

## **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 11 June 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 - 21 May 2019 ....3

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

Nil

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

6.1	DA-18/1183 - Railway Bridge Above Robey Street, Mascot.....	15
6.2	DA-18/1135 - Overbridge O'Riordan Street, Mascot- 40-50 Baxter Road, Mascot.....	72
6.3	DA-18/1067 - 7 Kurnell Street, Botany.....	128
6.4	S82-2019/3 - 294-296 Coward Street, Mascot.....	191
6.5	DA-2018/214 - 22-26 Keats Avenue, Rockdale.....	245
6.6	S82-2019/4 - 38 Russell Avenue, Sans Souci.....	296
6.7	DS18/891 - 19-25 Robey Street, Mascot .....	344

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

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**

**11/06/2019**

Item No	4.1
Subject	<b>Minutes of the Bayside Local Planning Panel Meeting - 21 May 2019</b>
Report by	Fausto Sut, Manager Governance & Risk
File	SF18/2999

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### **Recommendation**

That the Bayside Local Planning Panel notes that the Minutes of the Bayside Local Planning Panel meeting held on 21 May 2019 have been confirmed as a true record of proceedings by the Chairperson of that meeting.

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### **Present**

Jan Murrell, Chairperson  
Robert Montgomery, Independent Expert Member  
Greg Wright, Independent Expert Member  
Thomass Wong, Community Representative

### **Also Present**

Ben Latta, Acting Manager Development Services  
Fausto Sut, Manager Governance & Risk  
Marta Gonzalez-Valdes, Coordinator Development Assessment  
Angela Lazaridis, Senior Development Assessment Planner  
Ana Trifunovska, Development Assessment Planner  
Wolfgang Gill, IT Technical Support Officer  
Anne Suann, Governance Officer

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The Chairperson opened the meeting in the Botany Town Hall Committee Room at 6.00 pm.

## **1 Acknowledgement of Traditional Owners**

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

## **2 Apologies**

There were no apologies received.

## **3 Disclosures of Interest**

There were no disclosures of interest.

## 4 Minutes of Previous Meetings

### 4.1 Minutes of the Bayside Local Planning Panel Meeting - 30 April 2019

#### Decision

That the Bayside Local Planning Panel notes that the Minutes of the Bayside Local Planning Panel meeting held on 30 April 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 SF19/1525 - 5 Finch Drive, Eastgardens

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

The following person spoke:

- Mr Walter Gordon, Head of Planning and Development, Meriton Group, spoke for the officer's recommendation.

#### Determination

That the Bayside Local Planning Panel **APPROVES** the Section 4.55(1A) Application to modify Development Consent No. 2017/1224 to reduce the number of units on Level 15, change unit mix in Building A and Building B, modify the terraces on Level 16, and reduce floor area, at 5 Finch Drive, Eastgardens as follows:

- Amend Condition No.1 to reflect the amended plans.
- Amend Condition No. 24 to reflect the amended Section 7.11 Contribution fees in the overall fee breakdown and state the following:

24. Prior to the issue of any Construction Certificate, the following fees are to be paid:-

(a)	Development Control	\$13,583.00
(b)	Footpath Crossing Deposit	\$314,700.00 (See below)
(c)	Section 7.11 Contributions (See below)	<del>\$7,120,000.00</del> <b>\$7,040,000.00</b>

- |     |                                    |                         |
|-----|------------------------------------|-------------------------|
| (d) | Long Service Levy                  | See below               |
| (e) | Tree Maintenance Bond              | \$7,500.00 (See below)  |
| (f) | Street Tree Planting Bond          | \$7,500.00 (See below)  |
| (g) | Public Works Defect Liability Bond | \$25,000.00 (See below) |
- c Amend Condition No. 25 to reflect the amended Section 7.11 Contribution fees and state the following:
25. Prior to the issue of any Construction Certificate, the payment of a monetary contribution of ~~\$7,720,000.00~~ **\$7,040,000.00** in accordance with Council's Section 94 Contributions Plan 2016 which is broken down as follows:
- |    |                       |                           |                       |
|----|-----------------------|---------------------------|-----------------------|
| a) | Community Facilities  | <del>\$582,829.10</del>   | <b>\$576,280.46</b>   |
| b) | Recreation Facilities | <del>\$6,013,136.89</del> | <b>\$5,945,573.56</b> |
| c) | Transport Management  | <del>\$472,191.93</del>   | <b>\$466,886.40</b>   |
| d) | Administration        | <del>\$51,842.08</del>    | <b>\$51,259.58</b>    |

The Section 7.11 Contribution fees are subject to annual review and the current rates are applicable for the financial year in which the consent is granted. If the contribution is paid in a later financial year the fee applicable at the time will be required to be paid.

Name	For	Against
Jan Murrell	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Robert Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Greg Wright	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Thomass Wong	<input checked="" type="checkbox"/>	<input type="checkbox"/>

#### Reason for the Panel's Determination

The Panel is satisfied that the modifications as proposed will not have any adverse environmental effects and are minor in nature.

#### 6.2 BDA-2017/1154/A - 904-922 Botany Road, Mascot

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

The following person spoke:

- Tone Wheeler, architect, spoke for the officer's recommendation and responded to the Panel's questions.

### Determination

The Bayside Local Planning Panel **REFUSES** the Section 4.55(1A) Application to modify Development Consent No. 2017/1154 to provide a roof over car spaces and driveway on the northern side of Level 1, modification to the layout of units 6, 7, 8, 9, 10 and 11 on Level 2 and unit 17 on level 4, privacy screen proposed on the northern side of the private open space on units 9, 10 and 11. The reasons for refusal on a merits assessment required under Section 4.15 and the Regulations are as follows:

- 1 Insufficient information has been provided to justify the repositioning of the balconies for the units on Level 2 to encroach into the original separation distance and to convert the original private open space to an additional bedroom for the units. This would not have the effect of achieving an equitable sharing of the separation distances between buildings as detailed in the Apartment Design Guide. Furthermore, northern solar access to these balconies should not be relied upon that are located within this separation distance.
- 2 The plans and information submitted with the modification application are unclear in terms of the building constructed to date and the proposed changes shown on the modification plans. For example, in the unit inspected, the study has been constructed with a solid wall and door opening that for all intents and purposes could be used as an additional bedroom.

By way of comment, the Panel does not raise a concern with the north facing private courtyards to Units 6, 7 and 8 and the slab built to provide greater coverage to the car parking area.

The Panel, as mentioned above, notes from the site inspection that there is a lack of conformity with the built form and the plans the subject of this modification application. These changes could have the effect of changing the private open space requirements and the contributions under Section 7.11 adjusted. Any future modification application would also need to satisfy the requirement of being substantially the same development.

Name	For	Against
Jan Murrell	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Robert Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Greg Wright	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Thomass Wong	<input checked="" type="checkbox"/>	<input type="checkbox"/>

### Reason for the Panel's Determination

The Panel is not satisfied that all the changes in the modification application will result in a development that provides acceptable internal and external amenity.

### 6.3 DA-2015/421/E - 8-10 Martin Avenue, 47-49 Bonar Street & 9 Bidjigal Road, Arncliffe

The following person spoke:

- Michael Gheorghiu, applicant, spoke for the officer's recommendation.

#### Determination

- 1 That Development Application No 2015/421/E, being a Section 4.56 application to amend development consent number 2015/421, to modify and delete conditions relating to land subdivision, dedications, strata management and public domain matters at 8-10 Martin Avenue, 47 - 49 Bonar Street and 9 Bidjigal Road Arncliffe be APPROVED and the consent amended in the following manner:

- A. By amending conditions 2, 97, 99, 141 and 146 in the following manner:

*Condition 2:*

2. *The development must be implemented in accordance with the plans listed below, the application form and on any supporting information received with the application, except as may be amended in red on the attached plans and by the following conditions.*

Plan/Dwg No.	Drawn by	Dated	Received by Council
Architectural Plans			
AR-1701 Issue 15 (Section BB)	Mode Design	12/01/2018	15/01/2018
AR - 1700 Issue 15 (Section AA)	Mode Design	12/01/2018	15/01/2018
AR-1604 Issue 14 (North Elevation)	Mode Design	12/01/2018	28/03/2018
AR-1603 Issue 16 (West Elevation)	Mode Design	12/01/2018	15/01/2018
AR-1602 Issue 15 (East Elevation)	Mode Design	12/01/2018	15/01/2018
AR-1601 Issue 18 (South Elevation)	Mode Design	26/03/2018	28/03/2018
A-201 Rev 17 (Upper Basement Plan)	Mode Design	23/10/2017	18/01/2018
A-200 Rev 16 (Lower Basement Plan)	Mode Design	23/10/2017	18/01/2018
AR-1109 Issue 11 (Roof Plan)	Mode Design	12/01/2018	15/01/2018
AR-1108 Issue 13 (Level 9)	Mode Design	12/01/2018	15/01/2018

AR-1107 Issue 13 (Level 8)	Mode Design	12/01/2018	15/01/2018
AR-1106 Issue 13 (Level 7)	Mode Design	12/01/2018	15/01/2018
AR-1105 Issue 13 (Level 6)	Mode Design	12/01/2018	15/01/2018
AR-1104 Issue 13 (Level 5)	Mode Design	12/01/2018	15/01/2018
AR-1103 Issue 12 (Level 4)	Mode Design	12/01/2018	15/01/2018
AR-1102 Issue 12 (Level 3)	Mode Design	12/01/2018	15/01/2018
AR-1101 Issue 12 (Level 2)	Mode Design	12/01/2018	15/01/2018
AR-1100 Issue 18 (Level 1)	Mode Design	12/01/2018	15/01/2018
AR-320 Issue 8 (Site Plan)	Mode Design	10/03/2016	16/03/2016
Landscape Plans			
AR-8002 Issue 5 (Level 9)	Mode Design	16/08/2016	31/08/2016
AR-8001 Issue 5 (Level 8)	Mode Design	15/08/2016	31/08/2016
AR-8000 Issue 5 (Ground level)	Mode Design	24/08/2016	31/08/2016
<i>Plan of subdivision of Lots 1 &amp; 2 in DP233666 and Lot 21 in DP1238386 and easements over Lot 2 in DP233666, Lot 21 in DP1238386 and Lot 3 in DP1247416</i>	<i>Matthew William Cleary</i>	29/06/2018	26/04/2019
Park Landscape Plans			
PP-L000-E Cover Sheet (Materials & Finishes Specification)	Mode Design	18/03/2016	31/03/2016
PP-L400-F Landscape Plan 1 of 2	Mode Design	18/03/2016	31/03/2016
PP-L401-F Landscape Plan 2 of 2	Mode Design	18/03/2016	31/03/2016
PP-L500-D Planting Plan 1 of 2	Mode Design	18/03/2016	31/03/2016
PP-L501-D Planting Plan 2 of 2	Mode Design	18/03/2016	31/03/2016
PP-L600- C Typical Landscape Details Sheet 1 of 3	Mode Design	18/03/2016	31/03/2016

PP-L601- C Typical Landscape Details Sheet 2 of 3	Mode Design	18/03/2016	31/03/2016
PP-L602- C Typical Landscape Details Sheet 3 of 3	Mode Design	18/03/2016	31/03/2016
Driveway Plans			
DRIVEWAY LONG SECTION B99 VEHICLE Drawing DR1 Issue F	Acor Consulting Pty Ltd	13/12/2017	10/01/2018
DRIVEWAY LONG SECTION B85 VEHICLE Drawing DR1 Issue F	Acor Consulting Pty Ltd	13/12/2017	10/01/2018
LOADING BAY PLAN Drawing DR3 Issue F	Acor Consulting Pty Ltd	13/12/2017	10/01/2018
DRIVEWAY CLEARANCE DETAIL DR4 Issue F	Acor Consulting Pty Ltd	13/12/2017	10/01/2018
Drainage Plans			
GO170325 – C1 (ISSUE 8) Stormwater Management Plan- Cover Sheet& Notes	Acor Consulting Pty Ltd	31/05/2017	26/02/2018
GO170325 – C2 (ISSUE 8) Basement Level B2	Acor Consulting Pty Ltd	31/05/2017	26/02/2018
GO170325 – C3 (ISSUE 8) Basement LevelB1	Acor Consulting Pty Ltd	31/05/2017	26/02/2018
GO170325 – C4 (ISSUE 8)Ground Floor Plan	Acor Consulting Pty Ltd	31/05/2017	26/02/2018
GO170325 – C5 (ISSUE 8) - OSR / OSD Schematic Diagram	Acor Consulting Pty Ltd	31/05/2017	26/02/2018
GO170325 – C6 (ISSUE 8) Details Sheet 1	Acor Consulting Pty Ltd	31/05/2017	26/02/2018
GO170325 – C7 (ISSUE 8)Details Sheet 2	Acor Consulting Pty Ltd	31/05/2017	26/02/2018
GO170325– C9 (ISSUE 8)Details Sheet 4	Acor Consulting Pty Ltd	31/05/2017	26/02/2018

GO170325 – C10 (ISSUE 8)Details Sheet5	Acor Consulting Pty Ltd	31/05/2017	26/02/2018
GO140198 – C11 (ISSUE 7) STORMWATER MANAGEMENT PLANS - EROSION SEDIMENT CONTROL PLAN	Acor Consulting Pty Ltd	2/3/2016	
GO140198 – C12 (ISSUE 7) STORMWATER MANAGEMENT PLANS - EROSION SEDIMENT CONTROL PLAN – NOTES AND DETAILS.	Acor Consulting Pty Ltd	2/3/2016	
GO140198 – 1.01 (ISSUE 2) WATER CYCLE MANAGEMENT REPORT – COVER SHEET	Acor Consulting Pty Ltd	4/3/2016	
GO140198 – 1.02 (ISSUE 2) WATER CYCLE MANAGEMENT REPORT – STORMWATER QUALITY INVESTIGATION SECTION 1-3.	Acor Consulting Pty Ltd	4/3/2016	
GO140198 – 1.03 (ISSUE 2) WATER CYCLE MANAGEMENT REPORT – STORMWATER QUALITY INVESTIGATION SECTION 4-5.	Acor Consulting Pty Ltd	4/3/2016	
GO140198 – 1.04 (ISSUE 2) WATER CYCLE MANAGEMENT REPORT – STORMWATER QUALITY INVESTIGATION SECTION 5-6.	Acor Consulting Pty Ltd	4/3/2016	
GO140198 – 1.05 (ISSUE 2) WATER CYCLE MANAGEMENT REPORT – STORMWATER QUALITY INVESTIGATION SECTION 7.	Acor Consulting Pty Ltd	4/3/2016	
GO170325 D1 Issue E – Stormwater Management Plan Public Park	Acor Consulting Pty Ltd	31/05/201 7	26/02/2018
GO170325 D2Issue E– Rear Overland Flow Path Plan51-61 Bonar Street Arncliffe	Acor Consulting Pty Ltd	31/05/201 7	26/02/2018



[Amendment A - S96(AA) amended on 15/11/2016]  
[Amendment B - S96(AA) amended on 15/01/2018]  
[Amendment C - S96(AA) amended on 16/02/2018]  
[Amendment D - S96(AA) amended on 29/03/2018]  
[Amendment E - S4.56 amended on 28/05/2019]

Condition 97:

97. *The footpaths and streetscape on Martin Avenue and Bonar Street shall be constructed in accordance with Rockdale City Council Public Domain Plan for 'Wolli Creek and Bonar Street Precinct'. Existing surface levels shall remain unchanged unless approved by the Council in writing. No work shall commence within the road reserve fronting Martin Avenue and Bonar Street prior to obtaining a section s138 permit from the Council.*

[Amendment A – S96(AA) deleted on 15/11/2016]  
[Amendment E - S4.56 amended on 28/05/2019]

Condition 99:

99. *Where Council's park/reserve is damaged as a result of building work or vehicular building traffic, this area shall be restored by the developer at their expense. Repairs shall be completed prior to the issue of the Occupation Certificate.*

[Amendment E - S4.56 amended on 28/05/2019]

Condition 141:

141. *The new lots created are as per 'Plan of subdivision of Lots 1 & 2 in DP233666 and Lot 21 in DP1238386 and easements over Lot 2 in DP233666, Lot 21 in DP1238386 and Lot 3 in DP1247416', prepared by Matthew William Cleary, dated 29/6/2018. The subdivision plan is to be reviewed and approved by Council prior to the issue of the Subdivision Certificate.*

[Amendment E - S4.56 amended on 28/05/2019]

Condition 146:

146. *All existing and proposed services on the property shall be shown on a plan, and shall be submitted to Council. This includes electricity, gas, water, sewer, stormwater and telephone services. Where any service crosses one lot but benefits another lot, it is to be covered by an easement. The service easement is to be covered by a Section 88B or 88E Instrument, which may only be varied or extinguished with the consent of Bayside Council, except for Lot 3 which is proposed to be amalgamated with Lot 2 in the future consolidation plan.*

*These provisions are to be put into effect prior to the release of any Occupation Certificate.*

[Amendment A — S96(AA) amended on 15/11/2016]  
[Amendment E - S4.56 amended on 28/05/2019]

B. By deleting conditions 104 and 140 as follows:

Condition 104:

*104. Deleted*

*[Amendment E - S4.56 amended on 28/05/2019]*

Condition 140:

*140. Deleted*

*[Amendment E - S4.56 amended on 28/05/2019]*

C. By inserting condition 95A as follows:

Condition 95A:

*95A. The developer install an additional light pole within the north-eastern corner of the future Community Park along the frontage of 49 Bonar Street to Council's satisfaction. Lighting shall comply with Australian Standards AS1158.*

*[Amendment E - S4.56 amended on 28/05/2019]*

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

Name	For	Against
Jan Murrell	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Robert Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Greg Wright	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Thomass Wong	<input checked="" type="checkbox"/>	<input type="checkbox"/>

### Reason for the Panel's Determination

The Panel is satisfied the above minor modifications will not create any adverse impacts and approval is warranted.

## 6.4 DA-2018/213 - 8-20 Sarsfield Circuit, Bexley North

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

### Determination

1 The Development Application No. DA-2018/213 for the demolition of the existing mixed use and residential buildings and the construction of a seven (7) storey plus rooftop mixed use development, comprising 56 units, 6 retail shops and

basement car parking at 8-20 Sarsfield Circuit, Bexley North, is **REFUSED** pursuant to Section 4.16(1)(b) of the Environmental Planning and Assessment Act 1979 for the following reasons:

- a Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy Clause 4.3 - Height of Buildings of Rockdale Local Environmental Plan 2011. The applicant's written request has not adequately addressed the matters required to be demonstrated by Clause 4.6(3) of Rockdale Local Environmental Plan 2011 Height of Buildings standard and the objectives of the control. In this regard high quality of urban form, an appropriate transition in built form, and land use intensity are not met. As such the development is not in the public interest.
- b Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy Clause 4.4 for the FSR standard in the Rockdale Local Environmental Plan 2011. The applicant's written request has not adequately addressed the matters required to be demonstrated by Clause 4.6(3) of Rockdale Local Environmental Plan 2011 for a variation to FSR and its objectives are not met. That is: to maintain an appropriate visual relationship between the development and existing character of the area; and the impacts on the use or enjoyment of adjoining properties. As such the development is not in the public interest.
- c Pursuant to the provisions of Section 4.15(1)(b) and Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, the site is unsuitable for the proposed development.
- d The proposed development, pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, is inconsistent with requirements and objectives of State Environmental Planning Policy No. 55 - Remediation of Land. In particular, a Phase 1 Environmental Site Investigation has not been provided.
- e 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 with respect to the loss of existing affordable housing on the subject site.
- f The proposed development, pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, is inconsistent with State Environmental Planning Policy 65 & the Apartment Design Guide in regard to context and neighbourhood character, built form and scale, density, landscape and amenity.
- g Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy Clause 6.6 - Flood Planning of Rockdale Local Environmental Plan 2011 as a new flood advice letter did not accompany the application.
- h Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not

satisfy Clause 6.7 - Stormwater of Rockdale Local Environmental Plan 2011 as it fails to demonstrate acceptable disposal of stormwater from the subject land.

- i The proposal is inconsistent with the provision of Clause 4.6(8)(ca) of Rockdale LEP 2011 and does not accommodate or otherwise provide any demonstrable public benefit to the community.
- j Pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development is an overdevelopment of the site and is excessive in terms of its bulk, scale, height and density. The proposal is inconsistent with the future desired character of the area because it is inconsistent with the development controls applying to the land.
- k 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 in the public interest and is likely to set an undesirable precedent for overdevelopment within this locality of a neighbourhood centre.

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

Name	For	Against
Jan Murrell	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Robert Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Greg Wright	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Thomass Wong	<input checked="" type="checkbox"/>	<input type="checkbox"/>

#### Reason for the Panel's Determination

The Panel considers the proposal represents an overdevelopment of the site and the development application is not supported for the reasons given above.

The Chairperson closed the meeting at 7.00 pm.

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**Bayside Local Planning Panel**

**11/06/2019**

Item No	<b>6.1</b>
Application Type	S4.55(2) Modification
Application No	DA-18/1183
Lodgement Date	02/10/2018
Property	<b>Railway Bridge Above Robey Street, Mascot</b>
Ward	Mascot
Owner	ATRC
Applicant	Graham Johanson c/ OoH Media Fly Pty Ltd
Proposal	Modification of Development Consent DA93/3067 to replace the bridge mounted general advertising structure with an integrated digital LED screen.
No. of Submissions	Nil
Cost of Development	\$1000000
Report by	Michael McCabe, Director City Futures

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**Officer Recommendation**

- 1 That the Panel be satisfied that the proposed modification:
    - i. is substantially the same development as the development for which consent was originally granted and before that consent was modified;
    - ii. has been notified; and
    - iii. has been assessed having regard to the relevant matters in s4.15(1) of the EP&A Act.
  - 2 That the Panel consider any submissions made concerning the proposed modification and take into account the reasons of the consent authority that granted the consent that is sought to be modified.
  - 3 That modification application DA-2018/1183 seeking to modify development consent DA93/3067 to replace the bridge mounted general advertising structure with an integrated digital LED screen on the Railway Bridge above Robey Street, Mascot be APPROVED . The proposal is modified in the following manner:
    - i. By amending condition 1 to refer to approved plans and documentation.
    - ii. By amending condition 8 to read:

Advertisements displayed shall not contain/use:

      - a. Flashing lights.
      - b. Animated display, moving parts or simulated movement.
      - c. A method of illumination that unreasonably distracts or dazzles.
-

- d. Images that may imitate a prescribed traffic control device, for example red, amber or green circles, octagons or other shapes or patterns that may result in the advertisement being mistaken for a prescribed traffic control device.
  - e. Text providing driving instructions to drivers.
  - iii. By deleting conditions 3, 7 and 12; and
  - iv. By adding conditions 13 to 51 as per attached report.
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## Location Plan



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## Attachments

- 1 Planning Report [↓](#)
- 2 Site Plan & Elevations [↓](#)
- 3 Original DA consent [↓](#)
- 4 Draft conditions [↓](#)

## BAYSIDE COUNCIL

### Planning Assessment Report

#### Application Details

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<b>Application Number:</b>	DA-2018/1183
<b>Date of Receipt:</b>	2 October 2018
<b>Property:</b>	Lot 57 In DP 648872, Railway bridge above Robey Street, Mascot
<b>Owner:</b>	ATRC
<b>Applicant:</b>	Graham Johanson C/- Ooh Media Fly Pty Ltd
<b>Proposal:</b>	Modification of Development Consent DA93/3067 to replace the bridge mounted general advertising structure with an integrated digital LED screen
<b>Recommendation:</b>	Approval
<b>Value:</b>	\$1,000,000
<b>No. of submissions:</b>	Nil
<b>Author:</b>	Kerry Gordon – Kerry Gordon Planning Services
<b>Date of Report:</b>	1 May 2019

#### Key Issues

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Modification Application No. 2019/1183 was lodged on 2 October 2018 seeking to modify Development Consent DA93/3067 to replace the bridge mounted general advertising structure with an integrated digital LED screen. The application is accompanied by a Voluntary Planning Agreement which would have the effect of paying Council a percentage of the sign revenue as a public benefit.

The existing sign is mounted on the south-western side of the Robey Street railway bridge, Mascot and a second sign is mounted on the north-eastern side of the bridge.

The application was placed on public exhibition from 17 October to 7 November 2018 and no submissions were received during the public notification period.

The key issues relevant to the assessment of the replacement of the advertising display panel with a digital screen are the potential impacts on road safety, on safety of use of the airport and on the visual character of the area.

RMS has reviewed the proposal subject to *State Environmental Planning Policy No 64 (Advertising and Signage)* and has provided concurrence under Section 138 of *Roads Act 1993* with the inclusion of conditions, including a trial period.

The application was also referred to the Civil Aviation Safety Authority (CASA), who raised no objections to the proposal.



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

### Recommendation

That modification application DA-2018/1183 seeking to modify Development Consent DA93/3067 to replace the bridge mounted general advertising structure with an integrated digital LED screen on the Railway Bridge above Robey Street, Mascot be APPROVED subject to the amendment to the approved conditions of consent attached to this report.

### Background

#### History

The existing general purpose advertising structure, erected on the railway bridge over Robey Street, Mascot was approved under Development Consent 93/3067 dated 18 October 1993 and was one of two signs approved under that consent, with the other sign located on the north-eastern side of the railway bridge. The sign has been consistently operated since it was erected on the site.

It is noted that Condition 3 of the development consent required that the sign not exceed 12m x 3m in dimensions, however the existing sign has dimensions of 12.8m x 3.5m. As such the existing sign was not constructed in accordance with the development consent under which it was approved, being constructed with an advertising display area of 44.8m<sup>2</sup> where the approval permitted only 36m<sup>2</sup>, an increase of 8.8m<sup>2</sup> or 24.4%.

#### Proposal

Modification Application No. 2019/1183 seeking to modify Development Consent DA93/3067 to replace the bridge mounted general advertising structure with an integrated digital LED screen. The application is accompanied by a Voluntary Planning Agreement.



Figure 1: Existing advertising structure on south-western side of railway bridge over Robey Road



The existing advertising structure (see previous photograph) is an internally illuminated light box and has dimensions of 12.8m x 3.5m, with a display area of 44.8m<sup>2</sup>. The display structure is mounted on a wider structure which extends for the full length of the railway bridge and can be seen in the preceding photograph. This structure also has a logo of the advertising company attached to it at the bottom.

The proposed LED digital screen is to have dimensions of 12.44m x 3.29m, with a display area of 40.93m<sup>2</sup> and is proposed to operate 24 hours a day, seven days a week. The screen will have a depth of 300mm. This represents a reduction from the dimensions of the existing sign, but still represents a 4.93m<sup>2</sup> or 13.8% increase on the size of the originally approved sign.

It is proposed that the digital screen will display static images only and will not involve scrolling, flashing or motion picture or emit intermittent light. It is proposed that the advertisements will be changed every 10 seconds, with a 0.1 second transition time.



**Figure 2: Montage of proposed advertising sign (taken from SEE)**

The application indicates the advertising structure will not be used to display advertising for tobacco products, of an overtly religious nature, containing overt or sexually graphic impact or pornography and illegal drugs. It is indicated that the advertising content will comply with the Australian Advertising Industry Codes of Conduct and Outdoor Media Association's Code of Conduct.

The application indicates that Amber Alerts will be displayed on the screen at the request of law and safety enforcement agencies.

The application also seeks to amend/delete a number of the original conditions of consent as follows:

- It is requested that Condition 1, as follows, be deleted.

*The size, location and extent of the advertising signs on the north-eastern and south-western elevations of the bridge shall be the same as those contained in the plan prepared by Barry Smith Bateman & Associates Pty Ltd, numbered 7121, dated 6th September 1990 and received by Council on 11th August 1993.*

- It is requested that Condition 3, as follows, be amended to reflect the dimensions of the proposed digital sign.

*No part of the signs erected on either side of the overspan of the bridge shall not exceed the dimensions of 3m high and 12m wide.*

- It is requested that Condition 7, as follows, be deleted as Ordinance 55 has been repealed.

*The submission of a sign application under the provisions of Ordinance 55.*

- It is requested that Condition 12, as follows, be amended to reference the modified documents and plans.

*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.3067 of the 12th day of July 1993, and that any alteration, variation or extension to the use, for which approval has been given, would require further Town Planning Approval from Council.*

Subsequent to discussions with the Applicant, it has been agreed to amend the application as follows:

- The sign on the north-eastern side of the bridge is to be removed; and
- Any consent for the sign on the south-western side of the bridge shall lapse upon demolition of the bridge.

#### **Site Description**

The site is a railway bridge over Robey Street Mascot, approximately 30m north of its intersection with Qantas Drive and Seventh Street, known as the Robey Street Underbridge and is legally described as Lot 57 in DP 648872. The railway bridge is of steel construction and services the Botany Goods Train Line (see aerial photograph following identifying the location of the site on the following page).

Robey Street is a one way, east bound, street that is an exit route from Kingsford Smith Domestic Airport and carries traffic only in the direction facing of the sign on the south-western side of the bridge.

The surrounding area is characterised by commercial development and airport related uses and provides transport corridors to and from the Domestic and International Airports.

The existing advertising structure is an internally illuminated light box having dimensions of 12.8m x 3.5m and an advertising display area of 44.8m<sup>2</sup>. The light box is attached to a series of light coloured panels that are attached to the bridge structure.



Figure 3: Aerial photograph with Site identified in green

### Referrals

The table below outlines the referrals involved with the application.

**Table 1:** External and Internal Referrals

Referral	Status
RMS	No objections subject to conditions which are included in the recommendation
SACL	Concern is raised in relation to the proximity of the sign to the existing digital portrait sign near the intersection. The misalignment of the sequencing of the signs could confuse and distract drivers and pose a road safety risk. <u>Comment:</u> Whilst this concern is noted, given the support by RMS and the assessment of the separation distance under the Guidelines, following, the concern is not concurred with.
CASA	No objections subject to conditions which are included in the recommendation
ATRC	The proposal is supported, however it is requested that consideration be given to the timing of the construction of the Botany Rail Duplication Project. <u>Comment:</u> Discussions with ATRC revealed that a State Significant Infrastructure Application was lodged with the Department in November 18 and the Secretary's Environmental Assessment Requirements were provided in December 18. The existing bridge is to be demolished and replaced by duplicate bridges. The works are anticipated to occur in mid-late 2020. After discussions with the Applicant in this regard, it was agreed that a condition of consent be placed upon any approval limiting the approval until such time as the bridge is demolished.

Referral	Status
Development Engineer	No objections raised or conditions required

### Statutory Considerations

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

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

#### **S4.55 – Modification of Consents - Generally**

Section 4.55(2) of the Environmental Planning and Assessment Act permits the modification of a development application that does not involve a minor error or have minimal environmental impact, as follows, and the application is made pursuant to Section 4.55(2).

##### **(2) Other modifications**

*A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:*

- (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- (c) it has notified the application in accordance with:*
  - (i) the regulations, if the regulations so require, or*
  - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

*Subsections (1) and (1A) do not apply to such a modification.*

In relation to Section 4.55(2)(a), the application indicates that the modified development will be substantially the same as the development originally granted consent for the following reasons:

- The description of the original development is "advertising signs" and the modified development would be for the same.



- The proposed change will not substantially alter the approved built form as despite the change of the technology, the overall form, shape and height of the advertising structure remain the same as initially approved, with only a slight reduction in the size of the screen.
- The modified development is essentially or materially the same as the development that was initially approved.

The above arguments are, in part, concurred with, it being considered that the use of the development remains the same. However, the existing advertising structure has not been constructed in accordance with the development consent, being 24% larger, and the proposed advertising structure will still be 13.8% larger than the approved one. As such the argument that the modified development involves a slight reduction in the size of the screen is not correct. Notwithstanding this, it is considered that the modified development as proposed will be substantially the same as the development originally granted consent.

In relation to Section 4.55(2)(b), the application is not integrated development and the subclause is not applicable to the assessment.

In relation to Section 4.55(2)(c), the application has been notified in accordance with Council's DCP between 17 October to 7 November 2018.

In relation to Section 4.55(2)(d), no submissions were received by Council in response to the notification of the application.

Section 4.55(3) of the Environmental Planning and Assessment Act, as follows, requires consideration of the relevant matters identified in Section 4.15(1), which are addressed following.

- (3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application. The 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.*

#### **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. 64 (Amendment 3) – Advertising and Signage**

The application is for signage that is visible from a public place and which is permissible with consent and is not signage that is exempt development, and as such, pursuant to clause 6, SEPP 64 is applicable to the assessment of the application.

##### **Part 2 Signage Generally**

Clause 8 of SEPP 64 states that the consent authority must not grant consent to an application for signage unless it is satisfied:

- (a) that the signage is consistent with the objectives of this Policy as set out in clause 3 (1) (a), and*

- (b) that the signage the subject of the application satisfies the assessment criteria specified in Schedule 1.*

#### Objectives

The objectives stipulated under Clause 3(1)(a) are:

- (a) to ensure that signage (including advertising):*
- (i) is compatible with the desired amenity and visual character of an area, and*
  - (ii) provides effective communication in suitable locations, and*
  - (iii) is of high quality design and finish, and*

The replacement advertising display panel is appropriate to the character of the area, which includes several large scale, general purpose advertisement structures. The size of the advertising structure is being reduced slightly compared to the existing sign, but is increases in size compared to the approved sign. It is not considered appropriate that a sign larger than that approved be permitted by way of the modification of consent, however, as the Applicant has agreed to remove the sign on the other side of the bridge, on balance, a larger sign as proposed is reasonable.

The communication provided will be subject to conditions to ensure it is appropriate and will not impact road safety and will allow for ease of changing of advertising content, being possible using a computer, rather than needing to erect a new advertising panel.

The quality and finish of the LED digital screen is appropriate to the context.

- (b) to regulate signage (but not content) under Part 4 of the Act, and*

Noted.

- (c) to provide time-limited consents for the display of certain advertisements, and*

The advertising structure has a current approval. However, pursuant to clause 14, a condition of consent will limit the consent for the digital screen to 15 years, satisfying this objective. Further, given the imminent demolition of the railway bridge, the standard 15 year condition will be amended to indicate the consent lapses in 15 years or when the bridge is demolished, whichever happens first.

- (d) to regulate the display of advertisements in transport corridors, and*

The site is located in a transport corridor.

- (e) to ensure that public benefits may be derived from advertising in and adjacent to transport corridors.*

The sign application is supported by a VPA which provides a payment per square metre of signage per annum to Council by way of public benefit, satisfying this objective.

#### Schedule 1

The matters of consideration contained in Schedule 1 are addressed following.

#### **1 Character of the area**

- *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 design of the signage is appropriate to and compatible with the area, which is characterised with a series of large outdoor general purpose advertising structures. Given the proliferation of signage in this area, the increase in the size of the signage from that approved can only be supported subject to the removal of the signage on the other side of the bridge and that is conditioned accordingly. There is no theme for outdoor advertising in the locality.

## **2 Special areas**

- *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 signage is not located in a conservation area and is not identified as an item or heritage, but is in the visual catchment of heritage items in the vicinity of the site (I13, I168 and I170 – including Sydney Airport Group). The site is not in the vicinity of residential areas or other environmentally sensitive or natural conservation areas, is not located on a waterway, rural landscape or area of open space.

The sign is also located on a railway bridge which is listed on the RailCorp S170 Heritage and Conservation Register. The listing inventory indicates that the bridge is locally significant as the first welded steel railway bridge on the NSW rail network. The inventory indicates the significant fabric has been covered by signage, reducing its aesthetic quality. Given the bridge is intended to be demolished in the near future, the impact of any signage upon the heritage significance of the bridge is acceptable.

## **3 Views and vistas**

- *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?*

The signage is existing and its change in display format will not result in any detrimental impacts upon views or viewing rights of other advertisers. The signage does not dominate the skyline or reduce the quality of vistas in the area.

## **4 Streetscape, setting or landscape**

- *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?*
- *Does the proposal require ongoing vegetation management?*

As identified previously, there is concern with the size of the existing signage, not being compliant with the conditions of consent, however, with the removal of the second sign, the approval of a modified larger sign is acceptable. The sign does not require ongoing vegetation management.

Another matter that should be address in relation to the design is the current poor state of what appears to be the provision of electricity to the current signage lighting. As can be seen in the following photograph wiring from the signage is hanging loose from the sign in front of the embankment to the railway. If this wiring is related to the signage it should be removed and replaced with appropriately secured and located wiring to minimise its visual impact and ensure its safety. The Applicant has indicated that the wiring does not appear to be providing electricity to the existing sign but that they undertake to investigate the purpose of the wires and will seek to tidy up the cables when installing the proposed sign, subject to ARTC's approval and a condition to this effect is recommended.

Finally, in relation to reduction of clutter by rationalising and simplifying existing signage, the consent was for two signs, one on either side of the bridge. Since the installation of the signage, and as acknowledged in the Statement of Environmental Effects, Robey Street has become a one way street. As such the signage on the other side of the bridge (known as Sign B) is not visible to motorist using Robey Street. Whilst the sign is still used for advertising (see first photograph on the following page), the structure is falling into a state of disrepair (see second photograph on the following page). The applicant has agreed to remove this sign and a condition to this effect is recommended.



Figure 4: Wiring coming from the existing signage adjacent to the railway embankment





Figure 5: Sign B on opposite side of bridge



Figure 6: Damage to Sign B

**5 Site and building**

- *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?*

The relationship of the sign with the railway bridge has been discussed previously and it is considered appropriate in the context of the plans to demolish the bridge in the near future. The sign does not show any particular level of innovation or imagination in relation to the site or railway bridge structure.

**6 Associated devices and logos with advertisements and advertising structures**

- *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?*

The digital display contains the lighting within the device.

**7 Illumination**

- *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?*

An assessment of the illumination impact of the signage has shown that, subject to compliance with luminance levels, the digital screen will not result in unacceptable impacts upon the safety of pedestrians or vehicles and will not impact aircraft safety. The glare from the signage has been assessed as being compliant with AS 4282. Conditions of consent are recommended to insure the luminance levels are compliant with the recommendation of the report. The signage is to operate 24 hours, seven days a week.

**8 Safety**

- *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?*

An assessment of the potential of the changing of the signage every 10 seconds upon traffic safety has been carried out on behalf of the applicant, with the report prepared by Bitzios indicating the frequency of signage change would have negligible impact upon road safety. The RMS response to the information provided was to permit change of the signage only once a day in the early hours of the morning as a condition of consent, but to allow an 18 month trial period where the signage could be changed every 60 seconds, with a follow-up traffic safety assessment to be provided by the applicant at the expiration of the trial period. Conditions to this effect are included in the recommendation.

### **Part 3 Advertisements**

#### **Division 1 General**

This part applies to all signage other than business identification and building identification signs or signage that is exempt or on vehicles and as such applies to the assessment of the application.

#### **Division 2 Control of Advertisements**

Division 2 also applies to advertisements and identifies Council as the consent authority and indicates that applications for advertisements also need to satisfy other relevant requirements of the Policy.

It further indicates that if clause 18 or 24 applies, the consent authority must not grant consent unless arrangements that are consistent with the Guidelines have been entered into for the provision of the public benefits to be provided in connection with the display of the advertisement.

The application is subject to Clause 18 and the applicant has indicated that a VPA will be entered into which provides a payment per square metre of signage per annum to Council by way of public benefit. The public benefit has been accepted by Council as being reasonable.

Clause 14 indicates that a consent granted under this Part ceases to be in force on the expiration of 15 years after the date on which the consent becomes effective, or a lesser period as specified by the consent authority. A condition of consent to this effect is recommended.

#### **Division 3 Particular Advertisements**

Clause 17 applies to advertisement with a greater display area than 20m<sup>2</sup> or a height of 8m or more above ground and makes such applications advertised development for the purposes of the Act. The application was advertised in accordance with the requirements of the Act. The clause also requires referral of the application to the RMS if it is advertisement to which clause 18 applies (ie is also located within 250m of, and is visible from, a classified road). Robey Street is a classified road and as such a referral was made to RMS, who issued concurrence to the application subject to conditions which have been included in the recommendation.

Clause 19 applies to advertisements with a greater display area of 45m<sup>2</sup> and as such does not apply to the assessment.

Clause 20 requires that the name or logo of the person who owns or leases an advertisement may only appear within the advertising display area and must not be greater than 0.25m<sup>2</sup>. The existing name plate has an area of 0.25m<sup>2</sup> as required by the provision but is located separate from the advertising display area. A condition is recommended requiring the logo to be relocated to be within the advertising display area.

Clause 24 permits consent to be granted to an advertisement on a bridge, but only if the consent authority is satisfied that the advertisement is consistent with the Guidelines, which are addressed following.

**Transport Corridor Outdoor Advertising and Signage Guidelines (2017)**

Section 2.3.2 addresses signage placement in transport corridors in urban areas and requires advertisement to satisfy the following criteria:

*Advertising in urban areas should be restricted to rail corridors, freeways, tollways or classified roads:*

- a) Within or adjacent to strategic transport corridors passing through enterprise zones, business development zones, commercial core zones, missed use zones or industrial zones*
- b) Within or adjacent to strategic transport corridors passing through entertainment districts or other urban locations identified by the local council in a relevant strategy as being appropriate for such advertising.*

*Consideration must be given to the compatibility of advertising development with surrounding land uses and whether such advertising will impact on sensitive locations.*

The site is located adjacent to a classified road and is zoned B5 Business Development. The site is located within a transport corridor accessing Sydney Kingsford Smith Airport in an area characterised by similar signage which was constructed in the 1990s and early 2000's and as such is consistent with Section 2.3.2.

Section 2.4 addresses signage clutter and requires consideration of the following relevant controls:

- a) Multiple advertisements on a single block of land, structure or building should be discouraged as they contribute to visual clutter.*
- b) Where there is advertising clutter, consideration should be given to reducing the overall number of individual advertisements on a site. Replacement of many small signs with a larger single sign is encouraged if the overall advertising display area is not increased.*

The existing advertising structure is one of several at the locality and the railway bridge supports a sign on both sides, Sign A being the sign subject of the modification and Sign B on the opposite side of the bridge. Given the change in direction of traffic on Robey Street, Sign B has a very limited audience catchment. Given the lack of audience and the state of repair of the sign, it is appropriate that it be removed as part of this application in order to reduce visual signage clutter. The Applicant has agreed to this request.

Section 2.5.1 addresses general criteria for advertising structures as follows:

- a) The advertising structure should demonstrate design excellence and show innovation in its relationship to the site, building or bridge structure.*

The upgrade to digital technology of the existing advertising structure shows innovation. No other part of the advertising structure demonstrates any particular elements of design excellence.

- b) The advertising structure should be compatible with the scale, proportion and other characteristics of the site, building or structure on which the proposed signage is to be located.*

Given the imminent demolition of the railway bridge, the retention of a sign of similar size and design to the existing sign, albeit of a digital nature, is acceptable.

- c) *The advertising structure should be in keeping with important features of the site, building or bridge structure.*

Given the imminent demolition of the railway bridge, the retention of a sign of similar size and design to the existing sign, albeit of a digital nature, is acceptable.

- d) *The placement of the advertising structure should not require the removal of significant trees or other native vegetation.*

The advertising structure is existing and will not require the removal of any vegetation.

- e) *The advertisement proposal should incorporate landscaping that complements the advertising structure and is in keeping with the landscape and character of the transport corridor.*

- *The development of a landscape management plan may be required as a condition of consent.*
- *Landscaping outlined within the plan should require minimal maintenance.*

The existing landscaping surrounding the advertising structure and in the area is appropriate and is appropriately low maintenance.

- f) *Any safety devices, platforms, lighting devices or logos should be designed as an integral part of the signage or structure on which it is to be displayed.*

The advertising structure is not proposed to be altered, but the new display will incorporate internal LED lighting.

- g) *Illumination of advertisements must comply with the requirements in Section 3.3.3.*

This is addressed later in the report.

- h) *Illumination of advertisements must not cause light spillage into nearby residential properties, national parks or nature reserves.*

The proposed change in display will not result in any unacceptable light spillage to residential properties, national parks or nature reserves.

Section 2.5.4 addresses freestanding advertisements as follows:

- a) *The advertising structure must not protrude above the dominant skyline, including any buildings, infrastructure or tree canopies, when viewed from ground level within a visual catchment of 1km. Note: This impact should be measured from the vehicle approach location and any other critical viewpoints.*

The sign is not a freestanding advertisement.

- b) *For a freestanding advertisement greater than 45sqm that requires consent from local council, a DCP must be in force that has been prepared on the basis of an advertising design analysis for the relevant area or precinct.*

The sign is not a freestanding advertisement.

- c) *Where the sign is in a transport corridor a landscape management plan may be required as part of the DA approval for a freestanding advertisement. This may include requirements to provide appropriate vegetation behind and adjacent to the advertising structure to minimise unintended visual impacts. Landscaping should include trees, shrubs and ground covers to provide adequate screening, softening, colour, soil stabilisation and weed reduction.*

The sign is not a freestanding advertisement.

Section 2.5.8 addresses digital signs and for signs greater than 20m<sup>2</sup> the following apply:

- a) *Each advertisement must be displayed in a completely static manner, without any motion, for the approved dwell time as per criterion (d) below.*

It is intended that the advertisement be displayed in static manner and a condition of consent is recommended to this effect.

- b) *Message sequencing designed to make a driver anticipate the next message is prohibited across images presented on a single sign and across a series of signs.*

A condition of consent to this effect is recommended.

- c) *The image must not be capable of being mistaken:*
- i. for a prescribed traffic control device because it has, for example, red, amber or green circles, octagons, crosses or triangles or shapes or patterns that may result in the advertisement being mistaken for a prescribed traffic control device*
  - ii. as text providing driving instructions to drivers.*

A condition of consent to this effect is recommended.

- d) *Dwell times for image display must not be less than:*
- i. 10 seconds for areas where the speed limit is below 80 km/h*
  - ii. 25 seconds for areas where the speed limit is 80km/h and over*

The applicant has sought a dwell time of 10 seconds, however RMS has required by condition of consent a 24 hour dwell time, with an 18 month trial period of a 60 second dwell time.

- e) *The transition time between messages must be no longer than 0.1 seconds, and in the event of image failure, the default image must be a black screen.*

A condition of consent to this effect is recommended.

- f) *Luminance levels must comply with the requirements in Section 3 below.*

The luminance levels have been addressed by a lighting report and a condition of consent will require compliance with the recommendations of that report.

- g) *The images displayed on the sign must not otherwise unreasonably dazzle or distract drivers without limitation to their colouring or contain flickering or flashing content.*

A condition of consent to this effect is recommended.

- h) *The amount of text and information supplied on a sign should be kept to a minimum (e.g. no more than a driver can read at a short glance).*

A condition of consent to this effect is recommended.

- i) *Any sign that is within 250m of a classified road and is visible from a school zone must be switched to a fixed display during school zone hours.*

The sign is not located proximate to school zone.

- j) *Each sign proposal must be assessed on a case-by-case basis including replacement of an existing fixed, scrolling or tri-vision sign with a digital sign, and in the instance of a sign being visible from each direction, both directions for each location must be assessed on their own merits.*

This report contains a merit assessment of this sign as required.

- k) *At any time, including where the speed limit in the area of the sign is changed, if detrimental effect is identified on road safety post installation of a digital sign, RMS reserves the right to re-assess the site using an independent RMS-accredited road safety auditor. Any safety issues identified by the auditor and options for rectifying the issues are to be discussed between RMS and the sign owner and operator.*

Noted

- l) *Sign spacing should limit drivers' view to a single sign at any given time with a distance of no less than 150m between signs in any one corridor. Exemptions for low speed, high pedestrian zones or CBD zones will be assessed by RMS as part of their concurrence role.*

The Applicant has provided a justification for the sign, which is located within 150m of an existing digital sign, seeking an exemption to this provision. The justification indicates a view to both the proposed and existing sign occurs at approximately 60m from the intersection and lasts until approximately midway through the intersection. At this point in time the traffic speeds are very slow, with traffic usually being in a stopped position or travelling below 40kph through the intersection. This is consistent with the exemption criteria for low speed environments. Given the 60 second dwell time for the proposed sign it is extremely unlikely that the other sign which has a 10 second dwell time would be changing at that same time and as such distraction is unlikely. For these reasons, and as concurrence has been granted by RMS after an assessment of road safety, the exemption to the separation distance is supported in this case.

- m) *Signs greater than or equal to 20sqm must obtain RMS concurrence and must ensure the following minimum vertical clearances;*

- i. *2.5m from lowest point of the sign above the road surface if located outside the clear zone*

- ii. *5.5m from lowest point of the sign above the road surface if located within the clear zone (including shoulders and traffic lanes) or the deflection zone of a safety barrier if a safety barrier is installed.*

*If attached to road infrastructure (such as an overpass), the sign must be located so that no portion of the advertising sign is lower than the minimum vertical clearance under the overpass or supporting structure at the corresponding location.*

RMS has raised no concern in relation to the location of the existing sign. The sign is attached to a railway bridge over Robey Street and does not project below the bridge.

- n) *An electronic log of a sign's operational activity must be maintained by the operator for the duration of the development consent and be available to the consent authority and/or RMS to allow a review of the sign's activity in case of a complaint.*

A condition of consent to this effect is recommended.

- o) *A road safety check which focuses on the effects of the placement and operation of all signs over 20sqm must be carried out in accordance with Part 3 of the RMS Guidelines for Road Safety Audit Practices after a 12 month period of operation but within 18 months of the signs installation. The road safety check must be carried out by an independent RMS-accredited road safety auditor who did not contribute to the original application documentation. A copy of the report is to be provided to RMS and any safety concerns identified by the auditor relating to the operation or installation of the sign must be rectified by the applicant. In cases where the applicant is the RMS, the report is to be provided to the Department of Planning and Environment as well.*

RMS in its concurrence conditions has required such an audit at the completion of an 18 month trial period for 60 second dwell time of the digital sign.

Section 3 addresses road safety of advertisements and Section 5 addressed RMS assessment of advertising proposal and the assessment of these sections have been deferred to the RMS given the location of the sign on a classified road. RMS is satisfied that the proposal can be supported but has conditions the dwell time of the signage to 24 hours, with an 18 month trial of a dwell time of 60 seconds. RMS has required the applicant to provide a further road safety assessment at the completion of the trial period to determine the impact the shorter dwell time has had on road safety.

Section 4 addresses public benefits for advertising proposals and Section 4.2 identifies appropriate public benefits can be a monetary contribution or an 'in kind' contribution. Such contribution must be linked to improvements in local community services and facilities such as:

- *improved traffic safety (road, rail, bicycle and pedestrian)*
- *improved public transport services*
- *improved public amenity within, or adjacent to, the transport corridor*
- *support school safety infrastructure and programs*
- *other appropriate community benefits such as free advertising time to promote a service, tourism in the locality, community information, or emergency messages*

Section 4.2.3 indicates that where a local council is the consent authority, public benefit contributions may also be required as part of the approval to display an outdoor advertisement.



