey attached dwellings with arrangements as follows:

	<b>Ground Floor</b>	<b>First Floor</b>
<b>House 01</b>	<ul style="list-style-type: none"> <li>• Single attached garage with waste storage;</li> <li>• Open plan kitchen, dining and living area;</li> <li>• Powder Room;</li> <li>• Laundry;</li> <li>• Alfresco;</li> <li>• Cabana at the rear of the lot.</li> </ul>	<ul style="list-style-type: none"> <li>• Front facing Bedroom 01 with balcony;</li> <li>• Bedroom 02;</li> <li>• Bedroom 03;</li> <li>• Rear facing Master Bedroom with balcony and ensuite;</li> <li>• Bathroom.</li> </ul>
<b>House 02</b>	<ul style="list-style-type: none"> <li>• Single carport with waste storage room;</li> <li>• Open plan kitchen, dining and living area;</li> <li>• Powder Room;</li> <li>• Laundry;</li> <li>• Alfresco;</li> <li>• In-ground swimming pool;</li> <li>• Cabana at the rear of the lot.</li> </ul>	<ul style="list-style-type: none"> <li>• Front facing Bedroom 01 with balcony;</li> <li>• Bedroom 02;</li> <li>• Bedroom 03;</li> <li>• Rear facing Master Bedroom with balcony and ensuite;</li> <li>• Bathroom.</li> </ul>
<b>House 03</b>	<ul style="list-style-type: none"> <li>• Single carport with waste storage room;</li> <li>• Open plan kitchen, dining and living area;</li> <li>• Powder Room;</li> <li>• Laundry;</li> <li>• Alfresco.</li> </ul>	<ul style="list-style-type: none"> <li>• Front facing Bedroom 01 with balcony;</li> <li>• Bedroom 02;</li> <li>• Rear facing Master Bedroom with ensuite;</li> <li>• Bathroom.</li> </ul>
<b>House 04</b>	<ul style="list-style-type: none"> <li>• Single attached garage with waste storage and laundry;</li> <li>• Open plan kitchen, dining and living area;</li> <li>• Internal courtyard;</li> <li>• Powder Room;</li> <li>• Alfresco.</li> </ul>	<ul style="list-style-type: none"> <li>• Front facing Bedroom 01 with balcony;</li> <li>• Bedroom 02;</li> <li>• Rear facing Master Bedroom with ensuite;</li> <li>• Bathroom.</li> </ul>
<b>House 05</b>	<ul style="list-style-type: none"> <li>• Single attached garage with waste storage;</li> <li>• Open plan kitchen, dining and living area;</li> <li>• Powder Room;</li> <li>• Laundry/Pantry;</li> <li>• Alfresco.</li> </ul>	<ul style="list-style-type: none"> <li>• Front facing Bedroom 01 with balcony;</li> <li>• Bedroom 02;</li> <li>• Rear facing Master Bedroom with ensuite;</li> <li>• Bathroom.</li> </ul>





Figure 1: Proposed Front Elevation



Figure 2: Proposed Rear Elevation

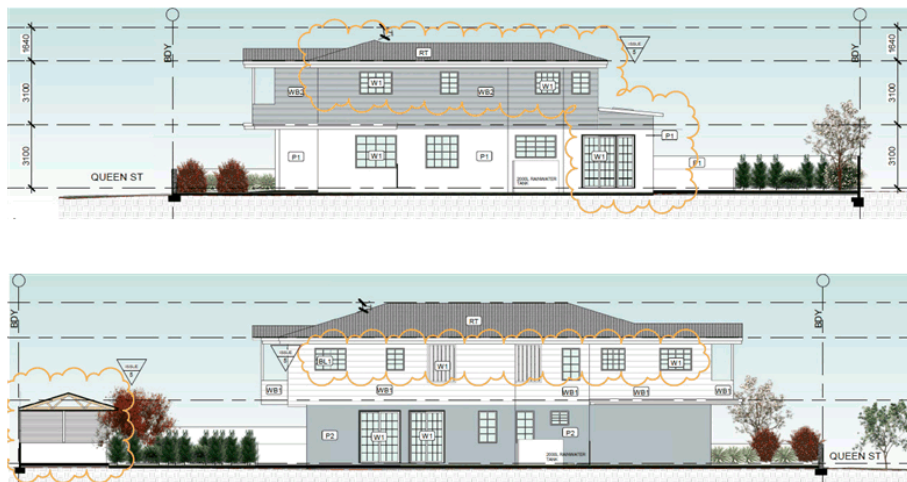


Figure 3: Proposed Side Elevations

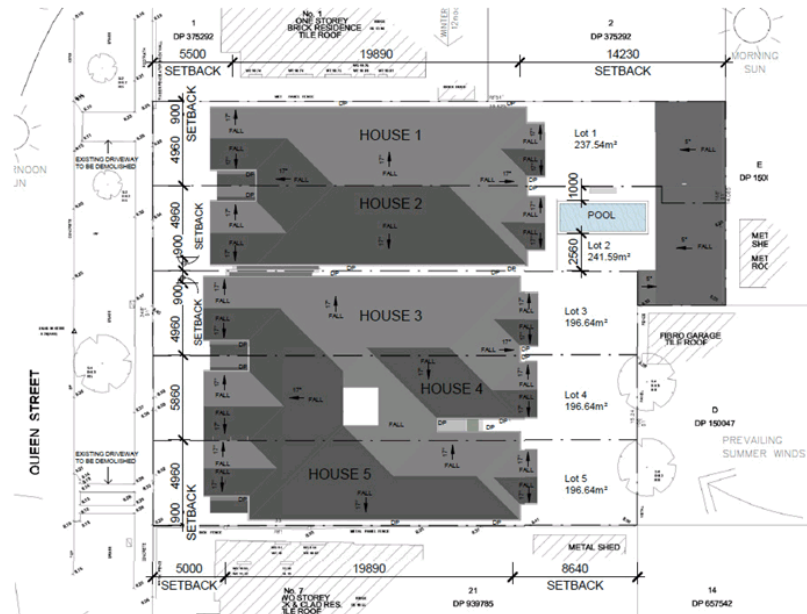


Figure 4: Proposed Site Plan

#### Site Description

The sites are legally known as Lot B DP 150047 and Lot C DP 150047. The subject site is located on the eastern side of Queen Street between Morgan Street to the north and Hambly Street to the south. The lot has an east to west orientation with the western side facing the street frontage and the eastern side facing the rear boundary. The site is located in the R2 Low Density Residential Zone.

3 Queen Street is rectangular in shape with a total site area of 556.4 sqm (site survey) and a street frontage and rear boundary width of 14.085m. Its northern and southern boundaries are 39.625m in length. 5 Queen Street is also rectangular in shape with a total site area of 505.9 sqm (site survey) and a street frontage and rear boundary width of 15.24m. Its northern and southern boundaries are 33.53m in length. Both sites are relatively flat in topography.

Existing development at 3 Queen Street comprises of a single storey detached weatherboard dwelling with a clad garage and clad shed at the rear of the site. Existing development at 5 Queen Street comprises of a single storey brick rendered detached dwelling house with tile roof, and a detached brick shed and above ground swimming pool at the rear of the site.

There are two (2) trees located within the nature strip which are to be retained and protected. There are also a number of trees within the adjacent lots which are to be retained and protected.

The adjoining site at 1 Queen Street contains a single storey detached brick dwelling, and the adjoining site at 7 Queen Street contains a brick and weatherboard clad two storey detached dwelling with metal shed in the rear. The sites abutting to the rear include 11A Morgan Street, 11 Morgan Street and 33 Victoria Street which all contain single storey dwellings. Development surrounding the site is quite distinct as it predominately consists of single and double storey detached dwellings on consistent rectilinear lots (Refer to the images below).

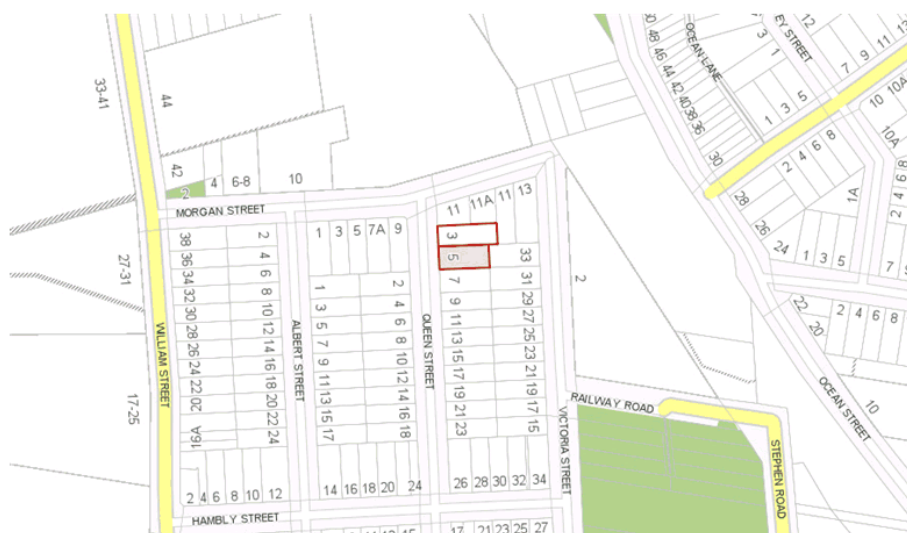


Figure 5: Subject site highlighted in red



Figure 6: Satellite imagery - subject site highlighted in red





*Figure 7: 3 Queen Street Botany*



*Figure 8: 5 Queen Street Botany*



Figure 9: 7 Queen Street Botany – Southern adjoining property



Figure 10: 1 Queen Street Botany – Northern adjoining property

## Statutory Considerations

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

### S.4.15(1) - Matters for Consideration – General

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

The following Environmental Planning Instruments are relevant to this application:

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

*State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004* ("BASIX") applies to the proposed development. The development application was accompanied by

BASIX Certificate No. 957459M\_03 dated 05 September 2018 prepared by Vipac committing to environmental sustainable measures.

#### **State Environmental Planning Policy No. 55 – Remediation of Land**

The provisions of SEPP 55 have been considered in the assessment of the development application, along with the requirements of Part 3K- Contamination of the Botany Bay Development Control Plan 2013. The likelihood of encountering contaminated soils on the subject site is considered to be extremely low given the following:

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

On this basis, the site is considered suitable in its present state for the proposed residential development. No further investigations of contamination are considered necessary.

#### **Botany Bay Local Environmental Plan 2013**

Botany Bay Local Environmental Plan 2013 has been considered in the assessment of the Development Application and the following information is provided:

<b>Relevant Clauses Principal Provisions of Botany Bay Local Environmental Plan 2013</b>	<b>Compliance Yes/No</b>	<b>Comment</b>
Land use Zone	Yes	The site is zoned R2 Low Density Residential zone under the Botany Bay Local Environmental Plan 2013.
Is the proposed use/works permitted with development consent?	Yes	The proposed use is attached and semi-detached dwellings which is permissible with Council's consent under the Botany Bay Local Environmental Plan 2013.
Does the proposed use/works meet the objectives of the zone?	Yes	The proposed development is consistent with the following objectives of the R2 Low Density Residential Zone: <ul style="list-style-type: none"> <li>To provide for the housing needs of the community within a low density residential environment.</li> <li>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</li> <li>To encourage development that promotes walking and cycling.</li> </ul>
Does Schedule 1 – Additional Permitted Uses apply to the site?	N/A	Schedule 1 does not apply to the site.
If so what additional uses are permitted on the site?		

<b>Relevant Clauses Principal Provisions of Botany Bay Local Environmental Plan 2013</b>	<b>Compliance Yes/No</b>	<b>Comment</b>
Does the proposed use/works require development consent for demolition?	Yes	The proposed development seeks consent for the demolition of all existing structures on site and hence satisfies the provisions of this Clause.
What is the height of the building?  Does the height of the building comply with the maximum building height?	Yes	A maximum height of 8.5 metres applies to the subject site.  The development has a maximum height of 8.5 metres from the NGL. This complies with the provisions of the BBLEP 2013.
What is the proposed Floor Space Ratio?  Does the Floor Space Ratio of the building comply with the maximum Floor Space Ratio?	<b>No- Refer to Note 1 – Clause 4.6 Variation relating to FSR Standard</b>	The maximum Floor Space Ratio requirement is 0.5:1.  The following FSR's are calculated for each proposed dwelling:  House 01: 0.6:1 (143.7 sqm) House 02: 0.59:1 (143.6 sqm) House 03: 0.61:1 (119.4 sqm) House 04: 0.61:1 (119.9 sqm) House 05: 0.61:1 (119.6 sqm)  The Floor Space Ratio of the development does not comply with Council's requirements under the Botany Bay Local Environmental Plan 2013. A clause 4.6 variation has been provided with the development application which is addressed in Note 1 below.
Is the site within land marked "Area 3" on the Floor Space Ratio Map?  If so, does it comply with the sliding scale for Floor Space Ratio in Clause 4.4A?	<b>No- Refer to Note 1 – Clause 4.6 Variation relating to FSR Standard</b>	The site is located in an Area 3 zone. The proposal does not comply with the maximum FSR.
Is the land affected by road widening?	N/A	The subject site is not affected by road widening.
Is the site listed in Schedule 5 as a heritage item or within a Heritage Conservation Area?	N/A	The site is not listed as a heritage item, nor is it located within a Heritage Conservation Area.
The following provisions in Part 6 of Botany Bay Local Environmental Plan apply– • 6.1 – Acid Sulfate Soils	Yes	The site is located in a Class 4 Acid Sulfate Soils Area. Excavation is required on site for the proposed in-ground swimming. However, the excavation does not extend 1.8 metres below natural ground level (NGL) and the watertable is unlikely to be lowered more than 2 metres below NGL, therefore an Acid Sulfate Soils Management Plan is not required and the proposal is considered acceptable.



Relevant Clauses Principal Provisions of Botany Bay Local Environmental Plan 2013	Compliance Yes/No	Comment
<ul style="list-style-type: none"> <li>6.2 – Earthworks</li> </ul>	Yes	The proposal does not involve extensive excavation other than earthworks associated with the in-ground swimming pool, foundations and footings.
<ul style="list-style-type: none"> <li>6.3 – Stormwater Management</li> </ul>	No	The proposed development was referred to Council's Development Engineer. The stormwater system proposed is not supported as no geotechnical report was provided to justify the infiltration rate used in the design of the infiltration stormwater system. The site is located within a groundwater exclusion compliance zone and a geotechnical report is mandatory when considering works below ground. It should also be noted that the infiltration rate used is greater than the maximum allowable under the DCP. There is insufficient information for Council to complete an accurate assessment of the development impacts on stormwater management.
<ul style="list-style-type: none"> <li>6.8 – Airspace Operations</li> </ul>	Yes	The subject site is affect by the 51m OLS height limit. However, the maximum RL height of the building sits at 16.489m AHD and will therefore not penetrate the maximum height limit.
<ul style="list-style-type: none"> <li>6.9 – Development in areas subject to aircraft noise</li> </ul>	No – Refer to Part 3J - Aircraft Noise and OLS	The site falls within the 20-25 ANEF Contour. The development will result in an increase in the number of dwellings and people affected by aircraft noise. An acoustic report was not provided therefore Council was unable to complete an accurate assessment.

#### Note 1 – Clause 4.6 Variation relating to FSR Standard

The applicant seeks to vary the Floor Space Ratio development standard of 0.5:1 under the BBLEP2013. Refer to the below gross floor area and proposed FSR calculations (Council calculations) for each dwelling below:

Lot	Site Area	Ground Floor GFA	First Floor GFA	Total GFA	Proposed FSR
<b>House 01</b>	237.54sqm	66.3sqm (including stair & 2.3sqm of garage)	77.4sqm	143.7sqm	0.6:1 (10% Variation)
<b>House 02</b>	241.59sqm	66.5sqm (including stair & waste store)	77.1sqm	143.6sqm	0.59:1 (9% Variation)
<b>House 03</b>	196.64sqm	65 sqm (including stair & waste store)	54.4sqm	119.4sqm	0.61:1 (11% Variation)
<b>House 04</b>	196.64sqm	61.9 sqm (including stair & 8.3sqm of garage)	58sqm	119.9sqm	0.61:1 (11% Variation)
<b>House 05</b>	196.64sqm	57 sqm (including stair & 3.5sqm of garage))	59.1sqm	119.6sqm	0.61:1 (11% Variation)

The site is located within 'Area 3' on the FSR map and therefore is subject to Clause 4.4A of the BBLEP2013. The objectives of this Clause are as follows:

- a) *To ensure that the bulk and scale of development is compatible with the character of the locality; and*
- b) *To promote good residential amenity.*

Pursuant to Clause 4.4A(3)(d), the proposal is defined as 'attached dwellings' and 'semi-detached dwelling' and not defined as 'dwelling houses' or 'multi-dwelling' housing. As such the building type would fall under the category of 'all other development for the purpose of residential accommodation'. Given the above, the maximum permitted FSR for the subject site is 0.5:1.

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.*

*(4) Development consent must not be granted for development that contravenes a development standard unless:*

- (a) the consent authority is satisfied that:*
  - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

(ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

(b) *the concurrence of the Secretary has been obtained.*

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

**4.6(3) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and there are environmental planning grounds to justify the contravention of the standard**

Applicant's Comment:

*The authority established by Four2Five Pty Ltd v Ashfield Council (2015), necessitates that environmental planning grounds for the proposed variation must be established aside from the consistency of the development with the objectives of the standard and the objectives of the zone.*

*In Wehbe V Pittwater Council (2007) NSW LEC 827, Preston CJ set out the following 5 different ways in which an objection (variation) may be well founded:*

- 1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;*
- 2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
- 3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
- 4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
- 5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

*It is generally understood that Clause 4.6(3) can be satisfied if it is established that a development satisfies one or more of points 2-5 above.*

*Having regard for the authority within Wehbe, compliance with the maximum FSR development standard has been determined to be unreasonable and unnecessary in the circumstances of the case, and the following grounds are submitted on support of the variation.*

- The proposal seeks to maintain the rectilinear subdivision pattern that has been established within the locality and is anticipated by the desired future character of the area. The proposed frontage width and dwelling design is characteristic of nearby contemporary developments and is acceptable in the context of the subdivision and streetscape pattern.*

Planner's Comment: The proposed subdivision pattern is not in line with the desired future character of the area as is discussed in Note 2 – Subdivision pattern below.