In addition to the standard DA fee, the applicant may be required to provide an upfront fee or an annual fee (payable to Council) for the duration of the consent, generally 15 years and in such instance no other additional fee is to be charged under the Local Government Act. Such fee may not be required by a Council if it is satisfied that adequate public benefits will be otherwise provided. Improvements for traffic safety are to be a priority for expenditure and may include flashing lights, cycle ways, pedestrian refuges or bridges.

The applicant has proposed a monetary payment to Council based on a percentage of the revenue of the sign by way of a VPA, which is an acceptable form of public benefit. A condition of consent consistent with the offer of public benefit is recommended.

### Botany Bay Local Environmental Plan 2013

The provisions of the BBLEP 2013 have been considered in the assessment of the Development Application and the following information is provided:

**Table 3: BBLEP 2013 Compliance Table**

Principal Provisions of BBLEP 2013	Compliance (Yes/No)	Comment
Land Use Zone	Yes	The site is zoned SP 2 Infrastructure (Classified Road) under the BBLEP 2013.
Is the proposed use/works permitted with development consent?	No	The proposed use is <i>signage</i> which is not a permissible use with consent. However, the advertising structure is an existing one which was granted consent and has operated continually since the consent was granted. As such the sign has existing use rights and the modification of the sign is permissible with consent pursuant to s. 4.65 of the Environmental Planning and Assessment Act.
Does the proposed use/works meet the objectives of the zone?	Yes	The proposed signage is not inconsistent with the objectives of the zone which are as follows: <ul style="list-style-type: none"> <li>• <i>To provide for infrastructure and related uses.</i></li> <li>• <i>To prevent development that is not compatible with or that may detract from the provision of infrastructure</i></li> </ul>
What is the height of the building? Does the height of the building comply with the maximum building height?	N/A	The site does not have a maximum height control.
5.10 – Heritage Conservation	Yes	The site is proximate to three items of heritage, the Commonwealth Water and Sewerage Pumping Stations (state significance), the ruins of the Botany Pumping Station (local significance) and Sydney (Kingsford Smith) Airport (local significance). The change to the display method for the signage will not detrimentally impact any of the items of heritage as it does not fundamentally

Principal Provisions of BBLEP 2013	Compliance (Yes/No)	Comment
		change the sign.
The following provisions in Part 6 of the LEP apply to the development:		
• 6.1 – Acid Sulfate Soils (ASS);	Yes	Class 2, but as no disturbance of the soil occurs no further assessment is required.
• 6.2 – Earthworks;	Yes	The advertising structure exists and there are no excavation works proposed and as such there will be no disturbance to the soil
• 6.3 – Stormwater management;	Yes	The proposed advertising structure will not impact stormwater management in the area.
• 6.8 – Airspace operations;	Yes	The height of the sign is not proposed to be altered and CASA have raised no objections to the proposal subject to requiring further approval for use of cranes is in excess of RL 10.6. A condition to this effect is recommended.

The objectives and provisions of the BBLEP 2013 have been considered in relation to the subject development application. The proposal is satisfactory in terms of the BBLEP 2013.

#### **S4.15(1)(a)(ii) - Provisions of any Draft Environmental Planning Instruments**

There are no current Draft Environmental Planning Instruments applicable to this development.

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

The following Development Control Plan is relevant to this application.

#### **Botany Bay Development Control Plan 2013**

The following is an assessment of the proposed development against the relevant provisions of this DCP as they relate to signage.

##### ***Part 3B – Heritage***

Refer to Table 3.

##### ***Part 3J- Aircraft Noise and OLS***

Refer to Table 3.

##### ***Part 3D – Signage***

The following provisions of Part 3D apply to the assessment of the application.

*Control C2 All signage is to be designed to:*

- (i) *Consider the architectural design of the building that the sign will be erected upon;*

The sign will have a similar design and size to the existing sign and is acceptable.

- (ii) *Be in scale with the building;*

*The sign has a similar design and size to the existing sign and has an acceptable relationship to the bridge supporting it.*

- (iii) *Not obscure architectural elements of the building or adjoining buildings;*

*The existing sign largely obscures the bridge upon which it is located and the proposed sign has a similar design and size and is therefore considered acceptable.*

- (iv) *Consider the effect on neighbouring buildings, streets and existing signs to ensure they do not create or add to undesirable visual clutter;*

The removal of the existing sign on the other side of the bridge will reduce visual clutter in the area.

- (v) *Require that any proposed logos, graphics or corporate colours to be part of the sign are sympathetic to the design, architecture, colours, finishes and materials of the building and the surrounding streetscape;*

A condition to this effect is recommended.

- (vi) *Ensure that the front façades of the building between the first floor and the parapet of the upmost level remains free from signage;*

N/A

- (vii) *Minimise the visibility of the signage structures, and any associated cabling, conduit or aerials;*

The digital screen incorporates all signage structure, ensuring a neat finish to the sign.

- (viii) *Give consideration to the visual impact of the signage on the skyline and surrounding buildings;*

N/A

- (ix) *Minimise the projection of the structure from the built form of the building; and*

N/A

- (x) *Not be attached to other advertising structures or signage.*

N/A

**Control C3** *The following are generally discouraged:*

- (i) *Advertising signage involving flashing or moving signs;*

The signage proposes a static display.

- (ii) *Any signage not permanently fixed to the premises;*

The sign is permanently fixed to the bridge structure.

- (iii) *Any signage which would adversely affect traffic or obstruct motorists' vision or attention;*

*RMS has advised that it does not consider the proposed sign to have detrimental impacts upon the safety of motorists.*

- (iv) *Signage extending over street boundaries, other than those permitted in conjunction with a shop;*

N/A

- (v) *Signage at a level less than 2600mm above the footpath;*

N/A

- (vi) *Advertising signage on garbage bins, telegraph posts and other surfaces of a public nature, except by prior contractual arrangement with Council; and*

N/A

- (vii) *A-Board (sandwich boards) on public footpaths or roadways where the placement of such signs would impede pedestrian or vehicular traffic.*

N/A

Control C6 Signage in the vicinity of the airport are required to address management of habitat and food sources on or associated with signage to minimise the potential for bird hazards impacting aviation operations.

The sign replaces an existing sign of similar size and location and will not have such detrimental impacts.

#### *Illuminated Signage*

Control 1 *The lighting intensity must not unreasonably impact on any residential properties adjoining the sign or that is within its locality.*

The site is not in proximity to any dwellings.

Control 2 *All illuminated signage, larger than 1m<sup>2</sup> that is adjacent or in the vicinity to residential dwellings must be switched off between 10pm and 6am daily.*

The site is not in proximity to any dwellings.

Control 3 *Electric wiring to illuminated signage is to be concealed.*

The electronic wiring will be concealed.

Control 4 *Illuminated signage is encouraged to be powered by solar power.*

The proposed signage is not to be solar powered.

*Control 5 Illuminated signage must minimise the spill effects or escape of light beyond the subject sign and must not compromise safety for pedestrians, vehicles or aircraft.*

The light spill impact of the signage has been assessed as being acceptable.

*Control 6 Illumination of a sign (with the exception of floodlit signs) must not be external to the sign i.e. surrounding the sign. Illumination must be part of the sign.*

The illumination of the signage is internal to the screen.

#### **Part 8 – Character Precinct**

Part 8.7 Mascot Character Precinct of the BBDCP 2013 is the relevant character precinct applicable to the proposed signs. None of the provisions of Part 8.7 address signage.

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

Clause 92 of the Regulation has been considered.

#### **S4.15(1)(b) - Likely Impacts of Development**

The proposed development will have no significant adverse environmental, social or economic impacts in the locality. The proposed signage has been assessed against the aims and objectives of SEPP 64 and satisfies the assessment criteria of the policy, particularly safety and illumination.

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

The suitability of the site for the advertising structure and change to digital format has been assessed throughout this report as being acceptable.

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

No submissions have been received.

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

Granting approval to the proposed development is not contrary to the public interest as it will replace the existing static signs with a digital sign, allowing better illumination control and removing the need to physically access to the site in order to change the advertisement content.

#### **Division 4.11 – Existing Use Rights**

Pursuant to Section 4.65 of the Act, existing use rights means:

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

- (i) *for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and*
- (ii) *that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse.*

For a use to constitute an existing use it has to be for a lawful purpose immediately before a new environmental planning instrument, which would prohibit the use, coming into force. The existing sign was granted consent under Development Consent DA93/3067 on 18 October 1993 and has been operational since that time. With the gazettal of BBLEP 2013, the site was zoned SP2 Infrastructure (Classified Road) and the use became a prohibited use. Accordingly, the existing sign has existing use rights.

Section 4.66 of the Act indicates that nothing in the Act prevents the continuance of an existing use.

Clause 4.67 permits the Regulations to make provisions for an existing use to be altered or extended or rebuilt, changed to another use or enlarged, expanded or intensified. Clause 4.67 also indicates that an environmental planning instrument cannot derogate or have the effect of derogating from the existing use rights provisions of the Act.

Part 5 of the Regulations addresses existing uses and Clause 41 permits any existing use to be enlarged, expanded or intensified, altered or extended or rebuilt.

As such, the proposal, which would constitute alterations to an existing use, is permissible with consent pursuant to Section 4.67 of the Act and Clause 41 of the Regulations.

## Conclusion

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That modification application DA-2018/1183 seeking to modify Development Consent DA93/3067 to replace the bridge mounted general advertising structure with an integrated digital LED screen on the Railway Bridge above Robey Street, Mascot be APPROVED subject to the amendment to the approved conditions of consent as attached to this report.

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## Attachment

### Schedule 1 – Conditions of Consent

#### SCHEDULE OF CONSENT CONDITIONS

Development Consent 3067 of 1993 shall be amended as follows:

- A. Replace Conditions 1 and 8 with the following

**Development in Accordance with Plans**

1. The development is to be carried in accordance with the following plans and documentation listed below and endorsed with Council's stamp, except where amended by other conditions of this consent:

Drawing	Author	Dated
Landscape Plan Robey Street, Drawing No. L1003 Issue 01	Group GSA	19/10/2017
Landscape Elevation Robey Street, Drawing No. L3006 Issue 03		19/10/2017
Landscape Montage Robey Street, Drawing No. L5001 Issue 01		19/10/2017

Reference Documents	Author	Dated
Statement of Environmental Effects	Urban Concepts	September 2018
Structural Engineering Report – 2020-RN-I	Arcadis Design & Consultancy	22 June 2018
Traffic Safety Assessment, Version 002	Bitzios Consultancy	23 May 2018
Lighting Impact Statement, Revision A	Elecrolight Australia Pty Ltd	28/09/17
Supplementary Response to Matters Raised by Bayside Council	Ooh! Media	Undated

**Advertisements Generally**

8. Advertisements displayed shall not contain/use:
- (a) Flashing lights.
  - (b) Animated display, moving parts or simulated movement.
  - (c) A method of illumination that unreasonably distracts or dazzles.
  - (d) Images that may imitate a prescribed traffic control device, for example red, amber or green circles, octagons or other shapes or patterns that may result in the advertisement being mistaken for a prescribed traffic control device.
  - (e) Text providing driving instructions to drivers.
- B. The deletion of Conditions 3, 7 and 12
- C. The addition of the following conditions to comply with agencies requirements and current regulations.

**Removal of Sign**

13. Prior to the commencement of use of the approved modified sign, the sign on the north-eastern side of the railway bridge shall be removed.

#### **Voluntary Planning Agreement**

14. The Voluntary Planning Agreement (VPA) between Council and OoH Media Fly Pty Limited was entered into in connection with the development application which is the subject of this development consent. The VPA among other things makes provision for public benefits in connection with this development consent pursuant to State Environmental Planning Policy 64 (Advertising and Signage). All obligations imposed by the VPA on the applicant/developer must be complied with at all times in accordance with the terms of the VPA, including in particular:
  - (a) payment of the monetary contribution in accordance with clause 5 and Schedule 2 of the VPA;
  - (b) allocation of display time to Destination NSW and Council in accordance with clause 10 of the VPA.

#### **Duration of Consent**

15. This development consent is issued for a limited period of 15 years from the date of the modification of consent or upon the demolition of the railway bridge upon which it is structurally supported, whichever occurs first. The consent will cease to be in force/expire at that time.

#### **Conditions imposed by Sydney Airport Corporation Limited (SACL)**

16. The approved height is inclusive of all lift over-runs, vents, chimneys, aerials, TV antennae, construction cranes etc.

Should you wish to exceed this height a new application must be submitted.

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.

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.

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

"Prescribed airspace" includes "the airspace above any part of either an Obstacle Limitation Surface (OLS) or Procedures for Air Navigation Services – Aircraft Operations (PANS-OPS) surface for the airport (Regulation 6(1)).

The height of the prescribed airspace at this location is 46 metres above AHD.

Planning for Aircraft Noise and Public Safety Zones Current planning provisions (s.117 Direction 3.5 NSW Environmental Planning and Assessment Act 1979) for the assessment of aircraft noise for certain land uses are based on the Australian Noise Exposure Forecast (ANEF). The current ANEF for which Council may use as the land use planning tool for Sydney Airport was endorsed by Airservices in December 2012 (Sydney Airport 2033 ANEF).

Whilst there are currently no national aviation standards relating to defining public safety areas beyond the airport boundary, it is recommended that proposed land uses



which have high population densities should be avoided.

**Advertisements - Dwell Time**

17. Each advertisement shall be displayed in a completely static manner, without any motion, for a dwell time of 24 hours.
18. The display change shall occur in the early hours of the morning (prior to network peak hours).

**Trial Period**

19. Notwithstanding Conditions 17 and 18, the advertising sign is permitted to operate with a minimum dwell time of 60 seconds for a trial period of 18 months (Trial Period).
  - a) Within 4 weeks of the trial period commencing, the applicant shall provide Roads and Maritime with a written notice of the date upon which the trial period commenced;
  - b) During the trial period, and any period thereafter, during which the dwell time operates at a duration of less than 24 hours as provided in Condition 5, the applicant must comply with all other conditions of RMS as following:
    - i) Message sequencing designed to make a driver anticipate the next message is prohibited;
    - ii) The amount of text and information supplied on a sign should be kept to a minimum, for example no more than a driver can read at a short glance;
    - iii) Each sign should be restricted to 6 units of information calculated as follows:
      - 1 Words of up to 8 letters, inclusive = 1 unit
      - 2 Numbers up to 4 digits, inclusive = 0.5 unit
      - 3 Numbers of 5-8 digits = 1 unit
      - 4 Symbol, picture, logo or abbreviation = 0.5 unit; and
    - iv) All advertisements displayed must be in accordance with Table 5 of the Department of Planning and Environment's Transport Corridor Outdoor Advertising and Signage Guidelines, dated November 2017 and as amended.
    - v) An electronic log of the sign's activity must be maintained by the operator for the duration of the development consent and be available to Council and/or Roads and Maritime to allow a review of the sign's activity for any reason, including where a complaint has been made.
  - c) Not less than 4 weeks before the conclusion of the trial period, the applicant may seek Roads and Maritime's written concurrence to continue to operate the advertising sign with a minimum dwell time of 60 seconds and the conditions specified in condition 19(b) (i-v) above.
  - d) When seeking Roads and Maritime concurrence in condition 19(c), the applicant must provide to Roads and Maritime a road safety audit report which considers

the effects of the placement and operation of the sign during the trial period on road safety (the report). The report must:

- i) Be prepared in accordance with Part 3 of the Roads and Maritime Guidelines for Road Safety Audit Practices;
  - ii) Be prepared by an independent accredited road safety auditor; and
  - iii) Assess the operation of the advertising sign during the trial period for a continual period of at least 12 months.
- e) If Roads and Maritime:
- i) Issues its written concurrence in accordance with condition 19(c), the applicant is to notify the Council of the Roads and Maritime written concurrence and may continue to operate the advertising sign with a dwell time of 60 seconds for the unexpired duration of the consent:
  - ii) Indicates in writing that it refuses to issue its written concurrence in accordance with Condition 19(c), the operation of the advertising sign must revert to the requirements of conditions 17 and 18
  - iii) Indicates in writing that it refuses to issue a written concurrence because of recommendations made in the report for conditions or changes that address any road safety concerns, the applicant may lodge a modification application under Section 96 of the Environmental Planning and Assessment Act 1979 for the operation of the sign in accordance with those recommendations and during the period from receipt of the Roads and Maritime refusal in writing in accordance with this paragraph until the approval of such modification, if any, the operation of the advertising sign must revert to the requirements of conditions 17 and 18.
- f) In considering whether or not to grant concurrence, Roads and Maritime will take into consideration any information provided by the applicant regarding the operation of the advertising sign during the trial period, as well as the relevant adopted signage guidelines and any other matter considered relevant to Roads and Maritime, including complaints received and changes in circumstances which has an impact on the operation of the road environment.

#### Permitted Luminance Levels

20. The luminance levels of the LED advertising screen must comply with *Australian Standards AS 4282-1997 Control of obtrusive effects of outdoor lighting*, and the below table:

Lighting Conditions	Permitted Luminance Zone 1	Permitted Luminance Zones 2 and 3	Permitted Luminance Zone 4
Full Sun on Face of Signage	No limit	Maximum Output	Maximum Output
Daytime Luminance	No limit	6000cd/m <sup>2</sup>	6000cd/m <sup>2</sup>
Morning and Evening, Twilight and Inclement Weather	No limit	700cd/m <sup>2</sup>	500cd/m <sup>2</sup>
Night Time		350cd/m <sup>2</sup>	

**Road Occupancy Licence**

21. Road Occupancy Licence (ROL) should be obtained from Transport Management Centre for any works that may impact on traffic flows on Robey Street during construction and maintenance activities. A ROL can be obtained through <https://myrta.com/oplinc2/pages/security/oplincLogin.jsf>.
22. All works associated with the proposed sign, including maintenance activities, shall be at no cost to Roads and Maritime.

**Advertisements Transition Time**

23. The transition time between messages must be no longer than 0.1 second.

**Advertisements Generally**

24. Advertisements displayed on the LED advertising screen must be in accordance with the guidelines for sign content outlined in Section 3.3.2 of the Transport Corridor Outdoor Advertising and Signage Guidelines, dated November 2017.

**Advertisements – Traffic Control Device or Driving Instructions**

25. Advertisements displayed on the LED advertising screen must not be capable of being mistaken:
  - a) For a prescribed traffic control device because it has, for example, red, amber or green circles, octagons, crosses or triangles or shapes or patterns that may result in the advertisement being mistaken for a prescribed traffic control device; or
  - b) As text providing driving instructions to drivers.

**Advertisements – Dazzle or Distract Drivers**

26. Advertisements displayed on the LED advertising screen must not otherwise unreasonably dazzle or distract drivers without limitation to their colouring or contain flickering or flashing content.

**Display of Road Safety and Emergency Messages**

27. The LED advertising screen shall be available for 5% of all advertising time each year for the display of road safety messages by arrangements with RMS and TfNSW. Additionally, the LED advertising screen shall be made available for use in the event of a "threat to life emergency" messaging to override the commercial advertising.

**Electronic Log**

28. An electronic log of the signs activities must be maintained by the operator for the duration of the development consent and be available to the consent authority and RMS to allow a review of the signs activities in case of a complaint.

**Wind Loading**

29. The approved sign must meet wind loading requirements as specified in Australian Standards AS 1170.1: Structural Design Actions – Permanent, Imposed and Other Actions and AS1170.2 – Structural Design Actions – Wind Actions.

**Reflectivity**

30. The visible light reflectivity from the proposed LED screen ad materials used on the signage structure shall not exceed 20 percent and shall be designed so as to minimise glare.

**Prescribed Conditions**

31. The Applicant shall comply with all relevant prescribed conditions of development consent under Part 6, Division 8A of the Regulations.
32. All building work must be carried out in accordance with the provisions of the Building Code of Australia.

**CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE COMMENCEMENT OF ANY DEVELOPMENT OR WORK****Builders Contact**

33. Prior to the commencement of works, the applicant must inform Council, in writing, of:
- a) The name of the contractor, and licence number of the licensee who has contracted to do, or intends to do, the work; or
  - b) The name and permit number of the builder who intends to do the work;
  - c) The Council also must be informed if:
  - d) A contract is entered into for the work to be done by a different licensee; or
  - e) Arrangements for the doing of the work are otherwise changed.

**Certification**

34. 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.

**Other Approvals and Permits**

35. Prior to commencement of any works, application(s) shall be made to Council's Customer Services Counter for the following approvals and permits on Council's property/road reserve under Road Act 1993 and Local Government Act 1993, as

appropriate:

(It should be noted that any works shown within Council's road reserve or other Council Lands on the development approval plans are indicative only and no approval for these works is given until this condition is satisfied.)

- a) Permit to erect hoarding on or over a public place, including Council's property/road reserve.
- b) Permit to construction works, place and/or storage building materials on footpaths, nature strips.
- c) Permit for roads and footways occupancy (long term/ short term).
- d) Permit to construct vehicular crossings, footpath, kerb and gutter over road reserve.
- e) Permit to open road reserve area, including roads, footpaths, nature strip, vehicular crossing or for any purpose whatsoever.
- f) Permit to place skip/waste bin on footpath and/or nature strip.
- g) Permit to use any part of Council's road reserve or other Council lands.

(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 Engineering and Regulatory Services for approval, which may impose special conditions that shall be strictly adhered to by the applicant(s)).

#### **Photographic Survey**

- 36. The applicant shall submit to Council a full photographic survey showing the existing conditions of Council's infrastructure. The survey shall identify any existing damages to the road, kerb, gutter, footpath, driveways, street trees, street signs and any other Council assets fronting the property and in the vicinity of the development. Failure to do so will result in the applicant being liable for any construction related damages to these assets. Any damage to Council's infrastructure during the course of this development shall be restored at the applicant's cost.

#### **Public Liability**

- 37. The Applicant must indemnify Council against all loss of or damage to the property of others and injury or death to any persons which may arise out of or in consequence of the carrying out of the work and against all claims, demands, proceedings, costs, charges and expenses whatsoever in respect thereof or in relation thereto. In this regard, the Applicant shall take out a public liability policy during the currency of the works in the sum of not less than \$20,000,000 and to be endorsed with Bayside Council as principal, and keep such policy in force at the Applicant's own expense. A certificate from the Applicant's insurers to this effect is to be LODGED WITH COUNCIL BEFORE ANY WORK IS COMMENCED. The amount of Common Law liability shall be unlimited.

#### **Site Fencing**

- 38. The works area on the site to which this approval relates must be adequately fenced or other suitable measures employed that are acceptable to the Principal Certifying Authority to restrict public access to the site and building works. Such fencing or other measures must be in place before the approved activity commences.

**CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE ISSUE OF ANY CONSTRUCTION CERTIFICATE****Payment of Fees**

39. Prior to issue of the Construction Certificate, the applicant must pay a development control fee of \$3,081.00.

**Payment of Levy Fee**

40. 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.

**Structural Details**

41. Prior to the issue of any Construction Certificate, the applicant shall submit to the satisfaction of the Certifying Authority structural drawings and accompanying design certification prepared by a suitably qualified practising Structural Engineer, verifying that the design complies with:
- a) The relevant clauses of the Building Code of Australia/National Construction Code;
  - b) The relevant Australian Standards; and Supplementary Engineering Report, dated 22/6/2018, prepared by Arcadis and contained at Appendix C of the Statement of Environmental Effects.
  - c) The recommendations at section 2.2 of the

**Construction Management Plan**

42. A Construction Management Program shall be submitted to, and approved in writing by the Council prior to the issue of a Construction Certificate. The program shall detail:
- a) The proposed method of access to and egress from the site for construction vehicles, including access routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or public reserves being allowed;
  - b) The proposed phases of construction works on the site and the expected duration of each construction phase;
  - c) The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken;
  - d) The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process;
  - e) The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be

located wholly within the site;

- f) The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period;
- g) The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site;
- h) The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an Accredited Certifier (Structural Engineering), or equivalent;
- i) Proposed protection for Council and adjoining properties, and
- j) The location and operation of any on site crane. Please note that a crane may require prior approval from Sydney Airports Corporation';
- k) The location of any Construction Zone (if required) approved by Council's Traffic Engineer, including a copy of that approval.

#### **DURING WORKS**

##### **Hoarding Requirements**

- 43. The land to which this consent relates must be fenced and enclosed to protect the entry or access to the land and demolition site by unlawful persons.
  - a) The fencing must be in place before the demolition commences, and
  - b) Must remain in place during the construction of the development.

##### **Construction Noise**

- 44. The following shall be complied with:
  - a) A sign must be erected in a prominent position on any work site on which work involved in the erection of the proposed development is being carried out:
    - i) Stating the unauthorized entry to the work site is prohibited;
    - ii) Showing that unauthorized entry to the work site is prohibited;
    - iii) The Development Approval number; and
    - iv) The name of the Principal Certifying Authority including an after hours contact telephone number; and
  - b) Any such sign is to be removed when the work has been completed.
- 45. The following shall be complied with during construction:
  - a) Construction Noise
    - i) Noise from construction activities associated with the development shall comply with the NSW Environment Protection Authority's Interim Construction Noise Guideline and the Protection of the Environment Operations Act 1997.
  - b) Level Restrictions

- i) Construction period of 4 weeks and under:
  - 1 The L10 sound pressure level measured over a period of not less than 15 minutes when the construction site is in operating must not less than 15 minutes when the construction site is in operating must not exceed the background level by more than 10dB(A).
- c) Time Restrictions
  - i) Monday to Friday 07:00am to 05:00pm
  - ii) Saturday 08:00am to 01:00pm
  - iii) No Construction to take place on Sundays or Public Holidays.
- d) Silencing
  - i) All possible steps should be taken to silence construction site equipment.

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

**Public Asset Damage**

46. Prior to the issue of any Occupation Certificate, any damage not shown in the photographic survey submitted to Council before site works commenced, will be assumed to have been caused as a result of the site works undertaken and must be rectified at the applicant's expense.

**Maintenance Plan**

47. Prior to commencement of use, a Maintenance Plan detailing the process for maintenance and changing sign content is to be prepared and submitted to Council. The Plan shall address, but not be limited to, the following matters, where relevant:
- a) Environmental and safety risk assessment;
  - b) Hours of work/inspections of sign (to ensure minimal disruption of any surrounding residential amenity and traffic operation);
  - c) Contact details of site manager;
  - d) Safety, including preparation of a safe work method statement;
  - e) Traffic management, including details for the location of parking for vehicles associated with the operation (ie. parked vehicles shall not impede the movement of traffic or pedestrians in and around the site);
  - f) External lighting in compliance with *AS4282:1997 Control of the Obtrusive Effects of Outdoor Lighting*;
  - g) Removal of graffiti;
  - h) Maintenance of vegetation immediately surrounding the site.

**Structural Inspection Certificate**

48. At the completion of works the applicant shall submit certification prepared by a



suitably qualified practising structural engineer, verifying that the structure:

- a) Has been inspected and installed in accordance with the approved structural design drawings;
- b) Complies with the relevant clauses of the Building Code of Australia/National Construction Code; and
- c) The relevant Australian Standards.

**CONDITIONS WHICH MUST BE SATISFIED DURING THE ONGOING USE OF THE DEVELOPMENT**

**Maintenance**

49. Regular maintenance of the approved advertising structures shall be undertaken in accordance with the Maintenance Plan under Condition 46. Signs are to be inspected regularly to identify any damage from storms, graffiti or the like.

**Removal of Graffiti**

50. Should the signage 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.

**Location of Certain Names and Logos**

51. The name or logo of the person who owns or leases the approved advertisement may appear only in the bottom right hand corner of the advertising structure and must be no greater than 0.25m<sup>2</sup> in size.

**Advice**

- 1. 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.
- 2. A new Construction Certificate may be required to be submitted to and approved by your Principal Certifying Authority prior to carrying out works the subject of the proposed amendment/s.

*[Amendment A – S4.55(1A) inserted on XXXXXXXXX]*

Robey Street Bridge, Mascot  
oOh!media  
September 2018

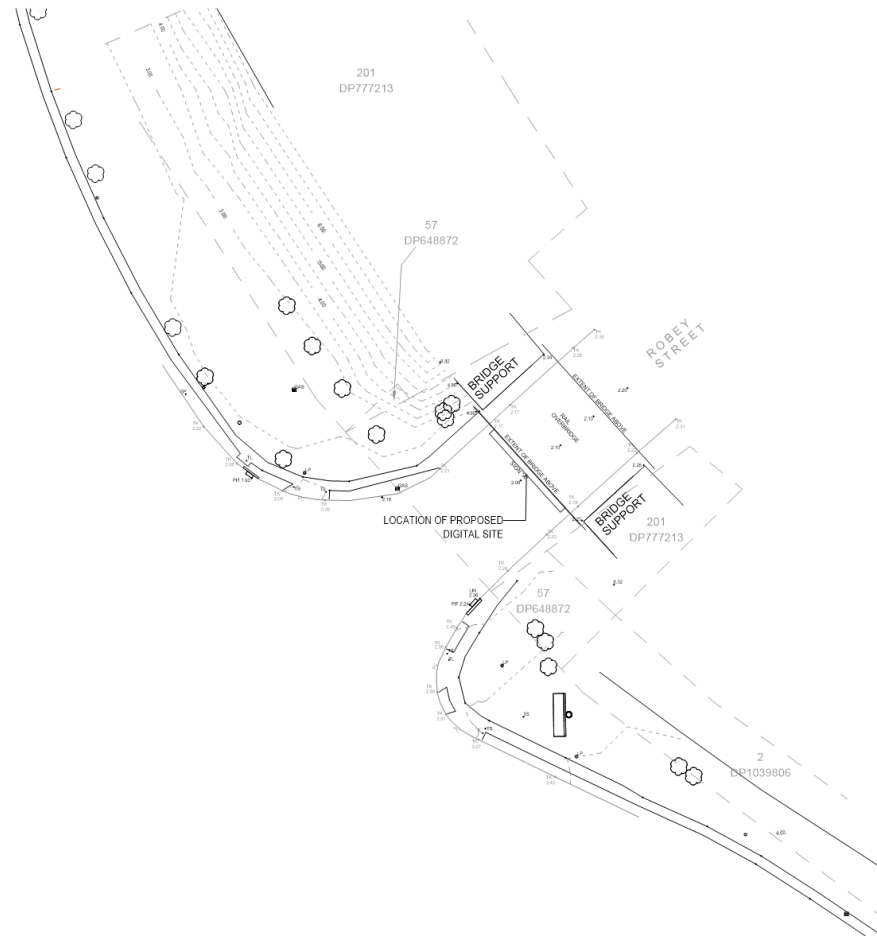
# Appendix B

## Site Plans and Elevations

### Produced by Group GSA



Robey Street Bridge, Mascot  
oOh!media  
September 2018



Amendments  
Issue Description Date  
11.01.2019 10/10/2019

PRELIMINARY

**ooh!**  
A Level 2.75 Barry St, North Sydney,  
NSW 1585  
P: 0012 9957 0055

**GROUP USA**  
Group USA Pty Ltd ABN 78 005 135 778  
Level 2, 48, Dutton St East Sydney NSW  
Australia 1511 www.groupusa.com  
T: 0012 9957 0744 F: 0012 9957 0458  
architectural interior design urban design landscape  
and interior fit out design 2005

**oOh! media**  
JOYCE DRIVE

**LANDSCAPE PLAN**  
ROBEY STREET

Scale 1:100 @ A2

Author: [Name] Date: [Date]

Drawn: [Name] Date: [Date]

Checked: [Name] Date: [Date]

Reviewed: [Name] Date: [Date]

Project No. Drawing No. 10000

160202 L1003 01

File Path: [Path]

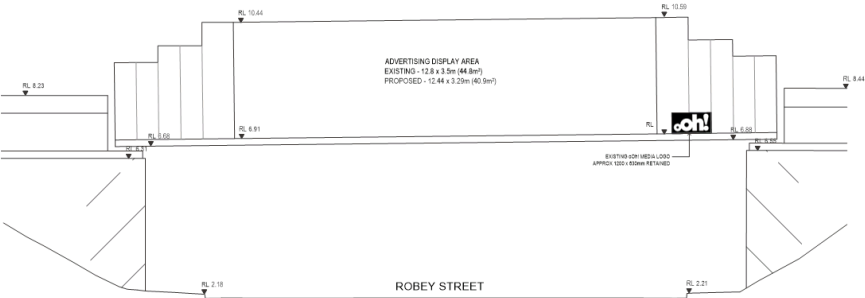
Project: [Project Name]

Client: [Client Name]

Notes: [Notes]

1

Robey Street Bridge, Mascot  
oOh!media  
September 2018



01 ROBEY STREET ELEVATION  
10

REVISIONS	DATE
01 - ISSUED FOR IGA	10/06/17
02 - REVISED FOR IGA	10/06/17
03 - REVISED FOR SUBMISSION	10/06/18

PRELIMINARY

oOh!  
A Level 2.76 Betty St, North Sydney  
NSW 1585  
P +612 9327 0000

GROUP USA  
Group USA Pty Ltd ABN 78 002 112 972  
Level 1, 100 Victoria St, East Sydney, NSW  
Australia 2011 www.groupusa.com  
T +612 9327 0000 F +612 9327 0000  
architectural design urban design landscape  
and interior design

Project Title  
oOh! media  
JOYCE DRIVE  
Drawing Title  
LANDSCAPE ELEVATION  
ROBEY STREET

Scale 1:500  
Drawing Number 160202  
Revised and checked by  
Designed by  
Project No 160202  
Drawing No L3006  
Date 03





Robey Street Bridge, Mascot  
oOh!media  
September 2018

Annexure 19

R271/LOT7/TP-69  
D.M. Cuthbert/gb

The Managing Director  
Paskaidorjums Pty Limited  
PO Box 566  
MASCOT NSW 2020  
Attention: Mr P Makucha

**NOTICE TO APPLICANT OF DETERMINATION OF A  
DEVELOPMENT APPLICATION  
N.S.W. ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979  
COUNTY OF CUMBERLAND PLANNING SCHEME  
DEVELOPMENT APPLICATION NO. 3067**

Applicant's Name:	Paskaidorjums Pty. Limited.
Address:	PO Box 566, Mascot.
Date of Application:	12th July, 1993.
Premises:	Lot 7, DP.747022 -
	Railway bridge abutments, Robey Street, Mascot.
Brief Description of Proposal:	Erection of advertising signs.

In pursuance of its powers under the abovementioned Order, the Council, as the Responsible Authority, resolved at its meeting held on 13th October, 1993, to grant approval of the abovementioned application, subject to the following conditions which are hereby imposed to protect the amenity of the neighbourhood and so that the use will not be contrary to public interest, viz:

1. The size, location and extent of the advertising signs on the north-eastern and south-western elevations of the bridge shall be the same as those contained in the plan prepared by Barry Smith Bateman & Associates Pty Ltd, numbered 7121, dated 6th September, 1990, and received by Council on 11th August, 1993.
2. No signs shall be erected or painted on any part of the abutments that support the bridge.
3. No part of the signs erected on either side of the overspan of the bridge shall not exceed the dimensions of 3m high and 12m wide.
4. The maximum height of the two (2) signs on either side of the overspan of the bridge shall not exceed 8.5m above ground level.
5. The sign, advertisement or structure shall be maintained in good repair at all times.
6. The sign/advertisement and surrounding area shall be maintained in a clean and tidy condition, free from litter or debris.

Robey Street Bridge, Mascot  
oOh!media  
September 2018

- 2 -

7. The submission of a sign application under the provisions of Ordinance 55.
8. The sign is not to contain flashing or revolving lights within the structure or appurtenant thereto.
9. The sign face not being altered or enlarged in any way without prior consent of Council.
10. The structure, advertising and landscaping to be maintained to the satisfaction of Council at all times.
11. The abutments shall be kept painted and free of graffiti to the satisfaction of Council at all times.
12. 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. 3067 of the 12th day of July, 1993, and that any alteration, variation, or extension to the use, for which approval has been given, would require further Town Planning Approval from Council.

Notes:

- (1) To ascertain the date upon which the consent becomes effective refer to Section 93 of the Act.
- (2) To ascertain the extent to which the consent is liable to lapse refer to Section 99 of the Act.
- (3) Section 97 of the Act confers on an applicant who is dissatisfied with the determination of a consent authority a right of appeal to the Land and Environment Court exercisable within twelve months after receipt of this notice.

Dated this 18th day of October, 1993.

(MRS.) D.M. CUTHBERT

DIRECTOR OF PLANNING  
AND ENVIRONMENT



271-7.a.app



Premises: Railway Bridge above Robey Street, Mascot

DA No: 2018/1183

**SCHEDULE OF CONSENT CONDITIONS****GENERAL CONDITIONS**

1. The development is to be carried in accordance with the following plans and documentation listed below and endorsed with Council's stamp, except where amended by other conditions of this consent and in particular by Condition 3:

<b>Drawing</b>	<b>Author</b>	<b>Dated</b>
Landscape Plan Robey Street, Drawing No. L1003 Issue 01	Group GSA	19/10/2017
Landscape Elevation Robey Street, Drawing No. L3006 Issue 03		19/10/2017
Landscape Montage Robey Street, Drawing No. L5001 Issue 01		19/10/2017

<b>Reference Documents</b>	<b>Author</b>	<b>Dated</b>
Statement of Environmental Effects	Urban Concepts	September 2018
Structural Engineering Report – 2020-RN-I	Arcadis Design & Consultancy	22 June 2018
Traffic Safety Assessment, Version 002	Bitzios Consultancy	23 May 2018
Lighting Impact Statement, Revision A	Elecrolight Australia Pty Ltd	28/09/17
Supplementary Response to Matters Raised by Bayside Council	Ooh! Media	Undated

[Amendment A – Section 4.55(2) amended on xx xxxxx 2019]

2. No signs shall be erected or painted on any part of the abutments that support the bridge.
3. ~~No part of the signs erected on either side of the overspan of the bridge shall not exceed the dimensions of 3m high and 12m wide.~~  
**[Amendment A – Section 4.55(2) deleted on xx xxxx 2019]**
4. The maximum height of the two (2) signs on either side of the overspan of the bridge shall not exceed 8.5m above ground level.
5. The sign, advertisement or structure shall be maintained in good repair at all times.
6. The sign/advertisement and surrounding area shall be maintained in a clean and tidy condition, free from litter or debris.
7. ~~The submission of a sign application under the provisions of Ordinance 55.~~  
**[Amendment A – S4.55(2) deleted on xx xxxx 2019]**
8. Advertisements displayed shall not contain/use:
- (a) Flashing lights.
  - (b) Animated display, moving parts or simulated movement.
  - (c) A method of illumination that unreasonably distracts or dazzles.
  - (d) Images that may imitate a prescribed traffic control device, for example red, amber or green circles, octagons or other shapes or patterns that may result in

3/15

*the advertisement being mistaken for a prescribed traffic control device.*

(e) *Text providing driving instructions to drivers.*

*[Amendment A – S4.55(2) amended on xx xxxx 2019]*

9. The sign is not to contain flashing or revolving lights within the structure or appurtenant thereto.
10. The structure, advertising and landscaping to be maintained to the satisfaction of Council at all times.
11. The abutments shall be kept painted and free of graffiti to the satisfaction of Council at all times.
- ~~12. ***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. 3067 of the 12<sup>th</sup> Day of July, 1993, and that any alteration, variation, or extension to the use, for which approval has been given, would require further Town Planning Approval from Council.***~~

*[Amendment A – S4.55(2) deleted on xx xxxx 2019]*

#### **Removal of Sign**

13. *Prior to the commencement of use of the approved modified sign, the sign on the north-eastern side of the railway bridge shall be removed.*

*[Amendment A – S4.55(2) inserted on xx xxxxx 2019]*

#### **Voluntary Planning Agreement**

14. *The Voluntary Planning Agreement (VPA) between Council and OoH Media Fly Pty Limited was entered into in connection with the development application which is the subject of this development consent. The VPA among other things makes provision for public benefits in connection with this development consent pursuant to State Environmental Planning Policy 64 (Advertising and Signage). All obligations imposed by the VPA on the applicant/developer must be complied with at all times in accordance with the terms of the VPA, including in particular:*
  - (a) *payment of the monetary contribution in accordance with clause 5 and Schedule 2 of the VPA;*
  - (b) *allocation of display time to Destination NSW and Council in accordance with clause 10 of the VPA.*

*[Amendment A – S4.55(2) inserted on xx xxxx 2019]*

#### **Duration of Consent**

15. *This development consent is issued for a limited period of 15 years from the date of the modification of consent or upon the demolition of the railway bridge upon which it is structurally supported, whichever occurs first. The consent will cease to be in force/expire at that time.*

*[Amendment A – S4.55(2) inserted on xx xxxx 2019]*

**Conditions imposed by Sydney Airport Corporation Limited (SACL)**

16. *The approved height is inclusive of all lift over-runs, vents, chimneys, aerials, TV antennae, construction cranes etc.*

*Should you wish to exceed this height a new application must be submitted.*

*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.*

*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.*

*Sydney Airport advises that approval to operate construction equipment (ie cranes) should be obtained prior to any commitment to construct.*

*"Prescribed airspace" includes "the airspace above any part of either an Obstacle Limitation Surface (OLS) or Procedures for Air Navigation Services – Aircraft Operations (PANS-OPS) surface for the airport (Regulation 6(1))."*

*The height of the prescribed airspace at this location is 46 metres above AHD.*

*Planning for Aircraft Noise and Public Safety Zones Current planning provisions (s.117 Direction 3.5 NSW Environmental Planning and Assessment Act 1979) for the assessment of aircraft noise for certain land uses are based on the Australian Noise Exposure Forecast (ANEF). The current ANEF for which Council may use as the land use planning tool for Sydney Airport was endorsed by Airservices in December 2012 (Sydney Airport 2033 ANEF).*

*Whilst there are currently no national aviation standards relating to defining public safety areas beyond the airport boundary, it is recommended that proposed land uses which have high population densities should be avoided.*

*[Amendment A – S4.55(2) inserted on xx xxxx 2019]*

**Advertisements - Dwell Time**

17. *Each advertisement shall be displayed in a completely static manner, without any motion, for a dwell time of 24 hours.*

*[Amendment A – S4.55(2) inserted on xx xxxx 2019]*

18. *The display change shall occur in the early hours of the morning (prior to network peak hours).*

*[Amendment A – S4.55(2) inserted on xx xxxx 2019]*

**Trial Period**

19. *Notwithstanding Conditions 17 and 18, the advertising sign is permitted to operate with a minimum dwell time of 60 seconds for a trial period of 18 months (Trial Period).*

- a) *Within 4 weeks of the trial period commencing, the applicant shall provide Roads and Maritime with a written notice of the date upon which the trial period commenced;*

- b) *During the trial period, and any period thereafter, during which the dwell time operates at a duration of less than 24 hours as provided in Condition 5, the applicant must comply with all other conditions of RMS as following:*
- i) *Message sequencing designed to make a driver anticipate the next message is prohibited;*
  - ii) *The amount of text and information supplied on a sign should be kept to a minimum, for example no more than a driver can read at a short glance;*
  - iii) *Each sign should be restricted to 6 units of information calculated as follows:*
    - 1 *Words of up to 8 letters, inclusive = 1 unit*
    - 2 *Numbers up to 4 digits, inclusive = 0.5 unit*
    - 3 *Numbers of 5-8 digits = 1 unit*
    - 4 *Symbol, picture, logo or abbreviation = 0.5 unit; and*
  - iv) *All advertisements displayed must be in accordance with Table 5 of the Department of Planning and Environment's Transport Corridor Outdoor Advertising and Signage Guidelines, dated November 2017 and as amended.*
  - v) *An electronic log of the sign's activity must be maintained by the operator for the duration of the development consent and be available to Council and/or Roads and Maritime to allow a review of the sign's activity for any reason, including where a complaint has been made.*
- c) *Not less than 4 weeks before the conclusion of the trial period, the applicant may seek Roads and Maritime's written concurrence to continue to operate the advertising sign with a minimum dwell time of 60 seconds and the conditions specified in condition 19(b) (i-v) above.*
- d) *When seeking Roads and Maritime concurrence in condition 19(c), the applicant must provide to Roads and Maritime a road safety audit report which considers the effects of the placement and operation of the sign during the trial period on road safety (the report). The report must:*
- i) *Be prepared in accordance with Part 3 of the Roads and Maritime Guidelines for Road Safety Audit Practices;*
  - ii) *Be prepared by an independent accredited road safety auditor; and*
  - iii) *Assess the operation of the advertising sign during the trial period for a continual period of at least 12 months.*
- e) *If Roads and Maritime:*
- i) *Issues its written concurrence in accordance with condition 19(c), the applicant is to notify the Council of the Roads and Maritime written concurrence and may continue to operate the advertising sign with a dwell time of 60 seconds for the unexpired duration of the consent:*
  - ii) *Indicates in writing that it refuses to issue its written concurrence in accordance with Condition 19(c), the operation of the advertising sign must revert to the requirements of conditions 17 and 18*

- iii) Indicates in writing that it refuses to issue a written concurrence because of recommendations made in the report for conditions or changes that address any road safety concerns, the applicant may lodge a modification application under Section 96 of the Environmental Planning and Assessment Act 1979 for the operation of the sign in accordance with those recommendations and during the period from receipt of the Roads and Maritime refusal in writing in accordance with this paragraph until the approval of such modification, if any, the operation of the advertising sign must revert to the requirements of conditions 17 and 18.
- f) In considering whether or not to grant concurrence, Roads and Maritime will take into consideration any information provided by the applicant regarding the operation of the advertising sign during the trial period, as well as the relevant adopted signage guidelines and any other matter considered relevant to Roads and Maritime, including complaints received and changes in circumstances which has an impact on the operation of the road environment.

[Amendment A – S4.55(2) inserted on xx xxxx 2019]

#### **Permitted Luminance Levels**

20. The luminance levels of the LED advertising screen must comply with Australian Standards AS 4282-1997 Control of obtrusive effects of outdoor lighting, and the below table:

<b>Lighting Conditions</b>	<b>Permitted Luminance Zone 1</b>	<b>Permitted Luminance Zones 2 and 3</b>	<b>Permitted Luminance Zone 4</b>
Full Sun on Face of Signage	No limit	Maximum Output	Maximum Output
Daytime Luminance	No limit	6000cd/m <sup>2</sup>	6000cd/m <sup>2</sup>
Morning and Evening, Twilight and Inclement Weather	No limit	700cd/m <sup>2</sup>	500cd/m <sup>2</sup>
Night Time		350cd/m <sup>2</sup>	

[Amendment A – S4.55(2) inserted on xx xxxx 2019]

#### **Road Occupancy Licence**

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

[Amendment A – S4.55(2) inserted on xx xxxx 2019]

22. All works associated with the proposed sign, including maintenance activities, shall be at no cost to Roads and Maritime.

[Amendment A – S4.55(2) inserted on xx xxxx 2019]

#### **Advertisements Transition Time**

23. *The transition time between messages must be no longer than 0.1 second.*

*[Amendment A – S4.55(2) inserted on xx xxxx 2019]*

#### **Advertisements Generally**

24. *Advertisements displayed on the LED advertising screen must be in accordance with the guidelines for sign content outlined in Section 3.3.2 of the Transport Corridor Outdoor Advertising and Signage Guidelines, dated November 2017.*

*[Amendment A – S4.55(2) inserted on xx xxxx 2019]*

#### **Advertisements – Traffic Control Device or Driving Instructions**

25. *Advertisements displayed on the LED advertising screen must not be capable of being mistaken:*

- a) *For a prescribed traffic control device because it has, for example, red, amber or green circles, octagons, crosses or triangles or shapes or patterns that may result in the advertisement being mistaken for a prescribed traffic control device; or*
- b) *As text providing driving instructions to drivers.*

*[Amendment A – S4.55(2) inserted on xx xxxx 2019]*

#### **Advertisements – Dazzle or Distract Drivers**

26. *Advertisements displayed on the LED advertising screen must not otherwise unreasonably dazzle or distract drivers without limitation to their colouring or contain flickering or flashing content.*

*[Amendment A – S4.55(2) inserted on xx xxxx 2019]*

#### **Display of Road Safety and Emergency Messages**

27. *The LED advertising screen shall be available for 5% of all advertising time each year for the display of road safety messages by arrangements with RMS and TfNSW. Additionally, the LED advertising screen shall be made available for use in the event of a “threat to life emergency” messaging to override the commercial advertising.*

*[Amendment A – S4.55(2) inserted on xx xxxx 2019]*

#### **Electronic Log**

28. *An electronic log of the signs activities must be maintained by the operator for the duration of the development consent and be available to the consent authority and RMS to allow a review of the signs activities in case of a complaint.*

*[Amendment A – S4.55(2) inserted on xx xxxx 2019]*

**Wind Loading**

29. The approved sign must meet wind loading requirements as specified in Australian Standards AS 1170.1: Structural Design Actions – Permanent, Imposed and Other Actions and AS1170.2 – Structural Design Actions – Wind Actions.

[Amendment A – S4.55(2) inserted on xx xxxx 2019]

**Reflectivity**

30. The visible light reflectivity from the proposed LED screen ad materials used on the signage structure shall not exceed 20 percent and shall be designed so as to minimise glare.

[Amendment A – S4.55(2) inserted on xx xxxx 2019]

**Prescribed Conditions**

31. The Applicant shall comply with all relevant prescribed conditions of development consent under Part 6, Division 8A of the Regulations.

[Amendment A – S4.55(2) inserted on xx xxxx 2019]

32. All building work must be carried out in accordance with the provisions of the Building Code of Australia.

[Amendment A – S4.55(2) inserted on xx xxxx 2019]

**CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE COMMENCEMENT OF ANY DEVELOPMENT OR WORK****Builders Contact**

33. Prior to the commencement of works, the applicant must inform Council, in writing, of:
- a) The name of the contractor, and licence number of the licensee who has contracted to do, or intends to do, the work: or
  - b) The name and permit number of the builder who intends to do the work;
  - c) The Council also must be informed if:
  - d) A contract is entered into for the work to be done by a different licensee; or
  - e) Arrangements for the doing of the work are otherwise changed.

[Amendment A – S4.55(2) inserted on xx xxxx 2019]

**Certification**

34. 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.*

*[Amendment A – S4.55(2) inserted on xx xxxx 2019]*

#### **Other Approvals and Permits**

35. *Prior to commencement of any works, application(s) shall be made to Council's Customer Services Counter for the following approvals and permits on Council's property/road reserve under Road Act 1993 and Local Government Act 1993, as appropriate:*

*(It should be noted that any works shown within Council's road reserve or other Council Lands on the development approval plans are indicative only and no approval for these works is given until this condition is satisfied.)*

- a) *Permit to erect hoarding on or over a public place, including Council's property/road reserve.*
- b) *Permit to construction works, place and/or storage building materials on footpaths, nature strips.*
- c) *Permit for roads and footways occupancy (long term/ short term).*
- d) *Permit to construct vehicular crossings, footpath, kerb and gutter over road reserve.*
- e) *Permit to open road reserve area, including roads, footpaths, nature strip, vehicular crossing or for any purpose whatsoever.*
- f) *Permit to place skip/waste bin on footpath and/or nature strip.*
- g) *Permit to use any part of Council's road reserve or other Council lands.*

*(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 Engineering and Regulatory Services for approval, which may impose special conditions that shall be strictly adhered to by the applicant(s)).*

*[Amendment A – S4.55(2) inserted on xx xxxx 2019]*

#### **Photographic Survey**

36. *The applicant shall submit to Council a full photographic survey showing the existing conditions of Council's infrastructure. The survey shall identify any existing damages to the road, kerb, gutter, footpath, driveways, street trees, street signs and any other Council assets fronting the property and in the vicinity of the development. Failure to do so will result in the applicant being liable for any construction related damages to these assets. Any damage to Council's infrastructure during the course of this development shall be restored at the applicant's cost.*

*[Amendment A – S4.55(2) inserted on xx xxxx 2019]*

#### **Public Liability**

37. *The Applicant must indemnify Council against all loss of or damage to the property of others and injury or death to any persons which may arise out of or in consequence of the carrying out of the work and against all claims, demands, proceedings, costs, charges and expenses whatsoever in respect thereof or in relation thereto. In this*



regard, the Applicant shall take out a public liability policy during the currency of the works in the sum of not less than \$20,000,000 and to be endorsed with Bayside Council as principal, and keep such policy in force at the Applicant's own expense. A certificate from the Applicant's insurers to this effect is to be **LODGED WITH COUNCIL BEFORE ANY WORK IS COMMENCED**. The amount of Common Law liability shall be unlimited.

[Amendment A – S4.55(2) inserted on xx xxxx 2019]

#### **Site Fencing**

38. The works area on the site to which this approval relates must be adequately fenced or other suitable measures employed that are acceptable to the Principal Certifying Authority to restrict public access to the site and building works. Such fencing or other measures must be in place before the approved activity commences.

[Amendment A – S4.55(2) inserted on xx xxxx 2019]

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

##### **Payment of Fees**

39. Prior to issue of the Construction Certificate, the applicant must pay a development control fee of \$3,081.00.

[Amendment A – S4.55(2) inserted on xx xxxx 2019]

##### **Payment of Levy Fee**

40. 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.

[Amendment A – S4.55(2) inserted on xx xxxx 2019]

##### **Structural Details**

41. Prior to the issue of any Construction Certificate, the applicant shall submit to the satisfaction of the Certifying Authority structural drawings and accompanying design certification prepared by a suitably qualified practising Structural Engineer, verifying that the design complies with:
- The relevant clauses of the Building Code of Australia/National Construction Code;
  - The relevant Australian Standards; and Supplementary Engineering Report, dated 22/6/2018, prepared by Arcadis and contained at Appendix C of the Statement of Environmental Effects.
  - The recommendations at section 2.2 of the

[Amendment A – S4.55(2) inserted on xx xxxx 2019]

##### **Construction Management Plan**

42. A Construction Management Program shall be submitted to, and approved in writing by the Council prior to the issue of a Construction Certificate. The program shall detail:

- a) *The proposed method of access to and egress from the site for construction vehicles, including access routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or public reserves being allowed;*
- b) *The proposed phases of construction works on the site and the expected duration of each construction phase;*
- c) *The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken;*
- d) *The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process;*
- e) *The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site;*
- f) *The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period;*
- g) *The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site;*
- h) *The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an Accredited Certifier (Structural Engineering), or equivalent;*
- i) *Proposed protection for Council and adjoining properties, and*
- j) *The location and operation of any on site crane. Please note that a crane may require prior approval from Sydney Airports Corporation;*
- k) *The location of any Construction Zone (if required) approved by Council's Traffic Engineer, including a copy of that approval.*

*[Amendment A – S4.55(2) inserted on xx xxxx 2019]*

#### **DURING WORKS**

##### ***Hoarding Requirements***

- 43. *The land to which this consent relates must be fenced and enclosed to protect the entry or access to the land and demolition site by unlawful persons.*
  - a) *The fencing must be in place before the demolition commences, and*
  - b) *Must remain in place during the construction of the development.*

*[Amendment A – S4.55(2) inserted on xx xxxx 2019]*

##### ***Construction Noise***

- 44. *The following shall be complied with:*
  - a) *A sign must be erected in a prominent position on any work site on which work involved in the erection of the proposed development is being carried out:*
    - i) *Stating the unauthorized entry to the work site is prohibited;*

12/15

- ii) Showing that unauthorized entry to the work site is prohibited;
- iii) The Development Approval number; and
- iv) The name of the Principal Certifying Authority including an after hours contact telephone number; and

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

[Amendment A – S4.55(2) inserted on xx xxxx 2019]

45. The following shall be complied with during construction:

- a) Construction Noise
  - i) Noise from construction activities associated with the development shall comply with the NSW Environment Protection Authority's Interim Construction Noise Guideline and the Protection of the Environment Operations Act 1997.
- b) Level Restrictions
  - i) Construction period of 4 weeks and under:
    - 1 The L10 sound pressure level measured over a period of not less than 15 minutes when the construction site is in operating must not less than 15 minutes when the construction site is in operating must not exceed the background level by more than 10dB(A).
- c) Time Restrictions
  - i) Monday to Friday 07:00am to 05:00pm
  - ii) Saturday 08:00am to 01:00pm
  - iii) No Construction to take place on Sundays or Public Holidays.
- d) Silencing
  - i) All possible steps should be taken to silence construction site equipment.

[Amendment A – S4.55(2) inserted on xx xxxx 2019]

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

**Public Asset Damage**

46. Prior to the issue of any Occupation Certificate, any damage not shown in the photographic survey submitted to Council before site works commenced, will be assumed to have been caused as a result of the site works undertaken and must be rectified at the applicant's expense.

[Amendment A – S4.55(2) inserted on xx xxxx 2019]

**Maintenance Plan**

47. Prior to commencement of use, a Maintenance Plan detailing the process for maintenance and changing sign content is to be prepared and submitted to Council. The Plan shall address, but not be limited to, the following matters, where relevant:

- a) Environmental and safety risk assessment;

- b) *Hours of work/inspections of sign (to ensure minimal disruption of any surrounding residential amenity and traffic operation);*
- c) *Contact details of site manager;*
- d) *Safety, including preparation of a safe work method statement;*
- e) *Traffic management, including details for the location of parking for vehicles associated with the operation (ie. parked vehicles shall not impede the movement of traffic or pedestrians in and around the site);*
- f) *External lighting in compliance with AS4282:1997 Control of the Obtrusive Effects of Outdoor Lighting;*
- g) *Removal of graffiti;*
- h) *Maintenance of vegetation immediately surrounding the site.*

*[Amendment A – S4.55(2) inserted on xx xxxx 2019]*

#### **Structural Inspection Certificate**

48. *At the completion of works the applicant shall submit certification prepared by a suitably qualified practising structural engineer, verifying that the structure:*
- a) *Has been inspected and installed in accordance with the approved structural design drawings;*
  - b) *Complies with the relevant clauses of the Building Code of Australia/National Construction Code; and*
  - c) *The relevant Australian Standards.*

*[Amendment A – S4.55(2) inserted on xx xxxx 2019]*

#### **CONDITIONS WHICH MUST BE SATISFIED DURING THE ONGOING USE OF THE DEVELOPMENT**

##### **Maintenance**

49. *Regular maintenance of the approved advertising structures shall be undertaken in accordance with the Maintenance Plan under Condition 46. Signs are to be inspected regularly to identify any damage from storms, graffiti or the like.*

*[Amendment A – S4.55(2) inserted on xx xxxx 2019]*

##### **Removal of Graffiti**

50. *Should the signage 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.*

*[Amendment A – S4.55(2) inserted on xx xxxx 2019]*

##### **Location of Certain Names and Logos**

51. *The name or logo of the person who owns or leases the approved advertisement may appear only in the bottom right hand corner of the advertising structure and must be no greater than 0.25m<sup>2</sup> in size.*

*[Amendment A – S4.55(2) inserted on xx xxxx 2019]*

**Advice**

1. *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.*
2. *A new Construction Certificate may be required to be submitted to and approved by your Principal Certifying Authority prior to carrying out works the subject of the proposed amendment/s.*

*[Amendment A – S4.55(2) inserted on xx xxxx 2019]*

**Notes:**

- (1) To ascertain the date upon which the consent becomes effective refer to Section 93 of the Act.
- (2) To ascertain the extent to which the consent is liable to lapse refer to Section 99 of the Act.
- (3) Section 97 of the Act confers on an applicant who is dissatisfied with the determination of a consent authority a right of appeal to the Land and Environment Court exercisable within twelve months after receipt of this notice.

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**Bayside Local Planning Panel**

**11/06/2019**

Item No	6.2
Application Type	S4.55(2) Modification
Application No	DA-18/1135
Lodgement Date	24/07/2018
Property	<b>Overbridge O'Riordan Street, Mascot - 40-50 Baxter Road Mascot</b>
Ward	Port Botany
Owner	Manboom Pty Ltd
Applicant	Ooh! Media Fly Pty Ltd
Proposal	Modification application to DA96/487 to convert existing illuminated general advertising structure to LED digital display
No. of Submissions	Four(4)
Cost of Development	\$100000
Report by	Michael McCabe, Director City Futures

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**Officer Recommendation**

1. That the Panel be satisfied that the proposed modification:
  - a. is substantially the same development as the development for which consent was originally granted and before that consent was modified;
  - b. has been notified; and
  - c. has been assessed having regard to the relevant matters in s4.15(1) of the EP&A Act.
2. That the Panel consider any submissions made concerning the proposed modification and take into account the reasons of the consent authority that granted the consent that is sought to be modified.
3. That modification application DA-2018/1135 seeking to modify development consent DA96/487 to convert existing illuminated general advertising structure to LED digital display on the Railway Bridge above O'Riordan Street, Mascot be APPROVED. The proposal is modified in the following manner:

\*By amending condition 1 to refer to approved plans and documentation.

\*By amending condition 20 to read:

20. *The applicant being informed that this approval, in relation to the south facing sign, 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. 96/0487 of the 13th day of February, 1996. Any alteration, variation, or extension of the use, for which approval has been given would require further Town Planning Approval from Council.*
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\*By deleting condition 10

\*By adding conditions 21 to 63; and

\*By inserting advice 1 to 3.

4. That the objectors be notified of the Panel's decision.

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## Location Plan



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## Attachments

- 1 Planning Report [↓](#)
- 2 Site Plans, Elevations & Photomontages [↓](#)
- 3 Original DA consent [↓](#)
- 4 Draft conditions [↓](#)

## BAYSIDE COUNCIL

### Planning Assessment Report

#### Application Details

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<b>Application Number:</b>	DA-2018/1135
<b>Date of Receipt:</b>	18 July 2018
<b>Property:</b>	Part Lots 4, 5 and 6 In DP 747022, O'Riordan Street, Mascot
<b>Owner:</b>	Manboom Pty Ltd
<b>Applicant:</b>	Graham Johanson C/- Ooh Media Fly Pty Ltd
<b>Proposal:</b>	Modification of Development Consent DA96/0487 to replace the north facing existing illuminated general advertising sign with an integrated digital LED screen
<b>Recommendation:</b>	Approval
<b>Value:</b>	Unknown
<b>No. of submissions:</b>	Four(4)
<b>Author:</b>	Kerry Gordon – Kerry Gordon Planning Services
<b>Date of Report:</b>	15 May 2019

#### Key Issues

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Modification Application No. 2018/1135 was lodged on 8 July 2018 seeking to modify Development Consent DA96/0487 to replace the north facing existing illuminated general advertising sign with an integrated digital LED screen. The application is accompanied by a Voluntary Planning Agreement which would have the effect of paying Council a percentage of the sign revenue as a public benefit.

The existing sign is one of two signs (one south and one north facing) mounted on a freestanding advertising structure which straddles O'Riordan Street and part of the railway bridge over O'Riordan Street, Mascot.

The application was placed on public exhibition from 31 July to 15 August 2018 and four submissions were received during the public notification period. The concerns raised in the submissions, where valid, are addressed by additional information sought from the applicant or conditions of consent.

The key issues relevant to the assessment of the replacement of the advertising display panel with a digital screen are existing use rights, the potential impact on road safety, on safety of use of the airport, the impact of lighting upon nearby hotels and dwellings and the impact upon the visual character of the area.

RMS has reviewed the proposal subject to *State Environmental Planning Policy No 64 (Advertising and Signage)* and has provided concurrence under Section 138 of *Roads Act 1993* with the inclusion of conditions.



The application was also referred to the Civil Aviation Safety Authority (CASA), who raised no objections to the proposal.

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

### Recommendation

That modification application DA-2018/1135 seeking to modify Development Consent DA96/0487 to replace the existing north facing illuminated general advertising structure with an integrated digital LED screen on the O'Riordan Street underbridge, Mascot be APPROVED subject to the amendment to the approved conditions of consent attached to this report.

### Background

#### History

The existing sign faces on the general purpose advertising structure straddling O'Riordan Street and part of the railway bridge, Mascot was approved under Development Consent 96/0487, dated 1 May 1996. The sign has been continually operating since it was erected on the site.

#### Proposal

Modification Application No. 2019/1183 seeks to modify Development Consent DA93/3067 to replace the north facing, illuminated, general advertising sign with an integrated digital LED screen. The application is accompanied by a Voluntary Planning Agreement.



Figure 1: Existing advertising sign on overbridge over O'Riordan Road

The existing advertising signs are externally illuminated vinyl advertising skins that are tensioned across an existing advertising structure constructed of tubular steel lattice framing. The existing north facing sign has dimensions of 29.6m x 6.0m, with a display area of 177.6m<sup>2</sup>.

The display structure is mounted on a large overbridge structure which straddles part of the railway bridge and O'Riordan Street as can be seen in the photograph on the preceding page. This structure also has a logo of the advertising company attached to it at the centre top.

The proposed LED digital screen is internally illuminated and is to have dimensions of 22.68m x 5.85m, with a display area of 132.7m<sup>2</sup> and is proposed to operate 24 hours a day, seven days a week. The screen will have a depth of 300mm. This represents a reduction from the dimensions of the existing sign, by a 44.9m<sup>2</sup> or 25.3%. The proposed advertising sign is shown in the following montage. As can be seen, panels are proposed to be inserted either side of the new sign in the "gaps" left by the removal of the larger signage panels.

The SEE also indicates the proposal will include the provision of an additional gantry platform behind the new digital sign and changes to the structural support members as well as removal of the external lighting. The Applicant has clarified that these will be behind the sign and not visible.

It is proposed that the digital screen will display static images only and will not involve scrolling, flashing or motion picture or emit intermittent light. It is proposed that the advertisements will be changed every 10 seconds, with a 0.1 second transition time.



**Figure 2: Montage of proposed altered Sign (taken from SEE)**

The application indicates the advertising structure will not be used to display advertising for tobacco products, of an overtly religious nature, containing overt or sexually graphic impact or pornography and illegal drugs. It is indicated that the advertising content will comply with the Australian Advertising Industry Codes of Conduct and Outdoor Media Association's Code of Conduct.

The application indicates that Amber Alerts and RMS Road Safety Announcements will be displayed on the screen at the request of law and safety enforcement agencies and RMS.

The application also seeks to amend/delete a number of the original conditions of consent as follows:

- It is requested that Condition 1, as stated following, be reworded to reflect the new approved plans.

*The development shall be carried out substantially in accordance with plans received by Council on 13th February 1996, except where amended by the conditions of the Consent.*

- It is requested that Condition 20 as stated following, be reworded to reflect the new approved plans.

*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. 96/0487 of the 13th day of February, 1996, and that any alteration, variation or extension to the use, for which approval has been given, would require further Town Planning Approval from Council.*

#### Site Description

The site is a portion of O'Riordan Street, Mascot, to the north of its intersection with Qantas Drive, and is legally described as Part Lots 4, 5 and 6 In DP 747022. This section of O'Riordan Street also contains a railway overbridge which is part of the goods railway line (see aerial photograph following identifying the location of the site).



**Figure 3: Aerial photograph with sign identified by red arrow**

O'Riordan Street is a one way, south bound, street that is an access route to Kingsford Smith Domestic Airport and carries traffic only in the direction of the sign.

The existing advertising sign is an internally illuminated light box and has dimensions of 29.6m x 6.0m, with a display area of 177.6m<sup>2</sup>. The display structure is mounted on a large overbridge structure which straddles part of the railway bridge and O'Riordan Street.



The surrounding area is characterised by commercial development and airport related uses and provides transport corridors to and from the Domestic and International Airports. In relatively close proximity to the proposed sign are a series of hotels.

### Referrals

The table below outlines the referrals involved with the application.

**Table 1:** External and Internal Referrals

Referral	Status
RMS	No objections subject to conditions which are included in the recommendation
SACL	Concern is raised in relation to the proximity of the sign to the existing digital sign operated by oOh! Media, which is within 150m and the potential of the signs to distract drivers and pose a road safety risk. <i>Comment:</i> Whilst this concern is noted, given the support by RMS and the assessment of the separation distance under the Guidelines, following, the concern is not concurred with.
CASA	No objections subject to conditions which are included in the recommendation
ATRC	The proposal is supported, however it is requested that consideration be given to the timing of the construction of the Botany Rail Duplication Project. Consideration should also be given to the impact upon the heritage listed railway bridge. <i>Comment:</i> Discussions with ATRC revealed that a State Significant Infrastructure Application was lodged with the Department in November 18 and the Secretary's Environmental Assessment Requirements were provide in December 18. The existing bridge is to be demolished and replaced by duplicate bridges. The works are anticipated to occur in mid-late 2020. After discussions with the Applicant in this regard, it was agreed that a condition of consent be placed upon any approval limiting the approval until such time as the overbridge structure is demolished, should that be required in order to facilitate the duplication of the railway bridge. In terms of heritage, as the listed bridge is to be demolished in the near future, the impact of the sign upon the significance of the bridge is not a concern that warrants refusal of the application.

### Statutory Considerations

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

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

#### **S4.55 – Modification of Consents - Generally**

Section 4.55(2) of the Environmental Planning and Assessment Act permits the modification of a development application that does not involve a minor error or have minimal environmental impact, as follows, and the application is made pursuant to Section 4.55(2).

##### **(2) Other modifications**

*A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:*

- (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- (c) it has notified the application in accordance with:*
  - (i) the regulations, if the regulations so require, or*
  - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

*Subsections (1) and (1A) do not apply to such a modification.*

In relation to Section 4.55(2)(a), the application indicates that the modified development will be substantially the same as the development originally granted consent for the following reasons:

- The description of the original development is “sign faces of advertising structure” and the modified development would be for the same.
- The proposed change will not substantially alter the approved built form as despite the change of the technology, the overall form, shape and height of the advertising structure remain the same as initially approved, with only a reduction in the size of the screen.
- The modified development is essentially or materially the same as the development that was initially approved.

The above arguments are concurred with, it being considered that the use of the development remains the same and it is considered that the modified development as proposed will be substantially the same as the development originally granted consent.

In relation to Section 4.55(2)(b), the application is not integrated development and the subclause is not applicable to the assessment.

In relation to Section 4.55(2)(c), the application has been notified in accordance with Council's DCP.

In relation to Section 4.55(2)(d), four submissions were received by Council in response to the notification of the application which are addressed later in this report.

Section 4.55(3) of the Environmental Planning and Assessment Act, as follows, requires consideration of the relevant matters identified in Section 4.15(1), which are addressed following.

*(3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application. The 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.*

#### **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. 64 (Amendment 3) – Advertising and Signage**

The application is for signage that is visible from a public place and which is permissible with consent and is not signage that is exempt development, and as such, pursuant to clause 6, SEPP 64 is applicable to the assessment of the application.

##### **Part 2 Signage Generally**

Clause 8 of SEPP 64 states that the consent authority must not grant consent to an application for signage unless it is satisfied:

- (a) that the signage is consistent with the objectives of this Policy as set out in clause 3 (1) (a), and*
- (b) that the signage the subject of the application satisfies the assessment criteria specified in Schedule 1.*

##### **Objectives**

The objectives stipulated under Clause 3(1)(a) are:

- (a) to ensure that signage (including advertising):*
  - (i) is compatible with the desired amenity and visual character of an area, and*
  - (ii) provides effective communication in suitable locations, and*
  - (iii) is of high quality design and finish, and*

The replacement advertising display panel is appropriate to the character of the area, which contains several large scale, general purpose advertisement structures. The size of the advertising panel is being reduced compared to the existing sign, which is supported. The communication provided will be subject to conditions to ensure it is appropriate and will not impact road safety and will allow for ease of changing of advertising content, being possible

using a computer, rather than needing to erect a new advertising panel. The quality and finish of the LED digital screen is appropriate to the context.

(b) *to regulate signage (but not content) under Part 4 of the Act, and*

Noted.

(c) *to provide time-limited consents for the display of certain advertisements, and*

The advertising structure has a current approval. However, pursuant to clause 14, a condition of consent will limit the consent for the digital screen to 15 years, or lesser time if the supporting structure is demolished to allow works for the duplication of the rail line to occur, satisfying this objective.

(d) *to regulate the display of advertisements in transport corridors, and*

The site is located in a transport corridor.

(e) *to ensure that public benefits may be derived from advertising in and adjacent to transport corridors.*

The sign application is supported by a VPA which provides a payment per square metre of signage per annum to Council by way of public benefit, satisfying this objective.

#### Schedule 1

The matters of consideration contained in Schedule 1 are addressed following.

#### **1 Character of the area**

- *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 design of the signage is appropriate to and compatible with the area, which is characterised as containing a series of large outdoor general purpose advertising structures. There is no theme for outdoor advertising in the locality.

#### **2 Special areas**

- *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 signage is not located in a conservation area, is not identified as an item or heritage, but is in the visual catchment of heritage items in the vicinity of the site (I3, I168 and I170 – including Sydney Airport Group). The site is not in the immediate vicinity of residential areas or other environmentally sensitive or natural conservation areas, is not located on a waterway, rural landscape or area of open space.

The sign is also located in proximity to a railway bridge which is listed on the RailCorp S170 Heritage and Conservation Register. Given the bridge is intended to be demolished in the near future, the impact of any signage upon the heritage significance of the bridge is acceptable.

**3 Views and vistas**

- 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?

The signage is existing and its change in display format will not result in any detrimental impacts upon views or viewing rights of other advertisers. The change in signage will not increase the manner in which the sign dominates the skyline or reduce the quality of vistas in the area.

**4 Streetscape, setting or landscape**

- 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?
- Does the proposal require ongoing vegetation management?

The sign is to be reduced from the size of the existing sign and is to be placed in an existing advertising support structure and as such the scale, proportion and form are appropriate to the streetscape. The new sign will make a similar contribution to the visual interest of the streetscape as the existing sign.

The reduction in the size of the sign will not reduce clutter but will rationalise and simplify the existing advertising and therefore is reasonable.

The proposed sign will not screen unsightliness and will require no change in the height of the advertising structure relative to the height of surrounding buildings, structures and tree canopies. The sign will not require ongoing vegetation management as it straddles a road.



Figure 5: Sign on opposite side of advertising structure



**5 Site and building**

- *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?*

The proposed sign will have a similar relationship with the scale, proportion and other characteristics of the site as it is to be installed on the existing advertising structure. The sign shows a degree of innovation in that it is a digital sign, thereby removing the need to access the site to change the content of the sign.

**6 Associated devices and logos with advertisements and advertising structures**

- *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?*

The digital display contains the lighting within the device.

**7 Illumination**

- *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?*

An assessment of the illumination impact of the signage prepared by Electro Light has concluded that, subject to compliance with luminance levels, the digital screen will not result in unacceptable impacts upon the safety of pedestrians or vehicles and will not impact aircraft safety. The glare from the signage has been assessed as being compliant with AS 4282, with particular regard had to the potential impact upon the Stamford Plaza Hotel adjoining the sign, with additional dimming of the sign proposed to ensure compliance. The impact upon 108 and 113 Robey Street, 111 High Street and 127, 131 and 133 Baxter Street was also addressed in the report and found to be acceptable.

However, the lighting assessment was carried out on the basis that the sign did not operate outside the hours of 6am to 11pm whilst the Statement of Environmental Effects indicates that the sign is to operate 24 hours, seven days a week. Conditions of consent are recommended to ensure the luminance levels are compliant with the recommendation of the report, including a condition limiting the hours of operation of the sign to between 6am and 11pm on any day.

**8 Safety**

- *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?*

An assessment of the potential of the changing of the signage every 10 seconds upon traffic safety has been carried out on behalf of the applicant, with the report prepared by Bitzios indicating the frequency of signage change would have negligible impact upon road safety. RMS raise no objection to the proposal subject to conditions which are included in the recommendation.

### **Part 3 Advertisements**

#### **Division 1 General**

This part applies to all signage other than business identification and building identification signs or signage that is exempt or on vehicles and as such applies to the assessment of the application.

#### **Division 2 Control of Advertisements**

Division 2 also applies to advertisements and identifies Council as the consent authority and indicates that applications for advertisements also need to satisfy other relevant requirements of the Policy.

It further indicates that if clause 18 or 24 applies, the consent authority must not grant consent unless arrangements that are consistent with the Guidelines have been entered into for the provision of the public benefits to be provided in connection with the display of the advertisement.

The application is subject to Clause 18 and the applicant has indicated that a VPA will be entered into which provides a payment per square metre of signage per annum to Council by way of public benefit. The public benefit has been accepted by Council as being reasonable.

Clause 14 indicates that a consent granted under this Part ceases to be in force on the expiration of 15 years after the date on which the consent becomes effective, or a lesser period as specified by the consent authority. A condition of consent to this effect is recommended.

#### **Division 3 Particular Advertisements**

Clause 17 applies to advertisement with a greater display area than 20m<sup>2</sup> or a height of 8m or more above ground and makes such applications advertised development for the purposes of the Act. The application was advertised in accordance with the requirements of the Act. The clause also requires referral of the application to the RMS if it is advertisement to which clause 18 applies (ie is also located within 250m of, and is visible from, a classified road). O'Riordan Street is a classified road and as such a referral was made to RMS, who issued concurrence to the application subject to conditions which have been included in the recommendation.

Clause 19 applies to advertisements with a greater display area of 45m<sup>2</sup> and as such applies to the assessment. The clause requires that such signs shall not be granted consent unless a development control plan is in force that has been prepared on the basis of an advertising design analysis for the area or where the advertisement is on transport corridor land and the consent authority is satisfied it is consistent with the Guidelines. The site is transport corridor land and an assessment against the Guidelines follows.

Clause 20 requires that the name or logo of the person who owns or leases an advertisement may only appear within the advertising display area and must not be greater than 0.25m<sup>2</sup>. The existing name plate has an area of 0.25m<sup>2</sup> as required by the provision but is located separate from the advertising display area at the top centre of the sign. A condition is recommended requiring the logo to be relocated to be within the advertising display area.

Clause 23 permits consent to be granted to a freestanding advertisement only if the advertising structure does not protrude above the dominant skyline, including buildings, structures or tree canopies when viewed from ground level within a visual catchment of 1 kilometre. The proposed advertising structure is existing and the change in display methodology does not alter the impact of the existing structure in terms of its visibility. Further, the signage is below the height of the nearby hotel buildings.

#### **Transport Corridor Outdoor Advertising and Signage Guidelines (2017)**

Section 2.3.2 addresses signage placement in transport corridors in urban areas and requires advertisement to satisfy the following criteria:

*Advertising in urban areas should be restricted to rail corridors, freeways, tollways or classified roads:*

- a) Within or adjacent to strategic transport corridors passing through enterprise zones, business development zones, commercial core zones, missed use zones or industrial zones*
- b) Within or adjacent to strategic transport corridors passing through entertainment districts or other urban locations identified by the local council in a relevant strategy as being appropriate for such advertising.*

*Consideration must be given to the compatibility of advertising development with surrounding land uses and whether such advertising will impact on sensitive locations.*

The site is located adjacent to a classified road and is zoned B5 Business Development. The site is located within a transport corridor accessing Sydney Kingsford Smith Airport in an area characterised by similar signage which was constructed in the 1990s and early 2000's and as such is consistent with Section 2.3.2.

Section 2.4 addresses signage clutter and requires consideration of the following relevant controls:

- a) Multiple advertisements on a single block of land, structure or building should be discouraged as they contribute to visual clutter.*
- b) Where there is advertising clutter, consideration should be given to reducing the overall number of individual advertisements on a site. Replacement of many small signs with a larger single sign is encouraged if the overall advertising display area is not increased.*

The existing advertising structure is one of several at the locality and the existing advertising structure supports a sign on both sides, the one on the northern side being the sign subject of the modification. The sign is located in an area that is specifically identified in the Guidelines as exhibiting advertising clutter and the northern sign is located immediately adjoining another large advertising sign as can be seen in the photograph on page 2 of this report. The application claims signage clutter is reduced by the reduction in the size of the sign and the removal of the external lighting source. The argument provided by the applicant is supported in this case.

Section 2.5.1 addresses general criteria for advertising structures as follows:

- a) *The advertising structure should demonstrate design excellence and show innovation in its relationship to the site, building or bridge structure.*

The upgrade to digital technology of the existing advertising structure shows innovation. No other part of the advertising structure demonstrates any particular elements of design excellence.

- b) *The advertising structure should be compatible with the scale, proportion and other characteristics of the site, building or structure on which the proposed signage is to be located.*

The advertising structure is not being altered and as such its compatibility with the area is not changed by the replacement of the sign face.

- c) *The advertising structure should be in keeping with important features of the site, building or bridge structure.*

The advertising structure is not being altered and is freestanding, with its relationship to surrounding structures not changed by the replacement of the sign face.

- d) *The placement of the advertising structure should not require the removal of significant trees or other native vegetation.*

The advertising structure is existing and will not require the removal of any vegetation.

- e) *The advertisement proposal should incorporate landscaping that complements the advertising structure and is in keeping with the landscape and character of the transport corridor.*

- *The development of a landscape management plan may be required as a condition of consent.*
- *Landscaping outlined within the plan should require minimal maintenance.*

The existing landscaping surrounding the advertising structure and in the area is appropriate and is appropriately low maintenance.

- f) *Any safety devices, platforms, lighting devices or logos should be designed as an integral part of the signage or structure on which it is to be displayed.*

The advertising structure is not proposed to be altered, but the new display will incorporate internal LED lighting and the external lighting will be removed. The changes proposed to the gantry and structure to support the sign and allow access for maintenance of the sign will be located behind the sign, minimising its visual impact.

- g) *Illumination of advertisements must comply with the requirements in Section 3.3.3.*

This is addressed later in the report.

- h) *Illumination of advertisements must not cause light spillage into nearby residential properties, national parks or nature reserves.*

The proposed change in display will not result in any unacceptable light spillage to residential properties, national parks or nature reserves.

Section 2.5.4 addresses freestanding advertisements as follows:

- a) *The advertising structure must not protrude above the dominant skyline, including any buildings, infrastructure or tree canopies, when viewed from ground level within a visual catchment of 1km. Note: This impact should be measured from the vehicle approach location and any other critical viewpoints.*

The sign does not protrude above the dominant skyline which is created by the nearby hotel buildings.

- b) *For a freestanding advertisement greater than 45sqm that requires consent from local council, a DCP must be in force that has been prepared on the basis of an advertising design analysis for the relevant area or precinct.*

No such DCP is in force, however the freestanding advertising structure already exists.

- c) *Where the sign is in a transport corridor a landscape management plan may be required as part of the DA approval for a freestanding advertisement. This may include requirements to provide appropriate vegetation behind and adjacent to the advertising structure to minimise unintended visual impacts. Landscaping should include trees, shrubs and ground covers to provide adequate screening, softening, colour, soil stabilisation and weed reduction.*

The freestanding advertising structure already exists and straddles a railway bridge and road and as such landscaping is not appropriate to the location of the sign.

Section 2.5.8 addresses digital signs and for signs greater than 20m<sup>2</sup> the following apply:

- a) *Each advertisement must be displayed in a completely static manner, without any motion, for the approved dwell time as per criterion (d) below.*

It is intended that the advertisement be displayed in static manner and a condition of consent is recommended to this effect.

- b) *Message sequencing designed to make a driver anticipate the next message is prohibited across images presented on a single sign and across a series of signs.*

A condition of consent to this effect is recommended.

- c) *The image must not be capable of being mistaken:*
  - i. *for a prescribed traffic control device because it has, for example, red, amber or green circles, octagons, crosses or triangles or shapes or patterns that may result in the advertisement being mistaken for a prescribed traffic control device*
  - ii. *as text providing driving instructions to drivers.*

A condition of consent to this effect is recommended.

- d) *Dwell times for image display must not be less than:*
  - i. *10 seconds for areas where the speed limit is below 80 km/h*
  - ii. *25 seconds for areas where the speed limit is 80km/h and over*

The applicant has sought a dwell time of 10 seconds, which has not been objected to by RMS.

- e) The transition time between messages must be no longer than 0.1 seconds, and in the event of image failure, the default image must be a black screen.*

A condition of consent to this effect is recommended.

- f) Luminance levels must comply with the requirements in Section 3 below.*

The luminance levels have been addressed by a lighting report and a condition of consent will require compliance with the recommendations of that report, including that the signage shall only operate between the hours of 6am and 11pm on any day.

- g) The images displayed on the sign must not otherwise unreasonably dazzle or distract drivers without limitation to their colouring or contain flickering or flashing content.*

A condition of consent to this effect is recommended.

- h) The amount of text and information supplied on a sign should be kept to a minimum (e.g. no more than a driver can read at a short glance).*

A condition of consent to this effect is recommended.

- i) Any sign that is within 250m of a classified road and is visible from a school zone must be switched to a fixed display during school zone hours.*

The sign is not located proximate to school zone.

- j) Each sign proposal must be assessed on a case-by-case basis including replacement of an existing fixed, scrolling or tri-vision sign with a digital sign, and in the instance of a sign being visible from each direction, both directions for each location must be assessed on their own merits.*

This report contains a merit assessment of this sign as required.

- k) At any time, including where the speed limit in the area of the sign is changed, if detrimental effect is identified on road safety post installation of a digital sign, RMS reserves the right to re-assess the site using an independent RMS-accredited road safety auditor. Any safety issues identified by the auditor and options for rectifying the issues are to be discussed between RMS and the sign owner and operator.*

Noted.

- l) Sign spacing should limit drivers' view to a single sign at any given time with a distance of no less than 150m between signs in any one corridor. Exemptions for low speed, high pedestrian zones or CBD zones will be assessed by RMS as part of their concurrence role.*

The Applicant has provided a justification for the sign, prepared by Bitzios, which is located within 85m of an existing digital sign, seeking an exemption to this provision. The justification indicates a view to both the proposed and existing sign occurs at approximately 115m from the intersection and lasts until approximately midway through the intersection. At this point in time the traffic speeds are very slow, with traffic usually being in a stopped position or travelling well below 50kph through the intersection.

The assessment by Bitzios indicates that the viewing angle of both signs is essentially straight-ahead with no turning of the head necessary to view the signs and as such would not require a driver to turn his/her head and thereby be distracted from the traffic ahead. This is consistent with the exemption criteria for low speed environments. Concurrence has been granted by RMS after an assessment of road safety, and given the concurrence and the assessment above described, the exemption to the separation distance is supported in this case.

*m) Signs greater than or equal to 20sqm must obtain RMS concurrence and must ensure the following minimum vertical clearances;*

- i. 2.5m from lowest point of the sign above the road surface if located outside the clear zone*
- ii. 5.5m from lowest point of the sign above the road surface if located within the clear zone (including shoulders and traffic lanes) or the deflection zone of a safety barrier if a safety barrier is installed.*

*If attached to road infrastructure (such as an overpass), the sign must be located so that no portion of the advertising sign is lower than the minimum vertical clearance under the overpass or supporting structure at the corresponding location.*

RMS has raised no concern in relation to the location of the existing sign.

*n) An electronic log of a sign's operational activity must be maintained by the operator for the duration of the development consent and be available to the consent authority and/or RMS to allow a review of the sign's activity in case of a complaint.*

A condition of consent to this effect is recommended.

*o) A road safety check which focuses on the effects of the placement and operation of all signs over 20sqm must be carried out in accordance with Part 3 of the RMS Guidelines for Road Safety Audit Practices after a 12 month period of operation but within 18 months of the signs installation. The road safety check must be carried out by an independent RMS-accredited road safety auditor who did not contribute to the original application documentation. A copy of the report is to be provided to RMS and any safety concerns identified by the auditor relating to the operation or installation of the sign must be rectified by the applicant. In cases where the applicant is the RMS, the report is to be provided to the Department of Planning and Environment as well.*

RMS in its concurrence conditions has required such an audit and a condition to this effect is recommended.

Section 3 addresses road safety of advertisements and Section 5 addressed RMS assessment of advertising proposal and the assessment of these sections have been deferred to the RMS given the location of the sign on a classified road. RMS is satisfied that the proposal can be supported subject to conditions which have been included in the recommendation.

Section 4 addresses public benefits for advertising proposals and Section 4.2 identifies appropriate public benefits can be a monetary contribution or an 'in kind' contribution. Such contribution must be linked to improvements in local community services and facilities such as:

- *improved traffic safety (road, rail, bicycle and pedestrian)*

- *improved public transport services*
- *improved public amenity within, or adjacent to, the transport corridor*
- *support school safety infrastructure and programs*
- *other appropriate community benefits such as free advertising time to promote a service, tourism in the locality, community information, or emergency messages*

Section 4.2.3 indicates that where a local council is the consent authority, public benefit contributions may also be required as part of the approval to display an outdoor advertisement. In addition to the standard DA fee, the applicant may be required to provide an upfront fee or an annual fee (payable to Council) for the duration of the consent, generally 15 years and in such instance no other additional fee is to be charged under the Local Government Act. Such fee may not be required by a Council if it is satisfied that adequate public benefits will be otherwise provided. Improvements for traffic safety are to be a priority for expenditure and may include flashing lights, cycle ways, pedestrian refuges or bridges.

The applicant has proposed a monetary payment to Council based on a percentage of the revenue of the sign by way of a VPA, which is an acceptable form of public benefit. A condition of consent consistent with the offer of public benefit is recommended.

#### Botany Bay Local Environmental Plan 2013

The provisions of the BBLEP 2013 have been considered in the assessment of the Development Application and the following information is provided:

**Table 3: BBLEP 2013 Compliance Table**

Principal Provisions of BBLEP 2013	Compliance (Yes/No)	Comment
Land Use Zone	Yes	The site is zoned SP 2 Infrastructure (Classified Road) under the BBLEP 2013.
Is the proposed use/works permitted with development consent?	No	The proposed use is <i>signage</i> which is not a permissible use with consent. However, the advertising structure is an existing one which was granted consent and has operated continually since the consent was granted. As such the sign has existing use rights and the modification of the sign is permissible with consent pursuant to s. 4.65 of the Environmental Planning and Assessment Act.
Does the proposed use/works meet the objectives of the zone?	Yes	The proposed signage is not inconsistent with the objectives of the zone which are as follows: <ul style="list-style-type: none"> <li>• <i>To provide for infrastructure and related uses.</i></li> <li>• <i>To prevent development that is not compatible with or that may detract from the provision of infrastructure</i></li> </ul>
What is the height of the building? Does the height of the building comply with the maximum building	Yes	The site does not have a maximum height control.



Principal Provisions of BBLEP 2013	Compliance (Yes/No)	Comment
height?		
5.10 – Heritage Conservation	Yes	The site is proximate to three items of heritage, the Commonwealth Water and Sewerage Pumping Stations (state significance), the ruins of the Botany Pumping Station (local significance) and Sydney (Kingsford Smith) Airport (local significance). The change to the display method for the signage will not detrimentally impact any of the items of heritage as it does not fundamentally change the sign.
The following provisions in Part 6 of the LEP apply to the development:		
• 6.1 – Acid Sulfate Soils (ASS);	Yes	Class 2, but as no disturbance of the soil occurs no further assessment is required.
• 6.2 – Earthworks;	Yes	The advertising structure exists and there are no excavation works proposed and as such there will be no disturbance to the soil
• 6.3 – Stormwater management;	Yes	The existing advertising structure will not impact stormwater management in the area.
• 6.8 – Airspace operations;	Yes	The height of the sign is not proposed to be altered and CASA have raised no objections to the proposal subject to requiring further approval for use of cranes is in excess of RL 20.0. A condition to this effect is recommended.

The objectives and provisions of the BBLEP 2013 have been considered in relation to the subject development application. The proposal is satisfactory in terms of the BBLEP 2013.

#### **S4.15(1)(a)(ii) - Provisions of any Draft Environmental Planning Instruments**

There are no current Draft Environmental Planning Instruments applicable to this development.

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

The following Development Control Plan is relevant to this application.

#### **Botany Bay Development Control Plan 2013**

The following is an assessment of the proposed development against the relevant provisions of this DCP as they relate to signage.

#### **Part 3B – Heritage**

Refer to Table 3.

**Part 3J- Aircraft Noise and OLS**

Refer to Table 3.

**Part 3D – Signage**

The development application has been assessed against the controls contained in *Part 3D of the DCP – Signage*. Part 1.2 contains a note that the DCP does not provide provisions for signage having an advertising display area greater than 45m<sup>2</sup>. As the sign has a proposed advertising display area of 132.7m<sup>2</sup> Part 3D of the DCP is not applicable to the assessment of the application.

**Part 8 – Character Precinct**

Part 8.7 Mascot Character Precinct of the BBDCP 2013 is the relevant character precinct applicable to the proposed signs. None of the provisions of Part 8.7 address signage.

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

Clause 92 of the Regulation has been considered.

**S4.15(1)(b) - Likely Impacts of Development**

The proposed development will have no significant adverse environmental, social or economic impacts in the locality. The proposed signage has been assessed against the aims and objectives of SEPP 64 and satisfies the assessment criteria of the policy, particularly safety and illumination.

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

The suitability of the site for the advertising structure and change to digital format has been assessed throughout this report as being acceptable.

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

Four submissions have been received in response to the notification of the application, which are addressed following.

- *The proposal will result in unacceptable signage clutter and will not comply with the RMS guideline for 150m separation between digital signs, with resultant potential impacts upon vehicular and pedestrian safety*

**Comment:** Additional information was sought to address this concern. In response the Applicant provided additional advice by Bitzios which indicated the second sign is located within 85m from the proposed digital sign. The application is seeking an exemption to this provision and the justification indicates a view to both the proposed and existing sign occurs at approximately 115m from the intersection and lasts until approximately midway through the intersection. At this point in time the traffic speeds are very slow, with traffic usually being in a stopped position or travelling well below 50kph through the intersection.

The assessment by Bitzios indicates that the viewing angle of both signs is essentially straight-ahead with no turning of the head necessary to view the signs and as such would not require a driver to turn his/her head and thereby be distracted from the traffic ahead. This is consistent with the exemption criteria for low speed environments. Concurrence has been granted by RMS after an assessment of road safety.

The existing advertising structure is one of several at the locality and the existing advertising structure supports a sign on both sides, the one on the northern side being the sign subject of the modification. The sign is located in an area that is specifically identified in the Guidelines as exhibiting advertising clutter and the northern sign is located immediately adjoining another large advertising sign as can be seen in the photograph on page 2 of this report. The application claims signage clutter is reasonably reduced by the reduction in the size of the sign and the removal of the external lighting source. The argument provided by the applicant is supported in this case.

- *Light glare impact on surrounding hotels/Lighting assessment does not consider nearest properties*

Comment: An amended lighting impact assessment (Issue 002) was provided which addresses the nearby hotels and indicates maximum luminance levels for operation and requires that the sign operate only between 6am and 11pm. Conditions of consent to this effect are recommended which will ensure lighting glare upon surrounding uses is acceptable.

- *New sign luminance output is higher than existing sign*

The lighting report addresses the suitability of the luminance of the proposed sign, see above comment.

Comment:

- *10 second dwell time creates concern for driver distraction*

Comment: The dwell time is consistent with the RMS condition recommended after its assessment of road safety.

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

Granting approval to the proposed development is not contrary to the public interest as it will replace the existing static signs with digital signs, allowing better illumination control and removing the need to physically access to the site in order to change the advertisement content.

#### **Division 4.11 – Existing Use Rights**

Pursuant to Section 4.65 of the Act, existing use rights means:

- (a) *the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for this Division, have the effect of prohibiting that use, and*
- (b) *the use of a building, work or land:*
  - (i) *for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and*

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

For a use to constitute an existing use it has to be for a lawful purpose immediately before a new environmental planning instrument, which would prohibit the use, coming into force. The existing sign was granted consent under Development Consent DA96/0487 on 1 May 1996 and has been operational since that time. With the gazettal of BBLEP 2013, the site was zoned SP2 Infrastructure (Classified Road) and the use became a prohibited use. Accordingly, the existing sign has existing use rights.

Section 4.66 of the Act indicates that nothing in the Act prevents the continuance of an existing use.

Clause 4.67 permits the Regulations to make provisions for an existing use to be altered or extended or rebuilt, changed to another use or enlarged, expanded or intensified. Clause 4.67 also indicates that an environmental planning instrument cannot derogate or have the effect of derogating from the existing use rights provisions of the Act.

Part 5 of the Regulations addresses existing uses and Clause 41 permits any existing use to be enlarged, expanded or intensified, altered or extended or rebuilt.

As such, the proposal, which would constitute alterations to an existing use, is permissible with consent pursuant to Section 4.67 of the Act and Clause 41 of the Regulations.

## Conclusion

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That modification application DA-2018/1135 seeking to modify Development Consent DA96/0487 to replace the existing north facing illuminated general advertising structure with an integrated digital LED screen on the O'Riordan Street underbridge, Mascot be APPROVED subject to the amendment to the approved conditions of consent attached to this report.

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## Attachment

### Schedule 1 – Conditions of Consent

#### SCHEDULE OF CONSENT CONDITIONS

Development Consent 0487 of 1996 shall be amended as follows:

- A. Replace Conditions 1 and 20 with the following

**Development in Accordance with Plans**

1. The development is to be carried in accordance with the following plans and documentation listed below and endorsed with Council's stamp, except where amended by other conditions of this consent:

Southern Signage

Plans received by Council on 13<sup>th</sup> February, 1996.

Northern Signage

Drawing	Author	Dated
Landscape Plan O'Riordan Street, Drawing No. L1004 Issue 01	Group GSA	19/10/2017
Landscape Elevation O'Riordan Street, Drawing No. L3007 Issue 03		14/6/2017
Landscape Montage O'Riordan Street, Drawing No. L5002 Issue 02		7/12/2017

Reference Documents	Author	Dated
Statement of Environmental Effects	Urban Concepts	June 2018
Response to Matters Raised by Bayside Council – inclusive of appendices	oOh! Media	Undated
Structural Engineering Report – 2020-GN-O	Arcadis Design & Consultancy	22 June 2018
Traffic Safety Assessment, Version 002	Bitzios Consultancy	23 May 2018
Traffic Safety Assessment, Additional letter	Bitzios Consultancy	13 May 2019
Lighting Impact Statement, Revision B	Eleclight Australia Pty Ltd	30/10/17

20. The applicant being informed that this approval, in relation to the south facing sign, 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. 96/0487 of the 13<sup>th</sup> day of February, 1996. Any alteration, variation, or extension of the use, for which approval has been given would require further Town Planning Approval from Council.
- B. The deletion of Conditions 10
- C. The addition of the following conditions to comply with agencies requirements and current regulations.

**Hours of Operation**

21. The northern sign shall only be operated/illuminated between the hours of 6.00am and 11.00pm on any day.

#### **Voluntary Planning Agreement**

22. The Voluntary Planning Agreement (VPA) between Council and OoH Media Fly Pty Limited was entered into in connection with the development application which is the subject of this development consent. The VPA among other things makes provision for public benefits in connection with this development consent pursuant to State Environmental Planning Policy 64 (Advertising and Signage). All obligations imposed by the VPA on the applicant/developer must be complied with at all times in accordance with the terms of the VPA, including in particular:
- (a) payment of the monetary contribution in accordance with clause 5 and Schedule 2 of the VPA;
  - (b) allocation of display time to Destination NSW and Council in accordance with clause 10 of the VPA.

#### **Duration of Consent**

23. This development consent is issued for a limited period of 15 years from the date of the modification of consent or upon the removal of the signage structure for the purpose of duplication of the railway line, whichever occurs first. The consent will cease to be in force/expire at that time.

#### **Conditions imposed by Sydney Airport Corporation Limited (SACL)**

24. The approved height is inclusive of all lift over-runs, vents, chimneys, aerials, TV antennae, construction cranes etc.

Should you wish to exceed this height a new application must be submitted.

Should the height of any temporary structure and/or equipment be greater than 20.0 metres AEGH, a new approval must be sought in accordance with the Civil Aviation (Buildings Control) Regulations Statutory Rules 1988 No. 161.

Construction cranes may be required to operate at a height significantly higher than that of the proposed development and consequently, may not be approved under the Airports (Protection of Airspace) Regulations.

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

"Prescribed airspace" includes "the airspace above any part of either an Obstacle Limitation Surface (OLS) or Procedures for Air Navigation Services – Aircraft Operations (PANS-OPS) surface for the airport (Regulation 6(1)).

The height of the prescribed airspace at this location is 46 metres above AHD.

Planning for Aircraft Noise and Public Safety Zones Current planning provisions (s.117 Direction 3.5 NSW Environmental Planning and Assessment Act 1979) for the assessment of aircraft noise for certain land uses are based on the Australian Noise Exposure Forecast (ANEF). The current ANEF for which Council may use as the land use planning tool for Sydney Airport was endorsed by Airservices in December 2012 (Sydney Airport 2033 ANEF).

Whilst there are currently no national aviation standards relating to defining public safety areas beyond the airport boundary, it is recommended that proposed land uses

which have high population densities should be avoided.

#### **RMS Conditions**

25. A road safety check is to be carried out in accordance with Part 3 of the Roads and Maritime Guidelines for Road Safety Audit Practices after a 12 month period of operation but within 18 months of the signs installation. The road safety check must be carried out by an independent Roads and Maritime accredited road safety auditor who did not contribute to the original application documentation. A copy of the report is to be provided to Roads and Maritime and any safety concerns identified by the auditor relating to the operation or installation of the sign must be rectified by the applicant.
26. A Road Occupancy Licence (ROL) should be obtained from Transport Management Centre for any works that may impact on traffic flows on O'Riordan Street during construction activities. A ROL can be obtained through <https://myrta.com/oplinc2/pages/security/oplincLogin.jsf>
27. A Construction Traffic Management Plan detailing hours of operation, access arrangements and traffic control should be submitted to Council for approval prior to the issue of a Construction Certificate.
28. All works associated with the proposed sign, including maintenance activities, shall be at no cost to Roads and Maritime Services.
29. Each advertisement must be displayed in a completely static manner, without any motion, for the approved dwelling time as per condition 32, including no flashing or scrolling of message.
30. Message sequencing designed to make a driver anticipate the next message is prohibited across images presented on a single sign and across a series of signs.
31. The image must not be capable of being mistaken:
  - (a) For a prescribed traffic control device because it has, for example, red, amber or green circles, octagons, crosses or triangles or shapes or patterns that may result in the advertisement being mistaken for a prescribed traffic control device, or
  - (b) As text providing driving instructions to drivers.
32. Dwell times for image displays are:
  - (a) 10 seconds for areas where the speed limit is below 80 km/h.
  - (b) 25 seconds for areas where the speed limit is 80 km/h and over.
33. The transition time between messages must be no longer than 0.1 second.
34. Luminance levels must comply with the requirements in the Table below:

Luminance means the objective brightness of a surface as measured by a photometer, expressed in candelas per square meter (cd/sqm). Levels differ as digital signs will appear brighter when light levels in the area are low, Unless provided below, luminance levels should otherwise comply with the recommended values of AS 4282 Control of the Obtrusive Effects of Outdoor Lighting.