- *Compliance with the 0.5:1 requirement would result in a significant reduction of floor space, with the proposed allotments only able to accommodate approximately 121m<sup>2</sup> of gross floor area each. Given a dwelling house would be able to be provided with in excess of 200m<sup>2</sup> of gross floor area, an FSR of 0.5:1 would not provide an appropriate correlation between the size of the proposed lots and the extent of the development on each lot, when compared with contemporary development in the locality. In this regard, the development would not be consistent with the prevailing character of the area.*
- *Compliance with the development standard would result in a development that is not indicative of the scale and internal amenity of other contemporary developments within the locality.*

Planner's Comment: As stated above, the proposed subdivision pattern is not considered appropriate in the context of the site (refer to Note 2 – Subdivision pattern). The standard is not considered unreasonable or unnecessary in this case as the proposed subdivision pattern (which is not supported) is prompting the need for an FSR variation. As a result, a variance to the FSR is not justified.

- *Given a dwelling house, would generally require a 900mm side setback to both sides, as well as an additional parking space, a dwelling house with equal FSR to the proposal would result in less landscaped area, less private open space, and a shorter rear setback than the proposal. Note that dwelling houses are generally subject to the same numerical controls within the BBDCP 2013 as attached dwellings.*

Planner's Comment: There is potential for a compliant scheme, providing the subdivision pattern complies (which it does not in this case). Therefore it is not justified to support the FSR variation based on the fact that other controls will be impacted.

- *There is merit in applying the FSR which could be achieved for attached dwelling (i.e. a dwelling house) being 0.85:1. The FSR of the proposed attached dwellings of 0.60:1 provides a density and visual appearance which is commensurate with what may be provided for a dwelling house on each lot. Although attached dwellings necessitate the provision of a party wall over the new boundary, the building bulk in this location is offset by additional floor space that might otherwise be provided elsewhere.*

Planner's Comment: The proposed attached dwellings do not provide a density or visual appearance that is desirable in the context of the site as is discussed further in this report.

*Thus, although the standard may not have been destroyed, its application under these circumstances is not reasonable.*

- *A development could be made to comply with the 0.5:1 FSR at the site. However, it is unlikely that this would result in any changes to the presentation to the street. Two storey developments are predominant within the street, and Council has demonstrated that there is no distinction to be made in the scale of attached dwellings when compared with dwelling houses. Therefore, a development for attached dwellings which complies with the development standard would be expected to result in poorer internal amenity than is typical for the locality.*

Planner's Comment: The proposed subdivision pattern and impacts on the streetscape character as a result of the attached dwelling typology proposed have been assessed in this report and it is deemed that the appearance of the street will be considerably

negatively altered. Therefore, a development that complies with the maximum allowable requirement from FSR should be adhered to.

- *Were Council to insist on compliance with the development standard, attached dwellings would then be the most desirable development typology on smaller lots. Preference should be given to attached dwellings on small lots, given that they provide a more efficient distribution of density at the site, and that they enable smaller site coverage over the site, and a provision of greater private open space and deep soil area. In this sense, the underlying objectives and purposes of the FSR may be defeated or thwarted if compliance was required, as detached dwellings on narrow allotments would be provided with very little functional floor space, with no associated benefit to the bulk and scale or character of the locality.*

Planner's Comment: The proposed lot configuration is not supported by Council, therefore it should not be assumed that attached dwellings would be the most desirable typology on the site. Given the existing streetscape character of Queen Street and the desired future character of the area, attached dwellings would not be considered appropriate from a streetscape and subdivision pattern point of view. Refer to further assessment below.

**Clause 4(a)(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3)**

Planner's Comment: It is considered that the argument put forward by the applicant detailing whether there is sufficient environmental planning grounds to justify contravening the development standard is not supported by Council.

**Clause 4(a)(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone which the development is proposed to be carried out.**

Applicant's Comment:

*The objectives of the R2 Low Density Residential Zone are as follows:*

- *'To provide for the housing needs of the community within a low density residential environment.'*

*The proposal seeks to provide additional housing to meet the needs of the local community. Attached dwellings are a low density form of residential development, and the provision of further attached dwellings in the locality is consistent with this objective of the zone.*

- *'To enable other land uses that provide facilities or services to meet the day to day needs of residents.'*

*This objective relates to the various non-residential uses that are permissible within the zone, and does not strictly apply to the proposed development. However, the increased density proposed by the subject development will improve the viability of non-residential uses within the locality.*

- *'To encourage development that promotes walking and cycling.'*

*The development provides sufficient space to enable bicycle storage for future occupants, and given the proposal is located within proximity to local services and public transport options, the increased density associated with the proposed development better meets this objective than the existing dwelling at the site.*

*The objectives of the R2 Low Density Residential Zone 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 to Part 4.4A relate to all development types that are affected by this clause. The table within subclause (3)(a), which applies only to dwelling houses, best demonstrates how each of these two objectives are able to be met concurrently. That is, as the size of an allotment decreases, the floor space required to maintain appropriate residential amenity to a dwelling, must be increased relative to the size of the allotment. Additionally, as the size of an allotment increases, the floor space required to maintain a bulk and scale that is compatible with the character of the locality, must be decreased relative to the size of the allotment.*

*The maximum FSR for multi dwelling housing as prescribed by subclause (3)(b), and the maximum FSR for residential flat buildings as prescribed by subclause (3)(c), are each greater than the FSR proposed at the site.*

*Of the ten other development types affected by subclause (3)(d), only six types of development are permitted at the site. Two of these, boarding houses and seniors housing, are provided with FSR bonuses under higher order planning instruments. Secondary dwellings are not permitted by the R2 zoning, but are permitted by way of State Environmental Planning Policy (Affordable Rental Housing) 2009, which also permits a floor space equal to that available for dwelling houses. This leaves only attached dwellings, group homes, and attached dwellings, as being strictly affected by subclause (3)(d).*

*Attached dwellings are able to meet the objectives of the standard, by being provided with a FSR that is expected by the vast majority of other development types that are affected by the standard.*

*With specific reference to the objective (b), the design of the proposal has ensured that good residential amenity is maintained as outlined in the following:*

- The proposed development will not impact on views that are available from nearby properties, or to or from important landmarks within the locality.*
- The amenity of the adjoining properties is not considered to be negatively impacted as a result of the proposed development. This includes both physical impacts such as overshadowing, overlooking and acoustic privacy as well as visual impacts such as height, bulk and scale, setbacks and landscaping.*
- The physical impacts of the proposed development are considered to be minor with careful design minimising any potential impacts. Diagrams have been prepared. All surrounding dwellings, and private open space areas will be capable of achieving the minimum sunlight access requirements – i.e.3 hours solar access between 9am and 3pm at the winter solstice. Narrow sections are provided in the centre of each dwelling to improve solar access to adjoining properties.*
- With regards to overlooking, there are considered to be no privacy issues relating to overlooking opportunities to the north, south and east of the subject site. Whilst some potential overlooking opportunities exist as a consequence of the rear balconies,*

*appropriate mitigation measures have been utilised to ensure the privacy and security of neighbours is not impacted. This includes generous rear and side setbacks, the inclusion of ground floor pergolas to obscure views to neighbouring properties, as well as sensitive internal dwelling layouts. First floor windows to side boundaries are provided with higher sill heights to minimise visual privacy impacts.*

- *In terms of the visual impacts, the proposed development is considered to be of an appropriate height, scale and visual appearance so as to be compatible with the surrounding area. Appropriate built form massing has ensured the development appears as a relatively modest building when viewed from the streetscape and the surrounding allotments.*

Planners Comments:

The Clause 4.6 variation to the FSR development standard has been assessed in accordance with the BBLEP2013.

The proposal:

- Is inconsistent with the existing FSR densities surrounding the site and therefore the objectives of *Clause 4.4A Exceptions to floor space ratio for residential accommodation*. The proposal will create a development that has an inappropriate built form. The development will add bulk and scale to the street and will therefore adversely impact upon the consistency and streetscape character of Queen Street;
- Is not considered to meet the objectives of the R2 Low Density Residential zone as it incorporates medium density typologies of attached and semi-detached dwellings that would be more appropriate within a R3 – Medium Density Residential zone.
- Is not considered to be compatible with the Desired Future character of the Botany Precinct.
- Will compromise the solar access, on-street parking, traffic generation, visual privacy, and amenity of surrounding properties given the added bulk and scale of the development (refer to respective sections of this report for further assessment);
- Would not comply with the prevailing subdivision pattern (refer to *Note 2 – Subdivision Pattern*) and will furthermore impact upon the bulk and scale of the development within the street.

Taking into consideration the above, the proposal is not consistent with the objectives of the standards. The applicant has attempted to provide justification for the proposed variation however in this case it is considered that the variation is not appropriate in maintaining and enforcing the development standard. The departure to the FSR development standard is contrary to the public interest, and therefore the Clause 4.6 request is not supported.

**Clause 4(b) the concurrence of the Secretary has been obtained**

The deviation from the FSR development standard does not raise any matter of significance for State or regional environmental planning and concurrence is not required for the scope of works in this application.

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

There are no current Draft EPIs applicable to this development

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

**Botany Bay Development Control Plan 2013**



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

### Part 3A – Parking & Access

Control	Proposed	Complies
<b>3A.2 Parking Provisions of Specific Uses</b>		
<b>C2</b> Car parking provision shall be provided in accordance with Table 1. Attached Dwellings: 1 space/dwelling	Each dwelling provides one (1) off street car parking spaces within either a garage or carport.	Y
<b>3A.3 Car Park Design</b>		
<b>C10</b> Off-street parking facilities are not permitted within the front setbacks.	The off-street parking facilities are located behind the entrance portico of each dwelling.	Y
<b>C12</b> Off-street parking facilities must not dominate the streetscape and are to be located away from the primary frontages of the site.	The proposed off-street parking facilities will dominate the street considering the width of each lot is 5.86m. The parking facilities would extend over the majority of the lot width, dominating the development's presentation to the street frontage.	<b>No – Refer to Note 2 – Subdivision Pattern</b>
<b>C14</b> A maximum of one vehicle access point is permitted per property. Council may consider additional vehicle access points for large scale developments.	Following subdivision, each property will have only one (1) vehicle access point off Queen Street.	Y
<b>C16</b> The following general design principles shall be considered when planning access driveways for developments:  (i) Separate ingress and egress vehicle access points shall be arranged for large scale developments to enable vehicular flow in a clockwise direction wherever possible;  (ii) Reversing movements into and out of public roads shall be prohibited at all times (except for dwelling houses);  (iii) The location of an access driveway shall be sited to minimise the loss of on-street parking;  (iv) An access driveway at the property line shall be clear of obstructions, such as fences, walls, poles and trees which may prevent drivers from viewing pedestrians; and  (v) The vehicle access point of the property shall be signposted with appropriate signs.  (vi) No vehicles shall be allowed to queue in the public road reserve.	The proposed subdivision and driveways will result in a loss of on-street car parking.  The driveway accessing House 02 will require the relocation of the power pole at the frontage of the site. The minimum clearance for driveways from existing power poles is 1m.	<b>No</b>
<b>C28</b> The minimum width of the access driveway at the property boundary shall be:-  (i) For dwelling houses:	The proposed driveway widths do not comply.	<b>No</b>

3 metres		
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**Part 3E – Subdivision and Amalgamation**

Control	Proposed	Complies
<b>3E.2.1 Residential Torrens Title Subdivision</b>		
<b>C1</b> Development Applications shall demonstrate that the proposed subdivision or amalgamation is consistent with the Desired Future Character of the area (refer to relevant sections in Part 8 - Character Precincts, Part 9 - Key Sites, Part 5 - Business Centres and Part 6 - Employment Zones).	The proposed lots will not demonstrate a pattern that is consistent with the Desired Future Character of the Botany Area which requires the retention and preservation of the rectilinear grid pattern. The pattern proposed is not rectilinear.  Refer to Note 2 – Subdivision Pattern for further discussion.	<b>No – Refer to Note 2 – Subdivision Pattern</b>
<b>C2</b> 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 (refer to Figure 1).  <b>Note:</b> 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.	The proposed subdivision pattern is not in line with the prevailing subdivision pattern in terms of area, dimensions, or shape.  Refer to Note 2 – Subdivision Pattern for further discussion.	<b>No – Refer to Note 2 – Subdivision Pattern</b>
<b>C3</b> Development application which proposes the creation of new allotments must be accompanied by a conceptual building plan that demonstrates compliance with relevant building controls.	A subdivision concept plan has been provided.	Y
<b>C4</b> Notwithstanding Control C2 above, land within Area H1 and H2 (refer to Figure 2, Figure 3 and Part 8 - Character Precincts) may have a minimum lot width of 5 metres.	The proposed lot widths are to be 5.86m in width.	Y
<b>C5</b> Proposed lots must be of a size and have dimensions to enable the siting and construction of a dwelling and ancillary structures that: 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	The proposed allotments will create an adverse impact upon solar access and privacy to the adjoining properties.	<b>No – Refer to Note 2 – Subdivision Pattern</b>

vii) Acknowledge contamination of the land		
viii) Protect heritage items		
<b>C7</b> All lots created shall have at least one (1) frontage to the street.	All lots will have a frontage to Queen Street.	Y

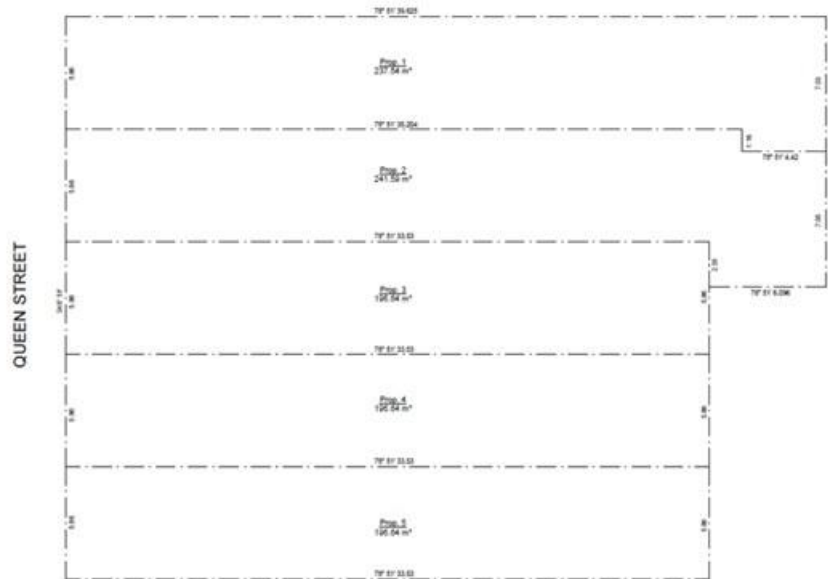
**Note 2 – Prevailing Subdivision Pattern**

Figure 11: Proposed lot subdivision plan from two (2) lots to five (5) lots

The proposal involves the Torrens title subdivision of the existing lots at 3 Queen Street and 5 Queen Street from two (2) lots to five (5) lots with 5.86m wide lot widths.

The relevant objectives of Part 3E.2.2 – Residential Torrens Title Subdivision of the BBDCP2013 are as follows:

- (1) To ensure that proposed subdivision is consistent with the Desired Future Character of the area;
- (2) To ensure the proposed subdivision is consistent with the existing or prevailing subdivision pattern;
- (3) To ensure a site's characteristics are considered;
- (4) To ensure the orderly development of land does not adversely impact on the amenity of existing developments within the locality; and
- (5) To ensure that future development can be accommodated on the land subject to controls with the DCP (ie. site frontage widths and setbacks).

**Objective 1. To ensure that proposed subdivision is consistent with the Desired Future Character of the area;**

The Desired Future Character Statement for the Botany Precinct states that development is to 'retain and preserve the rectilinear grid pattern within the Precinct.' The proposed subdivision pattern will not maintain the rectilinear pattern as Lot 1 and Lot 2 incorporate a battle axe like configuration towards the rear of the allotment (figure 9).

**Objective 2. To ensure the proposed subdivision is consistent with the existing or prevailing subdivision pattern;**

The DCP states that Council generally considers the prevailing subdivision pattern to be the typical characteristic of up to ten (10) allotments on either side of the subject site and corresponding number of allotments directly opposite the subject site. It is noted that the DCP does not provide any exclusions to how this subdivision pattern should be calculated in terms of zoning, strata subdivided properties or subdivided developments approved prior to the gazettal of the Botany Bay LEP 2013. An assessment of the lot pattern in the vicinity of the subject site has been undertaken. Refer to figures 12 and 13.

The subdivision pattern exhibits a consistent pattern in allotment sizes ranging from 403 sqm to 556 sqm with lot widths ranging from 12m to 15.2m. The average lot size amounts to 433.3 sqm and the average lot width amounts to 12.7m. The subject sites are located on the northern end of the block. The existing lot at 3 Queen Street is longer in depth than the existing lot at 5 Queen Street. The existing lot at 5 Queen Street follows the consistent prevailing pattern of the block.

The subdivision pattern to the south, which is part of the same block as the subject sites is consistently rectilinear. The subdivision pattern opposite the subject sites on the western side of Queen Street is also consistently rectilinear. The same can be said for the blocks further west and south of the subject sites (outside of the 10 allotments assessed), excepting a few exceptional instances.

The proposal will involve the Torrens title subdivision of the existing lots at 3 and 5 Queen Street as follows:

Lot	Lot Site Area	Lot Width	Configuration
Lot 1	237.54sqm	5.86m	Battle-axe/Irregular
Lot 2	241.59sqm	5.86m	Battle-axe/Irregular
Lot 3	196.64sqm	5.86m	Rectilinear
Lot 4	196.64sqm	5.86m	Rectilinear
Lot 5	196.64sqm	5.86m	Rectilinear

Given the above calculations and observations, the proposed lot characteristics are not consistent with the prevailing subdivision pattern and will therefore result in the overdevelopment of the area. The lot areas are too small and the lot widths are too narrow to ensure that the prevailing subdivision pattern is retained. The configuration of Lot 1 and 2 is also inconsistent with the distinct rectangular forms of all adjoining and adjacent lots in the block.



Figure 12: Lot configurations of the prevailing subdivision pattern

**Objective 3. To ensure a site's characteristics are considered;**

The proposed subdivision does not appropriately consider the site characteristics particularly the east-west orientation of the block, the rectilinear configuration of surrounding lots and the lack of potential to provide an appropriate building envelope and design that will meet all other requirements stipulated in the BBDCP2013 as well as apparent on the street.

It is not considered that the proposed subdivision pattern will provide an appropriate building envelope that will respond to the characteristics of the site considering every property along Queen Street consists of a detached dwelling with 0.9m side setbacks (refer to images below). Dwelling building envelopes that incorporate these characteristics would not be appropriate on the proposed subdivided lots as they would limit the useability of the dwelling. The proposed narrow lot widths and small lot sizes (when compared to surrounds) therefore prompt the design of terraced or attached dwelling typologies. These typologies are not consistent with the existing conditions on the street and would detrimentally impact upon the streetscape presentation of Queen Street. Refer to *Part 4A.2.4 – Streetscape Presentation* for further assessment regarding streetscape character.