Lighting Conditions	Permitted Luminance Zone 1	Permitted Luminance Zones 2 and 3	Permitted Luminance Zone 4
Full Sun on Face of Signage	No limit	No limit	No limit
Daytime Luminance	No limit	6000	6000
Morning and Evening, Twilight and Inclement Weather	700	700	500
Night Time	350	350cd	200

35. The image displayed on the sign must not otherwise unreasonably dazzle or distract drivers without limitation to their colouring or contain flickering or flashing content.
36. The amount of text and information supplied on a sign should be kept to a minimum (for example no more than a driver can read at a short glance). Text should preferably be displayed in the same font and size. Table 5 in Section 3 Transport Corridor Outdoor Advertising and Signage Guidelines.
37. Advertisements displayed on the LED advertising screen must be in accordance with the guidelines for sign content outlined in Section 3.3.2 of the Transport Corridor Outdoor Advertising and Signage Guidelines, dated November 2017.

#### Display of Road Safety and Emergency Messages

38. The LED advertising screen shall be available for 5% of all advertising time each year for the display of road safety messages by arrangements with RMS and TfNSW. Additionally, the LED advertising screen shall be made available for use in the event of a "threat to life emergency" messaging to override the commercial advertising.

#### Electronic Log

39. An electronic log of the signs activities must be maintained by the operator for the duration of the development consent and be available to the consent authority and RMS to allow a review of the signs activities in case of a complaint.

#### Wind Loading

40. The approved sign must meet wind loading requirements as specified in Australian Standards AS 1170.1: Structural Design Actions – Permanent, Imposed and Other Actions and AS1170.2 – Structural Design Actions – Wind Actions.

#### Reflectivity

41. The visible light reflectivity from the proposed LED screen ad materials used on the signage structure shall not exceed 20 percent and shall be designed so as to minimise glare.

#### Prescribed Conditions

42. The Applicant shall comply with all relevant prescribed conditions of development consent under Part 6, Division 8A of the Regulations.
43. All building work must be carried out in accordance with the provisions of the Building



Code of Australia.

**CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE COMMENCEMENT OF ANY DEVELOPMENT OR WORK**

**Builders Contact**

44. Prior to the commencement of works, the applicant must inform Council, in writing, of:
- a) The name of the contractor, and licence number of the licensee who has contracted to do, or intends to do, the work: or
  - b) The name and permit number of the builder who intends to do the work;
  - c) The Council also must be informed if:
  - d) A contract is entered into for the work to be done by a different licensee; or
  - e) Arrangements for the doing of the work are otherwise changed.

**Certification**

45. 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.

**Other Approvals and Permits**

46. Prior to commencement of any works, application(s) shall be made to Council's Customer Services Counter for the following approvals and permits on Council's property/road reserve under Road Act 1993 and Local Government Act 1993, as appropriate:
- (It should be noted that any works shown within Council's road reserve or other Council Lands on the development approval plans are indicative only and no approval for these works is given until this condition is satisfied.)
- a) Permit to erect hoarding on or over a public place, including Council's property/road reserve.
  - b) Permit to construction works, place and/or storage building materials on footpaths, nature strips.
  - c) Permit for roads and footways occupancy (long term/ short term).
  - d) Permit to construct vehicular crossings, footpath, kerb and gutter over road reserve.
  - e) Permit to open road reserve area, including roads, footpaths, nature strip, vehicular crossing or for any purpose whatsoever.

- f) Permit to place skip/waste bin on footpath and/or nature strip.
- g) Permit to use any part of Council's road reserve or other Council lands.

(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 Engineering and Regulatory Services for approval, which may impose special conditions that shall be strictly adhered to by the applicant(s)).

#### **Photographic Survey**

- 47. The applicant shall submit to Council a full photographic survey showing the existing conditions of Council's infrastructure. The survey shall identify any existing damages to the road, kerb, gutter, footpath, driveways, street trees, street signs and any other Council assets fronting the property and in the vicinity of the development. Failure to do so will result in the applicant being liable for any construction related damages to these assets. Any damage to Council's infrastructure during the course of this development shall be restored at the applicant's cost.

#### **Public Liability**

- 48. The Applicant must indemnify Council against all loss of or damage to the property of others and injury or death to any persons which may arise out of or in consequence of the carrying out of the work and against all claims, demands, proceedings, costs, charges and expenses whatsoever in respect thereof or in relation thereto. In this regard, the Applicant shall take out a public liability policy during the currency of the works in the sum of not less than \$20,000,000 and to be endorsed with Bayside Council as principal, and keep such policy in force at the Applicant's own expense. A certificate from the Applicant's insurers to this effect is to be LODGED WITH COUNCIL BEFORE ANY WORK IS COMMENCED. The amount of Common Law liability shall be unlimited.

#### **Site Fencing**

- 49. The works area on the site to which this approval relates must be adequately fenced or other suitable measures employed that are acceptable to the Principal Certifying Authority to restrict public access to the site and building works. Such fencing or other measures must be in place before the approved activity commences.

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

##### **Payment of Fees**

- 50. Prior to issue of the Construction Certificate, the applicant must pay a development control fee of \$3,081.00.

##### **Payment of Levy Fee**

- 51. 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.

##### **Structural Details**

- 52. Prior to the issue of any Construction Certificate, the applicant shall submit to the satisfaction of the Certifying Authority structural drawings and accompanying design certification prepared by a suitably qualified practising Structural Engineer, verifying

that the design complies with:

- a) The relevant clauses of the Building Code of Australia/National Construction Code;
- b) The relevant Australian Standards; and Supplementary Engineering Report, dated 22/6/2018, prepared by Arcadis and contained at Appendix C of the Statement of Environmental Effects.
- c) The recommendations at section 2.2 of the

#### **Construction Management Plan**

53. A Construction Management Program shall be submitted to, and approved in writing by the Council prior to the issue of a Construction Certificate. The program shall detail:

- a) The proposed method of access to and egress from the site for construction vehicles, including access routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or public reserves being allowed;
- b) The proposed phases of construction works on the site and the expected duration of each construction phase;
- c) The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken;
- d) The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process;
- e) The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site;
- f) The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period;
- g) The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site;
- h) The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an Accredited Certifier (Structural Engineering), or equivalent;
- i) Proposed protection for Council and adjoining properties, and
- j) The location and operation of any on site crane. Please note that a crane may require prior approval from Sydney Airports Corporation';
- k) The location of any Construction Zone (if required) approved by Council's Traffic Engineer, including a copy of that approval.

#### **DURING WORKS**

##### **Hoarding Requirements**

54. The land to which this consent relates must be fenced and enclosed to protect the entry or access to the land and demolition site by unlawful persons.
- a) The fencing must be in place before the demolition commences, and
  - b) Must remain in place during the construction of the development.

**Construction Noise**

55. The following shall be complied with:
- a) A sign must be erected in a prominent position on any work site on which work involved in the erection of the proposed development is being carried out:
    - i) Stating the unauthorized entry to the work site is prohibited;
    - ii) Showing that unauthorized entry to the work site is prohibited;
    - iii) The Development Approval number; and
    - iv) The name of the Principal Certifying Authority including an after hours contact telephone number; and
  - b) Any such sign is to be removed when the work has been completed.
56. The following shall be complied with during construction:
- a) Construction Noise
    - i) Noise from construction activities associated with the development shall comply with the NSW Environment Protection Authority's Interim Construction Noise Guideline and the Protection of the Environment Operations Act 1997.
  - b) Level Restrictions
    - i) Construction period of 4 weeks and under:
      - 1 The L10 sound pressure level measured over a period of not less than 15 minutes when the construction site is in operating must not less than 15 minutes when the construction site is in operating must not exceed the background level by more than 10dB(A).
  - c) Time Restrictions
    - i) Monday to Friday 07:00am to 05:00pm
    - ii) Saturday 08:00am to 01:00pm
    - iii) No Construction to take place on Sundays or Public Holidays.
  - d) Silencing
    - i) All possible steps should be taken to silence construction site equipment.

**CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE ISSUE OF ANY OCCUPATION CERTIFICATE****Public Asset Damage**

57. Prior to the issue of any Occupation Certificate, any damage not shown in the photographic survey submitted to Council before site works commenced, will be assumed to have been caused as a result of the site works undertaken and must be

rectified at the applicant's expense.

#### **Maintenance Plan**

58. Prior to commencement of use, a Maintenance Plan detailing the process for maintenance and changing sign content is to be prepared and submitted to Council. The Plan shall address, but not be limited to, the following matters, where relevant:
- a) Environmental and safety risk assessment;
  - b) Hours of work/inspections of sign (to ensure minimal disruption of any surrounding residential amenity and traffic operation);
  - c) Contact details of site manager;
  - d) Safety, including preparation of a safe work method statement;
  - e) Traffic management, including details for the location of parking for vehicles associated with the operation (ie. parked vehicles shall not impede the movement of traffic or pedestrians in and around the site);
  - f) External lighting in compliance with *AS4282:1997 Control of the Obtrusive Effects of Outdoor Lighting*;
  - g) Removal of graffiti;
  - h) Maintenance of vegetation immediately surrounding the site.

#### **Structural Inspection Certificate**

59. At the completion of works the applicant shall submit certification prepared by a suitably qualified practising structural engineer, verifying that the structure:
- a) Has been inspected and installed in accordance with the approved structural design drawings;
  - b) Complies with the relevant clauses of the Building Code of Australia/National Construction Code; and
  - c) The relevant Australian Standards.

#### **CONDITIONS WHICH MUST BE SATISFIED DURING THE ONGOING USE OF THE DEVELOPMENT**

##### **Maintenance**

60. Regular maintenance of the approved advertising structures shall be undertaken in accordance with the Maintenance Plan under Condition 46. Signs are to be inspected regularly to identify any damage from storms, graffiti or the like.

**Removal of Graffiti**

61. Should the signage 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.

**Location of Certain Names and Logos**

62. The name or logo of the person who owns or leases the approved advertisement may appear only in the bottom right hand corner of the advertising structure and must be no greater than 0.25m<sup>2</sup> in size.

**Luminance Levels**

63. Notwithstanding the luminance levels required by RMS in condition 34, the northern sign shall be commissioned on site to yield a maximum screen luminance of 6000cd/m<sup>2</sup> when full strikes the face of the sign (maximum brightness), 6000cd/m<sup>2</sup> during normal daytime operation, 700 cd/m<sup>2</sup> during twilight and inclement weather and 220 cd/m<sup>2</sup> during night time.

The maximum allowable day and night time dimming levels to comply with these requirements are:

<b>LUMINANCE LEVELS FOR DIGITAL ADVERTISEMENT</b>		
Lighting Condition	Max. Dimming Level to achieve compliance	Max. Permissible Luminance (cd/m <sup>2</sup> )
Full sun on face of signage	100%	6000
Day time luminance (typical sunny day)	100%	6000
Morning and evening twilight and overcast weather	11%	700
Night time (before 11pm)	3.67%	220
Night time (after 11pm)	OFF	OFF

**Advice**

1. 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.
2. A new Construction Certificate may be required to be submitted to and approved by your Principal Certifying Authority prior to carrying out works the subject of the proposed amendment/s.
3. The subject site is in the vicinity of the Sydney Gateway motorway project. This project is currently in the planning phase. No decision has been made about the proposed route and therefore it is not possible to provide more definite information about possible requirements for any part of the subject property.

Road and Maritime is coordinating Sydney Gateway motorway project with the Port Botany Rail Duplication project (rail project). This rail project affects land and rail assets owned by Transport for New South Wales (TfNSW) and is being managed by the Australian Rail Track Corporation (ARTC). Roads and Maritime understands that the subject site is located on land which is affected/in close proximity to the rail

project. Roads and Maritime recommends that the proponent contacts both TfNSW and ARTC to determine the impact.

Further information on the project can be obtained by emailing [info@sydneygateway.rms.snw.gov.au](mailto:info@sydneygateway.rms.snw.gov.au) or visiting the Sydney Gateway webpage.

*[Amendment A – S4.55(1A) inserted on XXXXXXXX]*

O'Riordan Street Underbridge, Mascot  
oOh!media  
June 2018

# Appendix B

## Site Plans and Elevations and Photomontages produced by Group GSA





[illegible]



O'Riordan Street Underbridge, Mascot  
oOh!media  
June 2018



Amendments:  
Version: 1.0  
Date: 11/06/2019

PRELIMINARY

**ooh!**  
A Local 2 TV Barry St, North Sydney,  
NSW 1586  
P +612 9357 5555

**GROUP USA**  
Group USA Pty Ltd ABN 79 002 175 178  
Level 2, 100 William St, Sydney, NSW  
Australia 2000 www.groupusa.com  
T +612 9254 4744 F +612 9254 4744  
architectural interior design urban design landscape  
and interior & interior 2000

**oOh! media**  
JOYCE DRIVE

LANDSCAPE MONTAGE  
ORRORDAN STREET

DATE

REVISIONS (DATE)

BY

DATE

PROJECT NO

160202 L5002 02

DATE

PROJECT NO

160202 L5002 02

DATE

PROJECT NO

160202 L5002 02

DATE

PROJECT NO

160202 L5002 02

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PROJECT NO

160202 L5002 02

O'Riordan Street Underbridge, Mascot  
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June 2018

Annexure 15

TPLN/220-OVERBRIDGE/1652  
Mr. I. Dencker/gb

Jackson Poole Rabinowitz Architects Pty Limited  
1/239 Pacific Highway  
NORTH SYDNEY NSW 2060

Attention: Mr D Connell

NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION  
ISSUED UNDER THE ENVIRONMENTAL PLANNING AND  
ASSESSMENT ACT 1979 - SECTION 92

DEVELOPMENT APPLICATION NO. 96/0487

Applicant Name:	Jackson Poole Rabinowitz Architects Pty. Limited.
Applicant Address:	1/239 Pacific Highway, North Sydney.
Owner:	Manboom Pty. Limited.
Date of Application:	13th February, 1996.
Land to be Developed - Address:	Part Lots 4, 5 & 6, DP.747022 - Overbridge, O'Riordan Street, Mascot.
Proposed Development:	Sign faces of advertising structure.

DETERMINATION

Made on:	1st May, 1996.
Determination:	Consent granted, subject to Conditions described below.
Consent to Operate From:	8th May, 1996.

Details of Conditions:

1. The development shall be carried out substantially in accordance with plans received by Council on 13th February, 1996, except where amended by the conditions of the Consent.
2. The scheduled fee for advertising per face area of the sign shall be paid in accordance with the agreement the Company has with Council, on the basis the fee is paid monthly in arrears, subject to the sign containing displayed advertising.

O'Riordan Street Underbridge, Mascot  
oOh!media  
June 2018

- 2 -

3. There shall be compliance with the provisions of the Council's Code for Advertising Signs.
4. The sign and surrounding area shall be maintained in a clean and tidy condition, free from litter or debris.
5. The advertising panel shall be maintained in good repair at all times.
6. All displayed advertising shall be in accordance with the ethical standards acceptable to the Media Council of Australia and the Advertising Standards of Australia.
7. The greater portion of the advertising panels shall be in "pictorial form" (non-provocative) to minimise driver distraction.
8. If the sign causes an adverse effect on traffic flow, or the effectiveness of the operation of the traffic signals at the intersection of O'Riordan Street and Joyce Drive, the Roads and Traffic Authority retains its rights to require that the cause of such detriment be remedied or removed (at no cost to the Authority or Council).
9. The sign colours shall not interfere with, or be detrimental to, any nearby traffic signal display.
10. Any proposed background illumination or floodlighting directed towards the sign shall be in accordance with the Australian Standard for Outdoor Lighting.
11. Council, together with the Roads and Traffic Authority, shall be notified in the event of any maintenance and/or construction affecting the roadway or footpath.
12. The colours and finishing of the sign shall contrast, as far as practicable, with those used on the Airport Central Building.
13. In order to ensure that there is sufficient landscaped area to address both the scale and bulk of the proposed signage structure and maintain a symmetry in the provision of landscaping, amended landscape working plans shall be submitted to, and approved by, Council prior to the determination of the Building Application. The landscape plans shall encompass:
  - (a) The area of land to the north-west of the proposed signage structure where the existing sign is to be removed.



O'Riordan Street Underbridge, Mascot  
oOh!media  
June 2018

- 3 -

- (b) The area of land to the south-east of the proposed signage structure incorporating the five advertising signs along Joyce Drive. The Landscape Plan shall take into account the removal of one sign on the northern side of the overbridge adjacent to the former Makucha office building and one of the five signs at the southern side of the overbridge at the western end of Joyce Drive near the intersection with O'Riordan Street, Mascot.
- (c) The area of the Roads and Traffic Authority median strip immediately to the south of the proposed signage structure.
- (d) The area of Sheraton-owned land to the south-west of the proposed signage structure.

These plans shall be to the satisfaction of Council's Landscape Architect.

The landscaping shall be installed according to the approved plan and maintained to the satisfaction of Council at all times.

The applicant shall be encouraged to landscape -

- (a) The area of Federal Airports Corporation land south of the existing zig-zag signs (along the entire length of the existing signs); and
- (b) The Federal Airports Corporation land to the south-west of the proposed signage structure for a distance of land equivalent to the distance from the easternmost zig-zag sign along Joyce Drive to the O'Riordan Street intersection

in accordance with the objectives of the Federal Airports Corporation's Landscape Master Plan.

14.

The applicant is to enter into an agreement with Council, to be prepared by Council's Solicitors at the applicant's expense, providing for the lodgement of a bond in the sum of \$20,000 for a period of four (4) years, to establish and maintain the landscaping in accordance with the approved landscaping plan.

The lodgement of the bond shall not preclude the Council from initiating legal proceedings, should the landscaping not be established and maintained in accordance with this Consent, and is not intended to limit the period of compliance with the landscaping requirements to four (4) years.

The bond may be applied by Council to the establishment and maintenance of the landscaping in accordance with the approved plan and Council shall be entitled to recover any monies expended in excess of the bond in establishing, re-establishing, or maintaining the landscape in accordance with the approved plan.

O'Riordan Street Underbridge, Mascot  
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June 2018

- 4 -

The agreement is to be executed and the bond lodged prior to the occupation of the site and the sum of \$100 shall be paid to cover the cost of preparing the agreement prior to the preparation of the agreement.

Any unexpended monies deposited with Council will be refunded on the expiration of the agreement.

15. The nature strip on Council's footway is to be landscaped, maintained and kept weed-free at the applicant's expense to the satisfaction of Council at all times, and shall be incorporated in any bond agreement adopted in respect of this Consent.
16. A retaining edge of concrete, at least 150mm high, or other approved barrier, shall be erected around the landscaped areas to prevent the encroachment of motor vehicles and to contain soil and mulch finishes.
17. An automatic watering system shall be installed in the landscaped area. This system shall be of a scale and standard determined by, and installed to the satisfaction of, Council's Landscape Architect.
18. Due to the limited area of landscaping able to be provided on the site, a contribution of \$10,000 is to be provided for the landscaping in the location.
19. Street trees shall be installed along Baxter Road. The cost of these trees is to be borne by the applicant - *Alnus jorullensis* at 8 metre centres.
20. 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. 96/0487 of the 13th day of February, 1996, and that any alteration, variation, or extension to the use, for which approval has been given, would require further Town Planning Approval from Council.

Right of Appeal:

If you are dissatisfied with this decision, Section 97 of the Environmental Planning and Assessment Act 1979 gives you the right to appeal to the Land and Environment Court within twelve (12) months after the date on which you receive this Notice.




O'Riordan Street Underbridge, Mascot  
oOh!media  
June 2018

- 5 -

SIGNED

On behalf of the Consent Authority

  
IAN DENCKER  
MANAGER -  
ENVIRONMENTAL PLANNING

Dated this 8th day of May, 1996.

200-over.a.app

Premises: Part Lots 4, 5 and 6 in DP 747022, O'Riordan Street, Mascot

DA No: 2018/1135

### SCHEDULE OF CONSENT CONDITIONS

#### GENERAL CONDITIONS

1. The development is to be carried in accordance with the following plans and documentation listed below and endorsed with Council's stamp, except where amended by other conditions of this consent:

#### Southern Signage

Plans received by Council on 13<sup>th</sup> February, 1996.

#### Northern Signage

Drawing	Author	Dated
Landscape Plan O'Riordan Street, Drawing No. L1004 Issue 01	Group GSA	19/10/2017
Landscape Elevation O'Riordan Street, Drawing No. L3007 Issue 03		14/6/2017
Landscape Montage O'Riordan Street, Drawing No. L5002 Issue 02		7/12/2017

Reference Documents	Author	Dated
Statement of Environmental Effects	Urban Concepts	June 2018
Response to Matters Raised by Bayside Council – inclusive of appendices	oOh! Media	Undated
Structural Engineering Report – 2020-GN-O	Arcadis Design & Consultancy	22 June 2018
Traffic Safety Assessment, Version 002	Bitzios Consultancy	23 May 2018
Traffic Safety Assessment, Additional letter	Bitzios Consultancy	13 May 2019
Lighting Impact Statement, Revision B	Elecrolight Australia Pty Ltd	30/10/17

[Section 96(2) amended on xx xxxx 2019]

2. The scheduled fee for advertising per face area of the sign shall be paid in accordance with the agreement the Company has with Council, on the basis the fee is paid monthly in arrears, subject to the sign containing displayed advertising.
3. There shall be compliance with the provisions of the council's Code for Advertising Signs.
4. The sign and surrounding area shall be maintained in a clean and tidy condition, free from litter or debris.
5. The advertising panel shall be maintained in good repair at all times.
6. All displayed advertising shall be in accordance with the ethical standards acceptable to the Media Council of Australia and the Advertising Standards of Australia.
7. The greater portion of the advertising panels shall be in 'pictorial form' (non-provocative) to minimise driver distraction.

3/14

8. If the sign causes an adverse effect on traffic flow, or the effectiveness of the operation of the traffic signals at the intersection of O'Riordan Street and Joyce Drive, the Roads and Traffic Authority retains its rights to require that the cause of such detriment be remedied or removed (at no cost to the Authority or Council).
9. The sign colours shall not interfere with, or be detrimental to, any nearby traffic signal display.
- ~~10. Any proposed background illumination or floodlighting directed towards the sign shall be in accordance with the Australian Standard for Outdoor Lighting. [Amendment A – S4.55(2) deleted on xx xxxx 2019]~~
11. Council, together with the Roads and Traffic Authority, shall be notified in the event of any maintenance and/or construction affecting the roadway or footpath.
12. The colours and finishing of the sign shall contrast, as far as practicable, with those used on the Airport Central Building.
13. In order to ensure that there is sufficient landscaped area to address both the scale and bulk of the proposed signage structure and maintain a symmetry in the provision of landscaping, amended landscape working plans shall be submitted to, and approved by, Council prior to the determination of the Building Application. The landscape plans shall encompass:
  - (a) The area of land to the north-west of the proposed signage structure where the existing sign is to be removed.
  - (b) The area of land to the south-east of the proposed signage structure incorporating the five advertising signs along Joyce Drive. The Landscape Plan shall take into account the removal of one sign on the northern side of the overbridge adjacent to the former Makucha office building and one of the five signs at the southern side of the overbridge at the western end of Joyce Drive near the intersection with O'Riordan Street, Mascot.
  - (c) The area of the Roads and Traffic Authority median strip immediately to the south of the proposed signage structure.
  - (d) The area of Sheraton-owned land to the south-west of the proposed signage structure.

These plans shall be to the satisfaction of Council's Landscape Architect.

The landscaping shall be installed according to the approved plan and maintained to the satisfaction of Council at all times.

The applicant shall be encouraged to landscape –

- (a) The area of Federal Airports Corporation land south of the existing zig-zag signs (along the entire length of the existing signs); and
- (b) The Federal Airports Corporation land to the south-west of the proposed signage structure for a distance of land equivalent to the distance from the easternmost zig-zag sign along Joyce Drive to the O'Riordan Street intersection.

in accordance with the objectives of the Federal Airports Corporation's Landscape Master Plan.

14. The applicant is to enter into an agreement with Council, to be prepared by Council's Solicitors at the applicant's expense, providing for the lodgement of a bond in the sum of \$20,000 for a period of four (4) years, to establish and maintain the landscaping in accordance with the approved landscaping plan.

The lodgement of the bond shall not preclude the Council from initiating legal proceedings, should the landscaping not be established and maintained in accordance with this Consent, and is not intended to limit the period of compliance with the

landscaping requirements to four (4) years.

The bond may be applied by Council to the establishment and maintenance of the landscaping in accordance with the approved plan and Council shall be entitled to recover any monies expended in excess of the bond in establishing, re-establishing, or maintaining the landscape in accordance with the approved plan.

15. The nature strip on Council's footway is to be landscaped, maintained and kept weed-free at the applicant's expense to the satisfaction of Council at all times, and shall be incorporated in any bond agreement adopted in respect of this Consent.
16. A retaining edge of concrete, at least 150mm high, or other approved barrier, shall be erected around the landscaped areas to prevent the encroachment of motor vehicles and to contain soil and mulch finishes.
17. An automatic watering system shall be installed in the landscaped area. This system shall be of a scale and standard determined by, and installed to the satisfaction of, Council's Landscape Architect.
18. Due to the limited area of landscaping able to be provided on the site, a contribution of \$10,000 is to be provided for the landscaping in the location.
19. Street trees shall be installed along Baxter Road. The cost of these trees is to be borne by the applicant – *Alnus jorullensis* at 8 metre centres.
20. *The applicant being informed that this approval, in relation to the south facing sign, 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. 96/0487 of the 13<sup>th</sup> day of February, 1996. Any alteration, variation, or extension of the use, for which approval has been given would require further Town Planning Approval from Council.*

*[Amendment A – S4.55(2) amended on xx xxxx 2019]*

#### **Hours of Operation**

21. *The northern sign shall only be operated/illuminated between the hours of 6.00am and 11.00pm on any day.*

#### **Voluntary Planning Agreement**

22. *The Voluntary Planning Agreement (VPA) between Council and OoH Media Fly Pty Limited was entered into in connection with the development application which is the subject of this development consent. The VPA among other things makes provision for public benefits in connection with this development consent pursuant to State Environmental Planning Policy 64 (Advertising and Signage). All obligations imposed by the VPA on the applicant/developer must be complied with at all times in accordance with the terms of the VPA, including in particular:*
  - (a) *payment of the monetary contribution in accordance with clause 5 and Schedule 2 of the VPA;*
  - (b) *allocation of display time to Destination NSW and Council in accordance with clause 10 of the VPA.*

#### **Duration of Consent**

23. *This development consent is issued for a limited period of 15 years from the date of the modification of consent or upon the removal of the signage structure for the purpose of duplication of the railway line, whichever occurs first. The consent will cease to be in force/expire at that time.*

**Conditions imposed by Sydney Airport Corporation Limited (SACL)**

24. *The approved height is inclusive of all lift over-runs, vents, chimneys, aerials, TV antennae, construction cranes etc.*

*Should you wish to exceed this height a new application must be submitted.*

*Should the height of any temporary structure and/or equipment be greater than 20.0 metres AEGH, a new approval must be sought in accordance with the Civil Aviation (Buildings Control) Regulations Statutory Rules 1988 No. 161.*

*Construction cranes may be required to operate at a height significantly higher than that of the proposed development and consequently, may not be approved under the Airports (Protection of Airspace) Regulations.*

*Sydney Airport advises that approval to operate construction equipment (ie cranes) should be obtained prior to any commitment to construct.*

*"Prescribed airspace" includes "the airspace above any part of either an Obstacle Limitation Surface (OLS) or Procedures for Air Navigation Services – Aircraft Operations (PANS-OPS) surface for the airport (Regulation 6(1))."*

*The height of the prescribed airspace at this location is 46 metres above AHD.*

*Planning for Aircraft Noise and Public Safety Zones Current planning provisions (s.117 Direction 3.5 NSW Environmental Planning and Assessment Act 1979) for the assessment of aircraft noise for certain land uses are based on the Australian Noise Exposure Forecast (ANEF). The current ANEF for which Council may use as the land use planning tool for Sydney Airport was endorsed by Airservices in December 2012 (Sydney Airport 2033 ANEF).*

*Whilst there are currently no national aviation standards relating to defining public safety areas beyond the airport boundary, it is recommended that proposed land uses which have high population densities should be avoided.*

**RMS Conditions**

25. *A road safety check is to be carried out in accordance with Part 3 of the Roads and Maritime Guidelines for Road Safety Audit Practices after a 12 month period of operation but within 18 months of the signs installation. The road safety check must be carried out by an independent Roads and Maritime accredited road safety auditor who did not contribute to the original application documentation. A copy of the report is to be provided to Roads and Maritime and any safety concerns identified by the auditor relating to the operation or installation of the sign must be rectified by the applicant.*
26. *A Road Occupancy Licence (ROL) should be obtained from Transport Management Centre for any works that may impact on traffic flows on O'Riordan Street during construction activities. A ROL can be obtained through <https://myrta.com/oplinc2/pages/security/oplincLogin.jsf>*
27. *A Construction Traffic Management Plan detailing hours of operation, access arrangements and traffic control should be submitted to Council for approval prior to the issue of a Construction Certificate.*

28. All works associated with the proposed sign, including maintenance activities, shall be at no cost to Roads and Maritime Services.
29. Each advertisement must be displayed in a completely static manner, without any motion, for the approved dwelling time as per condition 32, including no flashing or scrolling of message.
30. Message sequencing designed to make a driver anticipate the next message is prohibited across images presented on a single sign and across a series of signs.
31. The image must not be capable of being mistaken:
- (a) For a prescribed traffic control device because it has, for example, red, amber or green circles, octagons, crosses or triangles or shapes or patterns that may result in the advertisement being mistaken for a prescribed traffic control device, or
  - (b) As text providing driving instructions to drivers.
32. Dwell times for image displays are:
- (a) 10 seconds for areas where the speed limit is below 80 km/h.
  - (b) 25 seconds for areas where the speed limit is 80 km/h and over.
33. The transition time between messages must be no longer than 0.1 second.
34. Luminance levels must comply with the requirements in the Table below:

Luminance means the objective brightness of a surface as measured by a photometer, expressed in candelas per square meter (cd/sqm). Levels differ as digital signs will appear brighter when light levels in the area are low, Unless provided below, luminance levels should otherwise comply with the recommended values of AS 4282 Control of the Obtrusive Effects of Outdoor Lighting.

<b>Lighting Conditions</b>	<b>Permitted Luminance Zone 1</b>	<b>Permitted Luminance Zones 2 and 3</b>	<b>Permitted Luminance Zone 4</b>
Full Sun on Face of Signage	No limit	No limit	No limit
Daytime Luminance	No limit	6000	6000
Morning and Evening, Twilight and Inclement Weather	700	700	500
Night Time	350	350cd	200

35. The image displayed on the sign must not otherwise unreasonably dazzle or distract drivers without limitation to their colouring or contain flickering or flashing content.
36. The amount of text and information supplied on a sign should be kept to a minimum (for example no more than a driver can read at a short glance). Text should preferably be displayed in the same font and size. Table 5 in Section 3 Transport Corridor Outdoor Advertising and Signage Guidelines.
37. Advertisements displayed on the LED advertising screen must be in accordance with the guidelines for sign content outlined in Section 3.3.2 of the Transport Corridor Outdoor Advertising and Signage Guidelines, dated November 2017.

7/14

**Display of Road Safety and Emergency Messages**

38. The LED advertising screen shall be available for 5% of all advertising time each year for the display of road safety messages by arrangements with RMS and TfNSW. Additionally, the LED advertising screen shall be made available for use in the event of a "threat to life emergency" messaging to override the commercial advertising.

**Electronic Log**

39. An electronic log of the signs activities must be maintained by the operator for the duration of the development consent and be available to the consent authority and RMS to allow a review of the signs activities in case of a complaint.

**Wind Loading**

40. The approved sign must meet wind loading requirements as specified in Australian Standards AS 1170.1: Structural Design Actions – Permanent, Imposed and Other Actions and AS1170.2 – Structural Design Actions – Wind Actions.

**Reflectivity**

41. The visible light reflectivity from the proposed LED screen ad materials used on the signage structure shall not exceed 20 percent and shall be designed so as to minimise glare.

**Prescribed Conditions**

42. The Applicant shall comply with all relevant prescribed conditions of development consent under Part 6, Division 8A of the Regulations.
43. All building work must be carried out in accordance with the provisions of the Building Code of Australia.

**CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE COMMENCEMENT OF ANY DEVELOPMENT OR WORK****Builders Contact**

44. Prior to the commencement of works, the applicant must inform Council, in writing, of:
- a) The name of the contractor, and licence number of the licensee who has contracted to do, or intends to do, the work: or
  - b) The name and permit number of the builder who intends to do the work;
  - c) The Council also must be informed if:
  - d) A contract is entered into for the work to be done by a different licensee; or
  - e) Arrangements for the doing of the work are otherwise changed.

**Certification**

45. 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.

**Other Approvals and Permits**

46. *Prior to commencement of any works, application(s) shall be made to Council's Customer Services Counter for the following approvals and permits on Council's property/road reserve under Road Act 1993 and Local Government Act 1993, as appropriate:*

*(It should be noted that any works shown within Council's road reserve or other Council Lands on the development approval plans are indicative only and no approval for these works is given until this condition is satisfied.)*

- a) *Permit to erect hoarding on or over a public place, including Council's property/road reserve.*
- b) *Permit to construction works, place and/or storage building materials on footpaths, nature strips.*
- c) *Permit for roads and footways occupancy (long term/ short term).*
- d) *Permit to construct vehicular crossings, footpath, kerb and gutter over road reserve.*
- e) *Permit to open road reserve area, including roads, footpaths, nature strip, vehicular crossing or for any purpose whatsoever.*
- f) *Permit to place skip/waste bin on footpath and/or nature strip.*
- g) *Permit to use any part of Council's road reserve or other Council lands.*

*(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 Engineering and Regulatory Services for approval, which may impose special conditions that shall be strictly adhered to by the applicant(s)).*

**Photographic Survey**

47. *The applicant shall submit to Council a full photographic survey showing the existing conditions of Council's infrastructure. The survey shall identify any existing damages to the road, kerb, gutter, footpath, driveways, street trees, street signs and any other Council assets fronting the property and in the vicinity of the development. Failure to do so will result in the applicant being liable for any construction related damages to these assets. Any damage to Council's infrastructure during the course of this development shall be restored at the applicant's cost.*

**Public Liability**

48. *The Applicant must indemnify Council against all loss of or damage to the property of others and injury or death to any persons which may arise out of or in consequence of the carrying out of the work and against all claims, demands, proceedings, costs, charges and expenses whatsoever in respect thereof or in relation thereto. In this regard, the Applicant shall take out a public liability policy during the currency of the works in the sum of not less than \$20,000,000 and to be endorsed with Bayside Council as principal, and keep such policy in force at the Applicant's own expense. A certificate from the Applicant's insurers to this effect is to be LODGED WITH*



*COUNCIL BEFORE ANY WORK IS COMMENCED. The amount of Common Law liability shall be unlimited.*

**Site Fencing**

49. *The works area on the site to which this approval relates must be adequately fenced or other suitable measures employed that are acceptable to the Principal Certifying Authority to restrict public access to the site and building works. Such fencing or other measures must be in place before the approved activity commences.*

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

**Payment of Fees**

50. *Prior to issue of the Construction Certificate, the applicant must pay a development control fee of \$3,081.00.*

**Payment of Levy Fee**

51. *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.*

**Structural Details**

52. *Prior to the issue of any Construction Certificate, the applicant shall submit to the satisfaction of the Certifying Authority structural drawings and accompanying design certification prepared by a suitably qualified practising Structural Engineer, verifying that the design complies with:*
- a) *The relevant clauses of the Building Code of Australia/National Construction Code;*
  - b) *The relevant Australian Standards; and Supplementary Engineering Report, dated 22/6/2018, prepared by Arcadis and contained at Appendix C of the Statement of Environmental Effects.*
  - c) *The recommendations at section 2.2 of the*

**Construction Management Plan**

53. *A Construction Management Program shall be submitted to, and approved in writing by the Council prior to the issue of a Construction Certificate. The program shall detail:*
- a) *The proposed method of access to and egress from the site for construction vehicles, including access routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or public reserves being allowed;*
  - b) *The proposed phases of construction works on the site and the expected duration of each construction phase;*
  - c) *The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken;*
  - d) *The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process;*

- e) *The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site;*
- f) *The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period;*
- g) *The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site;*
- h) *The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an Accredited Certifier (Structural Engineering), or equivalent;*
- i) *Proposed protection for Council and adjoining properties, and*
- j) *The location and operation of any on site crane. Please note that a crane may require prior approval from Sydney Airports Corporation;*
- k) *The location of any Construction Zone (if required) approved by Council's Traffic Engineer, including a copy of that approval.*

**DURING WORKS****Hoarding Requirements**

54. *The land to which this consent relates must be fenced and enclosed to protect the entry or access to the land and demolition site by unlawful persons.*
- a) *The fencing must be in place before the demolition commences, and*
  - b) *Must remain in place during the construction of the development.*

**Construction Noise**

55. *The following shall be complied with:*
- a) *A sign must be erected in a prominent position on any work site on which work involved in the erection of the proposed development is being carried out:*
    - i) *Stating the unauthorized entry to the work site is prohibited;*
    - ii) *Showing that unauthorized entry to the work site is prohibited;*
    - iii) *The Development Approval number; and*
    - iv) *The name of the Principal Certifying Authority including an after hours contact telephone number; and*
  - b) *Any such sign is to be removed when the work has been completed.*
56. *The following shall be complied with during construction:*
- a) *Construction Noise*
    - i) *Noise from construction activities associated with the development shall comply with the NSW Environment Protection Authority's Interim Construction Noise Guideline and the Protection of the Environment Operations Act 1997.*
  - b) *Level Restrictions*

- i) Construction period of 4 weeks and under:
  - 1 The L10 sound pressure level measured over a period of not less than 15 minutes when the construction site is in operating must not exceed the background level by more than 10dB(A).
- c) Time Restrictions
  - i) Monday to Friday 07:00am to 05:00pm
  - ii) Saturday 08:00am to 01:00pm
  - iii) No Construction to take place on Sundays or Public Holidays.
- d) Silencing
  - i) All possible steps should be taken to silence construction site equipment.

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

**Public Asset Damage**

57. *Prior to the issue of any Occupation Certificate, any damage not shown in the photographic survey submitted to Council before site works commenced, will be assumed to have been caused as a result of the site works undertaken and must be rectified at the applicant's expense.*

**Maintenance Plan**

58. *Prior to commencement of use, a Maintenance Plan detailing the process for maintenance and changing sign content is to be prepared and submitted to Council. The Plan shall address, but not be limited to, the following matters, where relevant:*
- a) Environmental and safety risk assessment;
  - b) Hours of work/inspections of sign (to ensure minimal disruption of any surrounding residential amenity and traffic operation);
  - c) Contact details of site manager;
  - d) Safety, including preparation of a safe work method statement;
  - e) Traffic management, including details for the location of parking for vehicles associated with the operation (ie. parked vehicles shall not impede the movement of traffic or pedestrians in and around the site);
  - f) External lighting in compliance with AS4282:1997 Control of the Obtrusive Effects of Outdoor Lighting;
  - g) Removal of graffiti;
  - h) Maintenance of vegetation immediately surrounding the site.

**Structural Inspection Certificate**

59. *At the completion of works the applicant shall submit certification prepared by a suitably qualified practising structural engineer, verifying that the structure:*

- a) *Has been inspected and installed in accordance with the approved structural design drawings;*
- b) *Complies with the relevant clauses of the Building Code of Australia/National Construction Code; and*
- c) *The relevant Australian Standards.*

**CONDITIONS WHICH MUST BE SATISFIED DURING THE ONGOING USE OF THE DEVELOPMENT**

**Maintenance**

60. *Regular maintenance of the approved advertising structures shall be undertaken in accordance with the Maintenance Plan under Condition 46. Signs are to be inspected regularly to identify any damage from storms, graffiti or the like.*

**Removal of Graffiti**

61. *Should the signage 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.*

**Location of Certain Names and Logos**

62. *The name or logo of the person who owns or leases the approved advertisement may appear only in the bottom right hand corner of the advertising structure and must be no greater than 0.25m<sup>2</sup> in size.*

**Luminance Levels**

63. *Notwithstanding the luminance levels required by RMS in condition 34, the northern sign shall be commissioned on site to yield a maximum screen luminance of 6000cd/m<sup>2</sup> when full strikes the face of the sign (maximum brightness), 6000cd/m<sup>2</sup> during normal daytime operation, 700 cd/m<sup>2</sup> during twilight and inclement weather and 220 cd/m<sup>2</sup> during night time.*

*The maximum allowable day and night time dimming levels to comply with these requirements are:*

<b>LUMINANCE LEVELS FOR DIGITAL ADVERTISEMENT</b>		
<i>Lighting Condition</i>	<i>Max. Dimming Level to achieve compliance</i>	<i>Max. Permissible Luminance (cd/m<sup>2</sup>)</i>
<i>Full sun on face of signage</i>	<i>100%</i>	<i>6000</i>
<i>Day time luminance (typical sunny day)</i>	<i>100%</i>	<i>6000</i>
<i>Morning and evening twilight and overcast weather</i>	<i>11%</i>	<i>700</i>
<i>Night time (before 11pm)</i>	<i>3.67%</i>	<i>220</i>
<i>Night time (after 11pm)</i>	<i>OFF</i>	<i>OFF</i>

**Advice**

1. *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.*
2. *A new Construction Certificate may be required to be submitted to and approved by your Principal Certifying Authority prior to carrying out works the subject of the proposed amendment/s.*
3. *The subject site is in the vicinity of the Sydney Gateway motorway project. This project is currently in the planning phase. No decision has been made about the proposed route and therefore it is not possible to provide more definite information about possible requirements for any part of the subject property.*

*Road and Maritime is coordinating Sydney Gateway motorway project with the Port Botany Rail Duplication project (rail project). This rail project affects land and rail assets owned by Transport for New South Wales (TfNSW) and is being managed by the Australian Rail Track Corporation (ARTC). Roads and Maritime understands that the subject site is located on land which is affected/in close proximity to the rail project. Roads and Maritime recommends that the proponent contacts both TfNSW and ARTC to determine the impact.*

*Further information on the project can be obtained by emailing [info@sydneygateway.rms.nsw.gov.au](mailto:info@sydneygateway.rms.nsw.gov.au) or visiting the Sydney Gateway webpage.*

**[Amendment A – S4.55(1A) Conditions 21 to 63 and advice 1, 2 & 3 inserted on  
XXXXXXXXXX**

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**Bayside Local Planning Panel**

**11/06/2019**

Item No	6.3
Application Type	Development Application
Application No	DA-18/1067
Lodgement Date	27/04/2018
Property	<b>7 Kurnell Street, Botany</b>
Ward	Port Botany
Owner	Balari Investments P/L
Applicant	Bureau SRH Architecture Pty Ltd
Proposal	Demolition of existing structures Torrens title subdivision into two lots and construction of two x 2 storey semi-detached dwellings.
No. of Submissions	One (1)
Cost of Development	\$949,000.00
Report by	Michael McCabe, Director City Futures

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**Officer Recommendation**

1. That the Bayside Planning Panel exercising the functions of the Council as the consent authority pursuant to s4.16 of the Environmental Planning and Assessment Act 1979 not support the variation to the FSR standard, as contained in Clause 4.4A(3)(d) – FSR of Botany Bay LEP 2013 as it is not satisfied that the applicant's request has adequately addressed the matters required to be demonstrated by cl4.6 of that plan, and the proposed development would not be in the public interest because it is not consistent with the objectives of that particular standard and the objectives for the development within the zone.
  2. That Development application DA-2018/1067 for the demolition of existing structures, Torrens title subdivision into two lots and the construction of a semi-detached dwelling arrangement at No. 7 Kurnell Street, Botany, be REFUSED for the following reasons:
    - a. 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 4.4 of Botany Bay LEP 2013 relating to floor space ratio and the Clause 4.6 written variation request submitted by the applicant is not supported.
    - b. Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not meet the objectives of Clause 4A.4.3 of Botany Bay DCP 2013 Solar access Control C2, overshadowing of solar panels on adjoining houses.
    - c. Pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act, the proposed development is excessive in terms of bulk, size and density, and is inconsistent with the character and streetscape, and would adversely impact upon the amenity of the locality.
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- d. 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)(b) of the Environmental Planning and Assessment Act, the proposal is not in the public interest.
  3. That the objector be notified of the Panel's determination.
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## Location Plan



## Attachments

- 1 Supplementary planning report [↓](#)
- 2 Original Planning Assessment Report [↓](#)
- 3 Applicant's response to BPP comments [↓](#)
- 4 Original Clause 4.6 written request [↓](#)
- 5 Amended shadow elevations [↓](#)
- 6 Amended shadow diagram [↓](#)
- 7 Amended elevations [↓](#)
- 8 Amended landscape plan [↓](#)

# BAYSIDE COUNCIL

## Supplementary Planning Assessment Report

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### Application Details

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<b>Application Number:</b>	DA-2018/1067
<b>Date of Receipt:</b>	27 April 2018
<b>Property:</b>	7 Kurnell Street, Botany Lot 38 DP 15704
<b>Owner:</b>	Balari Investments P/L
<b>Applicant:</b>	Bureau SRH Architecture Pty Ltd
<b>Proposal:</b>	Demolition of existing structures, Torrens title subdivision into two lots and construction of two x two(2) storey semi-detached dwellings
<b>Property location:</b>	Located on the western side of Kurnell Street between Swinbourne and Warrana Streets
<b>Value:</b>	\$949,477.00
<b>Zoning:</b>	Botany Bay Local Environmental Plan 2013 R2 Low Density Residential
<b>Author:</b>	Petra Blumkaitis, Assessments
<b>Date of Report:</b>	21 May 2019
<b>Classification of Building:</b>	1a – Dwelling 10a – Garage
<b>Present Use:</b>	Residential
<b>No. of submissions:</b>	One (1) objection

### Key Issues

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The development application the subject of this report was referred to the Bayside Planning Panel (BPP) on 26 February 2019 with a recommendation for refusal.

At the meeting the BPP resolved:

1. *That the Bayside Planning Panel has decided that this matter be deferred to allow the applicant the opportunity to submit amended plans to address issues that have been raised, in particular:*
  - *A reduction in the bulk and scale at the rear to improve solar access for the adjoining property at number 9 (this includes a material improvement to the open space and demonstration of solar access for existing or replaced solar panels). This would also include a reduction in the upper floor and balcony for the south west to reduce impacts on the adjoining neighbour.*
  - *The streetscape presentation of the development needs to be further considered to improve soft landscaping and provide the opportunity for canopy*



*trees. In this regard, the applicant may also wish to consider a central driveway and the replacement planting of street-trees or alternatively, redesign the paving entries and driveway to provide more soft permeable areas for trees and landscaping.*

- *The applicant is to submit amended plans and documentation, including overshadowing diagram and a landscaping plan within 4 weeks to allow an assessment by Council officers and a timely report to be made back to the Panel for determination.*

In response to the above, the applicant submitted amended documentation on 26 March 2019 which includes:

1. Amended architectural plans,
2. Amended shadow diagrams and shadow elevations,
3. Amended landscape plan, and
4. Written response addressing the BPP assessment comments.

### Recommendation

1. That the Bayside Planning Panel exercising the functions of the Council as the consent authority pursuant to s4.16 of the Environmental Planning and Assessment Act 1979 not support the variation to the FSR standard, as contained in Clause 4.4A(3)(d) – FSR of Botany Bay LEP 2013 as it is not satisfied that the applicant's request has adequately addressed the matters required to be demonstrated by cl4.6 of that plan, and the proposed development would not be in the public interest because it is not consistent with the objectives of that particular standard and the objectives for the development within the zone.
2. That Development application DA-2018/1067 for the demolition of existing structures, Torrens title subdivision into two lots and the construction of a semi-detached dwelling arrangement at No. 7 Kurnell Street, Botany, be REFUSED for the following reasons:
  - a. 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 4.4 of Botany Bay LEP 2013 relating to floor space ratio and the Clause 4.6 written variation request submitted by the applicant is not supported,
  - b. Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not meet the objectives of Clause 4A.4.3 of Botany Bay DCP 2013 Solar access Control C2, overshadowing of solar panels on adjoining houses,
  - c. Pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act, the proposed development is excessive in terms of bulk, size and density, and is inconsistent with the character and streetscape, and would adversely impact upon the amenity of the locality, and
  - d. 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)(b) of the Environmental Planning and Assessment Act, the proposal is not in the public interest.

3. That the objector be notified of the Panel's determination.

## Background

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### History

The history of the subject development application is summarised as follows:

- **27 April 2018** – DA2018/1067 was submitted to Council.
- **4 – 21 May 2018** – The application was placed on neighbour notification in accordance with BBDCP 2013. One (1) submission was received.
- **26 February 2019** – The Bayside Planning Panel considered the application and resolved to defer the application to allow the applicant to submit an amended proposal.
- **26 March 2019** – amended plans submitted to Council
- **3 – 19 April 2019** - The amended application was placed on neighbour notification in accordance with BBDCP 2013. One (1) submission was received.

### Modifications made to the proposed development

The changes made in the amended architectural plans submitted to Council are summarised as follows:

#### Ground Floor Plan

- Addition of a bedroom and bathroom to the south-side semi-detached dwelling.

#### First Floor Plan

- Deletion of a bedroom from the south-side semi-detached dwelling.

#### Landscape plan/ streetscape

- Reduction in width of pedestrian entrance paths to the dwellings front doors, and a splay design of these paths to permit tree planting between the paths.
- Reduction in width of the driveways to increase planting area at either side of the site.

#### General

- Updated shadow diagrams

### Assessment of the Panel's deferment

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At the meeting of 26 February 2019 the Bayside Planning Panel resolved:

1. *That the Bayside Planning Panel has decided that this matter be deferred to allow the applicant the opportunity to submit amended plans to address issues that have been raised, in particular:*

**Deferral Reason 1**

- *A reduction in the bulk and scale at the rear to improve solar access for the adjoining property at number 9 (this includes a material improvement to the open space and demonstration of solar access for existing or replaced solar panels). This would also include a reduction in the upper floor and balcony for the south west to reduce impacts on the adjoining neighbour.*

Clause 4A.4.3 Solar Access of the Botany Bay DCP 2013 requires proposed development to meet general Controls C1 and C2.

**Control C1**

Control C1 requires *"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 open space areas of both the subject site and adjoining properties."*

Discussion: The amended design, as shown on updated shadow drawings improves the solar access to the primary open space of the adjoining dwelling at No. 9 Kurnell Street. The primary open space at No. 9 Kurnell Street is the rear garden and deck. Direct solar access for a minimum of two hours during mid-winter to 50% of the open space for both the subject site and the adjoining property will be achieved.

The amended design will continue to result in all windows on the northern elevation of No. 9 Kurnell Street to be fully in shadow during mid-winter. The windows along the northern elevation serve two bedrooms and a living room.

The amended design will not ensure two hours of solar access to the living areas of the south-side semi-detached dwelling. The south-side semi proposes an open plan kitchen, dining and living area on the ground floor at the western end of the dwelling. This area is served by one south facing window, and a west facing, stacking glass door.

The south facing window receives no direct sunlight at any time in mid-winter. Approximately 50% of the west-facing door will receive afternoon sunlight between approximately midday and 2pm. The design does not meet the Control requirement for two hours of solar access to windows in living areas between 9am and 3pm on 21 June.

**Control C2**

Control C2 requires *"Solar panels on adjoining houses that are used for domestic needs within that dwelling must not be overshadowed for more than two hours between 9am to 3pm in mid-winter"*

Discussion: The amended proposal continues to overshadow the domestic use solar panels on the roof of the adjoining dwelling to the south. All to half of the surface area of the solar panels are overshadowed until midday. At midday and 1pm the rear bank of panels are very close to receiving direct sunlight to their full surface area, and the forward bank are half in shadow. At 2pm the rear bank again receives very nearly full solar exposure while the front bank are again approximately half in shadow. At 3pm the rear bank receives full exposure while the front bank are shadowed only in a very small corner.

Overall the larger portion of the panels are shadowed for more than two hours between 9am and 3pm at mid-winter.

It is considered the amount of shadow cast by the proposed amended development on the domestic use solar panels on the adjoining property between 9am and 3pm in mid-winter will reduce the panel's efficacy to produce the amount of energy intended when installed. As such the proposal is not compliant with the DCP Clause, and is not supported.

#### **Deferral Reason 2**

- *The streetscape presentation of the development needs to be further considered to improve soft landscaping and provide the opportunity for canopy trees. In this regard, the applicant may also wish to consider a central driveway and the replacement planting of street-trees or alternatively, redesign the paving entries and driveway to provide more soft permeable areas for trees and landscaping.*

Discussion: An amended landscape plan was submitted to Council which provides for three canopy trees along the front boundary of the site; two to either side and one between the pedestrian paths to the front doors. The pedestrian paths have been narrowed and "splayed" to create a greater space between them for the tree planting. Additionally the driveways have been narrowed to permit more space for low lying planting alongside the driveways at either side of the site.

The provision of three canopy trees is a better outcome than two, as is increased lower level planting within the front setback of the site. The possible solution of centre driveways was not investigated. Central driveways would require the removal of the existing street tree which Council's Tree Management Officer identified as a Red Flowering Ironbark to be retained. Council's Tree Management Officer also identified the existing Cedar of Lebanon tree in the front setback to be retained, however retention of this tree would not permit a semi-detached development with two driveways, either separated or central, on the site.

The improved opportunity for landscape area and planting, and the retention of the existing street tree is supported. However the proposal remains inconsistent with the existing character of the streetscape for the reasons stated in the original report, particular given the lack of articulation at the front and the choice of materials, which are not complementary of the Kurnell Street streetscape.

#### **Assessment against relevant Controls**

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#### **Statutory Considerations**

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

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

The amended application was not accompanied by a new BASIX Certificate.

#### **Botany Bay Local Environmental Plan 2013**

The amended application is considered under Botany Bay Local Environmental Plan (BBLEP2103), where it differs from the original application, and the following information is provided:

#### **Clause 4.3 Height of Buildings**

The amended proposal remains under the maximum permitted height of 8.5m. The highest point of the ridge is 6.6m.

The amended plans reduce the size of the first floor footprint of the south side semi-detached dwelling. This reduces the height of this semi at the rear of the dwelling from 6.6m, to a single storey height of 3.8m.

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

The amended proposal will reduce the gross floor area proposed from 367m<sup>2</sup> to 339m<sup>2</sup>. The resultant floor space ratio will change from 0.76:1 to 0.69:1. This a variation of 19%. An amended cl4.6 justification has not been provided.

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

There are no current Draft EPIs applicable to this development

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

The following controls under BBDCP are relevant to the modified application to the extent they differ from the original application:

#### **Botany Bay Development Control Plan 2013 (BBDCP)**

#### **Part 3L – Landscaping and Tree Management**

The proposed changes in the landscape plan are addressed previously in this report.

#### **Part 4A – Dwelling House**

- **4A.2.4 Streetscape Presentation**

The existing character of Kurnell Street is that of low density residential development including semi-detached dwellings, many of which have a first floor addition with a smaller floor plate than the ground floor and are set back from the front elevation of the ground floor. The dominant roof form is pitched.

The amended proposal is considered to be out of character with the streetscape as it does not reflect the defining characteristics of smaller first floor floor plates, first floor setbacks and pitched roofs.

- **4A.2.9 Landscape Area**

The proposed change in the landscape plan are addressed previously in this report.

**4A.4.1 Visual Privacy**

Visual privacy has been previously addressed in this report.

**4A.4.3 Solar Access**

Solar access has been previously addressed in this report.

**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**

For the reasons explained in this and the original planning report, and the identified non compliances with Council's policies, the proposal will result in unreasonable impacts.

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

Previous conclusions regarding the suitability of the site remain.

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

The amended plans were re-notified between 3 – 19 April 2019. One submission was received which raised the following matters:

**1. Loss of privacy**

The submission states: *"The south facing windows proposed along the southern boundary will create an opportunity for overlooking into the rear yard and internal courtyard space of our house. If not already a potential DA condition, we would like these windows to have obscure glazing up to 1.5m high or be removed."*

Comment: The south elevation windows in the amended proposal serve a bathroom, an ensuite, the staircase, and two bedrooms.

- Bathrooms and ensuites are low traffic, specific use rooms which are considered unlikely to give rise to overlooking and a loss of privacy to the neighbouring property.
- The window adjacent to the staircase may permit overlooking and as such is recommended to be made with obscure glazing, particularly as skylights over the staircase will provide ample lighting.
- The three windows to the 'middle' bedroom are located in the only external wall of this room, added to which this room is south-facing a reasonable amount of openable glazing should be provided to ensure amenity to the room. However, the bottom panel can be provided with obscured glazing and the room will still achieve acceptable amenity to the room.
- The two windows in the south elevation of the rear bedroom are unnecessary because the bedroom also benefits from a large window in the rear/western elevation. These windows are the closest to the private open space at the rear of the adjoining property and allow the greatest potential for overlooking and loss of privacy. It is recommended the two south facing windows to the rear first floor bedroom be deleted.

**2. Overshadowing of solar panels**

The submission states: *"The removal of the upstairs bedroom has reduced the proposed bulk and improved the overshadowing, however we believe our solar panels are still vulnerable to working below max efficiency. An email sent to use by the owner/developer has indicated they are willing to reimburse us for the relocation of solar panels. Would it be possible to include DA condition that includes the relocation and the developers cost responsibilities as port of the Construction Certification requirements."*

Comment: Whilst overshadowing of the solar panels on the roof of the neighbouring dwelling is decreased in the amended proposal, the amount of overshadowing remains in contravention of the BBDCP2013 control requiring domestic use solar panels to not be shadowed for more than two hours during mid-winter. The proposal does not achieve this requirement and is subsequently not supported. Council cannot impose conditions which relate to properties other than the subject site.

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

Granting approval to the proposed development is not in the public interest.

#### **Conclusion**

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The amended plans and additional information have been lodged to address the issues raised by Bayside Planning Panel at their meeting of 26 February 2019.

The amended plans submitted to Council are considered to partly satisfy the Panel's reasons for deferral in that the streetscape appearance of the development will be improved and solar access to the open space of the adjoining property is increased. However the degree of overshadowing of the solar panels on the adjoining property remains excessive and unsupported, and the streetscape appearance of the proposal remains inconsistent with the character of Kurnell Street.

Therefore, it is recommended that the Panel determine the application in accordance with the recommendation provided.

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# BAYSIDE COUNCIL

## Planning Assessment Report

### Application Details

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Application Number:	2018/1067
Date of Receipt:	27 April 2018
Property:	7 Kurnell Street, Botany
Lot & DP/SP No:	Lot 38 DP 15704
Owner:	Balari Investments P/L
Applicant:	Bureau SRH Architecture Pty Ltd – Eugene Kirkwood
Applicant Address:	3/2 Verona Street, Paddington 2021
Proposal:	Demolition of existing structures; Torrens Title Subdivision into two lots and construction of two x 2 storey semi-detached dwellings
Property Location:	Located on the western side of Kurnell Street between Swinbourne and Warrana Streets
Value:	\$949,477.00
Zoning:	Botany Bay Local Environmental Plan 2013 R2 Low Density Residential
Author:	Petra Blumkaitis
Date of Report:	21 January 2019
Classification of Building:	1a – Dwelling 10a – Garage
Present Use:	Residential
No. of submissions:	Three (3) objections

### Key Issues

Key issues are:

1. Non-compliance with Botany Bay Local Environmental Plan floor space ratio (FSR) control. The permitted FSR for the site is 0.5:1 while the proposed FSR is 0.76:1, a variation of 25.7%. The variation and the submitted Clause 4.6 request to vary a development standard is addressed in this report,
2. Overshadowing of solar panels on the adjoining property to the south for greater than two hours between 9am and 3pm in mid-winter, in contravention of clause C2 of the Botany Bay Development Control Plan 2013, and
3. Impacts on streetscape and amenity of the locality.



# BAYSIDE COUNCIL

## Planning Assessment Report

### Recommendation

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1. That the Bayside Planning Panel exercising the functions of the Council as the consent authority pursuant to s4.16 of the Environmental Planning and Assessment Act 1979 not support the variation to the FSR standard, as contained in Clause 4.4A(3)(d) – FSR of Botany Bay LEP 2013 as it is not satisfied that the applicant's request has adequately addressed the matters required to be demonstrated by cl4.6 of that plan, and the proposed development would not be in the public interest because it is not consistent with the objectives of that particular standard and the objectives for the development within the zone.
2. That Development application DA-2018/1067 for the demolition of existing structures, Torrens title subdivision into two lots and the construction of a semi-detached dwelling arrangement at No. 7 Kurnell Street, Botany, be REFUSED for the following reasons:
  - a. 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 4.4 of Botany Bay LEP 2013 relating to floor space ratio and the Clause 4.6 written variation request submitted by the applicant is not supported,
  - b. Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not meet the objectives of Clause 4A.4.3 of Botany Bay DCP 2013 Solar access Control C2, overshadowing of solar panels on adjoining houses,
  - c. Pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act, the proposed development is excessive in terms of bulk, size and density, and is inconsistent with the character and streetscape, and would adversely impact upon the amenity of the locality, and
  - d. 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)(b) of the Environmental Planning and Assessment Act, the proposal is not in the public interest.
3. That the objector be notified of the Panel's determination.

### Site Description

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The site, legally identified as Lot 38 DP 15704, is located on the western side of Kurnell Street between Swinbourne and Warrana Streets. The site is regular in shape and has a total area of 485m<sup>2</sup>. The site is currently accommodated by a single storey brick and fibro dwelling house with detached fibro sheds and various trees and plantings. See locality map below.

Surrounding development comprises of single storey detached dwelling immediately adjoining the subject to the north and south, the Bayside Council depot to the rear and a mix of single storey detached dwellings and one and two storey semi-detached dwellings along Kurnell Street.

# BAYSIDE COUNCIL

## Planning Assessment Report



Figure 1. Site location

### Site History

The subject DA was lodged with Council on 27 April 2018. No previous applications are recorded.

### Description of Development

The proposal is for the demolition of structures and the construction of two semi-detached dwellings each containing four bedrooms, three bathrooms, living areas and single attached garage. The details of the application are as follows:

- Demolition of existing structures and associated site clearing;
- Torrens Title subdivision of the existing lot into proposed Lots 1 and 2 of 242.5m<sup>2</sup> each;
- Construction of two x 2 storey dwellings consisting of:

## BAYSIDE COUNCIL Planning Assessment Report

1. Ground floor- kitchen, walk-in pantry, dining and living room, laundry, toilet, single car garage, and stairs to first floor;
  2. First floor – four bedrooms, ensuite, bathroom, and stairs to ground floor; and
- Landscaping.

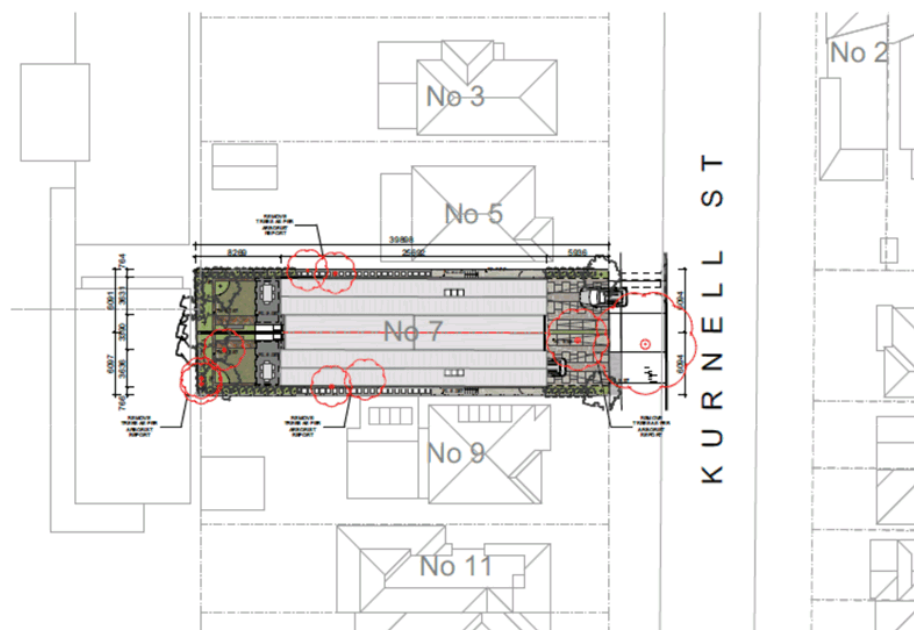


Figure 2. Site Plan

### Statutory Considerations

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

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

#### **S.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**

# BAYSIDE COUNCIL

## Planning Assessment Report

The application is accompanied by BASIX Certificate Number 922192M dated Thursday 26 April 2018. The Certificate demonstrates the proposed development satisfies the relevant water; thermal comfort and energy commitments as required by SEPP (BASIX).

The provisions of the SEPP are satisfied in this instance.

### State Environmental Planning Policy No. 55 – Remediation of Land

The provisions of SEPP 55 have been considered in the assessment of the application, along with the requirements of Part 3K- Contamination of the Botany Bay Development Control Plan 2013 (BBDCP 2013). The likelihood of encountering contaminated soils on the subject site is considered to be extremely low given the following:

- 1 The site appears to have been continuously used for residential purposes.
- 2 The adjoining properties to either side 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 State Environmental Planning Policy 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

The application is considered under Botany Bay Local Environmental Plan 2013 (BBLEP 2013) and the following information is provided:

Principal Provisions of BBLEP 2013	Compliance	Comment
2.1 Land use zones	Yes	The site is zoned R2 – Low Density Residential under the BBLEP 2013.
2.2 Is the proposed use/works permitted with development consent?	Yes	The proposed use as two semi-detached dwellings is permissible with Council's consent under the BBLEP 2013.
2.3 Does the proposed use/works meet the objectives of the zones?	No	The proposed development is inconsistent with the objectives for R2 low density residential land because the proposal does not meet the specified FSR control and is akin to medium density development.
2.5 Does Clause 2.5 and Schedule 1 – Additional Permitted Uses apply to the site?	N/A	The additional permitted uses in Clause 2.5 and Schedule 1 do not apply to the site.
3.6 Land to which this Plan applies may be subdivided,	Yes	The proposal includes the subdivision of the existing lot into two (2) lots of 242m <sup>2</sup>

## BAYSIDE COUNCIL

### Planning Assessment Report

Principal Provisions of BBLEP 2013	Compliance	Comment
but only with development consent.		each. Botany Bay LEP 2103 does not specify a minimum lot size.
<b>2.7</b> Demolition of a building or work may be carried out only with development consent.	Yes	The proposal includes demolition of the existing detached dwelling house and ancillary structures on site.
<b>4.3 Height of Buildings</b> The height of a building on any land is not to exceed the maximum shown on the Height of Buildings Map.	Yes	<p>Clause 4.3 permits a maximum building height of 8.5 metres as measured from natural ground level (existing) for the subject site.</p> <p>The proposed development seeks a building height, at the highest point, of 6.6m which is compliant with the maximum permitted in accordance with this Clause.</p> <p>Despite the numerical compliance with this Clause the proposal does not meet the objective to minimise the loss of solar access to existing development, as the proposal will significantly overshadow the adjoining property to the south.</p>
<b>4.4 Floor space ratio</b> 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	No	<p>The subject site is within Area 3 and as such Clause 4.4A(3)(d) states <i>the maximum floor space ratio for all other development for the purpose of residential accommodation is 0.5:1</i></p> <p>The proposed development is <i>other development</i> because it is a semi-detached development; not a dwelling house, multi dwelling housing, or a residential flat building.</p> <p>The proposed development seeks an FSR of 0.76:1 which is not compliant with the maximum permitted FSR of 0.5:1. The extent of the variation is 25.7% thereby requiring determination by the Bayside Planning Panel. A s.4.6 variation request has been submitted with the application and is addressed later in this report.</p>
<b>5.10 - Heritage</b>	N/A	The site is not listed as a heritage item or located within a Heritage Conservation Area.

## BAYSIDE COUNCIL

### Planning Assessment Report

Principal Provisions of BBLEP 2013	Compliance	Comment
<b>Part 6</b> provisions which apply to the development– <ul style="list-style-type: none"> <li><b>6.1</b> – Acid sulfate soils</li> </ul>	Yes	6.1 – Acid sulfate soils: Class 4. The proposed works will involve minimal excavation (surface scraping) mainly associated with preparing the site for the new dwellings. Further investigation is not warranted.
<ul style="list-style-type: none"> <li><b>6.2</b> – Earthworks</li> </ul>	Yes	6.2 – Earthworks on site will be required for site preparation. The anticipated impact from the earthworks is acceptable.
<ul style="list-style-type: none"> <li><b>6.3</b> – Stormwater Management</li> </ul>	Yes	6.3 – Council's Development Engineer has reviewed the application supported the proposal, subject to recommended conditions.

The objectives and provision of the BBLEP 2013 have been considered in relation to the subject development application. The proposal is considered unsatisfactory in terms of the BBLEP 2013.

#### **Clause 4.6 Variation to floor space ratio**

The site is nominated as having a maximum floor space ratio (FSR) of 0.5:1 on the BBLEP 2013 FSR map. The proposed semi-detached dwellings will result in a FSR of 0.76:1, which is a variation of 25.7%.

The site is located in Area 3. Clause 4.4A of BBLEP 2013 permits higher density for dwelling houses based on the size of the lot. The subject property has a site area of 485sq.m. Under Clause 4.4A, a dwelling house would be allowed to have a maximum FSR of 0.55:1.

The applicant has provided a written Clause 4.6 variation request, providing justification for the proposals variation to the 0.5:1 FSR requirement, stating that it is unnecessary and unreasonable in the particular circumstances.

In *Wehbe v Pittwater Council [2007] NSW LEC 827 (Wehbe)*, the Land and Environment Court set out the following five different ways in which an objection to a development standard may be well founded:

- 1 The objectives of the standard are achieved notwithstanding non-compliance with the standard.*
- 2 The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.*
- 3 The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.*

## BAYSIDE COUNCIL

### Planning Assessment Report

- 4 *The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.*
- 5 *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 & NSW LEC 90 (*Four2Five*), the Court established that the construction of Clause 4.6 is such that it is not sufficient for the applicant to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standards, as required by Clause 4.6(3)(b), or for the consent authority to be satisfied that the proposed development is consistent with the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, as required by Clause 4.6(4)(a)(ii). The Court outlines that Clause 4.6 requires that in addition to the requirements listed above, the applicant must also establish that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, as is required by Clause 4.6(3)(a). This may involve reference to reasons 2-5 outlined within *Wehbe*.

Consent may be granted for the proposal subject to Clause 4.6, notwithstanding that the proposal would contravene this development standard, as the FSR development standard is not expressly excluded from this Clause (Cl 4.6(2)). The applicant has provided a written request justifying the contravention of the development standard pursuant to Clause 4.6(3) of Botany Bay Local Environmental Plan 2013, which is considered below.

#### 4.6 Variation request assessment

##### Clause 4.6(3)

Clause 4.6(3) states consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the application that seeks to justify the contravention of the development standard by demonstrating:

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

The applicant has argued the FSR standard is unreasonable or unnecessary in the following three points:

- *Firstly, there are no adverse consequences attributable to the proposed non-compliant aspect of the development. To ensure absolute compliance with the FSR standard would necessitate the removal of large areas of floor space within the proposed building.*
- *Secondly, bearing in mind that the building meets the DCP criteria for size, scale and setbacks etc, and is therefore within the building envelope envisaged in the relevant planning framework, there would be no improvement in any potential impact on the amenity of adjoining properties by reducing the FSR.*
- *Thirdly, requiring compliance for the sake of numerical satisfaction would not result in any variation in the building's fit within the streetscape and desired future character, which are the matters sought to be achieved within Clause 4.4A itself.*



## BAYSIDE COUNCIL

### Planning Assessment Report

#### Comments:

The development application proposes a development that will result in buildings which are larger in bulk, scale and appearance to the existing dwellings in the area. The excessive bulk and scale of the dwellings will result in detrimental impacts on the neighbouring dwellings in regard to overshadowing. As can be seen from the submitted plans, the footprint and bulk of the proposed buildings extend significantly beyond the footprint and bulk of the buildings in Kurnell Street, including neighbouring semi-detached dwellings.



**Figure 3.** Streetscape Kurnell Street

The streetscape of Kurnell Street is characterised by a mix of semi-detached dwellings some with first floor additions predominantly set back further than the ground floor and single storey detached dwellings. The desired future character of the locality remains as existing, supported by the subdivision pattern and development style along Kurnell Street.

Compliance with the development standard will permit semi-detached dwellings with a lesser bulk and size and subsequent lesser negative impacts to be built on the site. Compliance will not hinder the orderly and appropriate development of the land.



## BAYSIDE COUNCIL

### Planning Assessment Report

Application of the FSR development standard is not considered unreasonable or unnecessary in the circumstances of this case.

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

The applicant argues there is sufficient grounds to justify the variation in the below extract from the written variation request:

*"The development in the main meets the objectives and controls of the relevant Environmental Planning Instrument and DCP. It acknowledges the site's location by maintaining the required side set backs and proposing a built form that retains a low intensity.*

*Within Kurnell Street, both nearby the site and further along its length are a number of examples of semi detached dwellings that have been extended up by a level. Sometimes on both sides and sometimes on one half only. In most cases these upper floors cover most of the ground floor footprint that by default enlarges the resulting FSR to greater than 0.55:1."*

*"The subject proposal seeks to demolish the existing dwelling on the site and construct a new building containing two new dwellings. As evidenced by the table within the SEE submitted to Council, the proposal meets all of the numerical standards within the DCP relating to site cover, setbacks, landscaped open space and design criteria. Accordingly, the proposal will provide good amenity to its future residents, without negatively impacting on adjoining properties in terms of expected shadow impact, aural or visual privacy etc.*

*A better planning outcome can also be considered in terms of the potential impact of the proposal on the public domain and in an urban design sense. Any assessment of these issues must consider the proposal in terms of the context of the site, its built form, the need for varied residential opportunities within a low density format in the locality, the design parameters of the relevant DCP and the long term potential for similar development on adjoining properties."*

*"...no significant adverse impacts arise from the non-compliance with the LEP FSR standard and therefore compliance would be merely for the sake of numerical accuracy."*

Comments:

There are no environmental planning grounds to justify contravening the development standard. The site is not otherwise constrained by flood affectation, steepness, easements, heritage items or other matters of the like which would hinder the orderly development of the land, and justify varying the development standard. A development application for sensitively and appropriately designed semi-detached dwellings which complied with the FSR control would be permissible on the site and is likely to be supported.

#### Clause 4.6(4)

Clause 4.6(4) states consent may 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)

Comment: Council is not satisfied that the written request has adequately addressed the matters required to be demonstrated in subclause (3) because the negative impacts the proposal will result

## BAYSIDE COUNCIL

### Planning Assessment Report

in have not been addressed nor an attempt to mitigate them made, no particular circumstances for the subject site have been identified which make a variation reasonable or necessary, and sufficient planning grounds to justify a variation have not been demonstrated.

- (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

Comment: The following matters pursuant to Clause 4.6 are therefore also considered:-

- Objectives of the Floor Space Ratio Standard.
- Objectives of the LR2 Low Density Residential zone
- Public interest
- Objectives of Botany Bay LEP 2013 Clause 4.6

#### **Objectives of Clause 4.4 Floor space ratio**

The objectives of Clause 4.4 FSR of the Botany Bay Local Environmental Plan 2013 are:

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

Additionally, Clause 4.4A contains the following objectives:

- (a) to ensure that the bulk and scale of development is compatible with the character of the locality,
- (b) to promote good residential amenity.

Comments:

The proposal is inconsistent with the objectives of the FSR development standard for the following reasons:-

- The proposal exceeds a reasonable density and intensity of use on the site. The proposal will result in unacceptable impacts on neighbouring properties due to the intensity of the proposed development.
- The resulting bulk and scale of the proposal is incompatible with the existing character of the locality. It is also excessive for the likely desired future character of the locality, as should each site of a similar size in Kurnell Street be redeveloped with a similar variation to the permitted FSR the future character of the locality will become dominated by dwellings with excessive bulk,

## BAYSIDE COUNCIL

### Planning Assessment Report

limited to no landscaping, repeated detrimental impacts to neighbours and an overall unattractive streetscape and public domain.

- Kurnell Street is not currently undergoing a substantial transformation nor is it anticipated to do so in the foreseeable future. It is not included in any State plan or policy which will change the development potential of the land. As such the maintenance of the relationship between the existing character in the locality and any new development would best be achieved through compliance with the relevant development standards.
- The proposed buildings are anticipated to adversely affect the streetscape when viewed from the adjoining road because of the bulk and style design of the buildings, in a street where first floor additions are predominantly set back and have a smaller floor plate than the ground floor beneath.
- An FSR of 0.5:1 on the subject site is considered appropriate to maintain the character of the locality and adequate to permit redevelopment of the site.
- The development standard can facilitate development which could contribute to the economic growth of Botany Bay without a variation to that standard.

#### **Objectives of the R2 Low Density Residential zone**

The Objectives of the R2 Low Density Residential zone is as follows:

- *To provide for the housing needs of the community within a low density residential environment;*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents;*
- *To encourage development that promotes walking and cycling.*

Comments:

The proposed semi-detached dwelling houses are a permissible use within the R2 Low Density Residential Zone.

The proposal provides additional housing to serve the housing needs of the community however the size of the proposed dwellings is not consistent with the low density scale of development in Kurnell Street.

The proposal may encourage walking and cycling as it is located close to employment, recreation, schools and retail opportunities.

#### **Public Interest and Public Benefit**

The proposed variation is not in the public interest as it will result in adverse impacts to neighbouring properties and the character of the locality.

During the public notification period for the development application three (3) submissions (all from the neighbouring property owners/residents to the south of the subject site) opposing the proposal were received. The matters raised in the submissions are addressed later in this report.

#### **Objectives of Clause 4.6 Exceptions to development standards**

The objectives of Clause 4.6 (pursuant to Clause 4.6(1) of Botany Bay Local Environmental Plan 2013) are:

# BAYSIDE COUNCIL

## Planning Assessment Report

- 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.

### Comments:

The subject site is not constrained by any particular environmental issues, such as rocky outcrops, steepness and the like which would warrant flexibility in applying development standards to achieve better outcomes for and from development of the site. Good planning outcomes can be achieved on site while complying with the FSR standard.

### Summary

The Clause 4.6 variation request to the floor space ratio control has been assessed in accordance with 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 inconsistent with the underlying objectives of the standard identified. The proposed development has been assessed against Councils' Botany Bay Local Environmental Plan 2013 and Botany Bay Development Control Plan 2013 controls which while compliant with some are noncompliant in significant and unsupportable ways.

It has been established that the proposed development is inappropriate and adherence to the development standard in this instance is reasonable and necessary.

The applicant's Clause 4.6 request is not well-founded and the major departure in FSR development standard for 7 Kurnell Street, Botany is not in the public interest. On this basis, it is recommended that the development standard relating to the maximum FSR for the site pursuant to Clause 4.4 of the Botany Bay Local Environmental Plan 2013 should not be varied.

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

There are no current Draft EPIs applicable to this development

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

The following Development Control Plan is relevant to this application:

#### Botany Bay Development Control Plan 2013

The application has been assessed against the controls contained in the BBDCP 2013. The discussion below compares the proposal with the relevant provisions of this Policy.

#### Part 3A – Parking & Access

The table below compares the proposal with the relevant provisions of this Part of the DCP.

Control	Proposed	Complies
<b>3A.2 – Parking provisions of specific uses</b>		
<b>C2 – Semi detached dwelling</b>		
One space per dwelling	Two spaces per dwelling are proposed with a single garage	Yes

## BAYSIDE COUNCIL

### Planning Assessment Report

Control	Proposed	Complies
	and one driveway parking space for each dwelling.	
<b>C4</b> – Tandem or stack parking	One garage space and one driveway space aligned with the garage are allocated to each dwelling.	Yes
<b>3A.3.1 – Car park design</b>		
<b>C10</b> – Off street parking facilities are not permitted within the front setback	Both single garages are behind the front building line.	Yes
<b>C13</b> – Pedestrian and vehicular paths separated	The driveways and pedestrian access to the dwellings are separated from each other.	Yes
<b>C14</b> – One vehicle access point per property	One vehicle access point for each semi-detached dwelling is proposed.	Yes
<b>C26</b> – Tandem car parking only permitted where spaces are allocated to the same single dwelling.	Tandem parking (garage and driveway) are allocated to the same single dwelling.	Yes
<b>C28</b> – Min 3m wide access driveway for dwelling houses	The width of each vehicle crossover is 3m.	Yes

#### **Part 3E – Subdivision and Amalgamation**

The table below compares the proposal with the relevant provisions of this Part of the DCP with a merit assessment discussed further below.

Control	Proposed	Complies
<b>3E.2.1 General Torrens Title Subdivision and Amalgamation</b>		
<b>C1</b> – Subdivision shall be consistent with the desired future character of the area under Part 8 of the BBDCP2013.	The proposed subdivision is generally consistent with the rectilinear subdivision pattern of the area.	Yes
<b>C2</b> – Subdivision must not compromise any significant features of existing or adjoining sites including streetscape character, landscape features or trees.	The proposed subdivision does not have a detrimental impact to the streetscape character. The proposed semi-detached dwellings for the proposed new lots are considered to not be consistent with the streetscape character due to size and bulk	Yes

## BAYSIDE COUNCIL

### Planning Assessment Report

Control	Proposed	Complies
C3 – Subdivision must have similar characteristics to the prevailing street pattern of lots fronting the same street.	The proposed subdivision will have similar characteristics to the prevailing street pattern of narrow, rectangular lots fronting Kurnell Street.	Yes
C4 – Applications which propose the creation of new allotments shall demonstrate that future development for the site can comply with all Parts of the DCP.	The proposed dwellings to be sited on the new lots cannot demonstrate compliance with all Parts of the DCP, particularly shown in the large variation proposed to the permissible FSR.	No
C5 – Applications must demonstrate that the following has been considered. (i) Site topography and other natural and physical features (ii) Existing services (iii) Existing vegetation (iv) Existing easements or the need for new easements (v) Vehicle access (vi) And land dedication required (vii) Potential flood affectation and stormwater management requirements (viii) Contamination of the land (ix) Existing buildings or structures (x) Heritage Items, Conservation Areas and adjoining Heritage Items	The proposed development includes the removal of a street tree, however all other matters have been considered.	Partial
C6 – Subdivision must not result in the creation of a new lot that contains significant site features that would render the land unable to be developed.	The proposed subdivision results in two residential allotments with the same site features.	Yes
C7 – Subdivision which results in additional residential allotments of land within ANEF contour of 30+ is not permitted.	The site is located outside ANEF contour 20.	Yes
C8 – Subdivision is not permitted in areas identified to be affected by projected 2100 sea level rise by NSW State Government.	The site has not been identified to be affected by projected 2100 sea level rise.	N/A
<b>3E.2.2 Residential Torrens Title</b>		
C2 – 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.	The proposed subdivision will result in lots with similar areas, dimensions, shape and	Yes

## BAYSIDE COUNCIL

### Planning Assessment Report

Control	Proposed	Complies
	orientation to that existing in Kurnell Street.	
C7 – All lots created shall have a least one (1) frontage to the street.	Both new lots will front Kurnell Street.	Yes

#### Part 3G – Stormwater Management

The table below compares the proposal with the relevant provisions of this Part of the DCP.

Control	Proposed	Complies
C1 – Development shall not be carried out on or for any lands unless satisfactory arrangements have been made with and approved by Council to carry out stormwater drainage works.	The application is accompanied by Concept Stormwater Plans prepared by Triaxial Consulting which were referred to Council's Development Engineer for review and comment (Issue A, dated 13.04.18).  Council's Development Engineer is satisfied with the proposal.	Yes

#### Part 3H – Sustainable Design

The table below compares the proposal with the relevant provisions of this Part of the DCP.

Control	Proposed	Complies
C1 – For all proposed residential development where BASIX applies, the application is to be accompanied by a BASIX Certificate.	The application was accompanied by BASIX Certificate No. 922192M.	Yes

#### Part 3K – Contamination

DCP Requirement	Proposed	Complies
O1 – To ensure that the development of contaminated or potentially contaminated land does not pose a risk to human health or the environment.	An assessment against the relevant provisions of the SEPP 55 is undertaken in S. 4.15(1)(a)(i) above.	Yes

#### Part 3L- Landscaping and Tree Management

Control	Proposed	Complies
<b>3L.1.2 – Development Application Submission Requirements</b>		
C1 – Landscape documentation is required to be submitted in accordance with Table 1.	The application is accompanied by a Landscape	Yes

## BAYSIDE COUNCIL

### Planning Assessment Report

Control	Proposed	Complies
	Plan prepared by Carmichael Studios, Drawing No. SK 01 Rev F undated.	
<b>3L.2 – General Requirements</b>		
<b>C1</b> – Existing trees including street trees must be preserved.	Four trees are proposed to be removed, three from the site and one street tree. The removal of the site trees, subject to replanting of advanced suitable species is supported. However Council's Tree Management Officer advises the street tree must be retained. The location of the driveway conflicts with the street tree and is not supported.	No
<b>C2</b> – Landscaping will be designed to reduce the bulk, scale and size of building and to shade and soften hard paved areas.	The proposed landscaping will slightly mitigate the bulk, scale and size of the proposed building however the small area in which larger species could be successfully grown will be largely occupied by driveways and pedestrian access paths.	No
<b>C3</b> – Landscaping is to be used to define the transition between public and private spaces.	The proposed landscaping will assist in delineating between the public road reserve and the private dwelling spaces.	Yes
<b>C4</b> – Landscape screening or buffers are to be included and designed so as to enhance privacy between properties and softening of wall and facades.	The proposed landscaping will enhance the privacy enjoyed between the semi-detached dwellings and the neighbouring properties.	Yes
<b>C9</b> – A deep soil landscape zone is required for all developments.	Deep soil zones are available in the rear garden to each semi-detached dwelling.	Yes
<b>C12</b> – Areas containing trees are to be of suitable dimensions to allow for lateral root growth as well as adequate water penetration and air exchange to the soil substrate.	Possible locations for tree species include the rear garden and the road reserve. Selection of suitable species and planting location should	Yes



## BAYSIDE COUNCIL

### Planning Assessment Report

Control	Proposed	Complies
	enable lateral root growth and water and air penetration into the soil.	

#### **Part 3N- Waste Minimisation and Management**

The application is accompanied by a Waste Minimisation and Management Plan, prepared in accordance with the BBDCP 2013. The Plan addresses works involved including minor excavation and fill to the site, in addition to the construction of the works proposed and is acceptable with regards to the relevant parts of this Part of the BBDCP 2013.

#### **Part 4A- Dwelling House**

The application is accompanied by a Site Analysis Plan which identified opportunities and affectations of the site.

The table below compares the proposal with the relevant provisions of this Part.

Control	Proposed	Complies
<b>4A.2.1 Design Excellence</b>		
<b>C1</b> – To achieve design excellence in urban design, development should account for those matters listed in the DCP.	The proposed development accounts for some of the matters listed however it does not minimise impacts on neighbours by maintaining appropriate levels of solar access, providing quality landscaping and avoiding a bulky appearance.	No
<b>C2</b> – A Development Application for a new dwelling house or major alteration to a dwelling must include a written statement to demonstrate how design excellence will be achieved in the proposed development and meet the requirements identified in C1	The application was not accompanied with a written design excellence statement.	No
<b>4A.2.2 Site Analysis</b>		
<b>C1</b> – A site analysis plan shall be submitted with all Development Applications.	A site analysis plan prepared by Bureau SRH was submitted with the DA.	Yes
<b>4A.2.3 Local Character</b>		
<b>C1</b> – Development must be designed to respond to the opportunities and constraints identified in the Site Analysis	The proposal generally responds to the site analysis, however there are matters which are not well addressed; primarily being the east-west site orientation and the subsequent shadowing effects to the property to the south, the retention and provision of	No

## BAYSIDE COUNCIL

### Planning Assessment Report

	landscape and deep soil planting areas and trees and the fit of the proposal with the streetscape.	
<b>C2</b> – Development must comply with the relevant Desired Future Character Statements in Part 8.	The Desired Future Character is addressed later in this report.	See below
<b>4A.2.4 Streetscape Presentation</b>		
<b>C1</b> – New dwellings must be designed to reflect the Desired Future Character Statement in Part 8 – Character Precincts and are to reinforce the architectural features and identify which contributes to its character.	The contribution the proposed makes to the desired future character of the Botany Character Precinct is addressed later in this report	See below
<b>C2</b> – Development must be designed to reinforce and maintain the existing character of the streetscape.	The proposal is inconsistent with the existing character of the streetscape because the first floor is not setback from the ground floor, like the majority of first floors along the street, the proposed materials are not seen elsewhere in the street and there is limited opportunity for landscape area and tree planting on the site.	No
<b>C3</b> Development must reflect dominant roof lines and patterns of the existing streetscape (refer to Figure 3).	The character of Kurnell Street includes numerous semi-detached dwellings many with first floor additions with smaller floor plates than the ground floor and pitched roofs.	No
<b>C4</b> – Building must appropriately address the street.	The proposed dwellings address Kurnell Street with easily identifiable pedestrian and vehicular access from the street.	Yes
<b>C6</b> – The entrance to a dwelling must be readily apparent from the street.	The entrances to each dwelling will be readily apparent from Kurnell Street.	Yes
<b>C7</b> – Dwelling are to have windows to the street from a habitable room to encourage passive surveillance.	The proposal will include a first floor bedroom door and balcony in each dwelling which faces the street.	Yes
<b>C10</b> - Development must retain characteristic features prevalent in houses in the street, including verandas, front gables, window awnings, bay windows, face brickwork or stone details.	The proposal does not retain or reflect characteristic design features prevalent in the street. These features include set back first floors and hipped roofs.	Yes

## BAYSIDE COUNCIL

### Planning Assessment Report

<b>4A.2.5 Height</b>		
<b>C1</b> – Maximum height of buildings must be in accordance with the Height of Buildings Map.	The proposed development seeks a building height of 6.6m which is compliant with the permitted 8.5m maximum.	Yes
<b>C3</b> – New buildings are to consider and respond to the predominant and characteristic height and storeys of buildings within the neighbourhood. Note: Characteristic building height is defined as the average building height of the two adjoining buildings.	The proposal exceeds the characteristic building height as defined because the adjoining dwellings are single storey. However there are many examples in Kurnell Street of two storey dwellings with a similar height to that proposed for the semi-detached dwellings. The number of storeys non-compliance with the height clause is acceptable.	Yes
<b>4A.2.6 Floor space ratio</b>		
<b>C1</b> – The maximum FSR of the development must comply with the Floor Space Ratio Map and Clause 4.4 and 4.4A of the BBLEP 2013.	Clause 4.4A permits an overall FSR of 0.5:1 for the subject site.  The proposed development seeks an overall FSR of 0.76:1 which is not compliant with the maximum permitted FSR. The extent of the variation is 25.7% thereby requiring determination by the Bayside Planning Panel. A s4.6 variation request has been submitted and is addressed earlier in this report.	No
<b>4A.2.7 Site Coverage</b>		
<b>C2</b> - For sites between 200-250m <sup>2</sup> the maximum site coverage is 65% of the lot.	Each lot of the subject site is 242m <sup>2</sup> , making 65% of the site area equal to 157.3m <sup>2</sup> . The proposed site coverage is a total of 114m <sup>2</sup> . The proposed site coverage is 47% of the site area and therefore compliant with this Control.	Yes
<b>4A.2.8 Building Setbacks</b>		
<b>C1</b> – Dwelling houses must comply with the minimum setbacks in Table 1. For lot widths less than 12.5m: a) Front setback – prevailing or 6m b) Side setback – merit c) Rear setback – 4m d) Eaves – 450mm from boundary	Proposed:  a) – 6m, which matches prevailing b) – 900mm c) – 11m d) – 900mm (box gutters)	Yes

## BAYSIDE COUNCIL

### Planning Assessment Report

<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 elements, or a variation in materials.	The side walls of the proposal are to be finished with differing materials and articulated along their length. This will contribute to lessening the bulk appearance of the proposal.	Yes
<b>4A.2.9 Landscape Area</b>		
<b>C2</b> - Development shall comply with the minimum landscaped area requirement in <b>Table 2</b> : <250m <sup>2</sup> – 15%	Landscape area = 78m <sup>2</sup> (32%).	Yes
<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).	Half of the rear yard landscape area is proposed to be a deck and 5m <sup>2</sup> of the front yard is part of the driveway. This means 35m <sup>2</sup> or 44% of the landscape area is not permeable deep soil zones.	No
<b>C4</b> – Site structure to retain existing trees.	Council's Tree Management Officer has advised the street tree and a cedar in the front yard should be retained. The proposed development removes both. Appropriate replanting could mitigate the removal of the two existing trees.	No
<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.	50% (3m <sup>2</sup> ) of the front setback is landscaped.	Yes
<b>C9</b> – The front setback area must contain at least one tree for frontages up to 11.5 metres in width and 2 trees for frontages great than this.	The proposal includes one tree in the outside corners of the existing lot front setback.	Yes
<b>4A.3.1 Materials and Finishes</b>		
<b>C1</b> - A Schedule of Finishes and a detailed Colour Scheme must accompany all Development Applications.	A schedule of material and finished prepared by Bureau SRH was submitted with the development application.	Yes
<b>C3</b> – Material, colours, architectural details and finishes must be sympathetic to the surrounding locality.	The proposed materials are contemporary and not sympathetic to the surrounding locality	No
<b>C4</b> - The use of materials with different textures are to be used to break up uniform buildings.	The proposed materials are a mix of metal cladding, painted concrete, aluminium windows and glass balustrades. The mix of materials	Yes

## BAYSIDE COUNCIL

### Planning Assessment Report

	and textures may break up the long walls of the semi-detached dwellings.	
<b>C5</b> – All materials and finishes must have low reflectivity.	The proposed dark colours for most of the development will ensure low reflectivity.	Yes
<b>C7</b> – Terracotta roof tiles must be used where this is the predominant roofing material.	Terracotta roof tiles are the predominant roofing material in the street. The proposal intends to use metal roofing.	No
<b>C10</b> The exterior walls of new dwellings must incorporate different materials, colours and textures to add interest and articulate the façade.	The exterior walls are proposed to be either metal cladding or painted concrete. The garage door is to be metal. A small amount of interest and articulation may result from the use of these materials on the façade.	Yes
<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.	The proposed dark colours are not consistent with the red brick and light colour paints on dwellings in Kurnell Street.	No
<b>4A.3.2 Roof and Attics/Dormers</b>		
<b>C1</b> – Where roof forms in a street are predominantly pitched, then any proposed roof should provide a similar roof form and pitch.	The predominant roof form is pitched. The proposal includes part pitched and part flat roofs.	Yes
<b>C2</b> – 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.	The part pitched and part flat roof continues for the length of the dwellings from front to rear.	Yes
<b>C3</b> – A variety of roof forms will be considered, provided they related appropriately to the architectural style of the proposed house and respect the scale and character of adjoining dwellings.	The proposed part pitched and part flat roofs relate appropriately to the style of the proposed dwellings and respect the scale and character of other roofs in the street.	Yes
<b>C4</b> – Pitched roofs must have a minimum eave overhang of 450mm (excluding gutters).	The amended elevations show a nil eave overhang.	No
<b>4A.3.3 Fences</b>		
<b>C1</b> - Front fences are to compliment the period or architectural style of the existing dwelling house.	No front fences are proposed.	N/A

## BAYSIDE COUNCIL

### Planning Assessment Report

<b>C18</b> – Side fences of a height of 1.8 metres are not to extend beyond the front building line.	The existing side fences taper from an approximate height of 1.8m down to the front boundary.	Yes
<b>4A.4.1 Visual Privacy</b>		
<b>C2</b> - Visual privacy for adjoining properties must be minimised by: <ul style="list-style-type: none"> <li>▪ using windows which are narrow or glazing</li> <li>▪ Ensuring that windows do not face directly on to windows, balconies or courtyards of adjoining dwellings</li> <li>▪ Screening opposing windows, balconies and courtyards; and</li> <li>▪ Increasing sill heights to 1.5 metres above floor level.</li> </ul>	The proposal includes first floor windows which are narrow either vertically or horizontally and with high sill heights in the north and south elevations. The large fixed windows adjacent to the staircases should be of an obscure or frosted glazing.	Yes
<b>C3</b> - First floor balconies are only permitted when adjacent to a bedroom	The proposed first floor balconies and the front and rear of the dwellings are adjacent to bedrooms.	Yes
<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 <b>C1</b> , <b>C2</b> and <b>C3</b> above are met	The first floor rear balconies are not located over the ground floor. The balconies extend beyond the floorplate of the ground floor, forming a roof for part of the hard surface landscape (rear deck) area below.	No
<b>C6</b> - Balconies are to be designed to minimise overlooking to other properties.  <b>Note:</b> Where a proposed development increases the potential for overlooking of adjoining properties, the Council may require balconies to be limited in size and in some cases, fitted with privacy screens or fin walls. Partially recessed balconies are encouraged at the rear to ensure the privacy of surrounding properties is maintained.	The rear balconies are centred within the site and provided with privacy screens on the outer sides. The design of the rear balconies will minimise overlooking to neighbouring properties.	Yes
<b>4A.4.3 Solar Access *see further discussion at the end of this DCP table.</b>		
<b>C1</b> – Buildings 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.	The proposed development will not permit two hours of solar access between the hours of 9am and 3pm during mid-winter to the primary private open space of the subject site.  Two hours of solar access during the specified period will also not be available to the north facing	No* Refer to comments in Note 1 below

## BAYSIDE COUNCIL

### Planning Assessment Report

	windows of the adjoining dwelling to the south.	
<b>C2</b> – Solar panels on adjoining house that are used for domestic needs within that dwelling must not be overshadowed for more than two hours between 9am to 3pm in mid-winter.	The solar panels on the adjoining property to the south, which are used for domestic needs will be overshadowed for more than two hours between 9am and 3pm during mid-winter.	No
<b>C6</b> – For development adjoining a semi-detached dwelling, first floor additions may need to be setback in order to provide adequate solar access to the living areas within the adjoining dwellings and their principal open space areas.	The proposed first floor is not set back.	No
<b>4A.4.4 Private Open Space</b>		
<b>C1</b> - 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> ;	(i) The rear private open space area for each dwelling is 60m <sup>2</sup> .	Yes
(ii) Is located at ground level with direct access to the internal living areas of the dwelling;	(ii) Direct access is to the space is from the living room.	Yes
(iii) Maximises solar access;	(iii) Solar access is maximised as much as possible for a site with an east-west orientation.	Yes
(iv) Is visible from a living room door or window of the subject development;	(iv) The open space is visible from the living room.	Yes
(v) Minimises overlooking from adjacent properties;	(v) The potential for overlooking from adjacent properties is minimised with boundary walls, planting and balcony screens.	Yes
(vi) Is generally level;	(vi) The open space is level.	Yes
(vii) Is oriented to provide for optimal year round use;	(vii) The open space faces to the west which is not optimal for year round use, however on sites with an east-west orientation and the road to the east the west orientation is all that is available.	Yes

## BAYSIDE COUNCIL

### Planning Assessment Report

(viii) Is appropriately landscaped; and	(viii) The open space is provided with soft and hard landscaped areas, a built in bbq and areas for planting.	Yes
(ix) Is located or screened to ensure privacy;	(ix) The private open space will not be visible from the street.	Yes
<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>		
<b>C2</b> – Sites less than 250m <sup>2</sup> may have minimum area of 25m <sup>2</sup> .	The subdivided sites will have an area of 242m <sup>2</sup> each. The open space areas are 60m <sup>2</sup> , in excess of the minimum 25m <sup>2</sup> required by this Control.	Yes
<b>C3</b> – For terraces and decks to be included in calculations of areas for private open space, these must be of a useable size (minimum 10m <sup>2</sup> ) with one length dimensions being a minimum of 2 metres, and be accessible from a communal living area of the dwelling.	The proposed rear decks are greater than 10m <sup>2</sup> and both width and depth is greater than 2 metres.	Yes
<b>C5</b> – The primary private open space is to be located at the rear of the property.	The primary private open space is located at the rear of the proposed dwellings.	Yes
<b>4A.4.5 Safety and Security</b>		
<b>C1</b> – Dwellings must be designed to encourage passive surveillance of the street	The proposal encourages passive surveillance of the street through the first floor east elevation balcony and the clear addressing and accessing of the site for pedestrians and vehicles from the street.	Yes
<b>4A.4.7 Vehicle Access</b>		
<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).	The proposed driveways are a minimum width of 3m, and are not adjacent to a solid structure.	Yes
<b>C4</b> – Vehicular crossing shall be sited so that existing street trees, bus stops, bus zones, power lines and other services are not affected.	An existing street tree is proposed to be removed to accommodate the new driveways. A replacement	No



## BAYSIDE COUNCIL

### Planning Assessment Report

	street tree is proposed to be planted between the new driveway laybacks.	
<b>C6</b> - The number of vehicle crossings is to be limited to one (1) per allotment.	One (1) vehicle crossing is proposed to each of the proposed allotments in accordance with the provisions of this Clause.	Yes
<b>C7</b> – Vehicular crossings shall be sited so as to minimise any reduction in on-street kerb side parking.	The proposed driveways may allow a small car to park between the driveways. It is anticipated the proposed driveways will result in the loss of one or two on street kerbside parking spaces.	No
<b>4A.4.8 Car Parking</b>		
<b>C1</b> Development must comply with Part 3A – Car Parking	The proposed development incorporates two (2) off street parking spaces in accordance with the provisions of this Clause.	Yes
<b>C2</b> – The provision of car parking must reasonably satisfy the need of current and future residents, but recognise the need to balance car parking access and provision with design, heritage, landscape and streetscape objectives.	The provision of two parking spaces for each dwelling is considered a suitable balance between resident need and design objectives.	Yes
<b>C3</b> Car parking is to be located at the rear of the site with access from a rear lane. If rear lane access is not possible, parking must be provided behind the front building alignment.	No rear lane is available to the site. The proposed single garages are accessed from Kurnell Street and located behind the front building alignment. Parking in the driveway will be forward of the front building line.	Yes
<b>C5</b> – Variations to the provision of car parking may be permitted in exceptional circumstances. However, the variations are not to allow the dominance of the garage/carport at the street frontage.	The proposed single garages are integrated into the dwelling design and do not dominate the street frontage.	Yes
<b>C8</b> – In new development the garage/carport is to be setback 5.5 metres from the front boundary.	The garages are proposed to be setback 6m from the front boundary.	Yes
<b>C20</b> – Reflective or smooth materials are not permitted for garage doors. Materials that complement the design and materials of the house are to be used.	The proposed garage door material is metal. This material may be both smooth and reflective.	No

\*Note 1 - 4A.4.3 Solar Access

## BAYSIDE COUNCIL

### Planning Assessment Report

The applicant submitted amended plans with the aim to reduce the overshadowing of the solar panels on the adjoining property. However the amended plans did not achieve compliance with BBDCP2103 Clause 4A.4.3 Control 2 which requires domestic use solar panels on adjoining houses to not be overshadowed for more than two hours between the hours of 9am and 3pm in mid-winter.