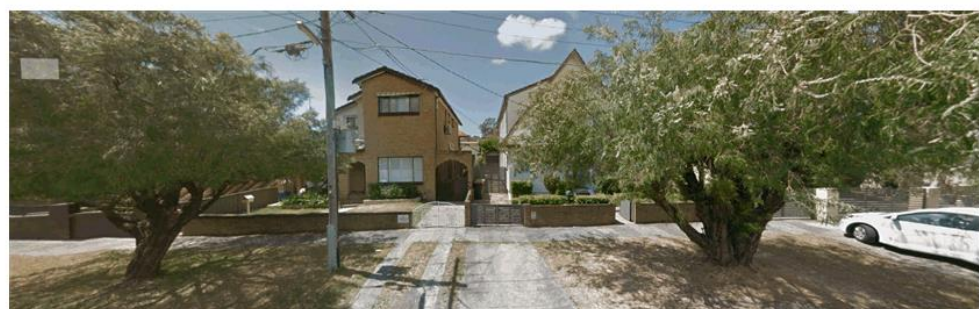
Taking into consideration the above, support for a terraced typology cannot be justified and the proposed subdivision pattern is not supported.



Figure 13: Satellite imagery of lot configurations. Note the existing building typologies



Figure 12: 1, 3, 5, and 7 Queen Street, Botany Streetscape View  
Note the existing conditions of the subject sites and their relationship to the surrounding blocks, all with consistent setbacks and lot widths



*Figure 13: Properties along the eastern side of Queen Street. Note the consistent setbacks and lot widths.*





Figure 14: Properties directly opposite the subject site. Note the consistent setbacks and lot widths.



Figure 15: Properties along the western side of Queen Street. Note the consistent setbacks and lot widths.

Given the east-west orientation of the lots, consideration must also be taken into account when assessing the potential for development in terms of solar access for subject and adjacent properties. The proposed building typology is attached and semi-detached dwellings which means that in some cases the building envelope will have a nil boundary setback. While the proposal attempts to alleviate the impacts of overshadowing via indents and courtyards, the minimum amount of solar access will continue to be difficult to achieve for any southern adjoining properties. Refer to *Note 4 – Solar Access* for further assessment regarding requirements relating to overshadowing.

Furthermore, the inconsistency of the proposed subdivision pattern will also impact upon other aspects of the proposal such as vehicular access and its impact upon on-street car parking, bulk and scale, aircraft noise exposure, and visual privacy and amenity (all further assessed in respective sections of this report).

**Objective 4. To ensure the orderly development of land does not adversely impact on the amenity of existing developments within the locality;**

Refer to the above comments.

***Objective 5. To ensure that future development can be accommodated on the land subject to controls with the DCP (ie. site frontage widths and setbacks).***

The proposed subdivision pattern will perform as a poor precedent that will have a detrimental impact upon future development in the area as it has minimal regard for the desired future character of the area and the controls stipulated in the BBDCP2013.

The proposed subdivision pattern has been assessed against the controls and objectives of *Part 3E – Subdivision and Amalgamation* of BBDCP2013. As demonstrated, it is not considered that the proposed subdivision pattern meets the objectives of the clause and therefore the proposal is not supported.

**Part 3G – Stormwater Management**

The development application was accompanied by stormwater plans and absorption rates which were prepared by TAA Consulting Engineers Pty Ltd. The plans demonstrate that an absorption system is to be provided. The stormwater system proposed is not supported a geotechnical report was not provided to justify the infiltration rate used in the design. The infiltration rate proposed is greater than the maximum allowable under this clause.

It should also be noted that the site is also located within a groundwater exclusion zone and a geotechnical report is mandatory in considering works proposed below NGL. Furthermore, details regarding the proposed in-ground swimming pool and the provision of rainwater tanks were not provided.

The scheme was referred to Council's Development Engineer who does not support the proposed stormwater management system as insufficient information has been provided to complete an accurate assessment of the proposal.

**Part 3J – Aircraft Noise and OLS**

The provisions of Australian Standard AS2021-2000 have been considered in the assessment of the development application as the subject site is located within the 20-25 ANEF contour. Residential development in these areas is considered 'conditional' under Table 2.1 of Australian Standard AS2021-2000. The development will result in an increase in the number of dwellings and people affected by aircraft noise. Therefore the submission of an acoustic report demonstrating that the proposed dwellings can achieve the requirements under Table 3.3 of AS2021-2000 is required.

An acoustic report was not provided therefore Council was unable to complete an accurate assessment of the impacts of aircraft noise.

**Part 3K – Contamination**

The relevant requirements and objectives have been considered in the assessment of the development application. The subject site has long been utilised for residential purposes and it is unlikely that the land is contaminated. Furthermore, the application has been assessed against SEPP 55 and is found to be satisfactory. Further site investigation is not required necessary in this instance.

### Part 3L – Landscaping and Tree Management

The proposal was referred to Council's Landscape Officer who does not support the proposed landscape plan as insufficient information has been provided to complete an accurate assessment of the proposal.

The proposed lot is required to provide a minimum of 15% (of the site area) of deep soil landscaping to comply with C2 in Part 4A2.9 of BBDCP2013. The following areas are proposed per lot:

House 01:	62.8 sqm / 26%
House 02:	43 sqm / 18%
House 03:	51.2 sqm / 26%
House 04:	53.9 sqm / 27%
House 05:	58.5 sqm / 30%

The proposed landscaped area complies with the minimum requirements, however there are a number of other issues and concerns that were not addressed. This includes the insufficient information regarding the proposed swimming pool surrounds, and the rainwater tanks to be utilised for irrigation. Therefore, Council is unable to complete an accurate assessment of the proposal.

### Part 3N – Waste Minimisation and Management

A Waste Management Plan prepared by Botany Terraces Pty Ltd was submitted with the application listing methods for minimising and managing construction and ongoing waste on site.

### Part 4A – Dwelling Houses

Control	Proposed	Complies
<b>4A.2.4 Streetscape Presentation</b>		
<p><b>C1</b> 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 contributes to its character. Applicants must address the design principles outlined in the statement.</p> <p><b>C2</b> Development must be designed to reinforce and maintain the existing character of the streetscape.</p> <p><b>C3</b> Development must reflect dominant roof lines and patterns of the existing streetscape (refer to Figure 3).</p>	<p>The proposal is located in a R2 Low Density Residential Zone. The immediate context is relatively low scale, consisting of single and double storey detached residential dwellings.</p> <p>The proposed development is not consistent with the desired future character of Botany. This is further discussed in <i>Part 8 – Botany Character Precinct</i>.</p> <p>The existing character of the streetscape is quite distinct, as the building typologies and subdivision pattern of the block and street incorporate relatively the same characteristics. These include approximately 12m wide frontages, 0.9m side setbacks, gabled or hipped roof forms and detached single dwelling forms.</p> <p>While the proposal reflects the dominant roof lines and patterns along the street, the overall form of the development does not reinforce or maintain the existing character of the streetscape, largely due to the</p>	<p><b>No – Refer to Note 2- Subdivision Pattern above and Part 8 – Botany Character Precinct, below</b></p>

	<p>deviation from the distinct prevailing subdivision pattern. The narrow lot widths and smaller site areas (as assessed in Note 2 – Subdivision Pattern) result in a bulk and scale that overdevelops the site. The development presents more as a medium density typology rather than an appropriate low density articulation of form.</p> <p>The proposal will not sit appropriately within a street that is relatively consistent.</p> <p>Refer to <i>Note 2 – Subdivision Pattern</i> and <i>Part 8- Botany Character Precinct</i> for further discussion.</p>	
<p><b>C4</b> Buildings must appropriately address the street. Buildings that are intrusive or inconsistent with the established development pattern will not be permitted.</p> <p><b>C6</b> The entrance to a dwelling must be readily apparent from the street.</p> <p><b>C7</b> Dwelling houses are to have windows to the street from a habitable room to encourage passive surveillance.</p>	<p>The proposed dwellings will all address Queen Street.</p> <p>Their proposed entrances are also readily apparent from the street.</p> <p>Bedroom 1 of each dwelling will have windows facing the street, encouraging passive surveillance.</p>	Y
<p><b>C10</b> 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>Major characteristic design features prevalent in houses in the street include gabled or hipped roofs. The proposal incorporates these roof types in the design.</p>	Y
<b>4A.2.5 Height</b>		
<p><b>C1</b> 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>Maximum Height: 8.5m</p> <p>Proposed Height: 8.5m</p> <p>Complies.</p>	Y
<b>4A.2.6 Floor Space Ratio</b>		
<p><b>C1</b> 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 (refer to Figure 12).</p>	<p>Total Proposed FSR Combined: 0.61:1</p> <p>Overall deviation of 11%</p>	<b>No – Refer to Note 1 – FSR Variation</b>
<b>4A.2.7 Site Coverage</b>		
<p><b>C2</b> For sites over 200m<sup>2</sup> the maximum site coverage is:</p> <p>200 – &lt;250m<sup>2</sup> 65% of the lot</p>	<p>Site coverage areas for each lot listed below:</p> <p><i>House 01: 125.1 sqm / 52.7%</i></p> <p><i>House 02: 121.3 sqm / 50%</i></p> <p><i>House 03: 72 sqm / 36.6%</i></p> <p><i>House 04: 86.9 sqm / 44%</i></p> <p><i>House 05: 86.8 sqm / 44%</i></p>	Y

	Complies.	
<b>4A.2.8 Building Setbacks</b>		
<p><b>C.1</b> Dwelling houses must comply with the following minimum setbacks as set out in Table 1.</p> <p><i>Lot Width of less than 12.5m:</i>  <i>Minimum front setback</i> – comply with the prevailing street setback or 6 metres (min)  <i>Minimum side setback</i> - Up to 2 floors 900mm (Council may require an increased setback due to streetscape and bulk considerations)  <i>Minimum rear setbacks</i> – 6 metres (min)  <i>Zero lot lines (with Council Discretion)</i> – On merit based on building type and open space provisions  <i>Eaves</i> – 450mm minimum setback</p>	<p>Proposed Front Setback: Prevailing street setback. Complies.</p> <p>Proposed Side Setbacks:</p> <p><i>House 01:</i> Northern – 0.9m, Southern – Nil  <i>House 02:</i> Northern – Nil, Southern – 0.9m  <i>House 03:</i> Northern – 0.9m, Southern – Nil  <i>House 04:</i> Northern – Nil, Southern – Nil  <i>House 05:</i> Northern – Nil, Southern – 0.9m</p> <p>An assessment has been completed of the prevailing building type and pattern along Queen Street. It was deduced that the building typologies along the street are quite distinct in that all dwellings incorporate a 0.9m side boundary setback. The proposed lots front only one street (Queen Street) and access is not available from a rear or secondary street. Therefore, the nil boundary setbacks, particularly to House 04 are considered inappropriate due to concerns relating to amenity, streetscape presentation, construction, and maintenance.</p> <p>For further discussion regarding the side boundaries refer to <i>Note 3 – Boundary Setbacks</i>, below.</p> <p>Rear Setbacks:</p> <p><i>House 01:</i> Nil  <i>House 02:</i> Nil  <i>House 03:</i> 10.06m  <i>House 04:</i> 10.06m  <i>House 05:</i> 10.06m</p> <p>The rear setbacks of House 01 and House 02 do not comply as the proposed cabanas are located on the boundary posing visual privacy and amenity concerns. Refer to Part 4A.5 – Ancillary Structures.</p>	<p><b>No – Refer to Note 2 – Subdivision Pattern &amp; Note 3 – Boundary Setbacks</b></p>
<p><b>C5</b> To avoid the appearance of bulky or long walls side and rear setbacks should be stepped or walls articulated by projecting or recessing window</p>	<p>The proposal incorporates courtyards and indents to all of the dwellings to ensure that large expanses of blank walls along the side boundaries between neighbouring</p>	<p>Y</p>

elements, or a variation in materials.	properties are avoided and the internal amenity of indoor living spaces is achieved.	
<b>C9</b> In certain circumstances where terrace house dwelling forms are proposed, Council may grant consent to a development with a 0 metre setback to a side boundary. However, Council must not grant consent, unless the applicant has satisfactorily addressed the questions identified in the Land and Environment Court Planning Principle "Building to the side boundary in residential areas" established in <i>Galea v Marrickville Council</i> [2003] NSWLEC 113 (or as updated) and consideration has been given to that statement. The Planning Principle is available to view on the Land and Environment Court's website ( <a href="http://www.lawlink.nsw.gov.au/lec">www.lawlink.nsw.gov.au/lec</a> ).	Terrace style housing is proposed for House 03, House 04 and House 05.  The applicant has not addressed the questions identified in the Land and Environment Court Planning Principle "Building to the side boundary in residential areas" in regards to the boundary to boundary setbacks of House 04.	<b>No – Refer to Note 3 – Building Setbacks</b>
<b>4A.2.9 Landscape Area</b>		
<b>C1</b> Landscaped areas are to be designed accordance with Part 3L - Landscaping.  <b>C2</b> Development shall comply with the following minimum landscaped area requirements, based on the area of the site in <b>Table 2</b> .  Table 2 requires the following minimum landscaped area:  Less than 250 m <sup>2</sup> - 15%  Landscaped Area is to be fully permeable deep soil zones which are areas of natural ground or soil, not planter boxes (refer to definition in Part 3L – Landscaping).  <b>C3</b> Landscaped Area is to be fully permeable deep soil zones which are areas of natural ground or soil, not planter boxes (refer to definition in Part 3L – Landscaping).	Landscaped areas for each lot listed below:  House 01: 62.8 sqm / 26%  House 02: 43 sqm / 18%  House 03: 51.2 sqm / 26%  House 04: 53.9 sqm / 27%  House 05: 58.5 sqm / 30%  The landscaped area proposed is predominantly deep soil area within the internal courtyard and the front and rear setbacks.	Y
<b>C7</b> Where a building, driveway or pool is sited at the location of an existing tree, Council may require plans to be modified.	The proposed driveways will impact upon the existing trees within the nature strip.	<b>No</b>
<b>C8</b> The front setback is to be fully landscaped with trees and shrubs and is not to contain paved areas other than driveways and entry paths. Paving is restricted to a maximum of 50% of the front setback area.	Due to the narrow lot width and the 3m provision for the driveway, more than 50% of the front setback will be paved which does not comply with the control.	<b>No</b>
<b>4A.3.1 Materials and Finishes</b>		

<p><b>C3</b> Materials, colours, architectural details and finishes must be sympathetic to the surrounding locality.</p> <p><b>C4</b> The use of materials with different textures such as brickwork, glass, timber weatherboards and iron awnings are to be used to break up uniform buildings.</p> <p><b>C10</b> The exterior walls of new dwellings must incorporate different materials, colours and textures to add interest and articulate the facade.</p>	<p>A schedule of colours and finishes was provided with the application.</p> <p>The proposal is to incorporate a range of materials including:</p> <ul style="list-style-type: none"> <li>• External Weatherboards in colours 'natural white' and 'ecru quarter' (neutral palette)</li> <li>• White painted timber fences and balustrades</li> <li>• Colorbond sheet metal roofing in colour 'shale grey'</li> <li>• A range of architectural details in neutral colour palettes</li> </ul> <p>The materials, colours, architectural detail and finishes are sympathetic to the surrounding locality, and add interest to the facade. The proposed materials, architectural details and finishes incorporate the use of different textures and colours preventing uniformity and adding interest to the streetscape facade.</p>	Y
<p><b>C7</b> Terracotta roof tiles must be used where this is the predominant roofing material.</p>	<p>The predominant roofing material in the street is terracotta roof tiles.</p> <p>The development proposes Colorbond metal roof sheeting which is not in line with the predominant roofing material on the street.</p>	No
<p><b>C11</b> 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>The proposed colour scheme is consistent with the colours apparent in the street incorporating a neutral palette of whites and greys.</p>	Y
<b>4A.3.2 Roofs and Attics/Dormer</b>		
<p><b>C1</b> Where roof forms in a street are predominantly pitched, then any proposed roof should provide a similar roof form and pitch. Roof pitches are to be between 22.5 degrees and 40 degrees.</p> <p><b>C3</b> A variety of roof forms will be considered, provided that they relate appropriately to the architectural style of the proposed house and respect the scale and character of adjoining dwellings.</p>	<p>There are a variety of roof types along the street. The proposed roof of each dwelling is a combination of hipped and gabled lines. The design attempts to provide roof lines that complement the roof of adjoining dwellings which include hipped and steep gabled designs.</p>	Y
<b>4A.3.3 Fences</b>		
<p><b>C1</b> Front fences are to compliment the period or architectural style of the existing dwelling house.</p>	<p>A picket style front fence with a height of 1.2m is proposed for the development. There is no existing consistent front fence style along the street however the</p>	Y



	proposed fence is considered appropriate in its context.	
<b>4A.4.1 Visual Privacy</b>		
<p><b>C1</b> 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><b>C2</b> Visual privacy for adjoining properties must be minimised by:</p> <ul style="list-style-type: none"> <li>▪ Using windows which are narrow or glazing which is translucent or obscured</li> <li>▪ Ensuring that windows do not face directly on to windows, balconies or courtyards of adjoining dwellings</li> <li>▪ Screening opposing windows, balconies and courtyards; and</li> <li>▪ Increasing sill heights to 1.5 metres above floor level.</li> </ul>	<p>The window selection and location is not considered appropriate in preventing direct views from proposed windows towards adjoining properties.</p> <p>There are a number of windows on House 01 and House 05 which face directly towards 1 Queen Street and 7 Queen Street respectively.</p> <p>In House 01, the ground floor stair window, laundry window, kitchen window and living and dining sliding doors face directly on to windows in the adjacent property at 1 Queen Street.</p> <p>In House 05, the ground floor hallway window faces directly towards two windows in the adjacent property at 7 Queen Street.</p> <p>These windows do not incorporate methods for minimising overlooking impacts, therefore adequate privacy levels between the neighbours and the residents are not maintained.</p>	<b>No – Refer to Public Submissions</b>
<p><b>C3</b> First floor balconies are only permitted when adjacent to a bedroom.</p> <p><b>C4</b> First floor balconies are only permitted at the rear of the dwelling if wholly located over the ground floor, providing the requirements in C1, C2 and C3 above are met.</p> <p><b>C6</b> Balconies are to be designed to minimise overlooking to other properties.</p>	<p>The front facing balconies to all the dwellings are located adjacent to Bedroom 01. The rear facing balconies to House 01 and House 02 are located adjacent to the Master Bedrooms.</p> <p>The front facing balconies will not pose any visual privacy issues as they overlook the street. However, the rear facing balconies are not wholly located over the ground floor (they extend over the outdoor alfresco area) and will pose negative overlooking impacts towards the properties to the rear of the site.</p>	<b>No – Refer to Public Submissions</b>
<b>4A.4.2 Acoustic Privacy</b>		
<p><b>C4</b> New dwellings on land within the Australian Noise Exposure Forecast (ANEF) Contour 20 or higher shall be designed and constructed in accordance with Australian Standard AS 2021 (Acoustic Aircraft Noise Intrusion-Building siting and Construction).</p>	<p>The proposed dwelling is within the 20-25 ANEF contour. Refer to <i>Part 3J – Development Affecting Operation at Sydney Airport</i>, above.</p>	<b>No – Refer to Part 3J above</b>
<b>4A.4.3 Solar Access</b>		
<p><b>C1</b> Buildings (including alterations/additions/extensions) are to be designed and sited to maintain approximately 2 hours of solar access between 9am and 3pm on 21 June to</p>	<p>Shadow diagrams were provided with the subject application. The lots are east-west orientated. The proposal will impact upon the amount of solar access received directly south of each proposed property.</p>	<b>No – Refer to Note 4 – Solar Access</b>