The applicant also submitted drawings of a possible semi-detached dwelling scheme for the site which was compliant with the FSR control, for the purposes of comparison. The FSR compliant scheme achieved a slight improvement in solar access to the panels. However the compliant scheme did not make a reasonable attempt to reduce the bulk of the building at first floor and as such it continued to be non-compliant with the solar access control. It is considered that a FSR compliant scheme which also creatively addressed the solar access requirement is likely to result in a proposal which can be compliant with both controls and yield a satisfactory semi-detached development on the site.

The applicant made an offer to the neighbouring owners to relocate the solar panels, at the applicant's expense, so that the panels would not be unacceptably overshadowed by the proposal. A letter from the neighbours was presented to Council, which acknowledge that the neighbours would be willing to negotiate with the applicant the relocation of the solar panels. In the letter the neighbours state 'To formalise our compensation agreement, we would require confirmation from you that the above compensation measures are acceptable to you and we provide you with a quote from a reputable installer'. The letter reiterates the neighbour's objection to the proposal on the basis of bulk and FSR. Based on this, it is our view that the agreement has not been finalised. Further it seems the neighbours have an expectation that Council would be involved in this matter and at the very least impose a condition of consent regarding the agreement.

Council cannot approve a development application which is dependent on works being carried out on a site other than the development site. The relocation of the solar panels would need to be completed first after which a development application may be prepared and assessed for the subject site, which may result in a favourable determination.

In addition to the above, the proposal does not comply with the solar access control in the DCP as the two windows on the southern neighbouring property do not receive a minimum of 2 hours solar access in mid winter.

For the above reasons the proposal is not supported.

#### **Part 8 – Botany Character Precinct**

Part 8.4.2 Desired Future Character of the Botany Precinct has been considered in the assessment of the application in the below table and fails to comply with a number of the controls contained therein. In particular, development is required to retain trees, be consistent with the streetscape and minimise impacts to neighbouring properties, which the proposed development does not achieve.

The following comments are made with respect to the relevant character guidelines desired by the DCP.

Item	Comment
<i>Function and Diversity</i>	The proposed development is considered to not enhance the public domain or streetscape of Kurnell Street. The proposal does not maintain or complement the existing development pattern of modestly sized first floor additions to semi-detached or free-standing dwellings in the street.

## BAYSIDE COUNCIL

### Planning Assessment Report

<i>Form, Massing, Scale and Streetscape</i>	The proposed development fails to maintain the density of the area as shown by the FSR non-compliance and presents a mass and scale not in keeping with the streetscape.
<i>Setbacks</i>	The proposed development generally complies with the prevailing street setbacks. However front setbacks are predominantly paved with little opportunity for deep soil planting.  The proposed side setbacks comply with the minimum 900mm required.
<i>Landscaping</i>	The proposed landscaping, while meeting the numerical minimums provided in the BBDCP2013 provides limited opportunities for deep soil planting and softening of the buildings. Additionally it is proposed to remove and replace a street tree which Council's Tree Management Officer requires to be retained.
<i>Heritage</i>	The site is not affected by heritage requirements.
<i>Fencing</i>	No front fencing is proposed. The existing side fencing is to remain.
<i>Noise</i>	The site is not affected noise criterion listed in this control.
<i>Subdivision</i>	The proposed subdivision is discussed elsewhere in this report and considered to respond appropriately to the various grids patterns established by the surrounding low density zone.
<i>Public Domain and Environment</i>	The proposed development will not raise any inconsistencies with the provisions of this control.
<i>Solar Access</i>	Matters relating to solar access are discussed in Part 4A.4.3 above.
<i>Traffic and Access</i>	Adequate off-street parking arrangements are provided for each dwelling house with some traffic and parking impacts to the surrounding street network.
<i>Views</i>	The proposed development does not affect existing views either to or across the site.
<i>Risk</i>	Not applicable in this instance.

#### **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**

Likely impacts on the natural and built environments, and social and economic impacts in the locality have been considered in the assessment of the application and negative impacts on the current built environment due to the size, bulk and style of the proposal are anticipated. A development

## BAYSIDE COUNCIL

### Planning Assessment Report

compliant with the floor space ratio control would correspondingly be smaller and have a lesser bulk appearance making it more suitable to the existing built environment. The design of the current proposal is out of character with the existing streetscape.

The overshadowing impact on the neighbouring property to the south is anticipated to have negative economic and personal results.

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

The suitability of the site for the proposal has been considered in the assessment of the development application. The subject site is not known to be affected by any natural hazards or other site constraints that are likely to have a significant adverse impact on the proposed development. The issue of likely site contamination has been considered, however, given the nature of the development, and the long standing use of the land for residential purposes, onsite investigation is not warranted.

The non-compliance of the proposal with controls in both the Botany Bay LEP 2013 and DCP 2013 and the anticipated adverse impacts resulting from these areas of non-compliance make the site unsuitable to the proposed development.

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

In accordance with Part 2 of the BBDCP 2013, the development application was notified to surrounding property owners for a 14 day period from 4 April 2018 to 20 April 2018. One (1) unique submission (a total of three separate submissions from the same owner/resident) was received which raises concerns which are examined and addressed below.

**Concern:** Overshadowing of private open space and solar panels.

*Comment:* The proposed development is assessed as being non-compliant with Clause 4A.4.3 C2 of the Botany Bay DCP 2013 because it will result in overshadowing of solar panels used for domestic purposes on the neighbouring property, for two hours or more between 9am and 3pm during mid-winter. This is one of the reasons Council is recommending the Bayside Planning Panel refuse the application.

**Concern:** Excessive FSR.

*Comment:* The applicant has submitted a request to vary the maximum floor space ratio permitted on the site (0.5:1), to allow an FSR of 0.76:1. Council does not support the excessive FSR nor the variation request. This is addressed earlier in this report and is one of the reason Council is recommending the Bayside Planning Panel refuse the application.

**Concern:** Bulk, too large a building for the site.

*Comment:* The bulk appearance of the proposal is a result of the proposed floor space ratio. A proposal which is compliant with the FSR development standard may reduce the bulk and size of the building on the site. The long side walls of the proposal have been articulated with varied setbacks along their length, and this will create a visual difference and relief when viewed obliquely from the short ends of the building (ie. from the street) however the bulk of the building when viewed from the neighbouring properties will remain large.

## **BAYSIDE COUNCIL**

### **Planning Assessment Report**

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

Granting approval to the proposed development will have adverse impacts on the neighbouring property and the locality, and is not recommended. The proposal is considered to not be in the public interest.

#### **Section 94 Contributions**

Council's S7.11 Planner has confirmed that a levy of \$20,000 applies to the proposed development should the proposed development be approved.



TO	Petra Blumkaitis – petra.blumkaitis@bayside.nsw.gov.au	PROJECT NO	18011
OF	Bayside Council	DATE	26 March 2019
FROM	Eugene Kirkwood – ek@bureausrh.com	DELIVERY	EMAIL
CONTENTS	Response to Bayside Planning Panel Comments on assessment of DA18/1067 New semi-detached dwellings	PAGES	2

Dear Petra,

Please see below our response to the Bayside Planning Panel assessment comments from the panel meeting on 26 February 2019.

- *A reduction in the bulk and scale at the rear to improve solar access for the adjoining property at number 9 (this includes a material improvement to the open space and a demonstration of solar access for existing or replaced solar panels). This would also include a reduction in the upper floor and balcony for the south west to reduce impacts on the adjoining neighbour.*

Please see attached the revised architectural drawings showing a significantly re-configured south west dwelling in response to comments on bulk and scale and the resultant overshadowing impacts to the neighbour to the South. The rear SW bedroom has been relocated to the ground floor and thus the first floor alignment is now limited to almost in line with the rear portions of the dwelling at number 9. This limits the presentation of the proposed Semi-detached dwelling in terms of bulk and scale and limits the negative effects to the amenity of the POS.

As the updated Winter Solstice shadow diagrams illustrate, there is a vastly improved solar access condition to the primary POS of the dwelling at Number 9 Kurnell St.

Please also note that the client has provided a formal offer to the neighbours of number 9 to have a solar panel contractor come out to site and provide a quote for the supply and install of a new system, strategically located on the main dwellings roof to get full benefit of the northern solar aspect. As of today, the client has yet to hear any response.

- *The streetscape presentation of the development needs to be further considered to improve soft landscaping and provide the opportunity for canopy trees. In this regard, the applicant may also wish to consider a central driveway and the replacement planting of street-trees or alternatively, redesign the paving entries and driveways to provide more soft permeable areas for trees and landscaping.*

Please see attached the updated landscape drawing showing the following amendments:

- 3 canopy trees, 2 located in the side boundary planter beds and one in a widened central wedge that can support a watergum with a mature height of 6m
- Reduced entry path widths to allow for more significant planter beds

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**BUREAU SRH**

- Reduced driveway entry 'tracks' to allow for greater side boundary planters and a more significant planting of low lying Dicandra Repens to the driveway strip
- *The applicant is to submit amended plans and documentation, including overshadowing diagrams and a landscaping plan within 4 weeks to allow an assessment by Council officers and a timely report to be made back to the Panel for determination.*

These documents have been issued on 26<sup>th</sup> March 2019, exactly 4 weeks from the planning panel meeting on 26<sup>th</sup> February 2019.

I trust all of the attached is in order and provides the information you require for further assessment.

We look forward to your response.

Regards,

Eugene Kirkwood

**BUREAU SRH PTY LIMITED**

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**CLAUSE 4.6 VARIATION**

**CLAUSE 4.4A – EXCEPTIONS TO FLOOR SPACE  
RATIO FOR RESIDENTIAL ACCOMMODATION**

**BOTANY BAY LEP 2013**



**Proposed Semi Detached Dwellings,**

**7 Kurnell Street, Botany**

**23 April, 2018**



## TABLE OF CONTENTS

1. INTRODUCTION.....	1
2. SITE & LOCATION .....	2
3. CLAUSE 4.6 VARIATION .....	5
4. THE TERMS OF CLAUSE 4.6 .....	6
5. ENVIRONMENTAL PLANNING GROUNDS .....	9
6. CONSISTENCY WITH THE STANDARD & ZONE OBJECTIVES.....	11
7. COMPLIANCE UNREASONABLE OR UNNECESSARY .....	12
8. CONCURRENCE OF THE SECRETARY .....	13
9. CONCLUSION .....	13

## LIST OF ILLUSTRATIONS

*Figure 1 –Site Survey*

*Figure 2 – Existing Building*

*Figure 3 - Location Map*

*Figure 4 – Aerial Photo*

*Figure 5 – FSR Map*

*Figure 6 – Zoning Map*



Plan Urban Services Pty Limited  
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## 1. INTRODUCTION

This report has been prepared to support the submission of a Development Application (DA) to be lodged with Bayside Council. The proposal seeks approval for the demolition of the existing dwelling and outbuildings at 7 Kurnell Street, Botany and the construction of a pair of semi detached dwellings and the re subdivision of the land.

This report has been prepared in relation to the plans titled *SK 0001 - SK 8001 (Not Consecutive), Project No. 18011, Revision 6, dated 18-04-2018*, drawn by *Bureau SRH Architecture*.

Under *Clause 4.4A* of the LEP the maximum permissible floor space ratio (FSR) can be varied from that shown on the LEP FSR map in relation to Development Applications (DAs) for residential accommodation. The proposal exceeds the maximum permissible FSR available under the Clause. Accordingly, a request to vary the FSR standards under *Clause 4.4A* of the *LEP* needs to be prepared, which is the purpose of this report.

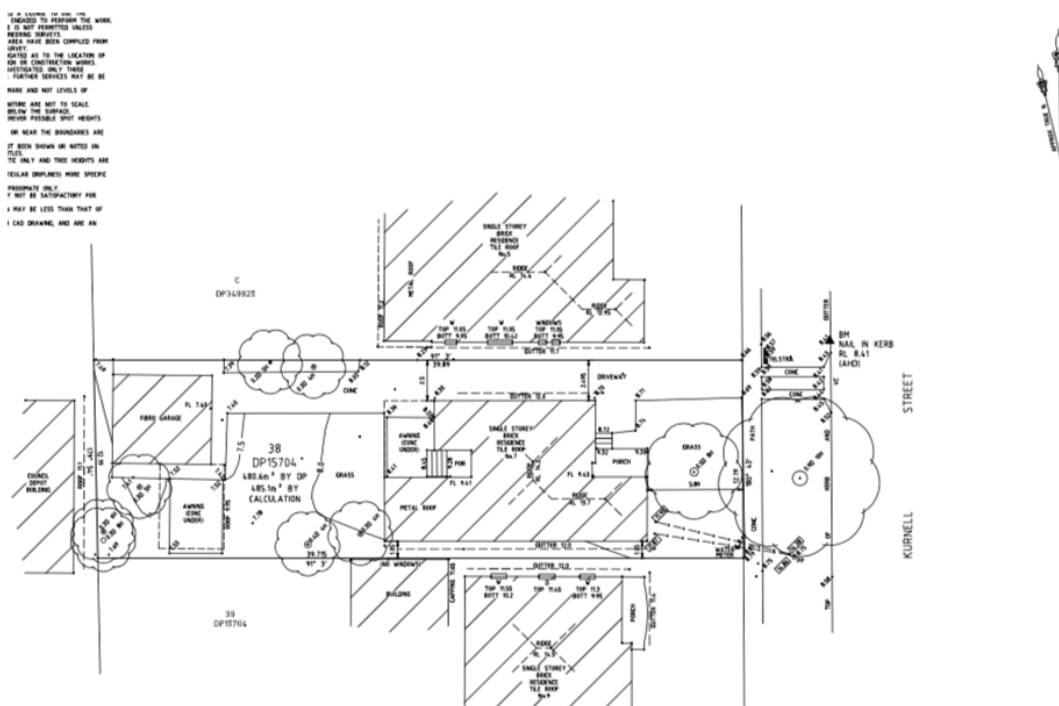


7 Kurnell Street, Botany – Proposed Semi Detached dwellings. Clause 4.6 Report (April 2018)

The subject site occupies Lot 38 in DP 15704 and is known as 7 Kurnell Street, Botany. It is located on the western side of Kurnell Street approximately 50 metres (m) south of its intersection with Swinbourne Street and has an area of 485.1m<sup>2</sup>.

The property is rectilinear in shape with a frontage to Kurnell Street of 12.19m, a side (northern) boundary of 39.89m, a southern side boundary of 39.715m and a rear (western) boundary also of 12.19m, (see Survey in [figure 1](#) below). The site has a fall of between 1m – 1.5m from east to west

### Figure 1 – Site Survey



The adjoining developments are predominantly single dwellings of one and two storeys and of varied style and age. The immediately adjoining building to the south (No. 9) is a pair of semi detached dwellings, with the northern half containing a first floor addition, while the adjoining dwelling to the north (No. 5) is a single storey dwelling. Further west of the site is a large industrial area off Clevedon and Pemberton Streets, however there is no direct access to Kurnell Street, from these sites.

The existing streetscape in Kurnell Street is shown in *figure 2* below.

**Figure 2 – Existing Streetscape**



Source: Google Maps

The site is approximately 3 - 5 minutes drive from the local centre of Botany. Recreation areas / facilities include Botany golf course, Booralee Park, Garnet Jackson Reserve and various Clubs and other recreation facilities.

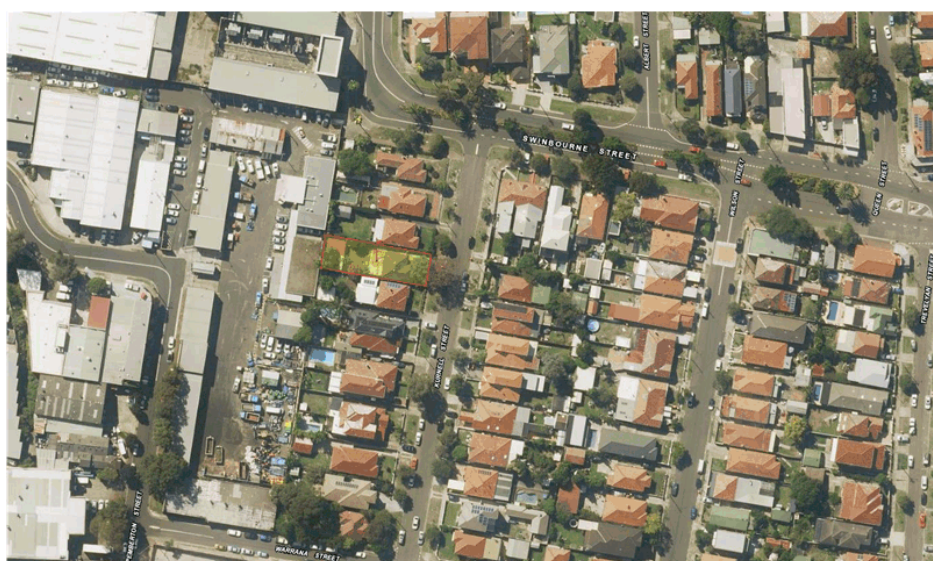
The general location of the property and the surrounding built form are shown in *figures 3* and *4* on the following page.

**Figure 3 – Location Map**



Map reproduced with permission of UBD. Copyright Universal Publishers Pty Ltd. DG 05/05

**Figure 4 – Aerial Photo**



Source: © DEPARTMENT OF LANDS SIX Portal



7 Kumell Street, Botany – Proposed Semi Detached dwellings.. Clause 4.6 Report (April 2018)



### 3 CLAUSE 4.6 VARIATION

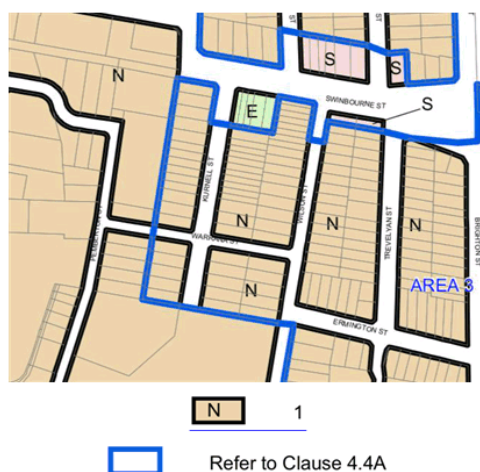
*Clause 4.6* of the LEP outlines the matters to be considered by Council where a proposal seeks to vary a numerical standard contained within the LEP. The subject development seeks to vary the FSR standard currently contained within *clause 8.6* of the LEP and therefore an assessment under clause 4.6 is required.

*Clause 4.4* of the *LEP* states in part:

- (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 associated LEP FSR map applicable to the site is shown in *figure 5* below.

**Figure 5 – FSR Map**



Source: Botany Bay LEP – FSR Map

*Clause 4.4A* of the *LEP* then provides variations to the maximum permissible FSR applicable to Das for residential Accommodation and states in part as follows:

#### *4.4A Exceptions to floor space ratio for residential accommodation*

*(1) .....*

*(2) This clause applies to land identified as “Area 3” on the Floor Space Ratio Map.*

*(3) Despite clause 4.4 (2), the following provisions relate to floor space ratios on land to which this clause applies:*

*(a) the maximum floor space ratio for a dwelling house is not to exceed the floor space ratio applicable to the site area of the land on which the dwelling house is situated:*

<i>Site Area</i>	<i>Maximum Floor Space Ratio</i>
<i>&lt;200 square metres</i>	<i>0.85:1</i>
<i>200–250 square metres</i>	<i>0.80:1</i>
<i>251–300 square metres</i>	<i>0.75:1</i>
<i>301–350 square metres</i>	<i>0.70:1</i>
<i>351–400 square metres</i>	<i>0.65:1</i>
<i>401–450 square metres</i>	<i>0.60:1</i>
<i>&gt;450 square metres</i>	<i>0.55:1</i>

*(b).....*

*(d) the maximum floor space ratio for all other development for the purpose of residential accommodation is 0.5:1.*

The effect of subclause *(3)(d)* is that the permissible FSR falls from 1:1 to 0.5:1 for residential accommodation, while the proposal seeks to achieve 0.76:1. This outcome is achievable in compliance with all of the relevant DCP requirements and in consideration of a number of similar sized semi detached / dual occupancy developments in Kurnell Street and the surrounding area, which suggests that Council has been willing to vary or abandon the standard in the past

#### **4. THE TERMS OF CLAUSE 4.6**

Development consent may still be granted to the proposed development (despite the non-compliance with the maximum height and FSR) if variations to the relevant controls are approved under clause 4.6 of the LEP. Clause 4.6 states as follows:



7 Kurnell Street, Botany – Proposed Semi Detached dwellings.. Clause 4.6 Report (April 2018)

#### 4.6 Exceptions to development standards

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

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

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

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

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

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
- (ii) the proposed development will be in the public interest because it is **consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and**
- (b) the concurrence of the Secretary has been obtained.

(5) In deciding whether to grant concurrence, the Secretary must consider:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
- (b) the public benefit of maintaining the development standard, and



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

*(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). **(some bold added)** ...*

This document provides a written request from the applicant seeking to justify the contravention of the FSR standard in accordance with clause 4.6. Clause 4.6 continues to be an appropriate and frequently applied mechanism to ensure that planning rules have appropriate levels of flexibility, when the circumstances warrant it. Some recent examples of the application of Clause 4.6 by the Land and Environment Court are as follows:

- In *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386 the Land and Environment Court approved a residential flat building in Randwick with a 55 per cent variation of the height limit (at its highest point) and a 20 per cent exceedance of the floor space ratio control.

The Court was satisfied that the clause 4.6 request by the applicant's town planner was comprehensive and had addressed all of the prerequisites. The Court was also persuaded that the site was 'unusual in terms of its location at the low point of the locality, its proximity to larger RFBs that would not comply with the building height development standard and its flood affectation'. Those features, when taken together with other benefits of the proposal such as its design excellence and internal amenity, provided sufficient environmental planning grounds to justify approval via clause 4.6.

- In *Moskovich v Waverley Council* [2016] NSWLEC 1015 the Land and Environment Court approved a residential flat building in Bondi with a floor space ratio of 1.5:1.

The development standard was 0.9:1. The exceedance was around 65 per cent. The Court's decision set out a detailed analysis of the decision of the Court in *Four2Five v Ashfield Council*, which concluded that the large numerical exceedance of the FSR control could be supported.



7 Kumell Street, Botany – Proposed Semi Detached dwellings.. Clause 4.6 Report (April 2018)

- In *Baker Kavanagh Architects v Sydney City Council* [2014] NSWLEC 1003 the Court granted a development consent for a three-storey shop top housing development in Woolloomooloo. In this decision, the Court, approved a floor space ratio variation of 187 per cent.

## 5 ENVIRONMENTAL PLANNING GROUNDS

There are sufficient environmental planning grounds to justify contravening the FSR standard contained in [Clause 8.6](#) of the [LEP](#).

The development in the main meets the objectives and controls of the relevant Environmental Planning Instrument and DCP. It acknowledges the site's location by maintaining the required side set backs and proposing a built form that retains a low intensity.

Within Kurnell Street, both nearby the site and further along its length are a number of examples of semi detached dwellings that have been extended up by a level. Sometimes on both sides and some times on one half only. In most cases these upper floors cover most of the ground floor footprint, that by default enlarges the resulting FSR to greater than 0.55:1

It is also interesting to note that a previous proposal at nearby 16 William Street, incorporated a similar size and FSR to that currently proposed. Council originally refused the DA, with the applicant appealing that decision to the Land & Environment Court. The Council accepted a Clause 4.6 request to vary the FSR and as part of a mediation process the DA was approved.

The subject proposal seeks to demolish the existing dwelling on the site and construct a new building containing two new dwellings. As evidenced by the table within the SEE submitted to Council, the proposal meets all of the numerical standards within the DCP relating to site cover, setbacks, landscaped open space and design criteria. Accordingly, the proposal will provide good amenity to its future residents, without negatively impacting on adjoining properties in terms of expected shadow impact, aural or visual privacy etc.

A better planning outcome can also be considered in terms of the potential impact of the proposal on the public domain and in an urban design sense. Any assessment of these issues must consider the proposal in terms of the context of the site, its built form, the need for varied residential opportunities within a low density format in the locality, the design parameters of



7 Kurnell Street, Botany – Proposed Semi Detached dwellings.. Clause 4.6 Report (April 2018)

the relevant DCP and the long term potential for similar developments on adjoining properties. These matters are discussed within the Statement of Environmental Effects submitted with the DA, with the proposal performing well in regard thereto.

It may be suggested in certain submissions that all of the above benefits could be achieved by a smaller compliant development. However, the proposal does achieve these requirements as and a reduction in FSR within the proposed building, would impact on the viability of the project and liveability of the proposed dwellings to a level not commensurate with the minor nature of the proposed variation. The increased FSR would also not improve amenity for future residents and as it is within a compliant building envelope will not reduce privacy or amenity to adjoining properties.

In the circumstances of this proposal a better outcome is also achieved by varying the relevant height standard through:

- The re invigoration of an older residential site with a new vibrant modern building, that although greater in FSR, respects its surroundings and reduces its impact on potential future adjoining redevelopments.
- The achievement of relevant LEP objectives and satisfaction of the DCP standards designed to ensure quality design outcomes, protect residential amenity and acceptable levels of privacy and solar access between adjoining developments.

In this context if the varied FSRs are not approved:

- The orderly and economic use of the land (as promoted by the objects of the EP&A Act, 1979) would be suboptimal; and
- The site's capacity to provide increased commercial and residential variety and opportunities within the locality would be not be fully utilised.

Furthermore, no significant adverse impacts arise from the non-compliance with the LEP FSR standard and therefore compliance would be merely for the sake of numerical accuracy. These facts, taken together, constitute environmental planning grounds sufficient to justify contravening the development standard.



7 Kumell Street, Botany – Proposed Semi Detached dwellings.. Clause 4.6 Report (April 2018)

## 6 CONSISTENCY WITH THE STANDARD & ZONE OBJECTIVES

The proposed development will be in the public interest because it is consistent with the objectives of both the LEP FSR standard and relevant land use zone. The reasons why are set out below.

*Clause 4.4A* of the LEP contains objectives indicating the purpose of the exceptions to FSR control. The objectives are listed and below together with comments on the proposal's performance against it.

*(a) to ensure that the bulk and scale of development is compatible with the character of the locality,*

**Comment:** The building envelope of the current proposal achieves the detailed requirements for height setbacks, landscaped area and other design criteria contained within both the LEP and DCP. In this context the bulk and scale is commensurate with adjoining and nearby dwellings and will fit within the desired future character of the locality.

*(b) to promote good residential amenity.*

**Comment:** As mentioned above, as the building meets the design, bulk and scale criteria of the relevant planning framework it will maintain and promote a good residential amenity in its locality.

The LEP zones the subject site *R2 Low Density Residential* and the proposed re development is permissible with Council's consent. The relevant zoning is shown in *figure 6* on the following page.

The relevant zone objectives within the LEP are as follows:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage development that promotes walking and cycling.*

The proposal satisfies these objectives in that it increases the range and type of residential accommodation available in the area within a scheme that fits with the lower density nature of the precinct. The proposal will not disadvantage walking and / or cycling opportunities.



Compliance with the development standard is unreasonable or unnecessary in the circumstances of this case. There are two primary reasons why this is so.

The burden placed on the landowner via such a requirement would be disproportionate to any adverse consequences attributable to the proposed non-compliant development (relying on comments made in an analogous context, in *Botany Bay City Council v Saab Corp* [2011] NSWCA 308 [15]).

**Secondly**, bearing in mind that the building meets the DCP criteria for size, scale and setbacks etc., and is therefore within the building envelope envisaged in the relevant planning framework, there would be no improvement in any potential impact on the amenity of adjoining properties by reducing the FSR.

*Thirdly*, requiring compliance for the sake of numerical satisfaction would not result in any variation in the building's fit within the streetscape and desired future character, which are the matters sought to be achieved within *Clause 4.4A* itself.

In view of all of the above, compliance with the numerical LEP standard for FSR is considered to be unreasonable and unnecessary in the circumstances. If approved, the proposal (when built) will not be out of place with, nor detrimental to the amenity of its surroundings and will fit within the desired future character of the area as envisaged in the relevant planning framework. The proposed development represents a good fit with the aims of the LEP, the objectives of both the height standard and relevant zone.

Approval of the increased FSR allows for a development that provides improved overall supply of housing stock in the area, bettering both housing choice and affordability.

## 8 CONCURRENCE OF THE SECRETARY

In accordance with the recent Planning Circular (PS 18 – 003) dated 21 February, 2018 the concurrence of the Secretary (of Department of Planning and Environment) can now be assumed for the proposed height variation.

## 9 CONCLUSION

An assessment undertaken against the relevant planning framework indicates that the proposal is an acceptable one. It will not impact negatively on the amenity of nearby residents. The variation to the FSR standard contained within the LEP is a matter that any reasonable Authority properly exercising its planning powers could agree to.

*David Furlong - Director*

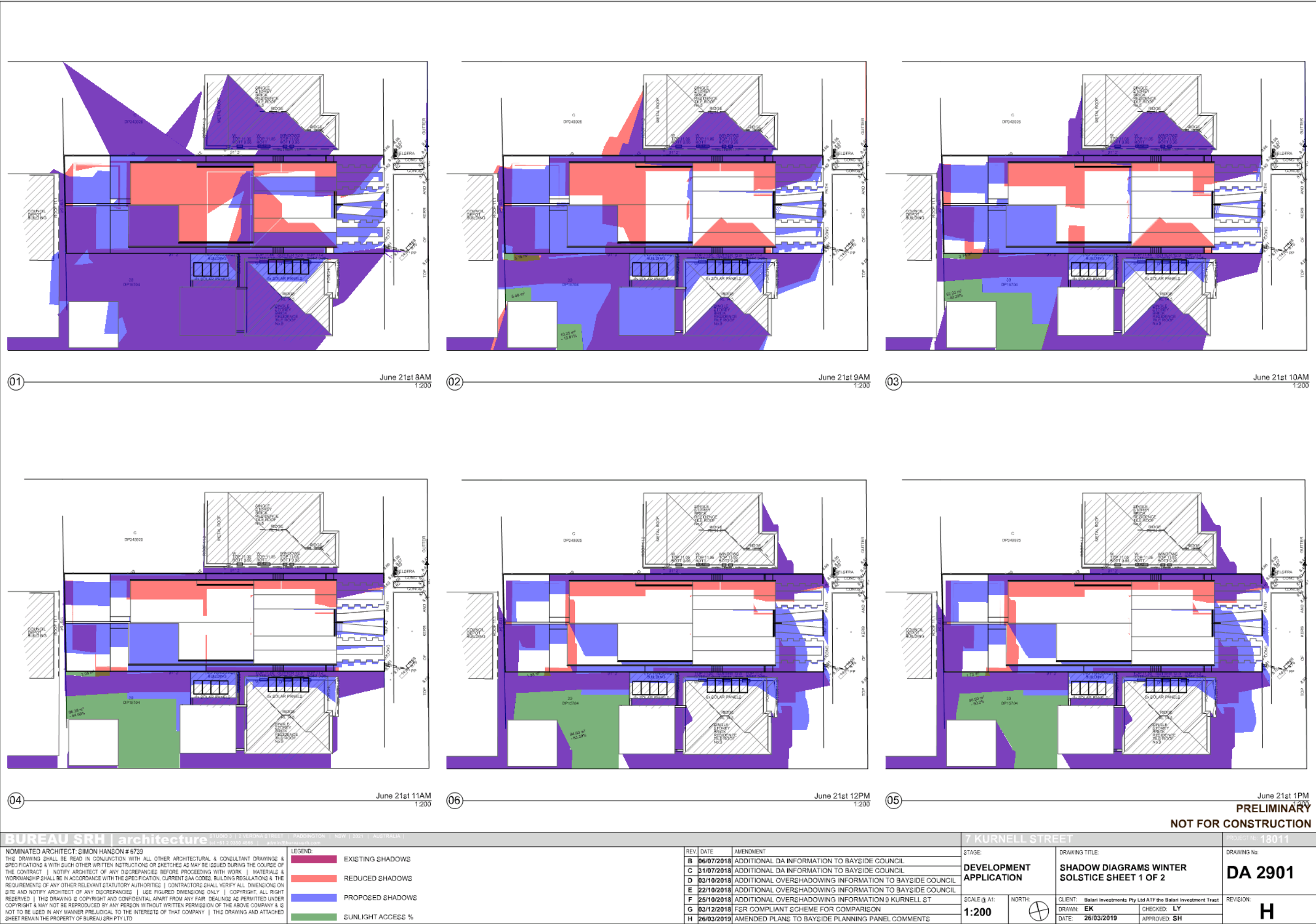
*BTP, MPLA*



7 Kumell Street, Botany – Proposed Semi Detached dwellings.. Clause 4.6 Report (April 2018)

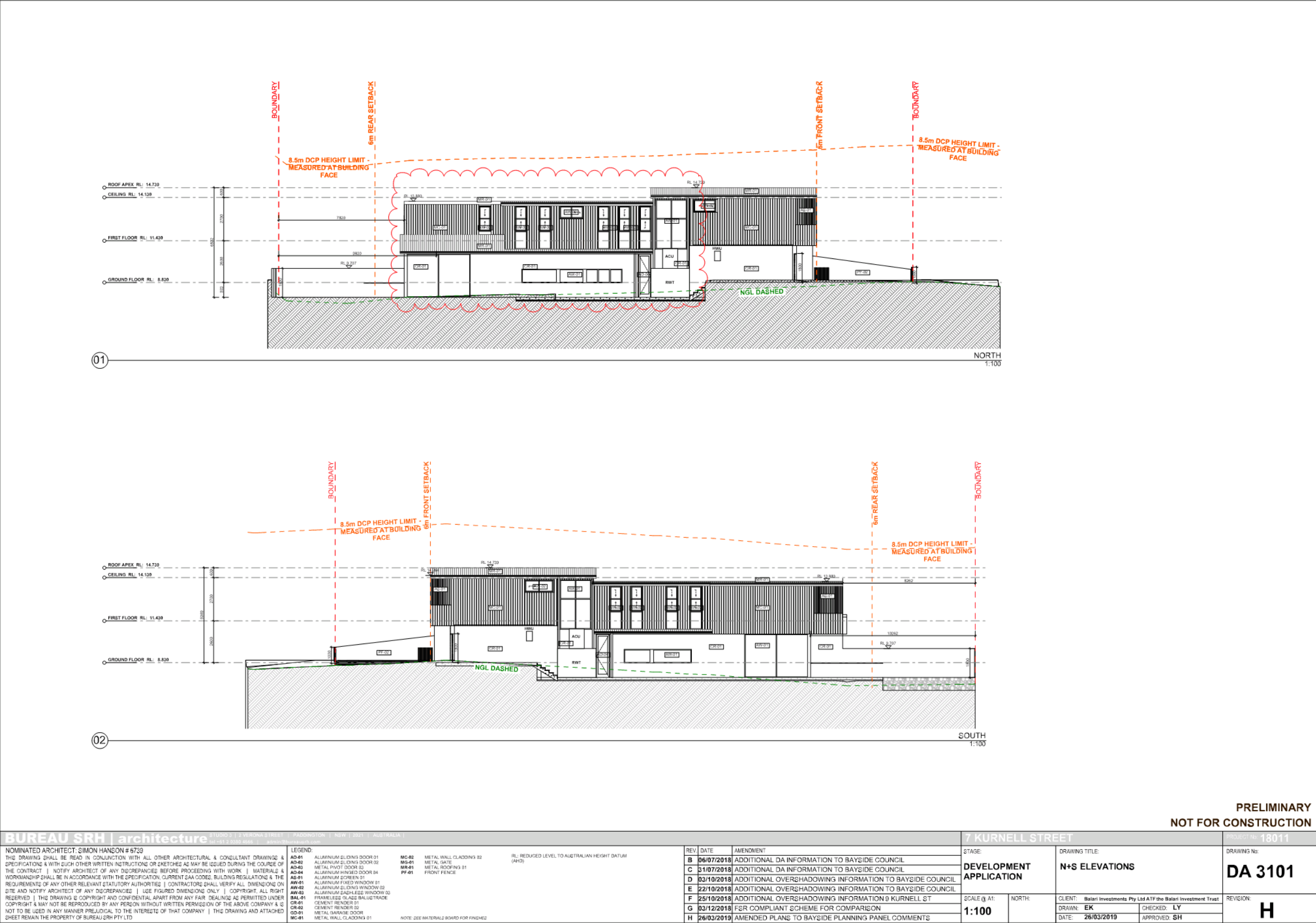


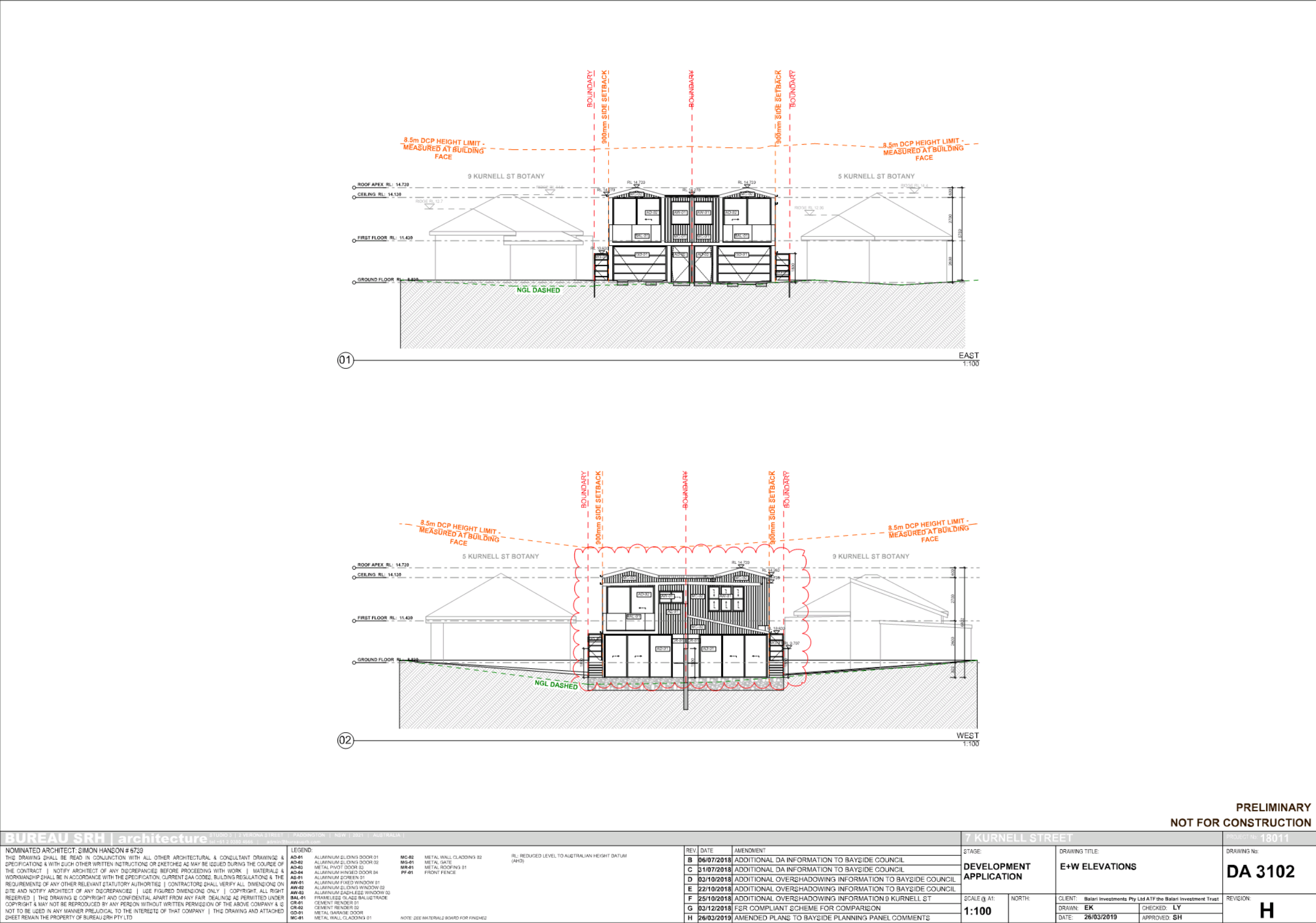
















## Bayside Local Planning Panel

11/06/2019

Item No	<b>6.4</b>
Application Type	Division 8.2 Review Application
Application No	S82-2019/3
Lodgement Date	14/03/2019
Property	<b>294-296 Coward Street, Mascot</b>
Ward	Mascot
Owner	Proton Property Group
Applicant	Arc Architects
Proposal	Change of use to vehicle hire premises with associated storage, operating 7am-5pm Mon to Fri; 8am-1pm Sat, Sun and Public Holidays and construction of a new administration building and signage.
No. of Submissions	Nil
Cost of Development	\$209,000.00
Report by	Michael McCabe, Director City Futures

## Officer Recommendation

That the Bayside Planning Panel resolve pursuant to Division 8.2 relating to Review Application No. DA2019/3 for the proposed Change of use to vehicle hire premises with associated storage, operating 7am – 5pm Monday to Friday; 8am to 1pm Saturdays, Sundays and Public Holidays and construction of a new administration building and signage at 294-296 Coward Street, Mascot be **APPROVED** pursuant to Division 8.4 of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report.

## Location Plan



## Attachments

- 1 Assessment Report 294-296 Coward St Mascot [↓](#)
- 2 Flood Risk Management Plan - 294-296 Coward St Mascot - WMA Water [↓](#)
- 3 Site Plan - 294-296 Coward St Mascot - ARC Architects [↓](#)
- 4 Sections - 294-296 Coward Street Mascot - ARC Architects [↓](#)
- 5 Elevations - 294-296 Coward Street Mascot - ARC Architects [↓](#)
- 6 Floor Plan - 294-296 Coward Street Mascot - ARC Architects [↓](#)
- 7 Landscape Plan - 294-296 Coward Street Mascot - ARC Architects [↓](#)



# BAYSIDE COUNCIL

## Bayside Planning Panel

### Division 8.2 Review Report

#### Application Details

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<b>Application Number:</b>	S82-2019/3
<b>Date of Receipt:</b>	14 March 2019
<b>Property:</b>	294-296 Coward Street, Mascot Lot 1 230307, Lot 1 DP 624365
<b>Owner:</b>	Proton Property Group
<b>Applicant:</b>	Arc Architects
<b>Proposal:</b>	Change of use to vehicle hire premises with associated storage, operating 7am – 5pm Monday to Friday; 8am to 1pm Saturdays, Sundays and Public Holidays and construction of a new administration building and signage.
<b>Recommendation:</b>	Approval
<b>No. of submissions:</b>	Nil
<b>Author:</b>	J Hunt – Development Assessment Planner
<b>Date of Report:</b>	15 May 2019

#### Key Issues

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The key issues which have been identified in the assessment of this Division 8.2 Review relate to:

The original DA-2018/1137 was refused by Council on 12 December 2018 due to the failure of the applicant to adequately address the flood risk of the site. Council's Engineers reviewed the Flood Management Plan provided with the original DA and advised that the submitted documentation contained many inaccuracies and generalisations about the site and the development, and a lack of detail and quality. Subsequently the application was refused.

On 14 March 2019, the applicant submitted a new Flood Management Plan with this Section 8.2 Review Application, which has been assessed by Council's Engineers and deemed satisfactory, they support the proposal however strictly subject to conditions including a limited timed use consent of 5 years as described below:

*The operation of the use shall cease after a period of five (5) years from the date of issue of this consent. Upon the expiration of the five (5) year period, all operations pertaining to the use shall cease immediately. No further application shall be made to Council, under any circumstances, to continue the operation of the use prior to, or upon expiration of the five (5) year consent period. This requirement applies to the existing and future owners (Registered Proprietor) of the property and the operator of the use.*

It is noted that under Section 8.2 of the Environmental Planning and Assessment Act 1979, a Review Application must be determined within 6 months of the original determination date. Therefore the application is required to be determined by 12 June 2019, or a new DA would need

to be lodged. Notably the Review Application was not lodged to Council until 3 months into this limited time period on 14 March 2019, leaving only 3 months for assessment and determination by Council.

## Recommendation

---

That the Bayside Planning Panel resolve pursuant to Division 8.2 relating to Review Application No. DA2019/3 for the proposed Change of use to vehicle hire premises with associated storage, operating 7am – 5pm Monday to Friday; 8am to 1pm Saturdays, Sundays and Public Holidays and construction of a new administration building and signage at 294-296 Coward Street, Mascot be **APPROVED** pursuant to Division 8.4 of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report.

## Background

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### History

#### DA-2018/1137

On 12 December 2018 the original DA-2018/1137 was refused by Council due to the applicant's failure to sufficiently address flooding risk on the subject site.

#### S82-2019/3

On 14 March 2019 the subject Section 8.2 Review Application was lodged to Council with a new Flood Management Plan prepared by WMA.

From 21 March 2019 to 4 April 2019 the application was publicly notified in accordance with the requirements of Botany DCP. No submissions were received.

### Proposal

The subject application seeks consent to change the use of part of the site (outlined in red below) to a vehicle hire premises with associated storage, operating 7am – 5pm Monday to Friday; 8am to 1pm Saturdays, Sundays and Public Holidays and construction of a new administration building and signage. The entire site is outlined in yellow below. The details of the proposal are outlined further below:



- Line mark the existing sealed concrete surface to create designated car parking spaces with associated wheel stops, for the proposed use. A wash bay area is



proposed and landscaping as existing is to be retained along the northern and part southern boundary of the site.

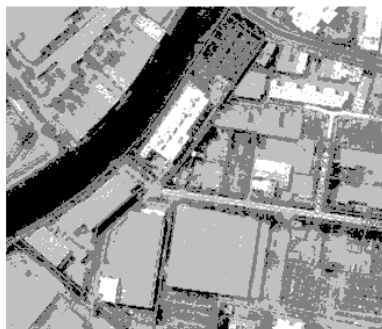
- Construct a single storey administration / office building for staff in the south east corner of the site, above an existing slab. An access ramp with associated awning is proposed to facilitate access for persons with a disability / mobility impairment and an accessible car parking space is located within close proximity to the ramp. The proposed building includes a customer service area, two service counters, a staffroom, accessible toilet facility, manager's office and storeroom.
- Installation of electronic boom gates to the existing vehicular access way to the site off Coward Street, in order to restrict access.
- A new business identification sign measuring 2100mm high by 2700mm wide within the landscaped area on the eastern side of the existing vehicular entrance off Coward Street.
- A maximum of 6 staff are to be employed up to 4 of which will be working from the office depending on weekly schedules.
- Vehicles and Vans for hire are proposed to be washed and cleaned at the location upon return from hire. A mesh screen fence will ensure visitors to the site are kept away from the main car storage area.

#### Site Location & Context

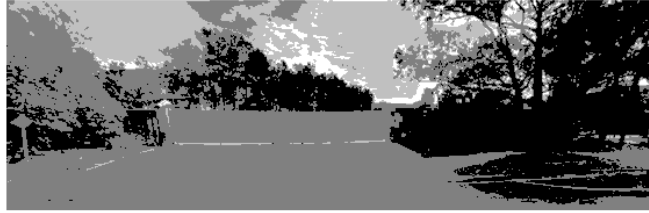
The subject site is an irregular shaped allotment, comprising of two lots, being Lot 1 DP 230307 (7206sqm) and Lot 1 DP 624365 (4368sqm). The property is known as 294-296 Coward Street Mascot. The site is currently fenced into two parts and that part of the site not part of this application appears to be utilized for the storage of trucks and earthworks equipment.

That part of the site subject of this application is vacant, sealed at ground level, comprises existing landscaping along the northern side boundary, storm water pits, an open storm water channel, an existing rainwater tank and masonry wall set back into the site from the surveyed front boundary.

A small square shaped raised slab exists on the site close to the front property boundary to Coward Street, this forms part of the remnants of a previous two storey building on site.



Aerial view of Subject site



Existing vehicle crossover from Coward Street on subject site

The subject site is:

- i. Zoned B7 Business Park
- ii. Potentially contaminated given past industrial uses i.e. concrete batching plant
- iii. Located in a cul de sac at the western end of Coward Street
- iv. Class 2 Acid Sulfate Soils
- v. Near the Alexandria Canal which is a state heritage item
- vi. Affected by Council pipes and flood affected.

### 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.

#### S8.2 – S8.5 – Review of Determination

The relevant matters to consider under S8.2 – S8.5 are listed below.