<p>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><b>C3</b> Where the primary private open space of an adjoining development currently receives less than the required amount of sunlight on 21 June (50% coverage for a minimum of 2 hours), the proposed development must not further reduce the amount of solar access to the private open space of the adjoining development.</p> <p><b>C4</b> Council may grant consent to a development that does not comply with the 2 hours of solar access requirement. However, Council must not grant consent, unless the applicant has satisfactorily addressed the questions identified in the Land and Environment Court Sunlight Planning Principle. The Planning Principle is updated by Court decisions and is available to view on the Land and Environment Court's website (<a href="http://www.lawlink.nsw.gov.au/lec">www.lawlink.nsw.gov.au/lec</a>).</p> <p><b>C5</b> Where a neighbouring development currently receives less than the required amount of sunlight (on 21 June) the amount of sunlight available on the 21 March or the 21 September will be assessed and form a merit based assessment of the Development Application.</p>	<p><b>Impacts on adjoining properties on 21st June</b></p> <p><b>1 Queen Street:</b></p> <p>The proposal is unlikely to impact upon this property as it is oriented towards the north.</p> <p><b>7 Queen Street:</b></p> <p>The northern elevation of the dwelling will be overshadowed by the development at all times of the day. Its private open space will receive sunlight to at least 50% of its area only during midday.</p> <p><b>11 Morgan Street:</b></p> <p>The private open space of this property will be overshadowed from midday onwards.</p> <p><b>33 Victoria Street:</b></p> <p>The rear private open space of this property will be overshadowed from midday onwards.</p> <p>The subject properties will also not receive adequate solar access with all northern and southern elevations impacted. Furthermore, the proposed private open spaces will not receive the minimum 2 hours of sunlight to 50% of these areas on 21 June.</p> <p>Refer to <i>Note 4 – Solar Access and Public Submissions</i> for further discussion.</p>	
<b>4A.4.4 Private Open Space</b>		
<p><b>C1</b> Each dwelling is to have a private open space that:</p> <ul style="list-style-type: none"> <li>(i) Has at least one area with a minimum area of 36m<sup>2</sup>;</li> <li>(ii) Is located at ground level with direct access to the internal living areas of the dwelling;</li> <li>(iii) Maximises solar access;</li> <li>(iv) Is visible from a living room door or window of the subject development;</li> <li>(v) Minimises overlooking from adjacent properties;</li> <li>(vi) Is generally level;</li> <li>(vii) Is oriented to provide for optimal year round use;</li> <li>(viii) Is appropriately landscaped; and</li> </ul>	<p>Private open space areas for each lot are listed below:</p> <p>House 01: 85.3 sqm House 02: 68.6 sqm House 03: 51.3 sqm House 04: 56.9 sqm House 05: 56.9 sqm</p> <p>The private open spaces are located at ground level with direct access from the living areas. They receive adequate solar access and are appropriately landscaped and screened to ensure privacy.</p>	Y

<p>(ix) Is located or screened to ensure privacy;</p> <p>Note: Private open space is not to include:</p> <p>(i) Non-recreational structures (including garages, tool sheds and such like structures);</p> <p>(ii) Swimming pools; and</p> <p>(iii) Driveways, turning areas and car spaces, drying areas and pathways.</p> <p><b>C2</b> Sites less than 250m<sup>2</sup> may have a minimum area of 25m<sup>2</sup>.</p>		
<p><b>C5</b> The primary private open space area is to be located at the rear of the property.</p>	The primary private open space areas of the proposal are located at the rear of the property.	Y
<b>4A.4.6 Excavation</b>		
<p><b>C1</b> 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.</p>	The proposed development is located on a site that is relatively flat and will therefore not involve extensive excavation.	Y
<b>4A.4.7 Vehicle Access</b>		
<p><b>C1</b> 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).</p> <p><b>C2</b> 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.</p> <p><b>C3</b> Driveways must be designed to comply with AS2890.1 (also refer to Part 3A - Car Parking).</p>	The current proposed driveway widths do not comply with the DCP and should be a min of 3m wide at the boundary and set at 90 degrees to the kerb. The proposed driveways are not supported by Council's Development Engineers as they are not designed to comply with AS2890.1.	<b>No – Refer to Part 3A</b>
<p><b>C4</b> Vehicular crossings shall be sited so that existing street trees, bus stops, bus zones, power lines and other services are not affected.</p>	The proposed vehicular crossing will impact upon the existing power pole.	<b>No</b>
<p><b>C6</b> The number of vehicle crossings is to be limited to one (1) per allotment.</p>	Only one (1) vehicle crossing is provided per allotment.	Y
<p><b>C7</b> Vehicular crossings shall be sited so as minimise any reduction in on-street kerb side parking.</p>	The proposed vehicular crossings will result in a reduction of on-street kerb side parking. Refer to <i>Part 3A – Car Parking</i> .	<b>No – Refer to Part 3A</b>
<b>4A.4.8 Car Parking</b>		
<p><b>C1</b> Development must comply with Part 3A - Car Parking.</p>	Refer to <i>Part 3A – Car Parking</i> .	<b>No – Refer to Part 3A</b>

<p><b>C4</b> Car parking structures must be located and designed to:</p> <p>(i) Comply with AS2890.1 and</p> <p>(ii) Conveniently and safely serve all users;</p> <p>(iii) Enable efficient use of car spaces, including adequate manoeuvrability for vehicles between the site and the street;</p> <p>(iv) Not dominate or detract from the appearance of the existing dwelling or new development and the streetscape;</p> <p>(v) Be compatible in scale, form, materials and finishes with the associated dwelling;</p> <p>(vi) Not reduce availability of kerbside parking;</p> <p>(vii) Retain any significant trees; and</p> <p>(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.</p>	<p>Refer to <i>Part 3A – Car Parking</i> and <i>Note 2 – Subdivision Pattern</i> as the proposed car parking scheme will dominate and detract from the streetscape due to the proposed narrow lot widths.</p>	<p><b>No – Refer to Part 3A &amp; Note 2 – Subdivision Pattern</b></p>
<p><b>C8</b> In new development the garage/carport is to be setback 5.5 metres from the front boundary. This may be difficult for small allotments with a frontage of 12.5 metres or less. In these cases Council will consider whether or not to require a setback of 5.5 metres on merit – this merit based assessment will include whether or not the proposed garage will have a dominant impact on the streetscape.</p>	<p>The proposed garages are setback less than 5.5m from the front boundary and the proposed allotments are quite narrow at 5.86m wide. However, the subdivision of the existing lots into the narrower allotments is not supported, therefore a deviation from the setback requirement is also not supported.</p>	<p><b>No</b></p>
<p><b>C9</b> Garages, parking structures (i.e. carports &amp; car spaces) and driveways are not to dominate the street.</p>	<p>The proposed parking structures in combination with the proposed subdivision pattern will negatively dominate the street.</p> <p>Refer to <i>Part 3A – Car Parking &amp; Note 2 – Subdivision Pattern</i></p>	<p><b>No – Refer to Part 3A and Note 2 – Subdivision Pattern</b></p>
<p><b>4A.5 Ancillary Development</b></p>		
<p><b>C1</b> The principal dwelling plus any ancillary structures are to comply with the controls for site coverage, minimum landscaped area, private open space and setback and height controls.</p>	<p>Refer to respective sections.</p>	<p><b>No</b></p>
<p><b>C3</b> Swimming pools and spas must comply with Part 70 - Swimming Pools.</p>	<p>Refer to <i>Part 70 – Swimming Pools</i>.</p>	<p><b>No - Refer to Part 70 – Swimming Pools</b></p>

<p><b>C4</b> Outbuildings (not including secondary dwellings) must be set back 900mm from the site's boundaries. Windows and glass doors are to face into the property. High or opaque windows may face onto a neighbouring property.</p> <p>Note: A nil setback may be used for masonry building walls with no eaves, gutters or windows; and for carports and open structures such as pergolas, awnings, and the like. Compliance with the Building Code of Australia is required.</p>	<p>The proposed cabana areas at the rear of House 01 and House 02 have nil boundary setbacks. Compliance with the BCA is required.</p>	<p><b>No</b></p>
<p><b>C5</b> All ancillary structures must comply with the following criteria:</p> <p>a. The structure does not exceed a maximum street wall height (or side wall height if not presenting to a street) of 3.6m;</p> <p>b. The structure does not exceed a maximum roof height of 6 metres;</p> <p>c. The pitch of the roof must not exceed 36 degrees;</p>	<p>Cabana Side Wall Height: 3.1m Cabana Roof Height: 3.6m Cabana Roof Pitch: 17 degrees</p>	<p><b>Yes</b></p>

### **Note 3 – Boundary Setbacks**

Part 4A.2.8, Control C9 states that where terrace style developments are proposed, Council may grant consent to a development with a 0 metre setback to a side boundary with the provision that the applicant provides an assessment against the Land and Environment Court Planning Principle "Building to the side boundary in residential areas" established in *Galea v Marrickville Council* [2003] NSWLEC 113. The development incorporates nil side boundary setbacks to at least one side of every house proposed excepting House 04 which proposes boundary to boundary nil side setbacks.

The applicant did not provide an assessment against the Land and Environment Court Planning Principle stated above, therefore there has been insufficient information provided to complete an accurate assessment of the proposal.

### **Note 4 – Solar Access**

Development Control Plan (DCP) 2013 states that the minimum amount of direct solar access to the dwelling's and adjoining dwellings primary open space area shall not be less than 2 hours between 9:00am and 3:00pm on the 21st June. In addition, Clause 6 states that where an existing development currently receives less than the required amount of sunlight (on 21st of June) the amount of sunlight available on the 21st of March or the 21st of September will be used as an alternative standard.

The subject allotment is east-west orientated with west being the front of the property and east being the rear of the property. The residential subdivision pattern in the street is such that each

of the allotments exhibit a predominately east-west orientation and in this regard the provision of solar access to adjoining residential buildings directly to the south of each allotment is difficult to achieve.

Nonetheless, the proposal involves the subdivision of the existing two lots into five lots, meaning that the number of people and dwellings impacted by overshadowing will increase. Not only will the adjacent neighbour be impacted by the proposal, but the proposed dwellings will also find difficulty achieving the minimum requirement for sunlight, posing solar amenity and dwelling useability impacts for the internal rooms and spaces proposed.

The applicant has submitted shadow diagrams for 9am, 12pm, and 3pm on June 21 and March 22. The shadow diagrams show that the adjoining windows and private open spaces at 7 Queen Street, will not receive the prescribed amount of sunlight. As the property is situated south of the proposal, 7 Queen Street's northern elevation and private open space, will be impacted during all times of the day. The property will only receive an adequate amount of sunlight to 50% of its private open spaces for a considerably short period of time, during midday. The proposed development further reduces the amount of solar access to the private open space of 7 Queen Street.

The same can be stated for the proposed windows and private open spaces in the subject development which will not receive adequate sunlight excepting a short period of time during midday.

Shadow diagrams provided for the 22 March were also assessed. They illustrate that the northern elevation of 7 Queen Street will continue to be impacted by the proposal during all times of the day. The private open spaces of 7 Queen Street and the proposed dwellings will receive an adequate amount of sunlight to at least 50% from 9am to midday. However based on the assessment below, the proposed development is not considered suitable given the inappropriate siting, design and subdivision pattern of the proposal.

The applicant has not addressed the questions identified in the Land and Environment Court Sunlight Planning Principal. The Land and Environment Court planning principles on the impact on solar access of neighbours (*Parsonage v Ku-ring-gai* (2004) NSWLEC 347) and as amended by *The Benevolent Society v Waverly Council* has therefore been addressed by Council as follows:

*The ease with which sunlight access can be protected is inversely proportional to the density of development. At low densities, there is a reasonable expectation that a dwelling and some of its open space will retain its existing sunlight. (However, even at low densities there are sites and buildings that are highly vulnerable to being overshadowed). At higher densities sunlight is harder to protect and the claim to retain it is not as strong.*

Comment: The subdivision pattern along the eastern side return of Queen Street is orientated east-west, with west being the front boundary and south being the rear boundary. The proposed development is within a low density residential area and does not comply with subdivision controls. The southern property (7 Queen Street) will be considerably impacted by the development as the existing conditions will not be retained. Furthermore, the addition of 3 more dwellings on the subject site will increase the density in the area and therefore further impact upon the amount of sunlight that each proposed dwelling receives.

*The amount of sunlight lost should be taken into account, as well as the amount of sunlight retained.*

Comment: The amount of existing sunlight comparative to the amount of sunlight retained has been taken into account. The shadow diagrams submitted with the application indicated in plan,

that the development would overshadow the adjoining property to the south and the subject proposed dwellings during all times of the day. It is considered that the overshadowing impacts created by the proposed development are not within acceptable limits and the application should not be supported.

*Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. The poor quality of a proposal's design may be demonstrated by a more sensitive design that achieves the same amenity without substantial additional cost, while reducing the impact on neighbours.*

Comment: The proposal's design is not supported. As discussed above, the proposed subdivision of the lots is considered inappropriate and will contribute to negatively impacting upon the amount of sunlight that should be provided.

*For a window, door or glass wall to be assessed as being in sunlight, regard should be had not only to the proportion of the glazed area in sunlight but also to the size of the glazed area itself. Strict mathematical formulae are not always an appropriate measure of solar amenity. For larger glazed areas, adequate solar amenity in the built space behind may be achieved by the sun falling on comparatively modest proportions of the glazed area.*

Comment: All northern and southern proposed windows of the development as well as northern facing windows at 7 Queen Street, will be completely overshadowed on June 21 for a period of more than 2 hours.

*Overshadowing by fences, roof overhangs and changes in level should be taken into consideration. Overshadowing by vegetation should be ignored, except that vegetation may be taken into account in a qualitative way, in particular dense hedges that appear like a solid fence.*

Comment: Overshadowing by fences, roof overhangs and changes in level have been taken into consideration. The sites will continue to be affected by the design regardless of the fences and roof overhangs of the proposal.

*In areas undergoing change, the impact on what is likely to be built on adjoining sites should be considered as well as existing development.*

Comment: The area is low density residential, consisting of predominately one and two storey dwellings. While it can be expected that with change dwellings on the street may increase from one to two storeys, the proposed subdivision of the existing sites will result in an increase of dwellings which will be further impacted by overshadowing.

## 70 – Swimming Pools

Control	Proposed	Complies
<b>70.2 General Requirements</b>		
<b>C1</b> Development must comply with the maximum site coverage requirements of the relevant Parts of the DCP.  Note: Swimming pools are included within 'site coverage' calculations and are not included as 'landscaped area'.	House 02 has a site coverage of 121.3sqm/50% of the site area which complies with the maximum requirement.	Y



<b>C4</b> A Geotechnical report is required where the site is located in a groundwater exclusion zone.	The site is located within a groundwater exclusion zone however a geotechnical report was not provided.	<b>No</b>
<b>C7</b> Swimming pools and spa pools are to be located at the rear of properties and not within the front setback.	The proposed swimming pool is located within the rear yard of House 02.	Y
<b>C8</b> The following minimum setbacks are required for swimming pools and spas (refer to Figure 1): (i) 1m from side boundaries; (ii) In cases where a proposed pool adjoins a habitable room of a neighbouring dwelling, a setback greater than 1.5 metres may be required by Council in order to protect the amenity of residents; and (iii) Setbacks are required to accommodate existing trees including their root systems, as well as trees on adjoining properties.	The proposed swimming pool incorporates a minimum side boundary setback of 1m.	Y
<b>C13</b> Direct sightlines into neighbouring residential properties must be reduced.	Direct sightlines into the neighbouring residential property are unlikely.	Y
<b>C14</b> All swimming pool safety fences and requirements for spas must comply with the relevant Acts, Regulations and Australian Standards.	Pool fence details were not provided.	<b>No – Insufficient information</b>
<b>C15</b> Swimming pools are to be orientated to the northern aspect of the site to maintain a sufficient level of solar access or incorporate energy efficient heating systems if the swimming pool is to be heated (e.g. solar heating systems connected to the roof of the dwelling)	The proposed swimming pool will receive an adequate amount of northerly solar access.	Y
<b>C21</b> A rainwater tank must be installed to ensure that the pool / spa can be filled up without the need to rely on potable water supplies. The tank capacity must comply with Table 1.	Rainwater tank provisions have not been specified.	<b>No – Insufficient information</b>

#### **Part 8- Botany Character Precinct**

The site is located within the R2 Low Density Residential Zone of the Botany Precinct on the eastern side of Queen between Morgan Street to the north and Hambly Street to the south. Refer to the table below which addresses each point regarding the 'Desired Future Character' for Botany.

Control	Proposed	Complies
<b>Function and Diversity</b> <ul style="list-style-type: none"> <li>Enhance the public domain and streetscapes within the Precinct.</li> <li>Development should: <ul style="list-style-type: none"> <li>promote neighbourhood amenity and enhance pedestrian comfort;</li> <li>encourage site layout and building styles and designs that promote commonality and a visual</li> <li>relationship with the surrounding built form and dwelling styles;</li> <li>encourage dwelling styles that maintain and complement existing development patterns;</li> <li>encourage a strong landscape and vegetation theme within both the public and private domain;</li> </ul> </li> </ul>	<p>The proposed development will not enhance the streetscape of Queen Street as the subdivision pattern proposed is inconsistent with the surrounding layout. The proposal will lack a positive relationships with dwellings along the street as it does not complement the existing development patterns, posing issues with subdivision, setbacks and inappropriate density.</p>	<b>No – Refer to Note 1 – FSR Variation &amp; Note 2 – Subdivision Pattern</b>
<b>Form, Massing, Scale and Streetscape</b> <ul style="list-style-type: none"> <li>Encourage development to follow the topography of the land.</li> <li>Maintain and enhance low density residential accommodation in the form of detached/attached dwellings with a maximum height of 2 storeys in the remainder of the Precinct.</li> <li>Promote site access and parking facilities that do not dominate the streetscape.</li> <li>Encourage new development or alterations and additions to existing development to complement the height and architectural style found in the immediate vicinity, particularly where there is an established character.</li> <li>Maintain roof forms to reflect the characteristics of the prevailing designs within the street.</li> </ul>	<p>Queen Street has quite an established character in that the subdivision pattern and lot widths of each site is relatively the consistent. Each dwelling along the street is also consistent incorporating 0.9m side setbacks.</p> <p>The proposal does not contribute to the streetscape or complement the existing character of the dwellings in the immediate vicinity of the development, largely due to the inconsistency of the propose subdivision pattern.</p> <p>While the development respects the topography of the land and maintains the predominant roof forms in the street, the subdivision and subsequent increase in density on the site is considered inappropriate in the context of Queen Street.</p>	<b>No – Refer to Note 2 – Subdivision Pattern</b>
<b>Setbacks</b> <ul style="list-style-type: none"> <li>Retain front setbacks which are consistent within a street and promote landscaping to soften the built form.</li> <li>Retain side setbacks, where they are consistent within a street</li> </ul>	<p>The front setbacks are consistent within the street.</p> <p>The proposed side setbacks will not be consistent with the existing side setbacks of buildings along the street (0.9m).</p>	<b>No – Refer to Part 4A.2.8 Building Setbacks</b>

<b>Landscaping</b> <ul style="list-style-type: none"> <li>Encourage landscaping within the front and side setback to soften the built form particularly in high density terrace, unit and residential flat buildings.</li> <li>Promote landscaping in rear private open space areas to provide privacy to adjoining properties.</li> <li>Maintain street trees.</li> </ul>	Landscaping has been proposed within the front, side rear setbacks.  The existing street trees are to be maintained.	Yes
<b>Subdivision</b> <ul style="list-style-type: none"> <li>Retain and preserve the rectilinear grid pattern within the Precinct</li> </ul>	The proposed subdivision pattern does not comply. The rectilinear grid pattern will not be retained or persevered for proposed lots with House 01 and House 02.	<b>No – Refer to Note 2 – Subdivision Pattern</b>
<b>Solar Access</b> <ul style="list-style-type: none"> <li>Encourage buildings to maximise solar access to surrounding residential properties and to public and private open spaces.</li> <li>Preserve solar access to adjoining properties.</li> </ul>	The proposed development will not maximise solar access to surrounding residential properties. Solar access will be reduced to the adjoining southern property at 7 Queen Street.	<b>No – Refer to Note 4 – Solar Access</b>
<b>Traffic and Access</b> <ul style="list-style-type: none"> <li>Encourage new development to have a minimal impact on traffic flow and demand for on street parking spaces.</li> <li>Encourage development to provide adequate on-site parking to assist in reducing traffic congestion on local road networks.</li> </ul>	The proposal's driveways will result in a decrease in on street parking spaces.	<b>No – Refer to Part 3A – Car Parking</b>

As such the proposal is unsuitable for the site and inconsistent with the desired future 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 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 significant adverse environmental, social or economic impacts in the locality.

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

The site is located within a 20-25 ANEF contour and is affected by aircraft noise. An acoustic report was not provided despite the development resulting in an increase in the number of

dwelling and people affected by aircraft noise therefore preventing an accurate assessment of the proposal.

The subject site is also located within the groundwater exclusion zone, however a geotechnical report was not provided.

Accordingly, it is considered that the site is not suitable to accommodate the development as insufficient information has been provided to enable an accurate assessment of the proposal.

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

In accordance with Part 2 of the Botany Bay Development Control Plan 2013 – Notification and Advertising the development application was notified to surrounding property owners for a 14 day period from 20 September 2018 to 5 October 2018. Seven (7) submissions were received and the specific concerns that were raised, are addressed below and within the relevant sections of this report:

- ***Car Parking***

Submitter's Comments: The submissions raised concerns regarding the loss and demand of on street car parking considering the development will result in an increase of density from two lots to five. Objectors are also concerned that construction vehicles will further add to difficulties with parking on the street.

Planner's Comment: The loss of on-street parking has been addressed in *Part 3A – Car Parking* of this report. Council agrees that loss of on street parking will become an issue as a result of the additional proposed driveways.

The use of the street for construction vehicles accessing the site is temporary in nature and if an application is considered for approval, Council would impose an appropriate condition, requiring hours of construction that will cause minimal nuisance.

- ***Building Design***

Submitter's Comments: The submissions raised concerns regarding the quality of the proposed dwellings.

Planner's Comment: Council cannot comment on the material and finished quality of the proposed dwellings as they have not been yet constructed. However, Council assesses development to ensure that the materials, colours and finishes chosen complement the streetscape and provide an appropriate aesthetic appearance as assessed in *Part 4A.2.4 Streetscape Presentation* and *Part 4A.3.1 Materials and Finishes*.

- ***Solar Access***

Submitter's Comments: Concerns were raised that there would be a significant loss of sunlight to the northern side of 7 Queen Street.

Planner's Comment: The solar impacts upon all adjoining properties have been addressed in *Part 4A.4.3 Solar Access* and *Note 4 – Solar Access*. It was deduced that the northern elevation of the property at 7 Queen Street will in fact be adversely impacted by the proposal.

- **Visual Privacy**

Submitter's Comments: Concern was raised regarding the lack of visual privacy due to overlooking from the balconies proposed at the rear of House 01 and House 02 towards 11 Morgan Street. Poor window alignment from the proposed windows along the southern elevation of House 05 towards the windows on the northern elevation of 7 Queen Street were also raised as a concern.

Planner's Comment: The impacts of visual privacy have been addressed in *Part 4A.4.1 Visual Privacy*. The proposed balconies and windows of concern do not propose privacy overlooking mitigation strategies and therefore, are not supported by Council.

- **Fencing**

Submitter's Comments: Concerns were raised regarding the removal of the rear fence between the subject site and 11 Morgan Street.

Planner's Comment: In the case of approval, an appropriate condition is included in the consent to ensure that 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 unless depicted in the stamped plans.

- **Asbestos and Hazardous Material**

Submitter's Comments: Concerns were raised regarding the removal of potential asbestos and lead painted materials during demolition.

Planners Comment: In the case of approval, a standard conditions is imposed to ensure the safe removal of any hazardous material such as asbestos that may be found during the construction process.

- **Subdivision Pattern & Streetscape Presentation**

Submitter's Comments: A number of the submissions raised concerns regarding the proposed subdivision pattern, highlighting that the proposal will subsequently impact upon parking, overcrowding, and streetscape consistency issues. The objectors are concerned that the terraced building typology will not complement a street of predominately 'freestanding houses'.

Planners Comment: The subdivision pattern and subsequent impact on streetscape presentation is not supported by Council, as is assessed in *Note 2 – Subdivision Pattern* and *Part 4A.2.4 Streetscape Presentation*.

The proposed issues raised within the submissions have been summarised in the relevant sections in the report above. Council agrees with the submissions received and recommends refusal based on the concerns raised.

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

It is considered that granting approval to the proposed development will have significant adverse impact on the public interest.

### Section 7.11 Contributions

The proposed development would generate Section 7.11 Contributions however as the proposal is recommended for refusal, the contributions have not been calculated.

### Conclusion

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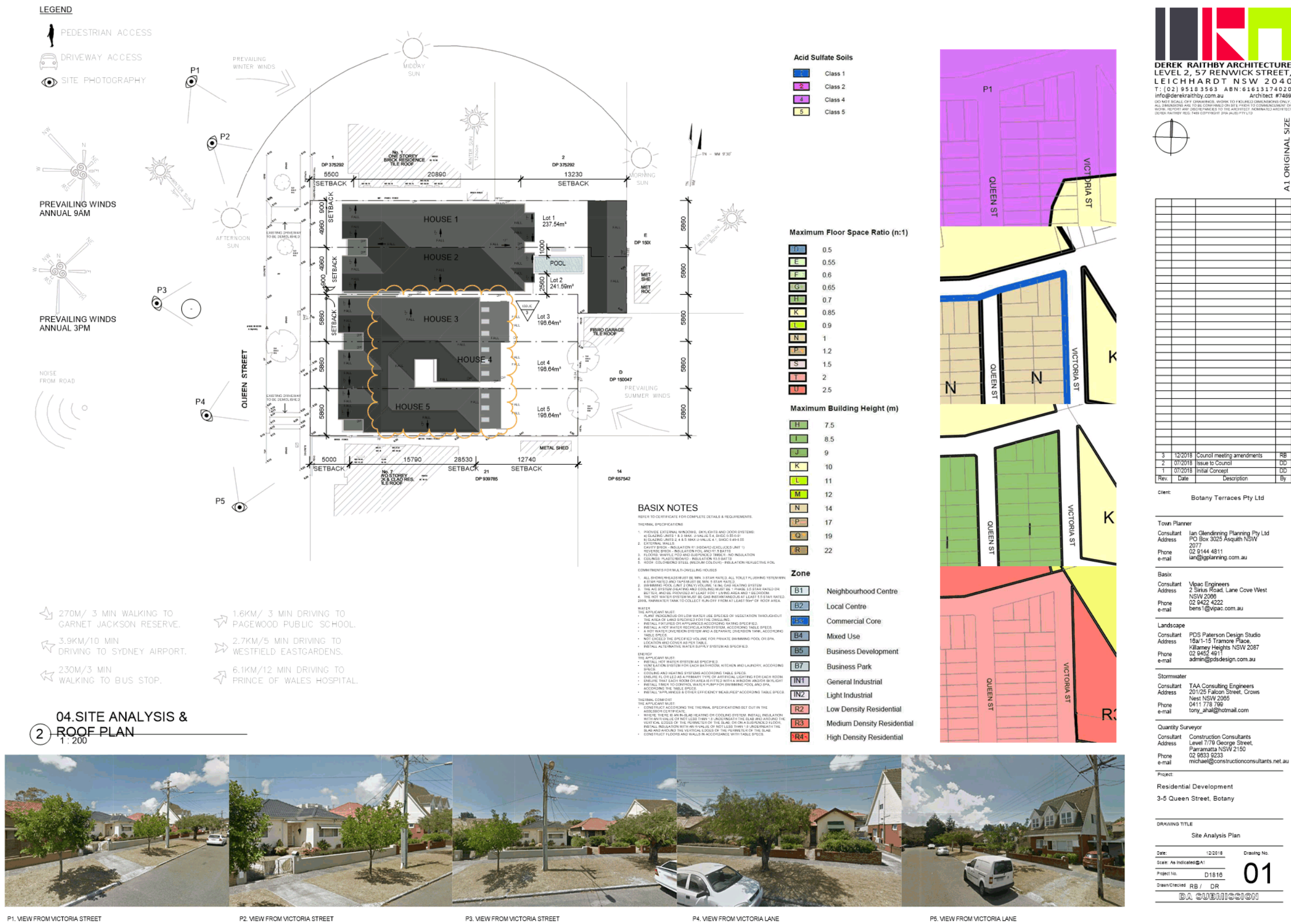
Development Application No. 2018/1169 was lodged on 14 September 2018 seeking consent for the demolition of existing structures, Torrens Title subdivision into five (5) lots, construction of two (2) semi-detached dwellings, three (3) attached dwellings, swimming pool and two (2) cabanas at 3-5 Queen Street, Botany.

The proposal has been assessed in accordance with Section 4.15 of the *Environmental Planning and Assessment Act*. The non-compliances as listed above relating to the BBLEP 2013 and the BBDCP 2013 have not been addressed and it is considered that the proposed development is not suitable for this site. The applicant seeks greater density and unsuitable subdivision pattern for the site which will result in an inappropriate bulk and scale that does not integrate into the streetscape character that is desired for the area. Furthermore, parking and vehicular access issues as well as overshadowing, stormwater, aircraft noise, and visual privacy pose as quite significant concerns as a result of this development.

The development application has been the subject of seven (7) submissions which raised concerns relating to subdivision pattern, streetscape presentation, parking, visual privacy, and overshadowing. The issues raised as part of this application have been addressed throughout the report. Therefore the proposed development is recommended for refusal subject to the reasons of refusal in the attached schedule.

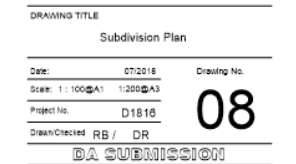
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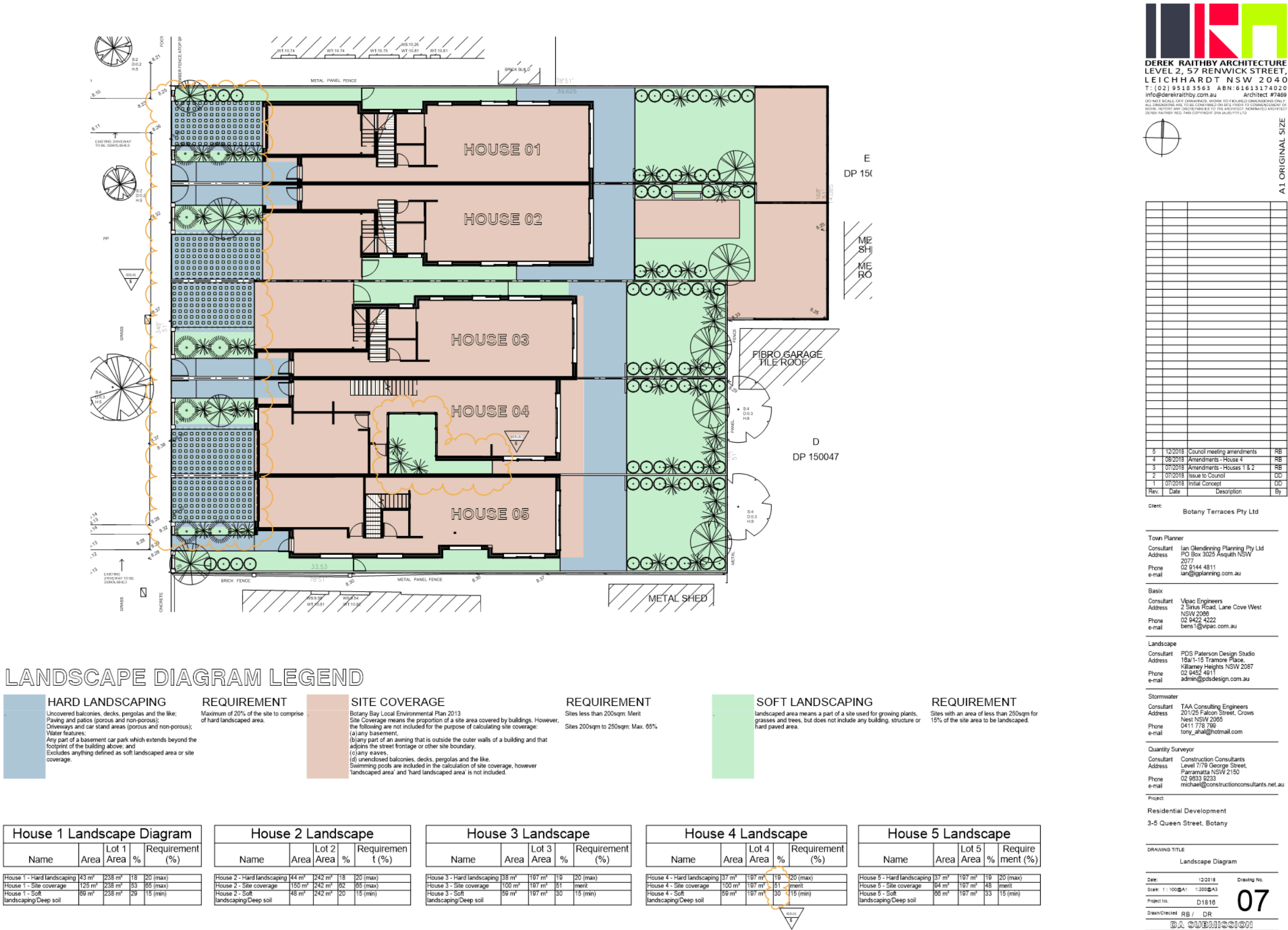






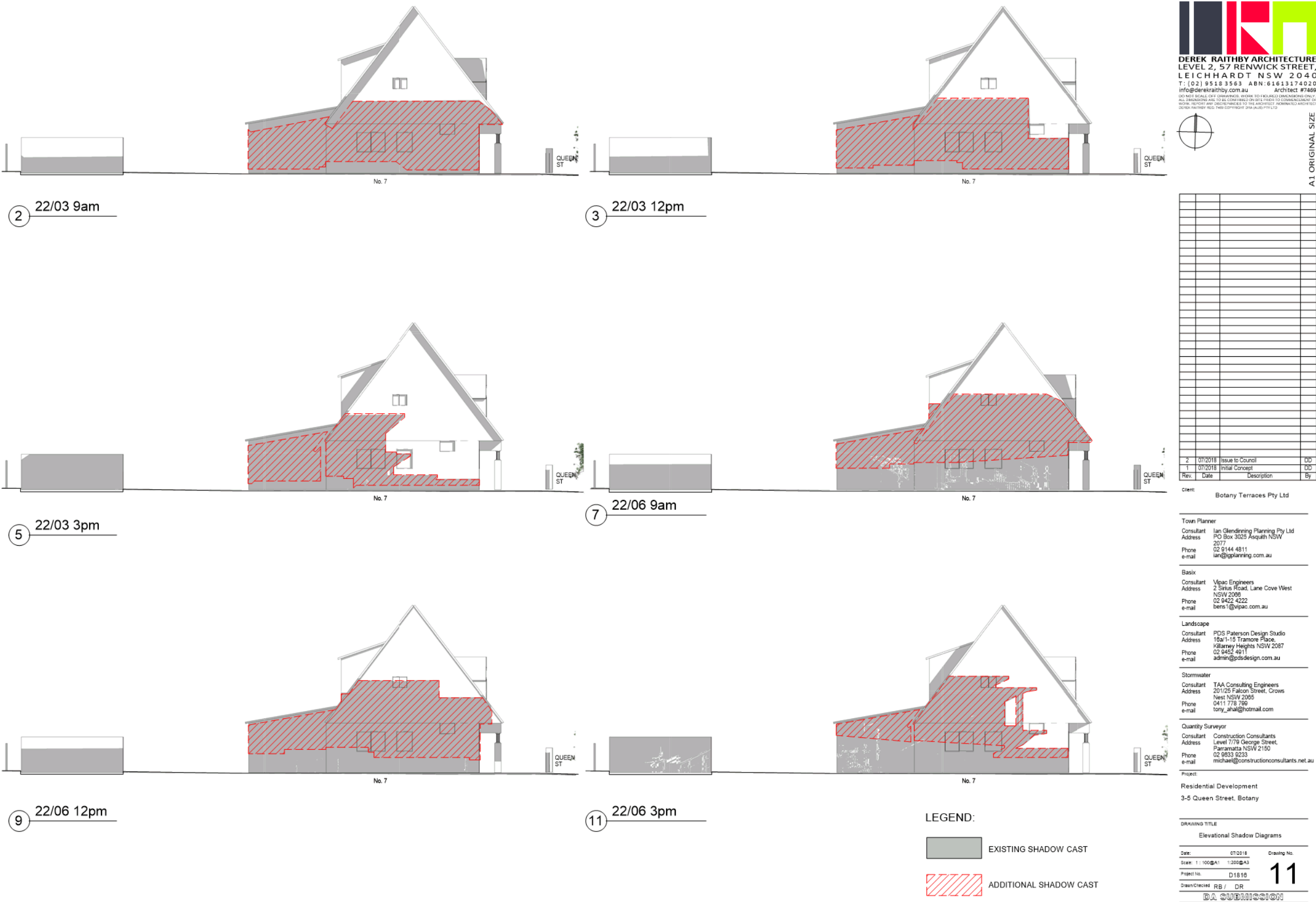












**STATEMENT OF  
ENVIRONMENTAL EFFECTS**

**PROPOSED DEMOLITION AND CONSTRUCTION OF 5  
ATTACHED DWELLINGS AND SUBDIVISION**

**3-5 QUEEN STREET, BOTANY**

**On behalf of**

**Botany Terrace Pty Ltd**

**September 2018**

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STATEMENT OF ENVIRONMENTAL EFFECTS

Proposed Demolition and Construction of 5 Attached Dwellings

3-5 Queen Street, Botany

Prepared under instructions from

Derek Raithby Architecture





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*Ian Glendinning Planning Pty Ltd*

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## 1. INTRODUCTION

This Statement of Environmental Effects accompanies a Development Application lodged on behalf of Botany Terrace Pty Ltd. The proposal seeks approval for the demolition of the existing development construction of 5 attached dwellings upon land known as 3-5 Queen Street, Botany.