#### 8.2 – Determination and decisions subject to review

*(1) The following determinations or decisions of a consent authority under Part 4 are subject to review under this Division:*

- (a) the determination of an application for development consent by a council, by a local planning panel, by a Sydney district or regional planning panel or by any person acting as delegate of the Minister (other than the Independent Planning Commission or the Planning Secretary),*
- (b) the determination of an application for the modification of a development consent by a council, by a local planning panel, by a Sydney district or regional planning panel or by any person acting as delegate of the Minister (other than the Independent Planning Commission or the Planning Secretary),*
- (c) the decision of a council to reject and not determine an application for development consent.*

*(2) However, a determination or decision in connection with an application relating to the following is not subject to review under this Division:*

- (a) a complying development certificate,*
- (b) designated development,*

*(c) Crown development (referred to in Division 4.6).*

*(3) A determination or decision reviewed under this Division is not subject to further review under this Division. 6*

**Comment:** The subject review is of a determination of an application made by Council and it does not constitute any of the exemptions detailed within Section 8.2(2).

#### **8.3 – Application for and conduct of review**

*(1) An applicant for development consent may request a consent authority to review a determination or decision made by the consent authority. The consent authority is to review the determination or decision if duly requested to do so under this Division.*

*(2) A determination or decision cannot be reviewed under this Division:*

- (a) after the period within which any appeal may be made to the Court has expired if no appeal was made, or*
- (b) after the Court has disposed of an appeal against the determination or decision.*

**Comment:** The request was made (and is required to be determined) within the 6 month period set out by this clause.

*(3) In requesting a review, the applicant may amend the proposed development the subject of the original application for development consent or for modification of development consent. The consent authority may review the matter having regard to the amended development, but only if it is satisfied that it is substantially the same development.*

**Comment:** The applicant has provided a new Flood Management Plan accompanying the proposed development. Council is satisfied that it remains substantially the same development in accordance with the requirements of this clause.

#### **8.4 – Outcome of review**

*After conducting its review of a determination or decision, the consent authority may confirm or change the determination or decision.*

**Comment:** The application has been reviewed and it is recommended that the initial refusal decision be changed and the application approved subject to conditions, in particular a condition that the use shall only operate for a limited timeframe of 5 years to reduce risk.

#### **8.5 – Miscellaneous provisions relating to reviews**

**Comment:** The miscellaneous provisions have been considered and noted. No further comments are made 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 No. 55 – Remediation of Land**

Whilst the property is not identified in Council's records as being potentially contaminated. Given the past industrial uses occurring on site, it is prudent to ensure the requirements of SEPP 55 are taken into consideration along with the requirements of Part 3K- Contamination of the Botany Bay Development Control Plan 2013.

The subject site is industrial in nature, as existing the majority of the surface area of the site subject of this application is sealed, with a portion adjoining the northern boundary comprising an existing landscaped area.

The proposal was accompanied by a Stage 1 Environmental Site Assessment undertaken by EIS and supplementary correspondence, dated 5 September 2018. The submitted information concludes that the site is suitable for the proposed use.

Given the above, the subject site is deemed to be suitable for the proposed change of use as sought by the applicant and satisfies the requirements of the SEPP.

##### **Botany Bay Local Environmental Plan 2013 (BBLEP)**

Botany Bay Local Environmental Plan (BBLEP) 2013 has been considered in the assessment of the Development Application and the following information is provided:

Clause	Requirement	Proposal	Compliance
2.3 – Zone	B7 – Business Park	Vehicle sales or hire premises permitted with consent	Yes
2.6 – Subdivision	Consent required	Consent sought	Yes
2.7 – Demolition	Requires consent	Demolition sought	Yes
4.3 – Height of Buildings	44m maximum	6m	Yes
4.4 – FSR	3:1 (8985sq/m)	0.013:1 (100sq/m office / admin building)	Yes
5.10 – Heritage Conservation	To conserve the environmental heritage of Botany Bay	Site located near Alexandria Canal yet proposal has nil adverse impact	Yes

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

There are no current Draft EPIs applicable to this development

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

The following Development Control Plan is relevant to this application:

**Botany Bay Development Control Plan 2013**

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

<b>Part 3A – Parking &amp; Access</b>			
<b>Part</b>	<b>Control</b>	<b>Proposed</b>	<b>Complies</b>
3A.2 – Parking Provision	C2 – Vehicle Sales / Hire Premises 1 space per 40sqm GFA (100sq/m admin building = 3 car spaces required)	59 car spaces. A Traffic and parking Impact report has been prepared by McLaren Traffic and their recommendations have been incorporated into the plans.	Yes
	C3 (vii) A minimum 25sqm of parking and manoeuvring area for each vehicle stored on-site for display, sale or hire.	Appropriate parking and manoeuvring areas provided on site	Yes
3A.3.1 – Car Park Design	C26 - Min driveway width 3m	As existing double driveway	Yes
3C – Access and Mobility	C1 - All new development must comply with Table 1 of this Part C2 - Vehicle parking for people with disability must be provided in the manner described in Table 1 of this Part.	Accessible ramp provided to front entry of office building on site & associated accessible parking and toilet facilities provided on site.	Yes
3D – Signage	C4 - Building identification signs are not permitted to have any other text or logo except for the name of the building, the major tenant or the building owner C7 - A maximum of one (1) sign per street frontage is permitted	1 x business identification sign within front setback to Coward Street, 2.1m H x 2.7m W, illustrates 'Hertz' logo & company colouring. Aluminium clad steel frame and is not proposed to be illuminated.	Yes
3K – Contamination	3K.2.1 - Site Investigation Process applicant must investigate the site and provide information about the nature, extent and degree of contamination to Council prior to determination of the development application	Satisfactory as discussed previously in report.	Yes
<b>Part 6 – Employment Zone</b>			
6.2.3 - Mascot West Industrial Precinct	C2 - Development is to have a relationship with Sydney (Kingsford Smith) Airport	Proposed car hire is to service visitors arriving and departing from airport	Yes
	C4 - Development within the precinct shall submit a detailed Flood Study/Assessment for 1 in 100 year average recurrence interval (ARI) design storm events	The Flood Management Plan and information submitted with this Review Application have been assessed by	Yes – see detailed

	and probable maximum flood (PMF).	Council's Engineers and are deemed satisfactory subject to a limited time use consent of 5 years.	discussion below
	C6 - Development within the precinct shall require submission of a Risk Management Plan to address potential risks related to coastal sea levels		
Part 7S - Vehicle Sales / Hire Premises			
7S.2	C1 – Acoustic Report required.	Submitted, AR concludes development will have no adverse acoustic impact to surrounding sensitive receiver locations	Yes
	C2 - All parking and storing of vehicles to be wholly on site. Design of parking and storage areas to comply with AS2890.1 and/or AS2890.2.	Satisfactory	Yes
	C3 - Plan of Management (POM) to be submitted.	Submitted, satisfactory	Yes
	C4 - Traffic and Parking Impact Assessment Report required	Submitted, satisfactory	Yes
	C5 - All driveways, circulation roadways, parking and vehicle storage areas are to be sealed.	Sealed surfaces as existing	Yes
	C11 - The number of cars for sale or hire must not exceed 1 for each 30sqm of the site area.	A maximum of 99 cars are permitted on the subject portion of the site. The proposal comprises a maximum of 59 car spaces.	Yes

<b>Part 3D – Signage</b>			
<b>Part</b>	<b>Control</b>	<b>Proposed</b>	<b>Complies</b>
3D.4 – Signage requirements by zone and use	C5 – One (1) business identification sign is permitted per industrial unit. Development applications for new industrial complexes shall include the location and dimensions of one advertising panel for each unit.	One (1) business identification sign is proposed on the Coward Street frontage within the front landscaped setback area of the subject site, located 14689mm from the eastern side boundary.	Yes
	C6 One (1) freestanding common tenancy sign is allowed per street frontage and the size is restricted to 10m <sup>2</sup> The sign must: (i) Be integrated into the landscape design; (ii) Be located within the property boundary with a minimum setback of 2 metres from the road alignment and clear of any footpath or designated pedestrian paths; (iii) Be no higher than five (5) metres above the natural ground level and have a maximum area of 10m <sup>2</sup> per face with a maximum advertising area of all faces not more than 25m <sup>2</sup> ; (iv) Present only information related to the use of the individual units; like a tenancy directory; (v) Be clear of any vehicular crossings and not compromise the safety of pedestrian and vehicular movement; (vi) Not require the removal of significant trees or vegetation; and (vii) Be illuminated where the illumination does not adversely impact upon the environment, safety or amenity of the area.	The proposed sign is for the subject tenancy Hertz and is 2100mm high by 2700mm wide and located within the landscaped front setback area of the subject site.	Yes

## Discussion

### 1. Flooding / Risk

#### **DA-2018/1137:**

The subject site is identified as being within a Flood Planning Area. A flood advice letter was issued by Council on 8<sup>th</sup> October 2018 and was provided with the DA.

The original DA-2018/1137 was refused by Council due to the failure of the applicant to adequately address the flood risk of the site. Issues with the proposal were raised by the Council's Development Engineer and the requirement was for the applicant to provide additional information outlined by Council's Engineers. The applicant was given the opportunity to submit three attempted versions of the Flood Management Plan. After each version was submitted it was reviewed by Council's Engineers and feedback provided on the inadequacies of the plan. It was determined that the consultant preparing the plan on behalf of the applicant has not adequately addressed concerns and has insufficient relevant experience. Subsequently the application was refused based on unresolved flooding and risk issues.

Below are the specific comments on the shortfalls in the Flood Management Plan in the original DA:

- *No flood evacuation strategy is provided,*
- *The flood management plan is generic, lack supporting information and site use specific analysis.*
- *There is an implied reliance on the SES and Council, that is inappropriate and places volunteers at risk and would require a referral to the SES,*
- *No detailed risk assessment was undertaken,*
- *There is no assessment of the time or depth of flooding at which access to and from the site will be restricted due to flooding of the driveway and road reserve.*
- *There is insufficient detail on the duration of a flood event and depth of flooding events. This site is affected by flash flooding as the critical storm duration is 2 hours. There is insufficient consideration in the Flood Management Plan on the flash flooding nature of the site (which may result in no warning being available to staff).*
- *There is no assessment of the depth at which vehicles will become buoyant and the site become unsafe nor how this will be taken into account in flood management at the site.*
- *There is a risk that to save cars from flood damage cars will be driven through flood waters increasing the hazard to road users, rescuers, and staff.*
- *The Plan proposes that cars will be relocated to an elevated site in 292 Coward Street which is above flood level, this is incorrect. The rear portion of this site is flood affected. In addition, Coward Street will be inundated by up to 1.4m of flood water, at a flood depth of more than 0.3m of standing water it is unsafe to drive small vehicles.*
- *There is insufficient information on how the works (incl. warning signs, plan of management, awareness, education etc) will be implemented.*
- *The document is very long, but contains very little facts, making it difficult to read and comprehend. This means the document will not be useful in a flood situation.*

Council Engineers raised concerns that the proposal would adversely impact upon the safety of employees at the site, road users and public infrastructure in the locality. The activity would increase the risk to members of SES and Council staff who may be requested to assist in a flood event.



The hazard identified for the site in the flood study varies over the site from H2 – H3, H2 is unsafe for small vehicles and H3 is unsafe for vehicles, children and the elderly. The flood hazard vulnerability curves are shown in Figure 1 below.

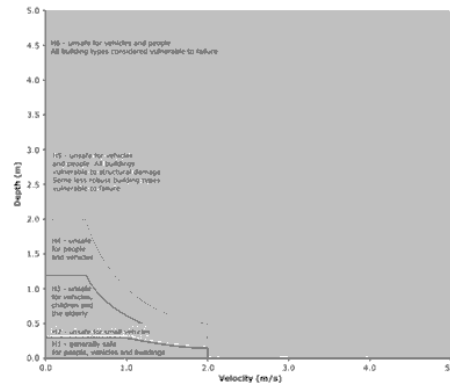


Figure 1: General flood hazard vulnerability curves

On the basis of the above, Council's Engineers did not support the proposal, due to failure to adequately address the flood risk of the site.

**S82-2019/3:**

A new Flood Management Plan was submitted with the current Review Application prepared by WMA Water dated March 2019 which concluded the following:

*"The site is heavily flood prone, and it is expected that flooding requiring implementation of this plan will affect the site during the anticipated 5 year operating life of the facility. WMAwater would not normally recommend using the site for operations involving expensive stock that can be damaged by flooding, apart from the following mitigating circumstances that apply in this instance:*

- *WMAwater understands the facility is intended to be relatively temporary, with a design life in the order of five years, before more major redevelopment is undertaken for a different site use.*
- *Comprehensive flood insurance cover has been obtained for damage to vehicles stored on the site.*
- *The site will have a manager present during all operations, and the people on site will be primarily Hertz employees who can be trained to understand flood risk and the appropriate response, and who can provide appropriate duty of care to any customers or other people who may be on-site during flooding."*

This documentation was assessed by Council's Development Engineers, their assessment comments and conclusion are included below:

**Traffic, Parking & Access:**

*The application seeks consent for construction of a single storey administration building over the footprint of the previous 2 storey office building on the site and the*

*use of the site as a storage area for car rentals at the rear of the site and a car rental area at the front by the administration building. The design prepared and assessed in the Traffic Report prepared by McLaren Traffic Engineering is considered acceptable.*

*Stormwater:*

*I have included conditions from the original Sydney Water referral in DA-2018/1137 as they should be included (CM: DOC18/39585). The most recent referral from Sydney Water appears to be incorrect. Site is mostly entirely concreted and impervious and an existing surface drainage systems is operating on the site. Provision for WSUD is to be provided for the site through an oil/sediment removal system.*

*Flooding:*

*The site is within 100m of the foreshore for the Alexandra Canal and is subject to flood depths of approximately 0.6-1m on the subject site, depending on location. The flood level is RL 2.51m AHD and the NGL for the property is RL 1.5m for the majority of the western half of the site, increasing to RL 1.6m, RL1.74m and RL 1.98m AHD to the rear of the site. The applicant does not proposed to utilise the rear of the site where the NGL is the highest as the proposed lot becomes too narrow so the predominant levels for the site are on the low end.*

*The ponding on the site is far too significant to be acceptable for this proposed use without proper risk management as many cars will be stored onsite for lengthy periods of time as a part of the development along with employees operating on the site.*

*S82 UPDATE:*

*Flood risk management plan prepared by WMA Water is considered acceptable and will be approved. This report addresses the flooding for the development, minimises the risk to life and is designed for implementation within the premises.*

*Approval is subject to the development consent to be limited to a timed consent similar to that of the previous consent for the concrete batching plant.DA-00/397 – DOC18/13313. The length of the timed consent shall be between 3-5 years as discussed previously with the applicant during assessment of DA-2018/1137. The consent is to be worded to this effect.*

*Conclusion*

*The development application is appropriate for approval subject to conditions. Traffic Report prepared by McLaren Traffic Engineering (CM: 19/82370) and Flood Risk Management Plan prepared by WMA Water (CM: 19/78228) shall be stamped/approved.*

Council's Development Engineers determined the Flood Management Plan report is acceptable. They advised approval would only be granted subject to a limited timeframe consent of 5 years. Council Engineers deem the development application is appropriate for approval subject to conditions which are included in the draft notice of determination.

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

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

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

The applicant has confirmed in writing that a temporary 5 year consent is sought for the proposed use. Accordingly a condition permitting a temporary consent is imposed. This is a limited timeframe consent within which the use can operate before the site is to become vacant again and the reason is to minimise the risk of exposure of the use to severe flooding events by limiting the timeframe they can operate on site.

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

The subject site is of appropriate zoning, overall area, dimensions and topography so as to facilitate the proposed change of use as sought by the applicant.

Notwithstanding the above, the subject site, in particular that area of the site proposed to be utilised for the development, is substantially flood affected.

The information submitted by the applicant addressing the flooding and risk concerns raised by council is deemed satisfactory, subject to the proposed use being granted a limited timeframe consent of 5 years.

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

In accordance with Part 2 of the Botany Bay DCP 2013 – Notification and Advertising, the application was publicly notified from 21 March 2019 to 4 April 2019. No submissions were received.

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

The proposal is deemed to be in the public interest for the reasons previously discussed within this report.

**Section 7.12 Contributions**

No Development Contributions are payable as the development is of a type not listed in the table of developments subject to contributions in the *City of Botany Bay 94A Development Contribution Plan 2016*.

**Attachment****Schedule 1 – Conditions of Consent****Premises: 294-296 Coward Street, Mascot****S82A-2019/3**

**SCHEDULE OF CONSENT CONDITIONS****GENERAL CONDITIONS**

1. The development is to be carried in accordance with the following plans and documentation listed below and endorsed with Council's stamp, except where amended by other conditions of this consent or in red on the plans:

Drawing No.	Author	Date Received
Site Plan, dwg. No A-002, dated 7/7/18	Arc	14/3/19
Sections, dwg. No. A-005, dated 24/7/18	Arc	14/3/19
Elevations, dwg. No. A-004, dated 24/7/18	Arc	14/3/19
Floor Plan, dwg. No.A-003, dated 24/7/18	Arc	14/3/19
Landscape Plan, dwg. No. A-006, dated 16/7/18	Arc	14/3/19

Reference Document(s)	Author	Date Received
Flood Risk Management Plan, dated March 2019	WMA Water	14/3/19
Contamination Report, dated 5/9/18	EIS	14/3/19
Plan of Management, dated 5 July 2018	Arc	14/3/19
Traffic and Parking Impact Statement, dated 13 July 2018	McLaren Traffic Engineering	14/3/19
Statement of Environmental Effects ,dated 24 July 2018	Arc	14/3/19
Acoustic Report, dated 11/7/18	Acoustic Logic	14/3/19
Construction Management report , dated 6/7/18	Arc	14/3/19

2.
  - a. This consent relates to land in Lot 1 DP 230370 and Lot 1 DP 624365 known as 294- 296 Coward Street and as such, works in association with this development consent must not encroach on to adjoining lands or the adjoining public place
3. All building work must be carried out in accordance with the provisions of the Building Code of Australia. The approval of this application does not imply or infer compliance with the Disability Discrimination Act.
4. The following shall be complied with:
  - a. The signage shall be for business identification purposes only and be associated with the approved use carried out within the premises; and

- b. The signage shall not be adapted or used for third party advertising purposes at any time;
  - c. The signage shall be appropriately maintained at all times and kept in a clean and tidy condition.
- 5. No further signs or advertising which requires consent shall be installed or displayed at the property without a development application being lodged with Council and consent thereto being given by Council.
- 6. The applicant must prior to the obtainment of the approved plans and specifications pay the following fees:  
 Development Control                      \$899.00
- 7. The consent given does not imply that works can commence until such time that:-
  - a. detailed plans and specifications of the building have been endorsed with a Construction Certificate by:-
    - i. the consent authority; or,
    - ii. an accredited certifier; and,
  - b. the person having the benefit of the development consent:-
    - i. has appointed a Principal certifying authority; and,
    - ii. has notified the consent authority and the Council (if the Council is not the consent authority) of the appointment; and,
    - iii. the person having the benefit of the development consent has given at least 2 days notice to the council of the persons intention to commence the erection of the building.

#### **DEVELOPMENT SPECIFIC CONDITIONS**

- 8. The operation of the use shall cease after a period of five (5) years from the date of issue of this consent. Upon the expiration of the five (5) year period, all operations pertaining to the use shall cease immediately. No further application shall be made to Council, under any circumstances, to continue the operation of the use prior to, or upon expiration of the five (5) year consent period. This requirement applies to the existing and future owners (Registered Proprietor) of the property and the operator of the use.
- 9. Sydney Water Easement  
 Where proposed development works are in close proximity to a Sydney Water easement, the developer may be required to carry out additional works to facilitate their development in order to not encroach within the Sydney Water easement. The easement for sewerage purposes is not to be built over or encroached in without the consent of Sydney Water.
- 10. Stormwater  
 No building or permanent structure is to be constructed within 1m from the outside wall of the stormwater asset or within the easement whichever is larger. Permanent structures include (but are not limited to) basement car park, hanging balcony, roof eaves, hanging stairs, stormwater pits, stormwater pipes etc. This clearance requirement would apply for unlimited depth and height.
- 11. Building Plan Approval  
 The approved plans must be submitted to the Sydney Water [Tap in™](#) online service to determine whether the development will affect any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met.  
*The Sydney Water [Tap in™](#) online self-service replaces our Quick Check Agents as of 30 November 2015.*

The Tap in™ service provides 24/7 access to a range of services, including:

- building plan approvals
- connection and disconnection approvals
- diagrams
- trade waste approvals
- pressure information
- water meter installations
- pressure boosting and pump approvals
- changes to an existing service or asset, e.g. relocating or moving an asset.

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>

#### 12. Section 73 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.

If you require any further information, please contact the Growth Planning and Development Team at [urbangrowth@sydneywater.com.au](mailto:urbangrowth@sydneywater.com.au).

#### **PRIOR TO THE ISSUE OF ANY CONSTRUCTION CERTIFICATE**

13. Prior to the issue of any Construction Certificate, detail design and construction plans in relation to the development shall be submitted to the Principal Certifying Authority for approval. The plans shall incorporate but not limited to:
  - a) The floor level of the habitable areas of the building shall be at least RL 3.01m AHD.
  - b) Wheel stops for the proposed off street car parking spaces are not to be located within the drainage easements that traverse the site.
14. A suitable qualified engineer is to certify that the structure can withstand the forces of floodwater, scour, debris and buoyancy in a 1% AEP flood event. All building materials shall be flood resistant, or flood compatible to a height of 500mm above the 1% AEP flood, or flow level. All internal electrical switches, power points or similar utilities liable to flood damage shall be set at a minimum of 500mm above the 1% AEP flood, or flow level. The proposed boom gates shall be flood proofed. Details shall be provided and approved prior to the issue of a construction certificate.
15. Flow through open form fencing (louvres or pool fencing) is required for all new front fencing and all internal fences and gates up to the 1% AEP flood level. Any new boundary fences adjoining private property shall have an 80mm gap at the bottom to allow flows through. Documentation and details shall be provided to Certifying Authority prior to the issue of the construction certificate.
16. Council accepts no liability for any damage to property/vehicles as a result of flooding and the applicant (including all owners of the property) shall submit written acceptance of liability of any damages prior to the issue of the Construction Certificate.

17. As a matter of WSUD, 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.
18. The owners/occupiers are to undertake all future maintenance and cleaning to the manufacturer's requirements.  
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>
19. 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.
20. Prior to the release of the Construction Certificate, the applicant shall provide certification from a suitably qualified Traffic Engineer to the principal certifier attesting that the design of the proposed development is in accordance with the approved traffic and parking impact assessment by McLaren Traffic Engineering, reference 18418.01FA and dated 13<sup>th</sup> July 2018.

#### **DURING WORKS**

21. The following shall be complied with during construction:

- a) Construction Noise
  - i) Noise from construction activities associated with the development shall comply with the NSW Environment Protection Authority's Environmental Noise Manual – Chapter 171 and the Protection of the Environment Operations Act 1997.
- b) Level Restrictions
  - i) Construction period of 4 weeks and under:
    - 1) The L10 sound pressure level measured over a period of not less than 15 minutes when the construction site is in operating must not less than 15 minutes when the construction site is in operating must not exceed the background level by more than 10dB(A).
- c) Time Restrictions
  - i) Monday to Friday 07:00am to 05:00pm
  - ii) Saturday 08:00am to 01:00pm
  - iii) No Construction to take place on Sundays or Public Holidays.
- d) Silencing

- i) All possible steps should be taken to silence construction site equipment.
- 22. 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.
- 23. During any works, 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.

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

- 24. Prior to issue of any Occupation Certificate, a registered plumber or other suitably qualified professional is to check the stormwater system for the site and shall provide a certificate stating that the system is satisfactory and in good working condition. If any element of the system cannot be certified as being satisfactory and in good working condition then the substandard section of the existing system is to be renewed.
- 25. A certificate from a Registered Surveyor shall be provided to the Principal Certifying Authority (PCA) certifying that the habitable floor level is constructed a minimum of 500mm above the 1% Annual Exceedance Probability (A.E.P) Flood Level. A copy of the certificate shall be provided to Council where Council is not the Principal Certifying Authority.
- 26. Flow through open form fencing (louvres or pool fencing) is required for all new front fencing and all internal fences and gates up to the 1% AEP flood level. Any new boundary fences adjoining private property shall have an 80mm gap at the bottom to allow flows through. Documentary evidence of the installation of the required fencing shall be provided to Certifying Authority prior to occupation.
- 27. Prior to the issue of any Occupation Certificate, certification from a suitably qualified traffic engineer must be supplied to the principal certifier certifying that the vehicle access and off street parking facility is in accordance with the approved construction plans, AS/NZS 2890.1, AS2890.2 and AS/NZS 2890.6, line marked and all signage relating to car parking erected. The car parking area is to be clearly and appropriately line marked and signposted indicating all vehicular movements on the site. The internal road network, pedestrian facilities and parking facilities (including parking for persons with disabilities) shall be clearly designated, sign posted and line marked prior to the issuing of an Occupation Certificate. Signage and line marking shall comply with Australian Standards AS1742 series and NSW Road Transport (Safety and Traffic Management) Regulations 1999.
- 28. Prior to the issue of any Occupation Certificate, the approved recommendations from the Flood Risk Management Plan Report prepared by WMA Water, project number 119009, dated 5 march 2019 shall be implemented on the site. Signs marking the route to the assembly point are to be installed throughout the site, and the assembly point must be clearly marked as per the report. The site flood evacuation plan signage shall be permanently erected throughout the facility as detailed in the report. Furthermore, the



approved flood risk management plan shall be permanently erected in a prominent location within the building to the satisfaction of the Principal Certifier.

**CONDITIONS WHICH MUST BE SATISFIED DURING THE ONGOING USE OF THE DEVELOPMENT**

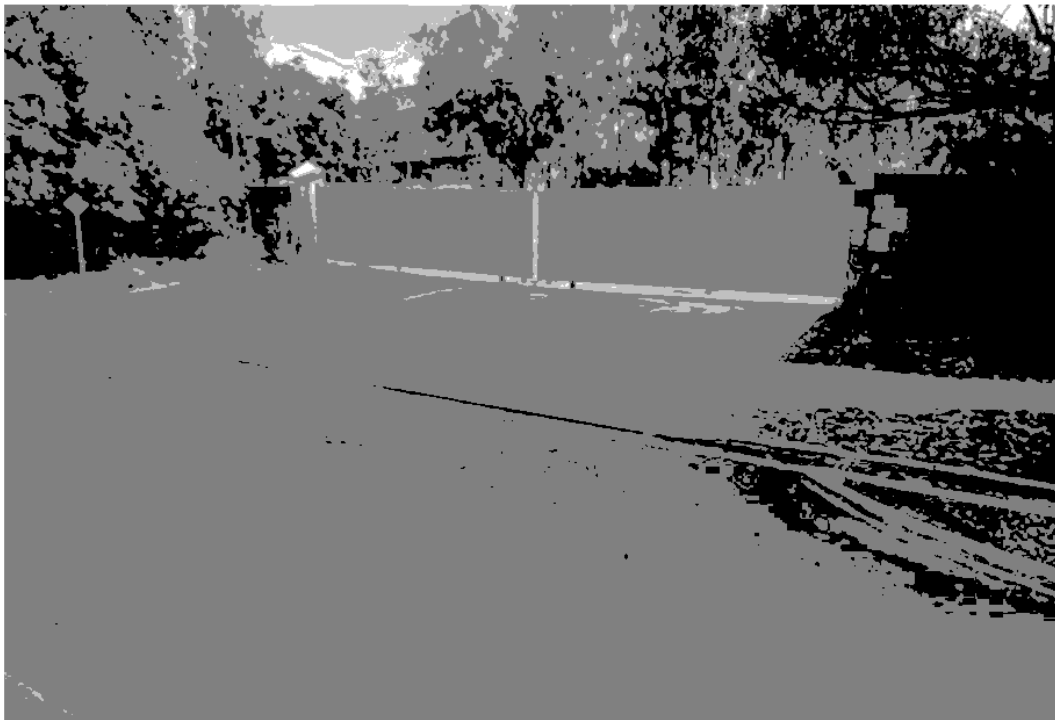
29. The hours of operation for the use shall be between the hours of 9.00am and 4.30 pm Monday to Friday, 9am to 1pm Saturdays and closed on Sundays/Public Holidays. Any additional hours of operation proposed to the premises shall form the subject of a further application to Council.
30. The maximum number of staff employed on-site at one-time shall not exceed six (6). Any additional staff employed on-site shall be subject to Council's approval.
31. All parking spaces are to be line-marked in accordance with the dimensions in AS2890.1 and AS2890.2 and in accordance with the approved Traffic Management Plan prepared by McClaren.
32. 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.
33. The use on the site is to be operated in accordance with the approved flood risk management plan. During a flooding event operations of the site shall be completely suspended and no vehicles should be driven on Coward Street once flooding exceeds the gutter level of the street or occurs within the site. Personal safety of all staff is the only priority of the flood management response. Under no circumstances shall staff/visitors put themselves at risk to save cars from damage.
34. The operation of the development and movements of vehicles shall comply with the following requirements:
  - a) All vehicles (including deliveries and garbage collection) shall enter and exit the site in a forward direction;
  - b) All manoeuvring of vehicles shall be carried out wholly within the site and vehicle manoeuvring areas shall be kept clear at all times.
35. Panel beating, spray painting and mechanical repairs shall not be carried out on the premises without prior consent of Council.
36. No signs, amplification equipment, goods or the like shall be placed on public areas or the footpath.
37. 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 including neighbouring properties by reason of noise, vibration, odour, fumes, vapour, steam, soot, ash, dust, particulate matter, waste water, waste products, grit, oil, or otherwise, or other impurities which are a nuisance or injurious to health.

38. Liquid and solid wastes generated on the site shall be collected, transported and disposed of in accordance with the Protection of the Environment Operations Act 1997. Records shall be kept of all liquid and solid waste disposals from the site, and be made available to Council Officers on request.
39. The operation of the premises shall be conducted in a manner that does not pollute waters as defined by the Protection of the Environment Operations Act 1997.
- a. 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 devices shall be disposed of in a manner that does not pollute waters.
  - b. The stormwater drainage 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.
40. Sufficient supplies of appropriate absorbent materials shall be kept on site to recover any liquid spillage. Liquid spills shall be cleaned up using dry methods, by placing absorbent material on the spill, and sweeping or shovelling the material into a secure bin. Absorbent materials used to clean up spills shall be disposed of to an appropriately licensed waste facility.
41. The use of the premises shall not give rise to any of the following when measured or assessed at "sensitive" positions within any other property. These "sensitive" positions should be selected to reflect the typical use of a property (ie any outdoor areas for day and evening but closer to the façade at night time), unless other positions can be shown to be more relevant:
- a. 'offensive noise' as defined in the Protection of the Environment Operations Act 1997;
  - b. transmission of vibration to any place of different occupancy above the requirements of AS2670;
  - c. a sound pressure LAeq, period at any noise sensitive position of any other premises or occupancy greater than the recommended amenity noise criteria detailed in the Department of Environment and Conservation, New South Wales (EPA) Industrial Noise Policy;
  - d. a sound pressure LAeq,15min at any noise sensitive position greater than the intrusiveness criteria determined in accordance with the Department of Environment and Conservation, New South Wales (EPA) Industrial Noise Policy and does not contain any tones, low frequency or impulsive factors as defined in the Department of Environment and Conservation, New South Wales (EPA) Industrial Noise Policy table 4.1;
  - e. the following additional criteria:
    - i. The operation of all plant and equipment shall not give rise to an equivalent continuous (LAeq) sound pressure level at any point on any residential property greater than 5dB(A) above the existing background LA90 level (in the absence of the noise under consideration).
    - ii. The operation of all plant and equipment when assessed on any residential property shall not give rise to a sound pressure level that exceeds LAeq 50dB(A) day time and LAeq 40 dB(A) night time.
    - iii. The operation of all plant and equipment when assessed on any neighbouring commercial/industrial premises shall not give rise to a sound pressure level that exceeds LAeq 65dB(A) day time/night time.
    - iv. For assessment purposes, the above LAeq sound levels shall be assessed over a period of 10-15 minutes and adjusted in accordance with EPA

- guidelines for tonality, frequency weighting, impulsive characteristics, fluctuations and temporal content where necessary.
- f. The use of the premises must not give rise to the transmission of offensive noise to any place of different occupancy and must meet the City of Botany Bay Standard noise Criteria.
42. All intruder alarms must be fitted with a timing device in accordance with the requirements of Protection of the Environment Operations (Noise Control) Regulation 2008, and AS2201, Parts 1 and 2 - 1978 Intruder alarm systems.
43. All waste and recycling containers shall be stored in a designated waste storage area within the site. The waste containers are not to be over filled and the lids kept closed at all times except when material is being put in them. The building owner shall be responsible for the following:
- a. Where waste and recycling containers need to be moved to the street:
    - i. Movement of the waste and recycling containers to the footpath for collections, and the return of waste and recycling containers to the waste storage area;
    - ii. Refuse containers are to be returned to the waste storage area on the same day as the refuse is collected;
    - iii. Refuse containers are not to be left on the street for longer than 24 hours;
  - b. Cleaning and maintaining the waste storage area, any drainage installations and waste collection containers.
44. Any lighting on the site shall be designed so as not to cause nuisance to other residences in the area or to motorists on nearby roads, and to ensure no adverse impact on the amenity of the surrounding area by light overspill. All lighting shall comply with AS4282-1997 Control of the obtrusive effects of outdoor lighting.
45. All goods associated with the use shall be stored wholly within the building and not in adjacent forecourts, yards, access ways, car parking areas, or on Council's footpath.
46. Should the external fabric of the building(s), walls to landscaped areas and like constructions be subject to graffiti or like 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.
47. The landscaped areas on the property shall be maintained in a neat and tidy condition and with a good coverage of plants at all times to Council satisfaction and in accordance with any approved landscape plan for the site and the Council Landscape DCP.
48. The storage of any tyres within the premises shall be in accordance with the NSW Fire Brigades Guidelines for the Bulk Storage of Rubber Tyres (April 2009).
49. All storage and handling of Flammable and Combustible Liquids will be in accordance with AS1940.
50. The ongoing maintenance of the nature strip shall be undertaken by the occupier/owner. Maintenance shall include mowing, the removal of weeds and rubbish and maintaining a good, even coverage of grass at all times.

**PROTON PROPERTY GROUP**

**FLOOD RISK MANAGEMENT PLAN  
HERTZ CAR RENTAL –  
296 COWARD STREET MASCOT**



MARCH 2019

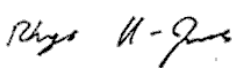



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**FLOOD RISK MANAGEMENT PLAN  
HERTZ CAR RENTAL –  
296 COWARD STREET MASCOT**

**MARCH 2019**

<b>Project</b> Flood Risk Management Plan Hertz Car Rental – 296 Coward Street Mascot		<b>Project Number</b> 119009	
<b>Client</b> Proton Property Group		<b>Client's Representative</b> Chris Proton	
<b>Authors</b> Rhys Hardwick Jones Richard Dewar		<b>Prepared by</b> 	
<b>Date</b> 5 March 2019		<b>Verified by</b> 	
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2	Final	Proton Property Group	Mar 2019

## FLOOD RISK MANAGEMENT PLAN HERTZ CAR RENTAL – 296 COWARD STREET MASCOT

### TABLE OF CONTENTS

	PAGE
<b>1. OVERVIEW .....</b>	<b>1</b>
<b>2. SITE INFORMATION.....</b>	<b>2</b>
2.1. Summary .....	2
2.2. People on Site .....	2
2.3. Buildings .....	2
2.4. Stock/ Equipment.....	3
<b>3. FLOOD BEHAVIOUR AND RISK ASSESSMENT.....</b>	<b>4</b>
3.1. Description of Flood Behaviour .....	4
3.2. Peak Flood Depths and Hazard .....	4
3.3. Duration of Inundation .....	5
<b>4. EVACUATION AND FLOOD RESPONSE .....</b>	<b>7</b>
4.1. Overview of Strategy .....	7
4.2. Evacuation – “Shelter in Place” .....	7

### LIST OF APPENDICES

Appendix A: Flood Action Plan  
Appendix B: Flood Emergency Management Plan Review

### LIST OF FIGURES

Figure 1 Proposed Developemnt Site  
Figure 2 Peak Flood Levels and Depths – 20% AEP  
Figure 3 Peak Flood Levels and Depths – 5% AEP  
Figure 4 Peak Flood Levels and Depths – 1% AEP  
Figure 5 Peak Flood Levels and Depths – Probable Maximum Flood  
Figure 6 Provisional Hydraulic Hazard – 20% AEP  
Figure 7 Provisional Hydraulic Hazard – 5% AEP  
Figure 8 Provisional Hydraulic Hazard – 1% AEP  
Figure 9 Provisional Hydraulic Hazard – Probable Maximum Flood  
Figure 10 Site Evacuation Plan

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## 1. OVERVIEW

This document outlines a plan for managing flood risk for Hertz Car Rental operations at 296 Coward Street, Mascot (see Figure 1 for site location).

The main part of the report presents background information about the nature of flood risk at the site, and the factors that were considered in developing the risk management plan.

The appendices to the report are intended to be operational documents that are used to implement the risk mitigation strategies. Appendix A contains a Flood Action Plan in the form of reference sheets that is to be printed and displayed in the site office, and which outline actions and responsibilities before, during and after flooding at the site. Appendix B contains a form for recording periodic reviews and changes to the plan, which should be undertaken annually or after any flooding occurs.

This Flood Risk Management Plan has been developed specifically for Hertz Car Rental operations at the site, primarily as a facility for storing rental cars, and not as a primary customer pickup/drop-off point. WMAwater understands that the main use of the site will be by Hertz staff transferring cars from the facility to other locations in and around the airport. This document is not applicable at other sites in the area, or for other operational uses at the site.

The site is heavily flood prone, and it is expected that flooding requiring implementation of this plan will affect the site during the anticipated 5 year operating life of the facility. WMAwater would not normally recommend using the site for operations involving expensive stock that can be damaged by flooding, apart from the following mitigating circumstances that apply in this instance:

- WMAwater understands the facility is intended to be relatively temporary, with a design life in the order of five years, before more major redevelopment is undertaken for a different site use.
- Comprehensive flood insurance cover has been obtained for damage to vehicles stored on the site.
- The site will have a manager present during all operations, and the people on site will be primarily Hertz employees who can be trained to understand flood risk and the appropriate response, and who can provide appropriate duty of care to any customers or other people who may be on-site during flooding.



## 2. SITE INFORMATION

### 2.1. Summary

Name	Details
<b>Street Address</b>	296 Coward Street Mascot NSW 2020
<b>Phone Number</b>	(02) 9725 2333
<b>Source of Potential Flooding</b>	<p>Flooding may occur as a result of local runoff exceeding the stormwater network capacity in Coward Street. Flooding of Coward Street is likely to occur every year or so.</p> <p>Flooding can also occur from elevated water levels in Alexandra Canal and the Cooks River backing up through the stormwater network, particularly at high tide.</p> <p>For both flooding types, floodwaters will generally rise from Coward Street into the site.</p>

### 2.2. People on Site

The site will be mainly set aside for vehicle storage and a near-airport location to allow for easy ferrying of vehicles. The site office will cater for predominantly Hertz vehicle rental clients, including corporate insurance clients. Customers will arrive at the location by taxi or private, public transport systems and be served at the onsite customer service office to collect rental vehicles.

Customer bookings are all created online and the average location waiting time for any customer is typically 10 minutes depending on volume. Customers will visit the location for brief periods and are restricted to collecting a vehicle from a designated parking space in immediate proximity to the office. It is anticipated that up to 3-6 customers will visit the site every trading hour.

It is proposed that up to 7 staff will be based at the new location and up to 4 of these will be working from the office depending on weekly schedules. Other employees visiting the site will be ferrying vehicles from the airport as required to meet customer hire bookings.

### 2.3. Buildings

The buildings located on the site include the office and reception area which may house up to 4 staff depending on the weekly roster. The buildings allow for short timeframe visits by customers and public access is restricted to the front section of the site.

The site will include a wash bay for vehicles. Vehicles and Vans for hire will be washed and





Flood Risk Management Plan  
Hertz Car Rental –  
296 Coward Street Mascot

cleaned at the location upon return from hire.

## **2.4. Stock/ Equipment**

During a normal operating conditions, the following will be housed on site:

- 30 to 40 cars and 2 to 5 small vans for hire;
- Up to 5 employee vehicles;
- The office storage room will accommodate up to 20 infant child seats;
- The wash bay will provide storage for products used in the cleaning of vehicles;
- No fuel or vehicle oil is to be kept at the site.

## **2.5. Trading Hours**

The Coward St location will operate the following hours:

- - Monday - Friday: 7:00 AM - 5:00 PM
- - Saturday: 8:00 AM - 1:00 PM
- - Sunday: 8:00 AM - 1:00 PM
- - Public Holidays: 8:00 AM - 1:00 PM



### 3. FLOOD BEHAVIOUR AND RISK ASSESSMENT

#### 3.1. Description of Flood Behaviour

The primary source of flood risk at the site is flash flooding due to stormwater runoff from the local catchment. In intense rainfall events, runoff will exceed the capacity of the local stormwater drainage network and accumulate in the sag point in Coward Street, immediately adjacent to the site. This water has the potential to accumulate and flood the site itself, posing a risk to people and property.

Flooding can also occur from Alexandra Canal, or the Cooks River. Rainfall over these larger catchments raises water levels in Alexandra Canal, which can back up through stormwater drains into Coward Street and onto the site.

#### 3.2. Peak Flood Depths and Hazard

Some flooding of Coward Street and the site is expected to occur more frequently than once per year on average.

Maps of the flood depth and level for less common storm events are attached:

- Figure 2 – 20% AEP;
- Figure 3 – 5% AEP;
- Figure 4 – 1% AEP;
- Figure 5 – Probable Maximum Flood (PMF).

Figure 6 to Figure 9 show the flood hazard categories for these same events.

AEP refers to Annual Exceedance Probability. 20% AEP means there is a 20% chance of that level of flooding occurring each year, or about once every 5 years on average over the long term. 1% AEP means a 1% chance every year, or about once every 100 years on average.

The hazard categories are based on the depth and velocity of floodwaters, with the following definitions:

- H1.** Generally safe for people, vehicles and buildings.
- H2.** Unsafe for small vehicles.
- H3.** Unsafe for vehicles, children and the elderly.
- H4.** Unsafe for people and vehicles.
- H5.** Unsafe for people and vehicles. All buildings vulnerable to structural damage. Some less robust building types vulnerable to failure.
- H6.** Unsafe for people and vehicles. All building types considered vulnerable to failure.

During any given 5 year operating period of the facility, there is a very high chance (more than 70%) that the 20% AEP flood levels will occur at least once. This is sufficient to flood the



Flood Risk Management Plan  
Hertz Car Rental –  
296 Coward Street Mascot

majority of the site to a depth of between 0.5 m to 1.0 m, and produces an H3 hazard category (unsafe for vehicles, children and the elderly).

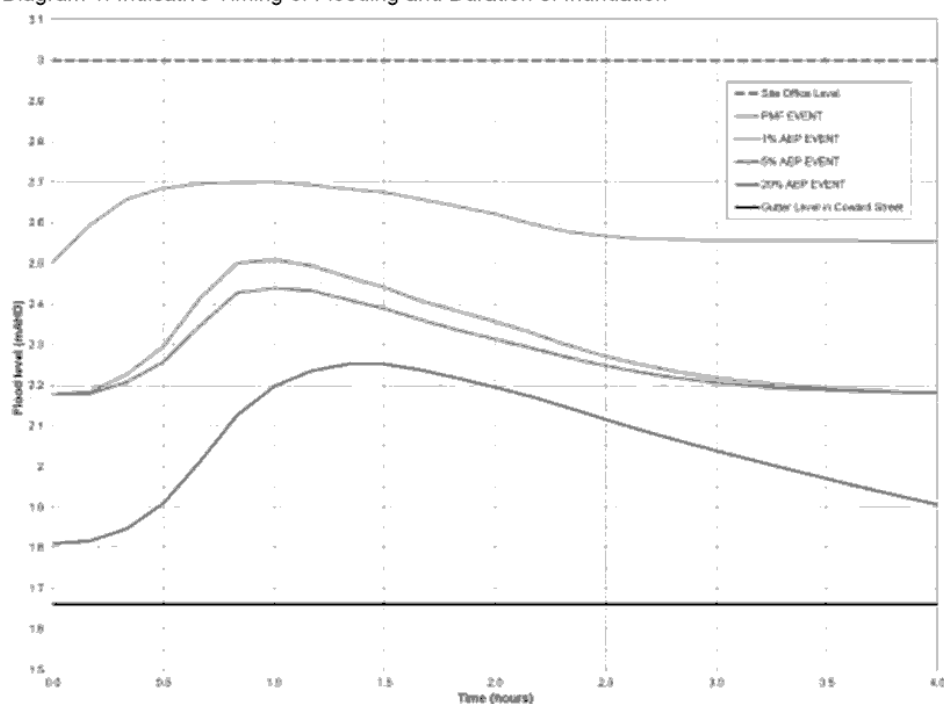
In a 1% AEP storm, the entire site will be affected by flooding greater than 0.5 m, and deeper than 1.0 m in parts of the site. There is approximately a 5% chance of this occurring during any given 5-year operating period.

In the PMF, inundation would be deeper than 1.0 m for the majority of the site, and produce a hazard category of H4 (unsafe for people and vehicles) for most of the site, except for within the site office. The chances of this level of flooding occurring are very small (less than 1 in a million in a given year).

### 3.3. Duration of Inundation

The site is subject to flash flooding, which will occur quickly and with very little warning, but also recede relatively rapidly after rainfall subsides. Diagram 1 shows the time of rise and fall of flooding according to catchment-wide modelling undertaken for Bayside Council by WMAwater. Key levels within the site and Coward Street are also indicated for reference.

Diagram 1: Indicative Timing of Flooding and Duration of Inundation



The timing shown in Diagram 1 assumes that there is relatively severe coincident flooding of



Flood Risk Management Plan  
Hertz Car Rental –  
296 Coward Street Mascot

Alexandra Canal and a peak high tide. The two to three hour duration of inundation is therefore longer than would be typically expected under normal conditions of ocean tide and coincident flooding in Alexandra Canal. Flooding produced by the local catchment alone would often be expected to subside within 1 hour.



## 4. EVACUATION AND FLOOD RESPONSE

### 4.1. Overview of Strategy

It will not be possible in real time during a flood to understand what the peak of the flood will be for this site. This is because:

- the time between the rainfall occurring and flooding occurring is very short (in the order of minutes), and
- the location of the most intense rainfall bursts for flood-producing storms in small catchments such as this cannot be predicted accurately.

Therefore the response plan and risk mitigation measures outlined in this document are based on the assumption of an extreme flood, and there is a single management plan to be followed as soon as any flooding of the site occurs. There will likely be very little warning of flooding, apart from very heavy local rainfall. General warnings about severe storms will be available for the Sydney Metropolitan region provided by the Bureau of Meteorology (BoM) but these will not provide specific information for this site.

Furthermore, small vehicles can become unstable and vulnerable to stall at depths of only 0.2 m to 0.3 m. Advice from the SES is that nobody should drive through any depth of floodwater, because of the difficulty for the driver to accurately gauge the depth of water, and because conditions underneath the water may have changed (such as failure of the pavement or a large pothole).

As a result, operations of the site should be completely suspended, and no vehicles should be driven on Coward Street, once flooding exceeds the gutter level of the street or occurs within the site. Personal safety of all staff is the only priority of the flood management response. Under no circumstances should staff put themselves at risk to save cars from damage.

### 4.2. Evacuation – “Shelter in Place”

The design of the site office is such that it should remain above the flood level for even the most extreme storm events (PMF). The evacuation and response plan for the site is based on the principle that during any flooding, personnel will “shelter in place” by moving to the site office and remaining in the building until after flooding has subsided. Site operations are to cease entirely during flooding.

Signs marking the route to the assembly point are to be installed throughout the site, and the assembly point clearly marked. The assembly point is shown below and attached as a poster (Figure 10) for display throughout the premises.

A detailed Flood Action Plan is attached to this document outlining specific responses and responsibilities, and the trigger points for these responses.



Flood Risk Management Plan  
Hertz Car Rental –  
296 Coward Street Mascot

## APPENDIX A. FLOOD ACTION PLAN

### A.1. Prepare – During Normal Daily Operations

ACTION	WHO	WHEN
Review and maintain this flood emergency management plan.	Site Manager	Conduct a review of plan after any flooding, or annually otherwise. Ensure contact numbers are up-to-date (Part A.5)
Prepare an Emergency Kit which includes spare batteries, torch, first aid kit, emergency contact numbers, a copy of the Flood Action Plan and other relevant emergency items.	Site Manager	Check and replenish annually and after any flooding
Display the Flood Evacuation poster and this Flood Action Plan in a prominent location in the site office, visible to all staff and customers and in good condition.	Site Manager	Ongoing
Maintain signs as detailed in Flood Emergency Management Plan	Site Manager	Ongoing
Inform staff of the risks that flooding can pose to them and the dangers of walking or driving through floodwaters.	Site Manager	Train new staff on arrival, maintain training of existing staff to inform about flood risks and make them aware of the contents of this plan.
Develop a strategy for operational response when flooding or heavy rainfall requires closure of the site.	Regional Manager	Ongoing
Be aware of forecast rainfall and monitor the Bureau of Meteorology website for Severe Storm Warnings in the region.	Site Manager	Ongoing
Maintain list of people to be contacted in case of flood.	Administrative Staff	Annual review (or following a flood) to ensure contacts are up to date.
Maintain insurance for flood damage to cars stored on site.	Insurance Manager	Ongoing
Maintain automated gate with control from site office.	Site Manager	Ongoing
Monitor stormwater grates on Coward Street and notify Council if blocked with debris.	Site Manager	Ongoing

119009: Hertz\_CowardSt\_FloodManagementPlan: 5 March 2019

A-1



Flood Risk Management Plan  
Hertz Car Rental –  
296 Coward Street Mascot

## A.2. Respond – Flooding Likely or Imminent

### Triggers:

- The BoM issuing a Severe Weather Warning or Severe Thunderstorm Warning for the Sydney Metropolitan Area indicating a likelihood of flash flooding
- Heavy rainfall in local area or at site

ACTION	WHO	WHEN
<b>Notify Staff and Customers:</b> Advise all staff and customers on site or involved in vehicle transfer operations of the possibility of flooding.	Administrative Staff; Site Manager	As appropriate after BoM Severe Weather Warning or Severe Thunderstorm warning is issued in conjunction with available rain radar information on the BoM web site.
<b>Observe:</b> Maintain observation of Coward Street entry driveway for flooding, and be prepared to cease operations and enact evacuation plan.	Site Manager	When heavy rainfall is occurring at site
<b>Prepare:</b> Move cars to higher locations within the site.	Operational staff	As appropriate after BoM Severe Weather Warning or Severe Thunderstorm warning is issued in conjunction with available rain radar information.
<b>Prepare:</b> Advise staff and customers on site to remain within site office.	Operational staff	When heavy rainfall is occurring at site, or if heavy rain is imminent based on a Detailed Severe Thunderstorm Warning issued by the BoM, or rain radar information.