In addition to this Statement of Environmental Effects, the proposal is described in the following documentation:

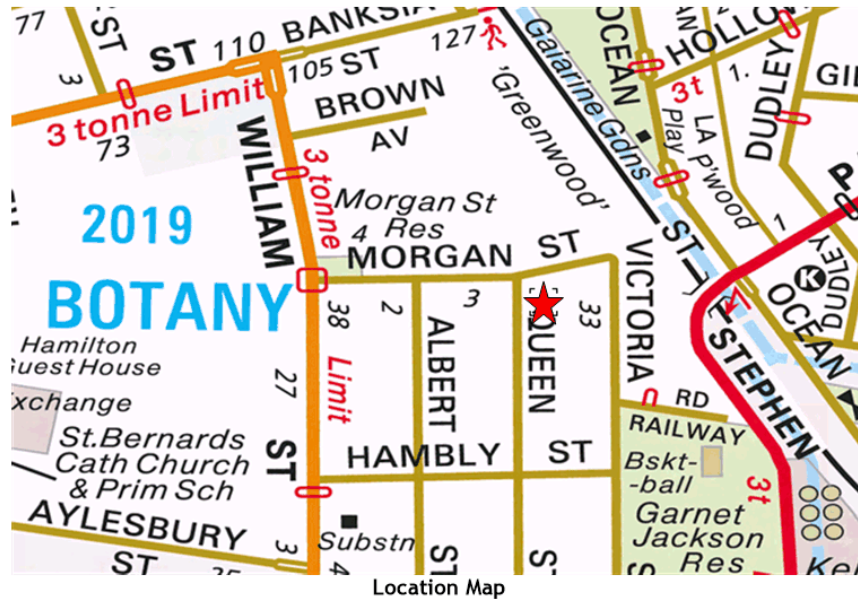
- Survey Plan prepared by Huy Thai, Dwg No. 180755/001 and dated 29.06.18.
- Architectural Plans prepared by Derek Raithby Architecture, Project No. D1816, Drawing No. 00 to 14, dated July 2018.
- BASIX Certificate No.957459M\_02 and dated 30 August 2018.
- Landscape Plan prepared by Paterson Design Studio, Revision B and dated 28 August 2018.
- Stormwater Management Plan prepared by TAA Consulting Engineers, H987 - S1 to S4, Rev A and dated 7.09.18.

This Statement describes the subject site and the surrounding area, together with the relevant planning controls and policies relating to the site and the type of development proposed. It provides an assessment of the proposed development against the heads of consideration as set out in Section 4.15 of the Environmental Planning and Assessment Act 1979. As a result of that assessment it is concluded that the development of the site in the manner proposed is considered to be acceptable and is worthy of the support of the Council.

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## 2. THE SITE

The subject site comprises two parcels of land identified as Lots B & C in DP 150047 and is known as 3-5 Queen Street, Botany. The property has a combined area of 1,062m<sup>2</sup>. The site is located on the eastern side of Queen Street with a combined street frontage of 29.325m. The site is depicted in the following locality.



The property known as No. 3 Queen Street (the northern site) has an area of 556.4m<sup>2</sup> with a frontage of 14.085m and a depth of 46.625m. The site currently comprises a single storey clad dwelling with pitched tiled roof. A carport is located behind the front building line and adjacent to the northern side boundary. A large detached garage is located towards the rear northeast corner of the site. A low rendered masonry fence is currently erected along the front boundary. There is no significant vegetation on site.

The property known as No. 5 Queen Street (the southern site) has an area of 505.9m<sup>2</sup> with a frontage of 15.24m to Queen Street and a maximum depth of 33.53m. This site currently comprises a single storey rendered brick dwelling with tiled roof. An attached carport is located behind the building line and adjacent to the southern boundary. A swimming pool is located in the rear yard. A low masonry fence is erected along the front boundary of the site. There is no significant vegetation on site.

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View of the No. 3 Queen Street



View of No. 5 Queen Street

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### 3. THE SURROUNDING ENVIRONMENT

The area surrounding the subject site comprises of a mixture of single and two storey detached dwellings with multi dwelling housing on the northern side of Morgan Street to the north of the development site. The site analysis plan and detailed survey plans accurately illustrates the location of the adjoining dwellings. The sites relationship with its surrounding properties is depicted in the following aerial photograph and context photographs.



Aerial Photo of Subject Site

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#### 4. THE PROPOSAL

The proposal seeks approval for the demolition of the existing structures and construction of 5 attached dwellings. The proposed development is to be constructed of a mixture of rendered brickwork and external cladding with colorbond roof sheeting. It is proposed to subdivide the attached dwellings into individual allotments.

Dwellings 1 and 2 are attached and Dwellings 3, 4 and 5 are attached. The proposed development is provided with setbacks of at least 5.0m to the street frontage as measured from the garages of Dwellings 3, 4 and 5. A setback of 0.9m is provided to both the northern and southern side boundary. Rear setbacks range from 8.6m to 14.23m as measured from the rear wall of the dwellings.

Each of the dwellings provide a similar floor plan as below:

<b>Ground Floor:</b>	Foyer, powder room, kitchen, dining, living room and garage (with laundry and bin storage).
<b>First Floor:</b>	Four bedrooms (master with ensuite) with bathroom.

Each dwelling is provided with a single garage with sufficient area forward of the garage for a second at grade parking space in a stacked arrangement. The development provides for three separate driveways, one for Dwelling 1, second for Dwelling 2 and 3 and the third for Dwelling 4 and 5.

Dwelling 1 and 2 are also provided with a detached cabana adjacent to the rear boundary. These structures are provided with nil setbacks to the side and rear boundaries. Dwelling 2 is provided with a swimming pool in the rear yard. This pool is provided with a setback of 1.0m to the sites northern boundary.

All collected stormwater is to be discharged to the street gutter via rainwater reuse tanks and dispersal trenches as per the Stormwater Management Plan prepared by TAA Consulting Engineers.

The proposal also provides for a new front fence with a height of 1.2m.

It is proposed to subdivide the dwelling houses into 5 separate allotments as per the proposed subdivision plan submitted with the application.

The development indices for the proposal are as follows:

<b>Site Area:</b>	<b>1,069m<sup>2</sup></b>
<b>Proposed Site Cover:</b>	<b>573m<sup>2</sup> or 53.6%</b>
<b>Proposed Deep Soil Landscaping:</b>	<b>297m<sup>2</sup> or 27.7%</b>

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**Proposed Hard Landscaping: 199m<sup>2</sup> or 15.6%**

The landscaping and site cover is calculated as follows:

Dwelling	Hard Landscape	Site Cover	Deep Soil
1	43m <sup>2</sup> (18%)	125m <sup>2</sup> (53%)	69m <sup>2</sup> (29%)
2	44m <sup>2</sup> (18%)	150m <sup>2</sup> (62%)	48m <sup>2</sup> (20%)
3	38m <sup>2</sup> (19%)	100m <sup>2</sup> (51%)	59m <sup>2</sup> (30%)
4	37m <sup>2</sup> (19%)	104m <sup>2</sup> (53%)	55m <sup>2</sup> (28%)
5	37m <sup>2</sup> (19%)	94m <sup>2</sup> (48%)	66m <sup>2</sup> (33%)

**Proposed Total Floor Space: 729m<sup>2</sup> or 0.68:1**

The floor space is calculated as follows:

Dwelling	Floor Space	Site Area	FSR
1	159m <sup>2</sup>	238m <sup>2</sup>	0.67:1
2	163m <sup>2</sup>	242m <sup>2</sup>	0.67:1
3	134m <sup>2</sup>	197m <sup>2</sup>	0.68:1
4	136m <sup>2</sup>	197m <sup>2</sup>	0.69:1
5	137m <sup>2</sup>	197m <sup>2</sup>	0.69:1



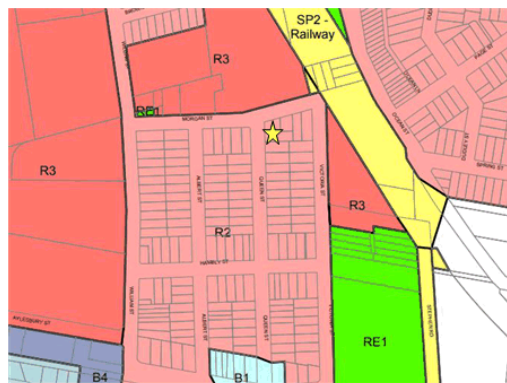
## 5. ZONING AND DEVELOPMENT CONTROLS

The proposed development is identified as development requiring consent under the provisions of the Environmental Planning and Assessment Act 1979, as amended. The following is an assessment of the proposal against the relevant provisions of the Act and all of the relevant planning instruments and policies of Botany Council.

### 5.1 Planning for Bushfire Protection

The subject site is not identified as bushfire prone land on Councils Bushfire Prone Lands Map. Therefore, the provisions of *Planning for Bushfire Protection Guidelines 2006* do not apply to the proposed development.

### 5.2 Botany Bay Local Environmental Plan 2013



Extract of Zoning Map

The Botany Bay LEP 2013 applies to the subject site. The site is zoned R2 - Low Density Residential pursuant to BBLEP 2013. Attached dwelling housing is a permissible use with consent in the R2 zone. Attached dwellings are defined as:

*attached dwelling means a building containing 3 or more dwellings, where:*

- (a) *each dwelling is attached to another dwelling by a common wall, and*
- (b) *each of the dwellings is on its own lot of land, and*
- (c) *none of the dwellings is located above any part of another dwelling.*

The proposed development which results in 5 attached dwellings each on its parcel of land, meets this definition.

The following development standards of the BBLEP 2013 which relate to the proposed development are:

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Clause	Development Standard	Proposed	Compliance
Clause 4.3- Height of Buildings	Area 1 - 8.5m	Maximum height 8.5m	Yes
Clause 4.4A (3)(d) - Floor Space Ratio (Area 3)	Area 3 Prior to Subdivision Multi Dwelling Housing 0.8:1	Multi Dwelling Housing 725m <sup>2</sup> or 0.68:1	Yes
	Post subdivision Site area <200m <sup>2</sup> : 0.85:1 Site area 200-250m <sup>2</sup> : 0.80:1	Lot 1: 0.67:1 Lot 2: 0.67:1 Lot 3: 0.68:1 Lot 4: 0.69:1 Lot 5: 0.69:1	Yes

The proposed development complies with the relevant development standards contained within the Botany Bay LEP 2013.

The following clauses also apply:

#### **Clause 6.1 Acid Sulfate Soils**

The subject is identified as Class 4 on the acid sulfate soil map. The proposal does not provide for excavation in excess of 2m and therefore no further information is required.

#### **Clause 6.3 Stormwater Management**

All collected stormwater will discharge to street gutter as per the Stormwater Management Plan prepared by TAA Consulting Engineers.

#### **Clause 6.9 Development Subject to Aircraft Noise.**

This clause relates to development on land that is in an ANEF contour of 20 or greater and as such does not apply to the proposal.

There are no other provisions of the LEP that apply to the proposed development.

### 5.3 Botany Bay Development Control 2013

The Botany Bay DCP applies to land that's defined under the Botany Bay LEP 2013. Part 3 of the DCP provides for General Provisions whilst Part 4 relates specifically to Residential Development. The following Provisions of the DCP are applicable to the development.

#### Part 3 General Provisions

##### 3A.2 Parking Provisions

For Attached Dwellings this clause requires parking at a rate of 1 space per dwelling. The proposal incorporates 1 parking space per dwelling contained within a garage integrated into the dwelling design. The proposal complies with this clause.

##### Clause 3.A.3.1 - Car Park Design

The proposal provides for one garage space for each of the attached dwellings. The garage is integrated into the dwelling design and is located behind the required front setback. A separate pedestrian pathway is provided for each dwelling to ensure no vehicular conflict. The driveways are located so that disruption to on street parking is minimised. This has been achieved by providing shared drives for Dwellings 2 & 3 and 4 & 5.

##### Clause 3E2.2 - Residential Torrens Title Subdivision

This clause provides:

*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.*

In this regard the proposal provides for 5 attached dwellings which are permissible within the R2 zone, comply with the development standards of the LEP and meet the objectives of the zone. The subject site is located within close proximity of (30m) of multi dwelling housing on Morgan Street with further multi dwelling housing on nearby Victoria Street. There are a number of properties with similar lot sizes and dimensions including the following:

24 Hambly Street (Cnr Queen Street): Lot size 233m<sup>2</sup> and frontage 5.9m

23 Albert Street: Lot size 204m<sup>2</sup> and frontage 6.1m

25 Albert Street: Lot size 197m<sup>2</sup> and frontage 5.8m

The application proposes 5 attached dwellings generally consistent with the DCP controls.

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#### **Clause 3G.2 Stormwater Management**

A Stormwater Management Plan has been prepared by TAA Consulting Engineers in accordance with this Clause and Part 10 Stormwater Management Technical Guidelines.

#### **Part 3I Crime Prevention, Safety and Security**

This part requires considered of Crime Prevention Through Environmental Design (CPTED). It is considered that the development has been designed in accordance with the principles of CPTED for the following reasons:

- Each dwelling is orientated towards Queen Street and allows for casual surveillance of the street and dwelling approach with habitable windows on the front façade.
- The proposal is consistent with the established front setback.
- The pedestrian entrance for each dwelling is easily identifiable from the public domain.
- The development will be appropriately lit.
- The proposal does not provide for any front fencing and as such the streetscape will be open.

#### **Part 3L Landscaping and Tree Management**

The proposal does not require the removal of any significant vegetation. A Landscape Plan has been submitted with the application as required by this part. The Landscape Plan provides for a number of trees, shrubs and screen planting.

#### **Part 3N Waste Minimisation and Management**

A Waste Management Plan has been prepared in accordance with this Part of the DCP.

The following table provides a summary of the relevant provisions of Part 4A Dwelling Houses. It is noted that this part applies to low density residential development. Attached housing is permissible in the R2 Low Density Zone and therefore the provisions of this part apply.

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Clause/ Design Element	DCP Requirement	Compliance/Comments
Part 4A.2.3 – Local Character	<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>	<p>Yes</p> <p>A site analysis plan has been submitted. The proposal provides for two storey attached dwellings on relatively level land. The two storey development is compatible with the existing surrounding development and the desired future character Statement.</p>
Part 4A.2.4 – Streetscape Presentation	<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 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). 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>Yes</p> <p>The proposal provides for two storey attached dwellings with setbacks to the street frontage that is compatible with the existing surrounding development and the desired future character as identified in Part 8.</p> <p>The proposal does not require the removal of any significant vegetation.</p> <p>The proposal provides for a conventional pitched roof form which is compatible with the predominant roof form in the immediate locality.</p> <p>Each dwelling has been designed to be orientated towards Queen Street. The pedestrian access and front door is easily recognisable for people entering the site.</p>

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Clause/ Design Element	DCP Requirement	Compliance/Comments
	<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>Each dwelling provides for views of the street and dwelling approach to ensure passive surveillance.</p> <p>The scale and style of window and door openings are compatible with the existing surrounding development.</p> <p>The external finishes are compatible with the surrounding development.</p>

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Clause/ Design Element	DCP Requirement	Compliance/Comments
	<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>	
Part 4A.2.5 – Height	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.	Yes The proposal complies.
Part 4A.2.6 – Floor Space Ratio	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.	Yes The proposal complies.
Part 4A.2.7 – Site Coverage	Sites <250m <sup>2</sup> maximum site coverage = 65%	Yes All resultant lots comply.
Part 4A.2.8 – Building Setbacks	Front – prevailing setback or 6m	Yes The proposal provides for a setback of 5.0m to the street frontage. This setback is consistent with the established building line in this area and the two immediately adjoining properties. The front façade is well articulated with varied setbacks.



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Clause/ Design Element	DCP Requirement	Compliance/Comments
	<p>Side Lot width &lt;12.5m – merit assessment Lot width &gt;12.5m – 900mm</p> <p>Rear Lot width &lt;12.5m – 4m Lot width &gt;12.5m – 6m</p> <p>Eaves – min 400mm</p>	<p>Yes The proposal provides for setbacks of 0.9m to the sites northern and southern side boundaries. This setback is considered appropriate and compatible with the existing surrounding development.</p> <p>Yes Dwelling houses provide ample setback to the rear boundary. The cabana setbacks are discussed later in this report.</p> <p>Yes</p>
Part 4A.2.9 – Landscaped Area	Site area <250m <sup>2</sup> - 350m <sup>2</sup> - 15% of site area	Yes All lots comply.
Part 4A.3.1 – Materials and Finishes	<p>Schedule of External Finishes to be submitted.</p> <p>Be sympathetic to the surrounding development.</p>	Yes A schedule has been submitted which is sympathetic to the existing surrounding development and natural environment.
Part 4A.3.2 – Roofs and Attics/Dormers	<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>	Yes Proposal provides for a pitched roof form that is compatible with the predominant roof form.

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Clause/ Design Element	DCP Requirement	Compliance/Comments
	Pitched roofs must have a minimum eave overhang of 450mm (excluding gutters).	
Part 4A.3.3 – Front Fences	Front fences are to compliment the period or architectural style of the existing dwelling house.	Yes The proposal provides for a new front fence comprising a low masonry base with timber picket infills to a height of 1.2m. This is compatible with the existing surrounding fence which comprises a mix of low masonry walls and higher picket or palisade fencing. The proposed fence is predominantly open and does not dominate the streetscape.
Part 4A.4.1 – Visual Privacy	Visual privacy for adjoining properties must be minimised by: a. Using windows which are narrow, or glazing which is translucent or obscured; b. Ensuring that windows do not face directly on to the windows, balconies or courtyards of adjoining dwellings; c. Screening opposing windows, balconies and courtyards; and d. Increasing sill heights to 1.5 metres above floor level.	Yes The proposal provides for all high use living areas on the ground floor to minimise the potential for overlooking. Whilst the first floor provides for a balcony on the rear elevation, this balcony is small and only serves a bedroom and as such is not conducive to outdoor entertaining. Windows are offset from the adjoining dwellings windows.
Part 4A.4.2 – Acoustic Privacy	The site is not noted as being affected by the ANEF contours.	Not Applicable

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Clause/ Design Element	DCP Requirement	Compliance/Comments
Part 4A.4.3 – Solar Access	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.	Yes Shadow diagrams have been submitted.
Part 4A.4.4 – Private Open Space	Each dwelling is to have a private open space that: (i) Has at least one area with a minimum area of 36m <sup>2</sup> ; (ii) Is located at ground level with direct access to the internal living areas of the dwelling; (iii) Maximises solar access; (iv) Is visible from a living room door or window of the subject development; (v) Minimises overlooking from adjacent properties; (vi) Is generally level; (vii) Is oriented to provide for optimal year round use; (viii) Is appropriately landscaped; and (ix) Is located or screened to ensure privacy;	Yes Each area is provided with private open space in the rear yard that is directly accessible from the internal living areas, is level and is of adequate dimension. The private open space is located at ground level and can be appropriately landscaped
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.	Yes All dwellings have good views of the street and dwelling approach. The entry is easily identifiable and is not obscured.

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Clause/ Design Element	DCP Requirement	Compliance/Comments
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.	Yes The proposal does not result in any unreasonable excavation.
Part 4A.4.7 – Vehicle Access	<p>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).</p> <p>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.</p> <p>Driveways must be designed to comply with AS2890.1 (also refer to Part 3A - Car Parking).</p> <p>Vehicular crossings shall be sited so that existing street trees, bus stops, bus zones, power lines and other services are not affected.</p> <p>Internal driveways characterised by large expanses of concrete are not permitted. 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>	Yes Driveways comply with Council's requirements. The driveways do not impact on existing vegetation or services. Driveways are shared to minimise hard surfaces and disruption to on street parking.

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Clause/ Design Element	DCP Requirement	Compliance/Comments
	<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>	

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Clause/ Design Element	DCP Requirement	Compliance/Comments
4A.4.8 Car Parking	<p>If rear lane access is not possible, parking must be provided behind the front building alignment.</p> <p>For existing and new dwellings, a garage or carport in order of priority must be:</p> <ul style="list-style-type: none"> <li>(i) Located at the rear of the site with access from a rear lane;</li> <li>(ii) At the rear of the site with access from the street frontage;</li> <li>(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</li> <li>(iv) Located at the side of the dwelling house, at least 1 metre behind the front building alignment.</li> </ul>	<p>The proposal provides for a single garage for each dwelling integrated into the dwelling design. The upper level balconies extend over forward of the garage to minimise their dominance. The front façade is well articulated and the garages do not dominate the streetscape. Landscaping forward of the development and the articulation ensure an appropriate presentation to Queen Street.</p>
4A.5 Ancillary Development	<p>The principal dwelling plus any ancillary structures are to comply with the controls for site coverage, minimum landscaped area, private open space and setback and height controls.</p> <p>Outbuildings (not including secondary dwellings) must be set back 900mm from the site's boundaries.</p> <p>A nil setback may be used for masonry building walls with no eaves, gutters or windows</p>	<p>Yes</p> <p>Proposal complies with the site cover and landscape controls.</p> <p>See Below</p> <p>Yes</p> <p>The detached cabana's for Dwelling 1 and 2 provide for a nil setback to the side and rear boundaries. These structures are masonry and do not comprise any windows or openings in these elevations.</p>

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Clause/ Design Element	DCP Requirement	Compliance/Comments
	Maximum height 6m.	Yes Height is 3.1m
	Roof pitch not to exceed 36 degrees.	Yes Flat roof proposed.
A7.0 Swimming Pools	Development must comply with the maximum site coverage requirements of the relevant Parts of the DCP.	Yes
	Swimming pools and spas must be located at ground level.	Yes Swimming Pool at ground level.
	Swimming pools and spa pools are to be located at the rear of properties and not within the front setback.	Yes Swimming pool at rear of site.
	1m from side boundaries	Yes Swimming pool setback 1.0m.

There are no other provisions of the DCP that apply to the proposed development.



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## **6. SECTION 4.15 ASSESSMENT**

### **Environmental Planning Instruments**

The subject site is zoned R2 - Low Density Residential under the provisions of the Botany Bay LEP 2013. The proposed dwelling houses and subdivision are permissible with the consent of Council. The proposal has been assessed against the objectives and provisions of both the Botany Bay LEP 2013 and the Development Control Plan as detailed within this report.

### **Impacts of the Development**

The proposed development has been designed so as to have minimal impact upon the amenity of adjoining properties particularly with regard to a loss of privacy and overshadowing as has been demonstrated by this report.

The proposed development is considered to be of a design, which is in keeping with the character of the surrounding area. The proposal presents five well-articulated dwellings, which are considered to be compatible with the existing development in this locality.

### **Suitability of the Site**

The subject site is zoned R2 - Low Density Residential under the Botany Bay LEP 2013. The proposed dwellings are generally in compliance with the development controls in the BBLEP 2013 and is permissible with the consent of Council.

The proposal does not require the removal of any protected vegetation and the site is relatively flat. There are no environmental constraints on site.

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## 7. CONCLUSION

The proposed development is development requiring consent under the terms of the Environmental Planning and Assessment Act 1979 and has been assessed against the requirements of Section 4.15 of the Act, Botany Bay LEP 2013, Council's and Council's policies including the Botany Bay Development Control Plan.

It is considered that this Statement of Environmental Effects has demonstrated that the proposal satisfies the aims and objectives of the above planning controls. It is considered that the proposal will not impact upon the amenity of adjoining properties or upon the character of the surrounding area.

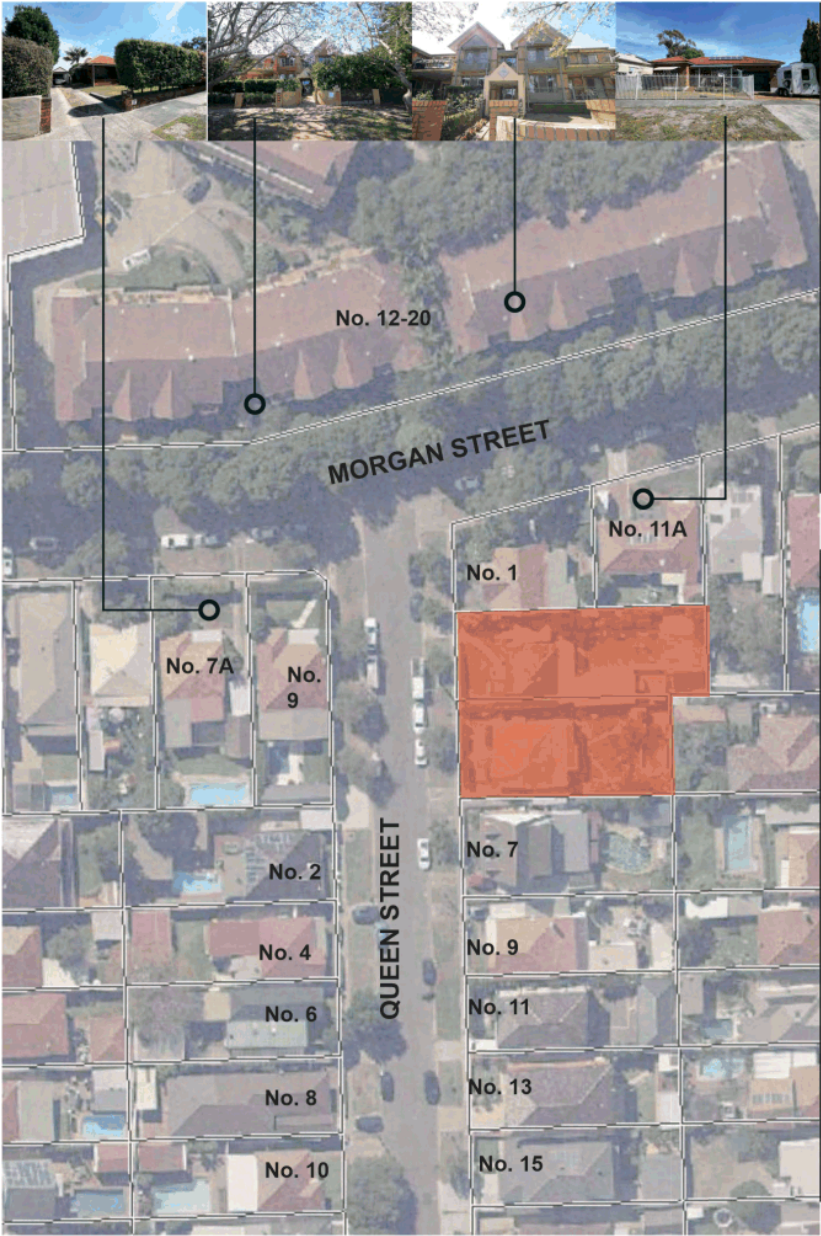
It is my opinion that this proposal for the construction of 5 dwellings and subdivision upon property at 3-5 Queen Street, Botany is worthy of the support of Council.

Ian Glendinning  
B App Sc (Env. Planning) MPIA, LFAIBS  
IAN GLENDINNING PLANNING

August 2018







7A, 11A, 12-20 MORGAN STREET, BOTANY												
No	No. OF STOREYS	ROOF TYPE	WALL TYPE	WINDOWS & DOORS	ENTRANCE	FRONT SETBACK*	SIDE SETBACKS*	GARAGE TYPE	FENCE*	BALCONY BALUSTRADE	ORNAMENT/ FEATURE	LANDSCAPE
7A	1	• Hip roof • Tiles	• Face brickwork • Medium colour	• Aluminium windows & doors • Light colour	• Aligned with building	• 8m	• 3m next to adjoining building No. 9 • 900mm next to adjoining building No. 5	• Carport + garage on side setback • Gable roof with tiles • Weatherboard walls - light colour • Roller shutter garage door - dark colour	• Solid brick wall + hedge/screen plants • 0.6m high	—	—	• Hedge/screen plants
11A	1	• Hip roof • Tiles	• Face brickwork • Medium colour	• Aluminium windows & doors • Light colour	• Recessed from front building alignment	• 5m	• 900m next to adjoining building No. 11 • Nil setback next to adjoining building No. 1 (Queen St)	• Garage in the building • Roller shutter garage door - dark colour	• Vertical metal slats • Light colour • 1.5m high	—	—	• Lawn only
12-20	2	• Gable & hip roof • Tiles • Parapet (building entrance)	• Facebrick work • Medium colour	• Aluminium windows & doors • Light colour	• Recessed from front building alignment	• 8m	• 3m on both sides	• Part of building complex - internal (residential flat building)	• Composition of solid brick wall + vertical metal slats • Medium & dark colour • 1.5m high	—	—	• Hedge/screen plants • Trees

\*Note: approximate distances measured from maps.six.nsw.gov.au

BOTANY BAY DEVELOPMENT CONTROL PLAN 2013	
<b>PART 4 - RESIDENTIAL DEVELOPMENT</b> <b>4A DWELLING HOUSES</b> <b>4A 2.4 STREETSCAPE PRESENTATION</b> <b>Controls</b> <b>General</b> <ul style="list-style-type: none"><li>• C1 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 contributes to its character. Applicants must address the design principles outlined in the statement.</li><li>• C2 Development must be designed to reinforce and maintain the existing character of the streetscape.</li><li>• C3 Development must reflect dominant roof lines and patterns of the existing streetscape (refer to Figure 3). 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.</li><li>• C4 Buildings must appropriately address the street. Buildings that are intrusive or inconsistent with the established development pattern will not be permitted.</li><li>• C5 Developments on sites with two or more frontages should address both frontages</li><li>• C6 The entrance to a dwelling must be readily apparent from the street.</li><li>• C7 Dwelling houses are to have windows to the street from a habitable room to encourage passive surveillance.</li><li>• C8 Skylights are to be flush with the roof surface and located to the rear of a building.</li><li>• C9 A street number for the property is to be clearly identifiable from the street.</li><li>• C10 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.</li><li>• C11 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.</li><li>• C12 Painting, rendering and bagging of existing face brickwork must be consistent with the existing character of the street.</li><li>• C13 New extensions must be consistent with existing materials.</li><li>• C14 Dormer roofs must be consistent with the style of the existing dwelling.</li></ul>	<b>PART 8 - CHARACTER PRECINCTS</b> <b>8.4 BOTANY CHARACTER PRECINCT</b> <b>8.4.2 DESIRED FUTURE CHARACTER</b> <b>Form, Massing, Scale and Streetscape</b> <ul style="list-style-type: none"><li>• Encourage development to follow the topography of the land.</li><li>• Promote medium residential development in areas adjacent/adjoining existing medium density housing development with an FSR of 0.85:1 and 2 storeys with attic (a maximum height of 10 metres) unless the site area is over 2000m<sup>2</sup> which then permits a FSR of 1.5:1 and 2 to 6 storeys (a maximum height of 22 metres).</li><li>• Maintain and enhance low density residential accommodation in the form of detached/ attached dwellings with a maximum height of 2 storeys in the remainder of the Precinct.</li><li>• Promote site access and parking facilities that do not dominate the streetscape.</li><li>• Encourage new development or alterations and additions to existing development to complement the height and architectural style found in the immediate vicinity, particularly where there is an established character.</li><li>• Maintain roof forms to reflect the characteristics of the prevailing designs within the street.</li></ul>

**DEREK RATHBY ARCHITECTURE**  
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LEICHHARDT NSW 2040  
T: (02) 9518 3563 ABN: 61613174020  
info@derekathby.com.au Architect #7469  
DO NOT SCALE OFF DRAWINGS. WORK TO FIGURED DIMENSIONS ONLY.  
ALL DIMENSIONS ARE TO BE CONFIRMED ON SITE PRIOR TO COMMENCEMENT OF WORK. REPORT ANY DISCREPANCIES TO THE ARCHITECT. NOMINATED PROJECT OFFICE: 10/10/18  
DEREK RATHBY P/LD: 10/10/18



A1 ORIGINAL SIZE

Rev.	Date	Description	By
1	12/2018	Council meeting amendments	RB

Client: Botany Terraces Pty Ltd

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Project:  
Residential Development  
3-5 Queen Street, Botany

DRAWING TITLE	
Streetscape Analysis 3/4	
Date: 08/2018	Drawing No.
Scale: 1:100@A1 1:200@A3	18
Project No: D1816	RB / DR
DA SUBMISSION	



Overview of Queen Street existing streetscape



Existing side setback analysis

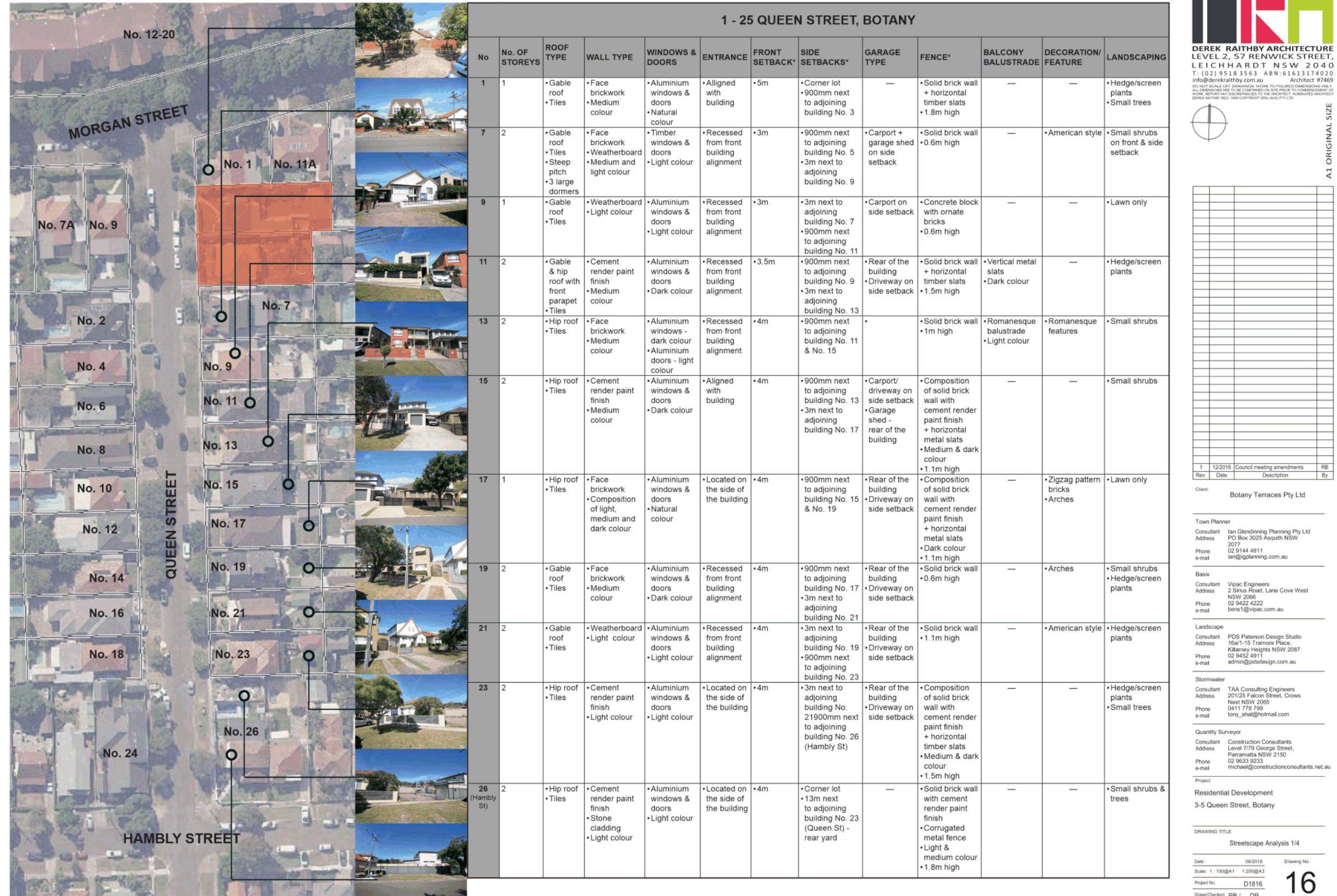


Examples of different styles, materials, roof, garage types, bulk and form



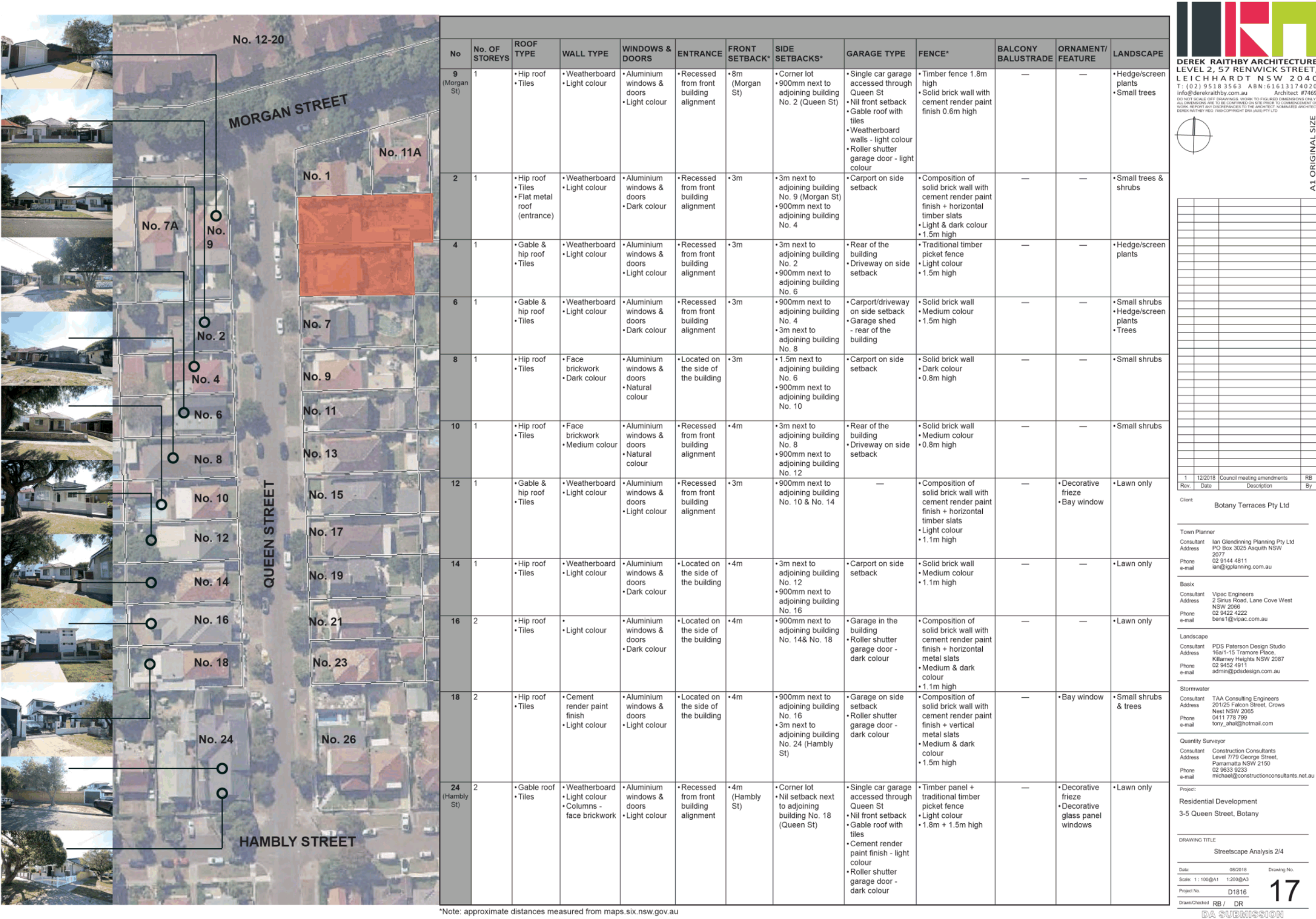
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\*Note: approximate distances measured from [maps.six.nsw.gov.au](http://maps.six.nsw.gov.au)





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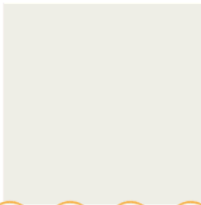

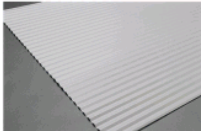







Image	Symbol	Type	Description
	BL	Balustrade Finish	Vertical metal slats - Dulux 'Natural white' or similar
	CC	Floor Finish	Concrete Finish
	CP1	Floor Finish	Carpet - Godfrey Hirst Elegant Expressions 'Cloud Whisp' or similar
	F1	Fence Finish	Composition of face brickwork + traditional timber picket fence
	GP	Floor Finish	Grass Concrete Paver blocks (driveway)
	P1	Wall Finish	Render finish - Dulux 'Natural white' or similar
	P2	Wall Finish	Render finish - Dulux "Grey Pail" or similar
	RS	Roof Sheetting	Colorbond "Woodland Grey" or similar

Image	Symbol	Type	Description
	RT	Tile Roof	Tile Roof
	SC	Privacy Screen	Window privacy screen Dulux "Natural White" or similar
	T1	Floor Finish	External concrete tile
	T2	Floor Finish	Internal Porcelain Tile
	W1	Frame Finish	Windows & doors framing powdercoat Colorbond 'Whitehaven' or similar
	WB1	Wall Finish	Weatherboard - Dulux 'Natural White' or similar
	WB2	Wall Finish	Weatherboard - 'Grey Pail' or similar

[illegible]

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Project:  
Residential Development  
3-5 Queen Street, Botany

DRAWING TITLE	
Finishes Schedule	
Date:	12/2018
Scale:	@A1 1:200 @A3
Project No.	D1816
Drawn/Checked	RB / DR



A1 ORIGINAL SIZE

[illegible]

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Project:  
Residential Development  
3-5 Queen Street, Botany

Photomontage

Date: 07/2018 Drawing No. 13  
Scale: @A1 1:200@A3  
Project No. D1816  
Drawn/Checked RB / DR  
DA SUBMISSION

**CLAUSE 4.6 - VARIATION TO DEVELOPMENT STANDARDS**  
**Written request-Floor Space Ratio**

**Demolition of the existing dwellings and construction of five attached dwellings, and Torrens subdivision of two lots into five lots.**



**3-5 Queen Street, Botany**  
**Lot B and C in DP 150047**

**Date: December 2018**



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**Clause 4.6 Written Request to Vary a Development Standard  
Botany Bay Local Environmental Plan 2013**

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Applicant's name	Botany Terrace Pty Ltd
Site address	3-5 Queen Street, Botany NSW 2019
Proposal	Demolition of existing dwelling and construction of five attached dwellings and Torrens subdivision of one lot into five lots
Environmental Planning Instrument	Botany Bay Local Environmental Plan 2013
Development standard to be varied	Clause 4.4A - Floor space ratio The relevant subclause states:  <i>(3)(d) The floor space ratio all other development for the purpose of residential accommodation is 0.5:1.</i>

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Below is the written request relating to the proposed variation to Clause 4.4A of BBLEP 2013 in accordance with the provisions of clause 4.6 of BBLEP 2013.

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**Details of development standard sought to be varied**

Clause 4.4A of Botany Bay Local Environmental Plan 2013 (BBLEP 2013) prescribes the maximum floor space ratio (FSR) for residential accommodation on land identified on the Floor Space Ratio Map as "Area 3". Clause 4.4A(3)(a) of the BBLEP 2013 permits an FSR for dwelling houses which varies between 0.55:1 and 0.85:1, depending on the size of the allotment. However, given dwelling houses, attached dwellings, and attached dwellings are each listed separately within the BBLEP 2013 Dictionary, and separately within the definition for residential accommodation, Council has determined that subclause 4.4A(3)(a) does not apply to attached dwellings, and that subclause 4.4A(3)(d), relating to all other development for the purpose of residential accommodation, is the clause which identifies the maximum FSR for the proposal.

Subclause 4.4A(3)(d), requires a FSR of 0.5:1 for semi-detached dwellings, which is lower than what is permitted for dwelling houses. Each dwelling within the proposed development has a FSR of 0.6:1 which exceeds the maximum permitted under the LEP.

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**Clause 4.6 Exceptions to Development Standards - Botany Bay Local Environmental Plan 2013**

Clause 4.6 of BBLEP 2013 is the mechanism by which a consent authority is able to grant consent to a development despite non-compliance with a prescribed development standard. The objectives of Clause 4.6 are as follows:

*(1) The objectives of this clause are as follows:*

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

*(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

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

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

*(4) Development consent must not be granted for development that contravenes a development standard unless:*

*(a) the consent authority is satisfied that:*

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

*(b) the concurrence of the Secretary has been obtained.*

*(5) In deciding whether to grant concurrence, the Secretary must consider:*

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- (a) whether contravention of the development standard raises any matter of significance for state or regional environmental planning, and*
- (b) the public benefit of maintaining the development standard, and*
- (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.*

*(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*

- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

*Note. When this Plan was made it did not include Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E3 Environmental Management or Zone E4 Environmental Living.*

*(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*

*(8) This clause does not allow development consent to be granted for development that would contravene any of the following:*

- (a) a development standard for complying development,*
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
- (b1) clause 4.3 (2A),*
- (b2) clause 4.4B (3),*
- (c) clause 5.4.*



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**4.6(3) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and there are environmental planning grounds to justify the contravention of the standard**

The authority established by *Four2Five Pty Ltd v Ashfield Council* (2015), necessitates that environmental planning grounds for the proposed variation must be established aside from the consistency of the development with the objectives of the standard and the objectives of the zone.

In *Wehbe V Pittwater Council* (2007) NSW LEC 827, Preston CJ set out the following 5 different ways in which an objection (variation) may be well founded:

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard;*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

It is generally understood that Clause 4.6(3) can be satisfied if it is established that a development satisfies one or more of points 2-5 above.

Having regard for the authority within *Wehbe*, compliance with the maximum FSR development standard has been determined to be unreasonable and unnecessary in the circumstances of the case, and the following grounds are submitted on support of the variation.

- The proposal seeks to maintain the rectilinear subdivision pattern that has been established within the locality and is anticipated by the desired future character of the area. The proposed frontage width and dwelling design is

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characteristic of nearby contemporary developments and is acceptable in the context of the subdivision and streetscape pattern.

- Compliance with the 0.5:1 requirement would result in a significant reduction of floor space, with the proposed allotments only able to accommodate approximately 121m<sup>2</sup> of gross floor area each. Given a dwelling house would be able to be provided with in excess of 200m<sup>2</sup> of gross floor area, an FSR of 0.5:1 would not provide an appropriate correlation between the size of the proposed lots and the extent of the development on each lot, when compared with contemporary development in the locality. In this regard, the development would not be consistent with the prevailing character of the area.
- Compliance with the development standard would result in a development that is not indicative of the scale and internal amenity of other contemporary developments within the locality.
- Given a dwelling house, would generally require a 900mm side setback to both sides, as well as an additional parking space, a dwelling house with equal FSR to the proposal would result in less landscaped area, less private open space, and a shorter rear setback than the proposal. Note that dwelling houses are generally subject to the same numerical controls within the BBDGP 2013 as attached dwellings.
- There is merit in applying the FSR which could be achieved for attached dwelling (i.e. a dwelling house) being 0.85:1. The FSR of the proposed attached dwellings of 0.60:1 provides a density and visual appearance which is commensurate with what may be provided for a dwelling house on each lot. Although attached dwellings necessitate the provision of a party wall over the new boundary, the building bulk in this location is offset by additional floor space that might otherwise be provided elsewhere.

Thus, although the standard may not have been destroyed, its application under these circumstances is not reasonable.

- A development could be made to comply with the 0.5:1 FSR at the site. However, it is unlikely that this would result in any changes to the presentation to the street. Two storey developments are predominant within the street, and Council has demonstrated that there is no distinction to be made in the scale of attached dwellings when compared with dwelling houses. Therefore, a development for attached dwellings which complies with the development standard would be expected to result in poorer internal amenity than is typical for the locality.

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- Were Council to insist on compliance with the development standard, attached dwellings would then be the most desirable development typology on smaller lots. Preference should be given to attached dwellings on small lots, given that they provide a more efficient distribution of density at the site, and that they enable smaller site coverage over the site, and a provision of greater private open space and deep soil area. In this sense, the underlying objectives and purposes of the FSR may be defeated or thwarted if compliance was required, as detached dwellings on narrow allotments would be provided with very little functional floor space, with no associated benefit to the bulk and scale or character of the locality.

Clause 4(a)(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out,

The objectives of the R2 Low Density Residential Zone are as follows:

- *To provide for the housing needs of the community within a low density residential environment.*

The proposal seeks to provide additional housing to meet the needs of the local community. Attached dwellings are a low density form of residential development, and the provision of further attached dwellings in the locality is consistent with this objective of the zone.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

This objective relates to the various non-residential uses that are permissible within the zone, and does not strictly apply to the proposed development. However, the increased density proposed by the subject development will improve the viability of non-residential uses within the locality.

- *To encourage development that promotes walking and cycling.*

The development provides sufficient space to enable bicycle storage for future occupants, and given the proposal is located within proximity to local services and public transport options, the increased density associated with the proposed development better meets this objective than the existing dwelling at the site.

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The objectives of Clause 4.4A of BBLEP 2013 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 to Part 4.4A relate to all development types that are affected by this clause. The table within subclause (3)(a), which applies only to dwelling houses, best demonstrates how each of these two objectives are able to be met concurrently. That is, as the size of an allotment decreases, the floor space required to maintain appropriate residential amenity to a dwelling, must be increased relative to the size of the allotment. Additionally, as the size of an allotment increases, the floor space required to maintain a bulk and scale that is compatible with the character of the locality, must be decreased relative to the size of the allotment.

The maximum FSR for multi dwelling housing as prescribed by subclause (3)(b), and the maximum FSR for residential flat buildings as prescribed by subclause (3)(c), are each greater than the FSR proposed at the site.

Of the ten other development types affected by subclause (3)(d), only six types of development are permitted at the site. Two of these, boarding houses and seniors housing, are provided with FSR bonuses under higher order planning instruments. Secondary dwellings are not permitted by the R2 zoning, but are permitted by way of State Environmental Planning Policy (Affordable Rental Housing) 2009, which also permits a floor space equal to that available for dwelling houses. This leaves only attached dwellings, group homes, and attached dwellings, as being strictly affected by subclause (3)(d).

Attached dwellings are able to meet the objectives of the standard, by being provided with a FSR that is expected by the vast majority of other development types that are affected by the standard.

With specific reference to the objective (b), the design of the proposal has ensured that good residential amenity is maintained as outlined in the following:

- The proposed development will not impact on views that are available from nearby properties, or to or from important landmarks within the locality.
- The amenity of the adjoining properties is not considered to be negatively impacted as a result of the proposed development. This includes both physical

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impacts such as overshadowing, overlooking and acoustic privacy as well as visual impacts such as height, bulk and scale, setbacks and landscaping.

- The physical impacts of the proposed development are considered to be minor with careful design minimising any potential impacts. Diagrams have been prepared. All surrounding dwellings, and private open space areas will be capable of achieving the minimum sunlight access requirements - i.e. 3 hours solar access between 9am and 3pm at the winter solstice. Narrow sections are provided in the centre of each dwelling to improve solar access to adjoining properties.

- *With regards to overlooking, there are considered to be no privacy issues relating to overlooking opportunities to the north, south and east of the subject site. Whilst some potential overlooking opportunities exist as a consequence of the rear balconies, appropriate mitigation measures have been utilised to ensure the privacy and security of neighbours is not impacted. This includes generous rear and side setbacks, the inclusion of ground floor pergolas to obscure views to neighbouring properties, as well as sensitive internal dwelling layouts. First floor windows to side boundaries are provided with higher sill heights to minimise visual privacy impacts.*

- In terms of the visual impacts, the proposed development is considered to be of an appropriate height, scale and visual appearance so as to be compatible with the surrounding area. Appropriate built form massing has ensured the development appears as a relatively modest building when viewed from the streetscape and the surrounding allotments.

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### Conclusion

The reasons for the proposed variation can be summarised as follows:

- The proposal seeks to maintain the rectilinear subdivision pattern that has been established within the locality and is anticipated by the desired future character of the area;
- Insistence on compliance with the 0.5:1 FSR limit, would result in a development of an uncharacteristically small scale within the locality;
- The underlying object or purpose of the FSR standard would ultimately be defeated or thwarted if compliance was required;
- Council has in the past granted consent to development for semi-detached dwellings, and attached dwellings that do not comply with the standard within subclause (3)(d), but do comply with the standard within subclause (3)(a), under similar circumstances. Thus, although the standard may not have been abandoned or destroyed, its application under these circumstances is not reasonable;
- The objectives of the zone are achieved notwithstanding non-compliance with the standard;
- The proposal provides a better correlation between the size of the site and the extent of any development on the site, than that what would be provided with a compliant proposal;
- The proposal is unlikely to create significant adverse environmental effects on the use or enjoyment of adjoining properties and the public domain;
- Attached dwellings can satisfy the objectives of the standard, by being provided with a FSR that is expected by the vast majority of other development types that are affected by the standard;
- The proposal has ensured that good residential amenity is maintained.

Given the above it is considered that the requirements of Clause 4.6 have been satisfied and that the variation to the FSR development standard can be approved.

Ian Glendinning  
B App Sc (Env. Planning) MPIA, LFAIBS  
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December 2018

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### **Attachment**

Floor Space Ratio calculation plan is attached.

The FSR for house No. 1 is 144m<sup>2</sup> or 0.6:1  
The FSR for house No. 2 is 144m<sup>2</sup> or 0.59:1  
The FSR for house No. 3 is 118m<sup>2</sup> or 0.6:1  
The FSR for house No. 4 is 118m<sup>2</sup> or 0.6:1  
The FSR for house No. 5 is 119m<sup>2</sup> or 0.6:1