Flood Risk Management Plan  
Hertz Car Rental –  
296 Coward Street Mascot

### A.3. Respond – During Flooding

#### Triggers:

- Visible flooding within the site or on Coward Street above gutter level; or
- Very heavy rainfall on site

ACTION	WHO
<b>Cease operations</b> on site and close gates to Coward Street to prevent entry/exit.	Site Manager
Under no circumstances are staff to drive through floodwaters at any depth, or to put personal safety at risk to prevent damage to vehicles.	All Staff
<b>Evacuate:</b> All people on site to proceed to high ground within site office and remain for duration of flooding unless otherwise advised by emergency services personnel.	All personnel and customers
<b>Advise</b> operational staff in the area that the site is temporarily closed.	Admin staff
<b>Follow</b> advice of emergency services.	All personnel and customers
<b>Monitor</b> flooding visually and from available online sources (BoM, news sources, social media etc.)	Anyone on the premises

# NEVER DRIVE, RIDE OR WALK THROUGH FLOODWATER

See A.5 below for Emergency Contacts





#### A.4. Recover – After Flooding Recedes

##### Triggers:

- After rainfall has ceased AND floodwaters has receded below the kerb level in Coward Street.

ACTION	WHO	WHEN
Ascertain the safety and whereabouts of all staff.	Site Manager	After rainfall has ceased AND floodwaters has receded below the kerb level in Coward Street.
Before resuming operations, undertake an OH&S risk assessment and identify any hazards that have been created, particularly with regards to utilities (electricity, gas, water, sewage etc.).	Site Manager	After rainfall has ceased AND floodwaters has receded below the kerb level in Coward Street.
Take photos of water marks and damage. Contact insurer for assessment if necessary.	Staff as appropriate.	Before operations resume.
Assess whether clean-up or repair operations are required and enact clean-up plan where safe to do so.	Staff as appropriate according to training and relevant expertise.	Before operations resume.
Resume site operations and open gate.	Site Manager	Once the OH&S risk assessment is complete and it is deemed safe to do so.
Maintain observations of weather conditions and news in case flooding resumes.	Site Manager	Ongoing
Restock Emergency Kit	Administrative staff	Following clean-up
Review flood actions and debrief with staff, amend FEMP where necessary. See Appendix B.	Site Manager	Following resumption of normal functioning
Evaluate storage procedures and revise as necessary.	Site Manager	Following resumption of normal functioning



Flood Risk Management Plan  
Hertz Car Rental –  
296 Coward Street Mascot

### A.5. Emergency Contacts

ORGANISATION/POSITION	NAME	PHONE NUMBER
Ambulance/ Police/ Fire	n/a	000
SES		132 500 www.ses.nsw.gov.au
Site Manager		
Regional Operations Manager		
Water and Sewage		
Electricity		
Gas		

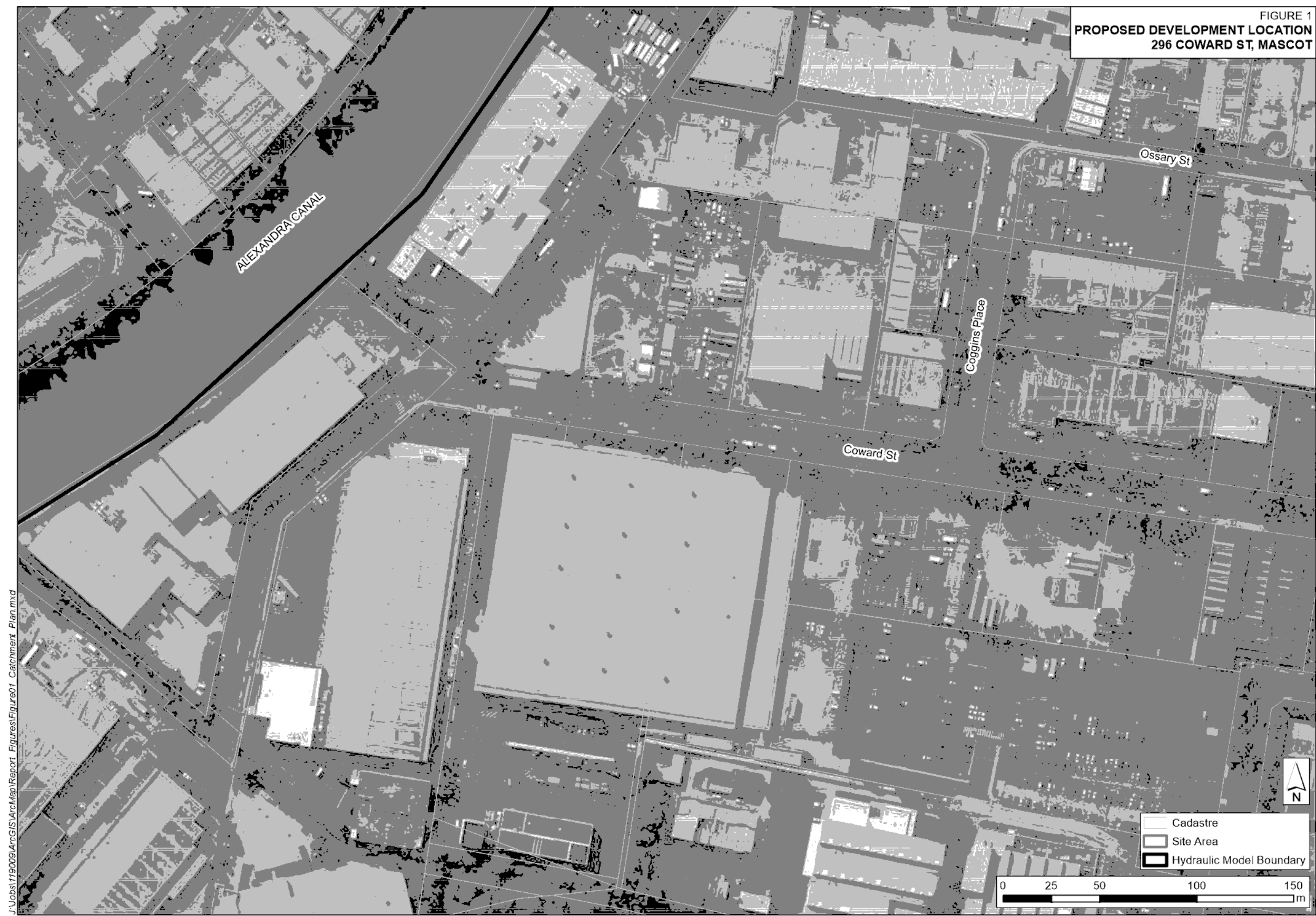


## APPENDIX B. FLOOD EMERGENCY MANAGEMENT PLAN REVIEW

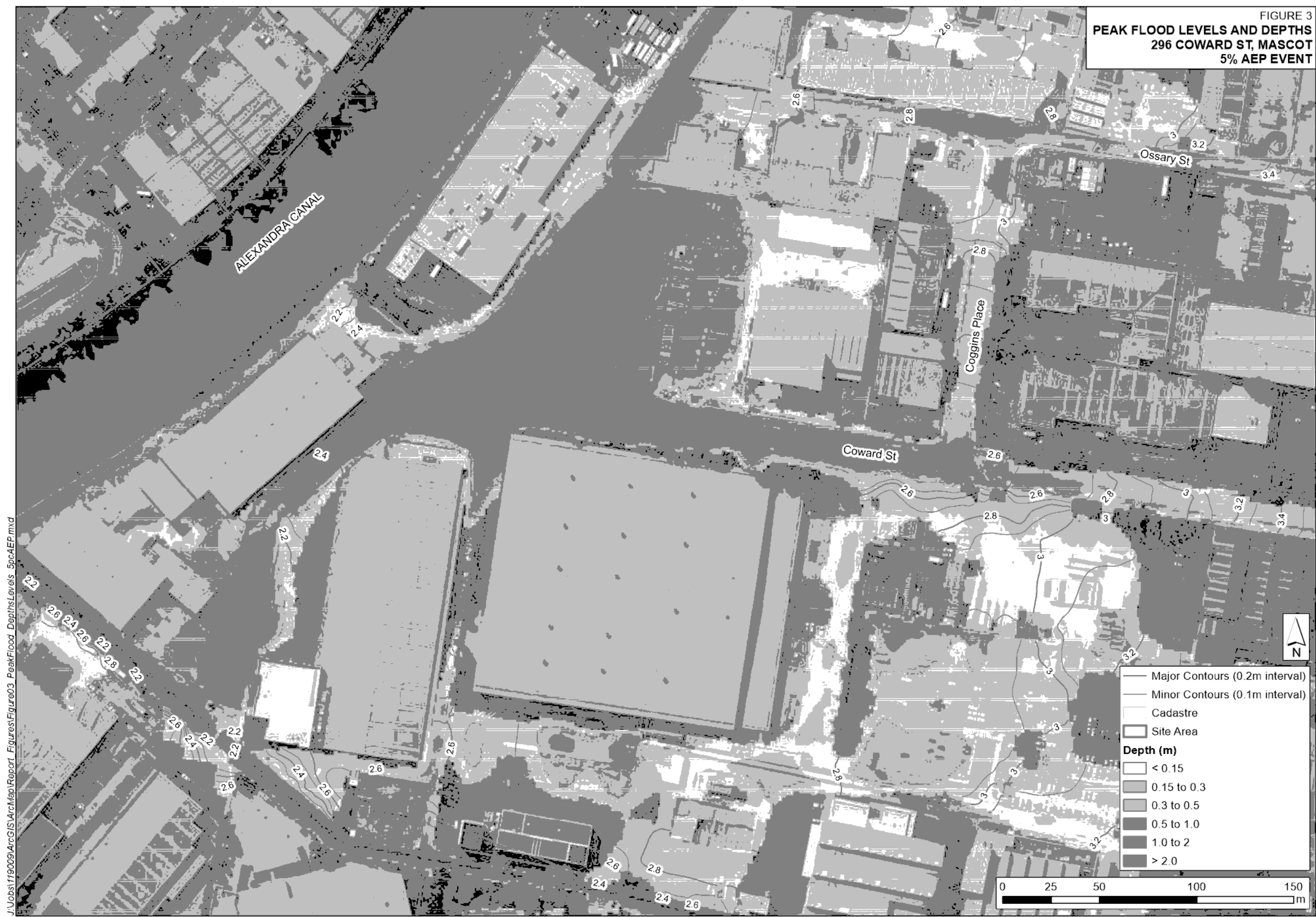
This Flood Emergency Management Plan is to be reviewed at least annually, as well as following flood events and when circumstances change. Regular reviews are required to ensure the Plan works as it should, and to account for any change in risks, key personnel and contact details.

Details of the review are to be recorded in the table below:

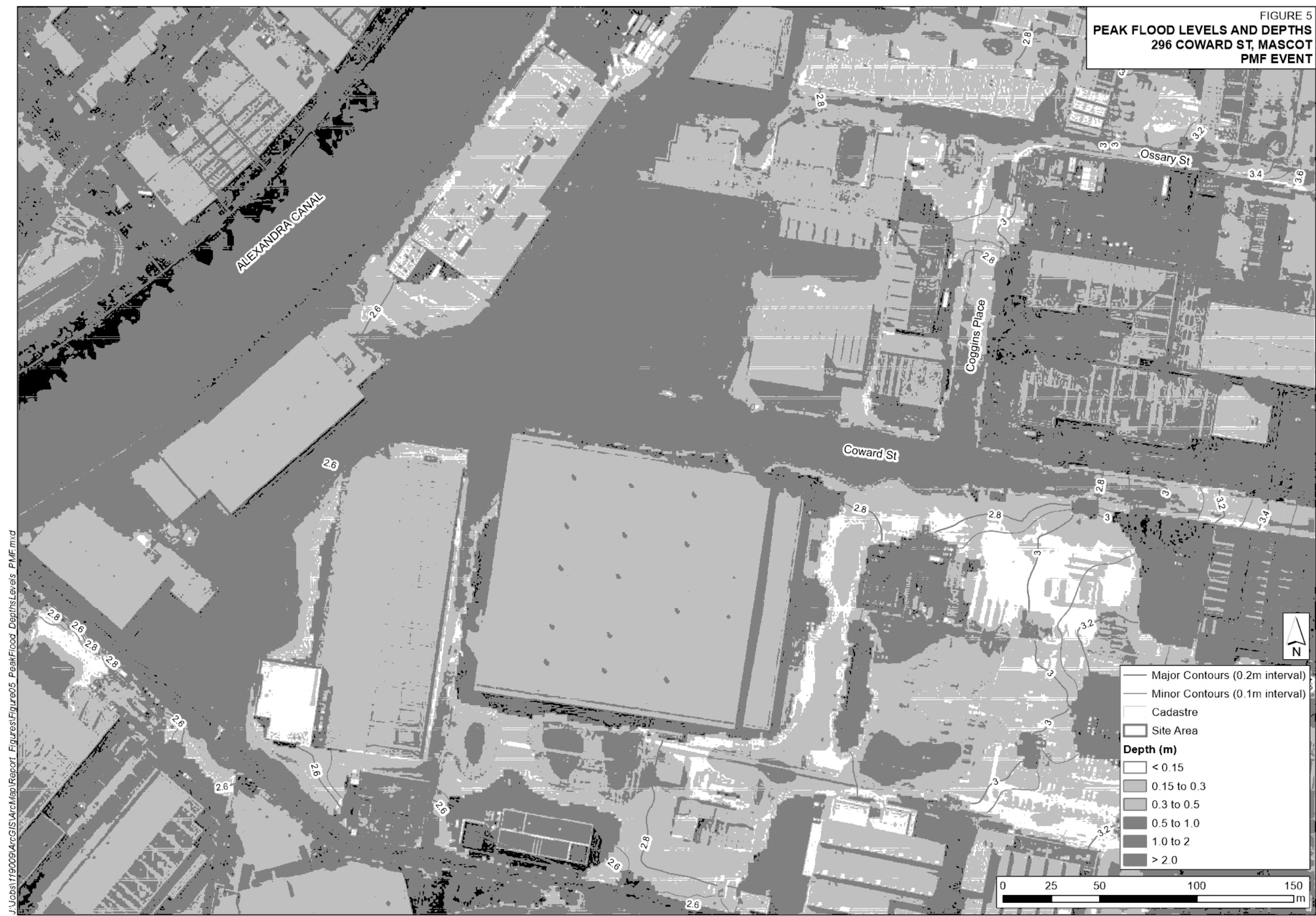
Review Date	Reason for Review	Any Changes Made (and description if relevant)



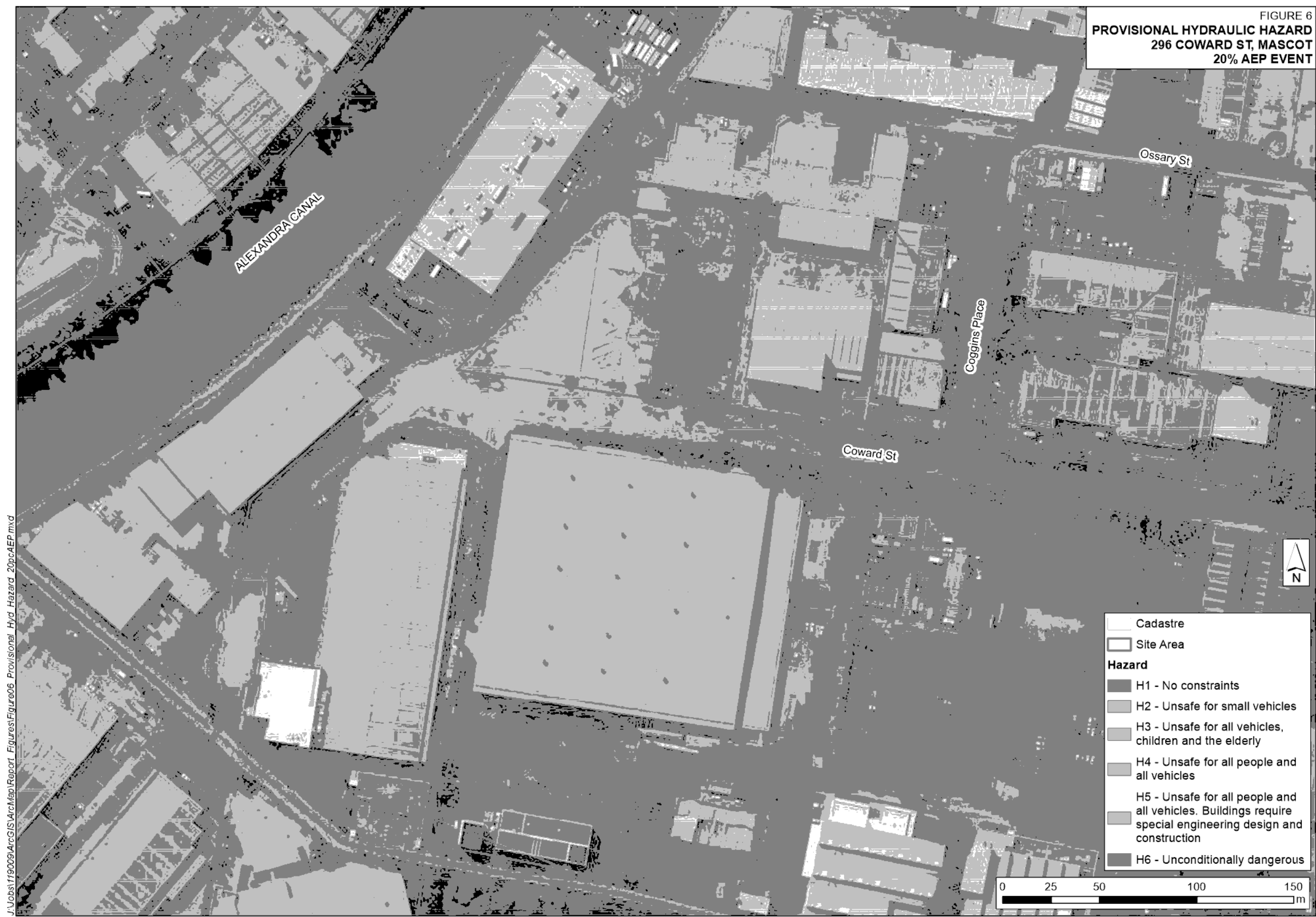


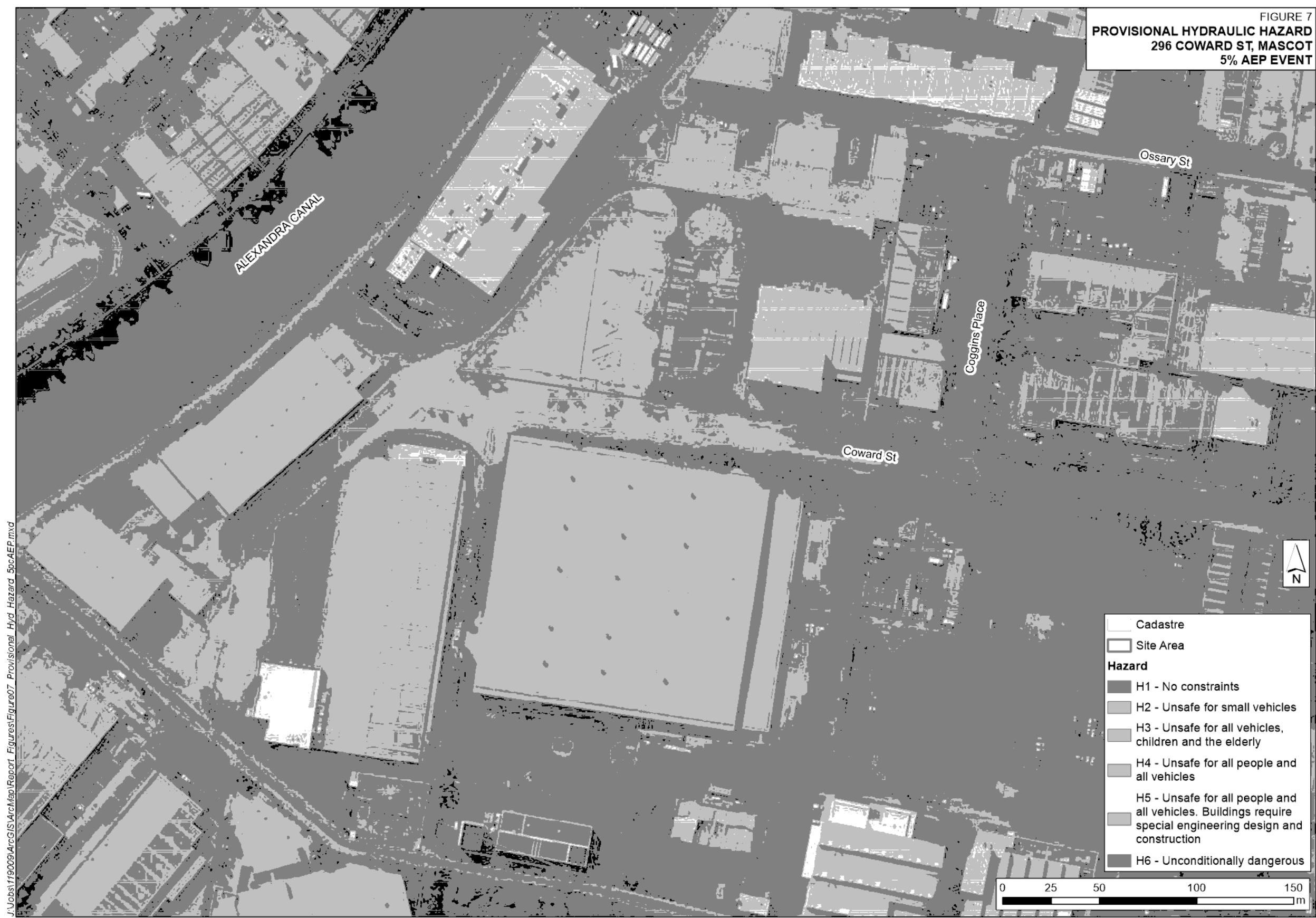


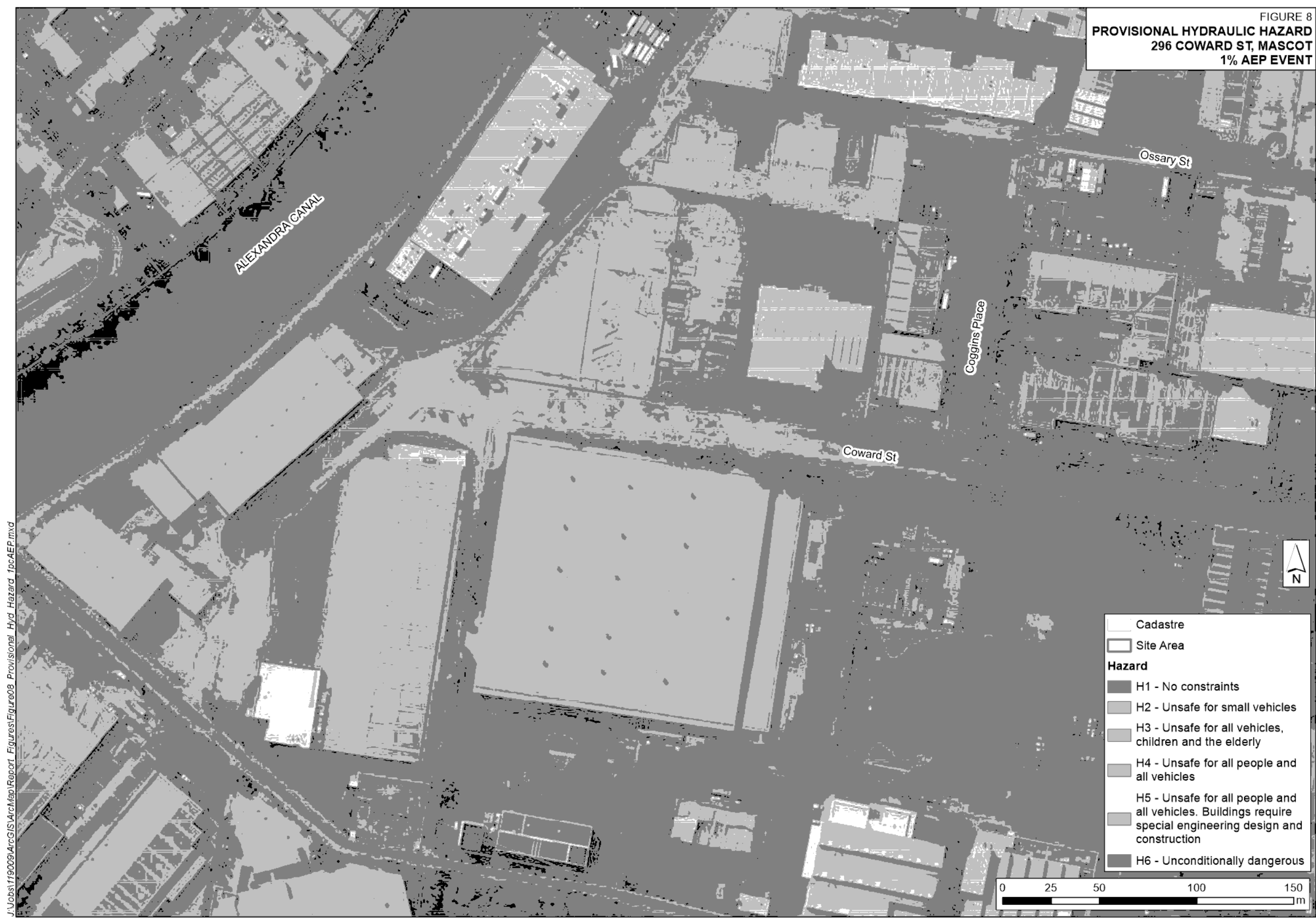


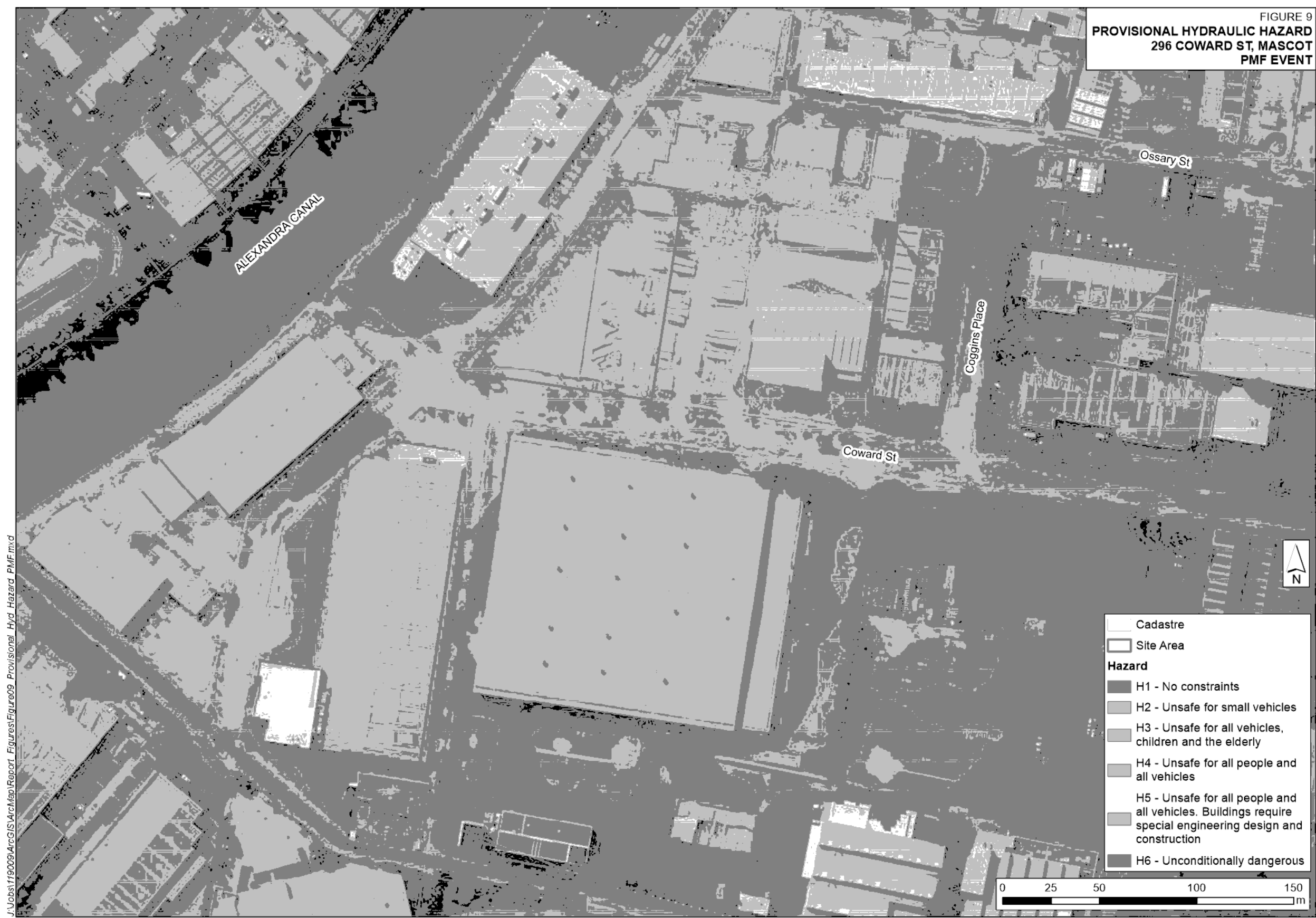


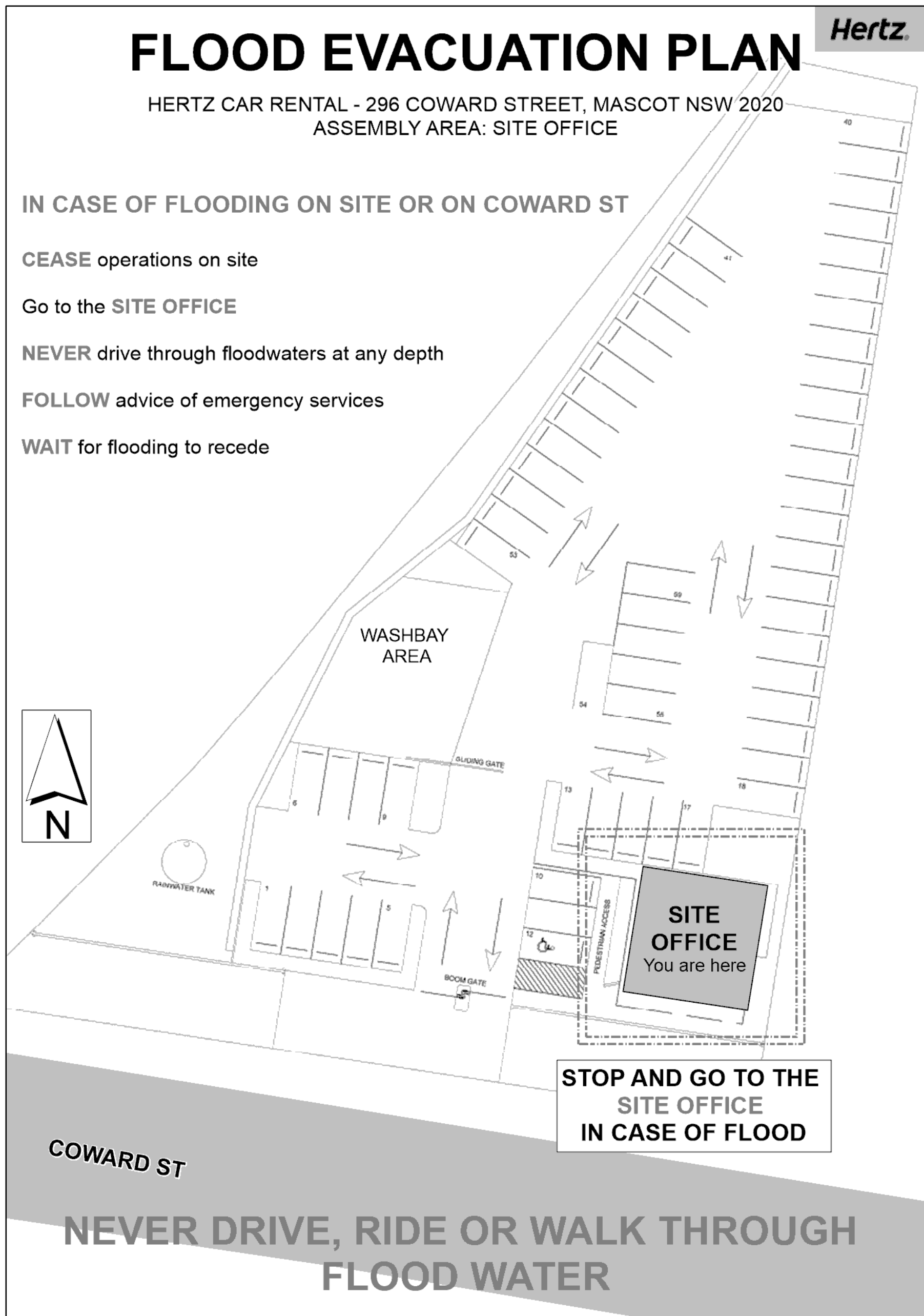






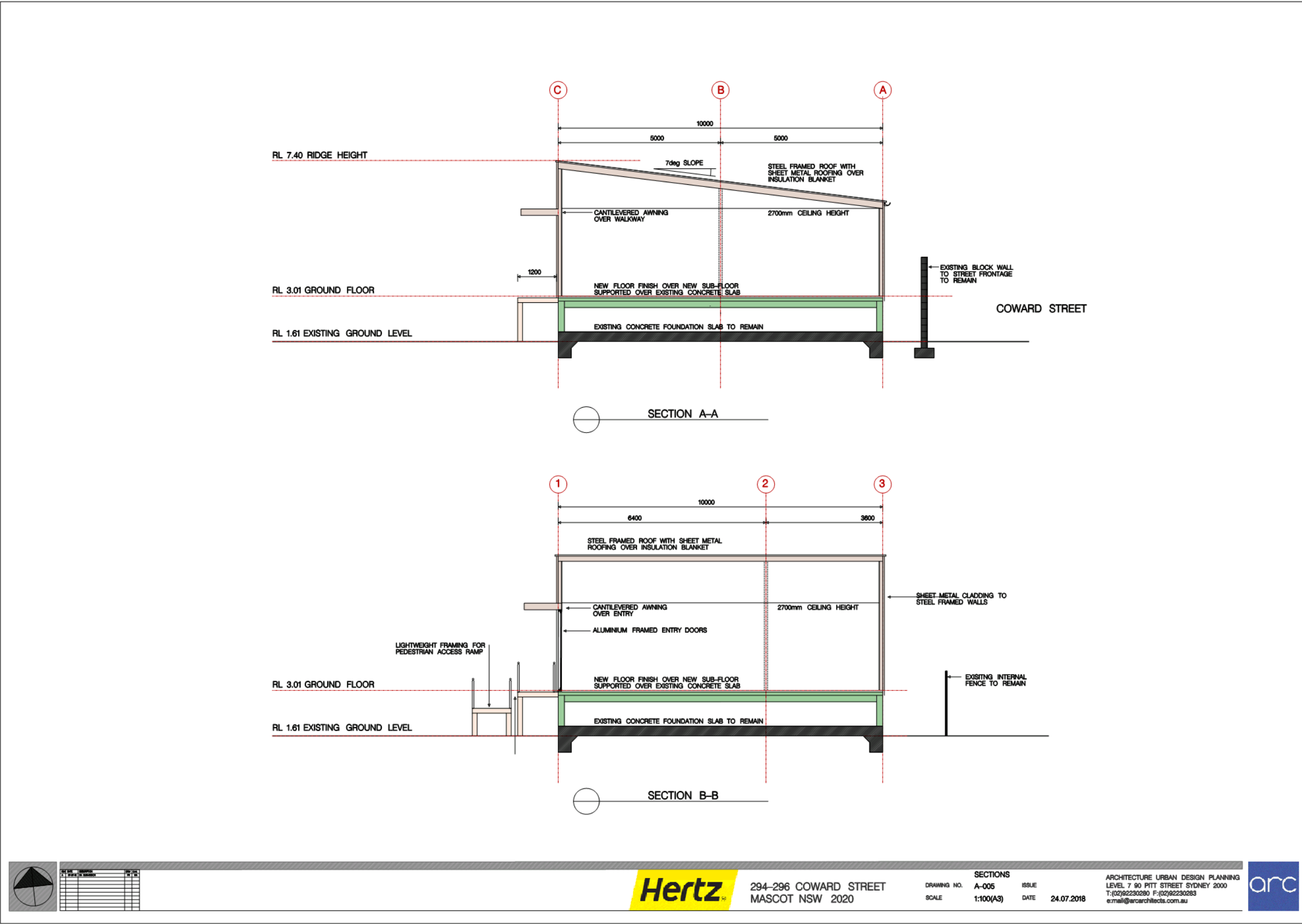


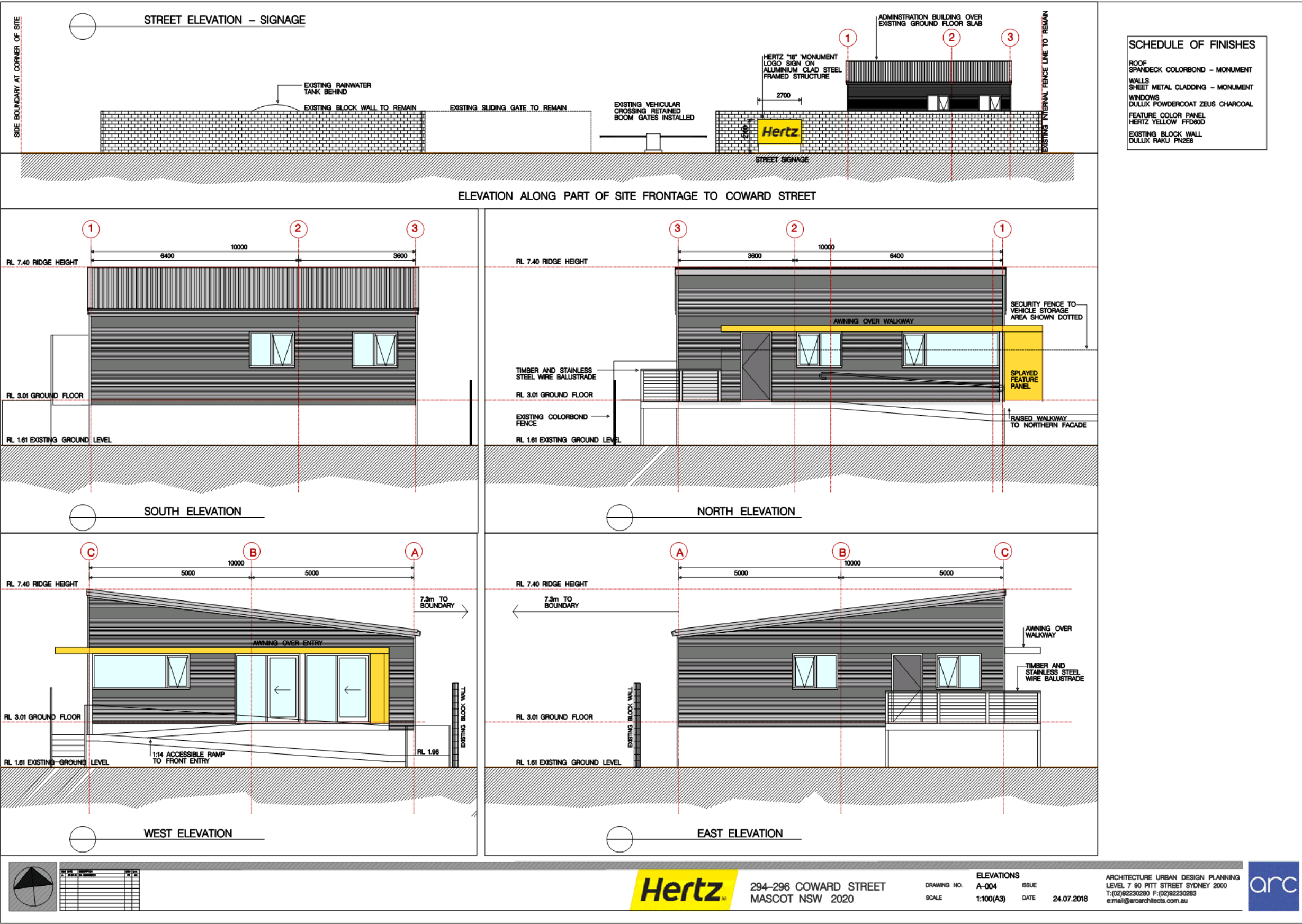




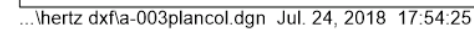














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**Bayside Local Planning Panel**

**11/06/2019**

Item No	<b>6.5</b>
Application Type	Development Application
Application No	DA-2018/214
Lodgement Date	17/08/2018
Property	<b>22-26 Keats Avenue, Rockdale</b>
Ward	Bexley
Owner	Infinite Blue Enterprises Pty Ltd
Applicant	CD Architects
Proposal	Integrated Development - Demolition of existing structures and construction of an eight (8) storey mixed use development comprising fifty one (51) residential apartments, three (3) commercial tenancies, three (3) levels of basement carparking and a roof top terrace.
No. of Submissions	9 and a petition containing 21 signatures
Cost of Development	\$14,015,722.00
Report by	Michael McCabe, Director City Futures

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**Officer Recommendation**

1. That the Bayside Local Planning Panel exercising the functions of the Council as the consent authority pursuant to s4.16 of the Environmental Planning and Assessment Act 1979 do not approve a variation to the building height standard prescribed by cl4.3 of the Rockdale Local Environmental Plan 2011, as it is not satisfied that the applicant's request has adequately addressed the matters required to be demonstrated by cl4.6 of that Plan, and the proposed development would not be in the public interest because it is not consistent with the objectives of that particular standard and the proposed variation to cl 4.3 – Height of Buildings is not permitted under cl4.6(8)(ca).
  2. That development application DA-2018/214 for Integrated Development – Demolition of existing structures and construction of an eight (8) storey mixed use development comprising fifty one (51) residential apartments, three (3) commercial tenancies, three (3) levels of basement car parking and a roof top terrace at 22-26 Keats Avenue Rockdale be REFUSED for the following reasons:
    - a. 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 4.3 of the Rockdale Local Environmental Plan 2011 relating to building height.
    - b. Pursuant to the provisions of Section 4.15(1)(a)(i) and (iii) of the Environmental Planning and Assessment Act 1979, the proposal does not satisfy the Design Quality Principles within Schedule 1 of State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development, Part 4.2 - Streetscape and Site Context, Part 5.2 - Residential Flat Buildings, Part 5.3 - Mixed Use and Part 7.5 - Rockdale Town Centre in that the proposed
-

development contains insufficient setbacks from the southern boundary to suitably regulate the bulk and scale of the building, to maintain the amenity of neighbouring residential development and to respond to the local context.

- b. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposal is unsatisfactory with respect to Clause 4.6(8)(ca) of Rockdale Local Environmental Plan 2011 in that the development exceeds the 25m building height limit and does not provide demonstrable public benefits.
  - c. Pursuant to the provisions of Section 4.15(1)(a)(i) and (iii) of the Environmental Planning and Assessment Act 1979, the proposal is inconsistent with the requirements of Part 3E - Deep Soil Zones of the Apartment Design Guide.
  - d. Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposal does not satisfy Part 4.6 Car Parking, Access and Movement of Rockdale Development Control Plan 2011 as the design of the circulation area in the basement results in vehicular conflicts and the use of the rear lane is not suitable for vehicular manoeuvring due to its insufficient width.
  - e. Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposal does not satisfy Part 4.5.2 Social Equity - Equitable Access of Rockdale Development Control Plan 2011 in that the pre and post adaptable unit plans for 403, 503 and 603 are inconsistent with the design of those apartments within the submitted floor plans and equitable access from those dwellings to the rooftop terrace (serviced by Lift A only) is unclear.
  - f. 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 impacts on the streetscape and adverse impacts on the adjoining residential building to the south.
  - g. The proposed development, pursuant to the provisions of Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, is not considered to be suitable for the site, in terms of the extent of gross floor area sought, inadequate building setbacks and the likely associated impacts upon the streetscape and neighbouring properties.
  - h. Having regard to the issues raised in submissions received by Council in opposition to the proposed development, pursuant to the provisions of Section 4.15(1)(d) of the Environmental Planning and Assessment Act 1979, the proposal results in unacceptable impacts on adjoining /nearby properties and the streetscape.
  - i. 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.
3. That the objectors be advised of the Panel's decision.
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## Location Plan



## Attachments

- 1 Planning Report [↓](#)
- 2 Site Plan [↓](#)
- 3 Elevations [↓](#)
- 4 Bayside Design Review Panel Minutes [↓](#)
- 5 Clause 4.6 - Building Height [↓](#)
- 6 SRV Truck Turning Paths [↓](#)



# BAYSIDE COUNCIL

## Planning Assessment Report

### Application Details

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<b>Application Number:</b>	DA-2018/214
<b>Date of Receipt:</b>	17 August 2018
<b>Property:</b>	22 Keats Avenue, ROCKDALE (Lot 10 DP 6311) 26 Keats Avenue, ROCKDALE (Lot 13 DP 6311)
<b>Owner(s):</b>	Infinite Blue Enterprises Pty Ltd
<b>Applicant:</b>	CD Architects
<b>Proposal:</b>	22-26 Keats Avenue, ROCKDALE NSW 2216 - Integrated Development - Demolition of existing structures and construction of an eight (8) storey mixed use development comprising fifty one (51) residential apartments, three (3) commercial tenancies, three (3) levels of basement carparking and a roof top terrace
<b>Recommendation:</b>	Refused
<b>No. of submissions:</b>	9 and petition containing 21 signatures
<b>Author:</b>	Patrick Nash
<b>Date of Report:</b>	21 May 2019

### Key Issues

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The key issues related to this application are:

- The site is not subject to FSR controls. Therefore, density is regulated by height, setbacks and ADG controls. The proposed setbacks to the southern boundary are considered to be insufficient to regulate the visual bulk and scale of the building as viewed from the streetscape and the adjoining residential flat building (balconies and windows to habitable areas) at No.28-30 Keats Avenue.
- The non-compliance with the building height development standard within Clause 4.3 of Rockdale LEP 2011. The subject site has an allowable height limit of 22m. However, in accordance with Clause 4.3(2A), a 3m bonus is available because the site is larger than 1000m<sup>2</sup>. This allows for a 25m height limit, whereas the proposal extends up to 29.15m. Clause 4.6(8)(ca) stipulates that clause 4.6 cannot be used to exceed the 25m height limit, unless it is for a demonstrable public benefit. It is Council's view that the height breach is inappropriate, and there are inadequate public benefits associated with the proposed development. Consequently, the submitted clause 4.6 exception cannot be supported.
- Unsatisfactory resolution of the ground floor plan with respect to the loading areas. The width of the lane adjacent to the eastern boundary is not suitable for vehicular manoeuvring and results in insufficient room to support the swept paths of a SRV.
- Unsatisfactory basement car parking layout which contains vehicular conflicts between oncoming vehicles around the sharp turns.

## Recommendation

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1. THAT the Bayside Local Planning Panel exercising the functions of the Council as the consent authority pursuant to s4.16 of the Environmental Planning and Assessment Act 1979 do not approve a variation to the building height standard prescribed by cl4.3 of the Rockdale Local Environmental Plan 2011, as it is not satisfied that the applicant's request has adequately addressed the matters required to be demonstrated by cl4.6 of that Plan, and the proposed development would not be in the public interest because it is not consistent with the objectives of that particular standard and the proposed variation to cl 4.3 – Height of buildings is not permitted under cl4.6(8)(ca).

2. That development application DA-2018/214 for Integrated Development – Demolition of existing structures and construction of an eight (8) storey mixed use development comprising fifty one (51) residential apartments, three (3) commercial tenancies, three (3) levels of basement car parking and a roof top terrace at 22-26 Keats Avenue Rockdale be REFUSED for the following reasons:

1. 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 4.3 of the Rockdale Local Environmental Plan 2011 relating to building height.
2. Pursuant to the provisions of Section 4.15(1)(a)(i) and (iii) of the Environmental Planning and Assessment Act 1979, the proposal does not satisfy the Design Quality Principles within Schedule 1 of State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development, Part 4.2 - Streetscape and Site Context, Part 5.2 - Residential Flat Buildings, Part 5.3 - Mixed Use and Part 7.5 - Rockdale Town Centre in that the proposed development contains insufficient setbacks from the southern boundary to suitably regulate the bulk and scale of the building, to maintain the amenity of neighbouring residential development and to respond to the local context.
3. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposal is unsatisfactory with respect to Clause 4.6(8)(ca) of Rockdale Local Environmental Plan 2011 in that the development exceeds the 25m building height limit and does not provide demonstrable public benefits.
4. Pursuant to the provisions of Section 4.15(1)(a)(i) and (iii) of the Environmental Planning and Assessment Act 1979, the proposal is inconsistent with the requirements of Part 3E - Deep Soil Zones of the Apartment Design Guide.
5. Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposal does not satisfy Part 4.6 Car Parking, Access and Movement of Rockdale Development Control Plan 2011 as the design of the circulation area in the basement results in vehicular conflicts and the use of the rear lane is not suitable for vehicular manoeuvring due to its insufficient width.
6. Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposal does not satisfy Part 4.5.2 Social Equity - Equitable Access of Rockdale Development Control Plan 2011 in that the pre and post adaptable unit plans for 403, 503 and 603 are inconsistent with the design of those apartments within the submitted floor plans and equitable access from those dwellings to the rooftop terrace (serviced by Lift A only) is unclear.
7. 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

- impacts on the streetscape and adverse impacts on the adjoining residential building to the south.
8. The proposed development, pursuant to the provisions of Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, is not considered to be suitable for the site, in terms of the extent of gross floor area sought, inadequate building setbacks and the likely associated impacts upon the streetscape and neighbouring properties.
  9. Having regard to the issues raised in submissions received by Council in opposition to the proposed development, pursuant to the provisions of Section 4.15(1)(d) of the Environmental Planning and Assessment Act 1979, the proposal results in unacceptable impacts on adjoining /nearby properties and the streetscape.
  10. 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.
3. THAT the objectors be advised of the Panel's decision.

## Background

### History

#### Previous applications

- DA-2014/104 - Council approved a DA for demolition of the existing structures and construction of a 4 storey mixed use development comprising of 1 retail premises, 8 residential units, 11 car spaces and roof terrace at 22 Keats Avenue, Rockdale.
- PDA-2015/34 - Pre DA advice was issued by Council on 2 July 2015 in relation to a proposal for construction of a seven (7) storey mixed use development comprising commercial unit, seventy (70) room boarding house and basement parking at 24-26 Keats Avenue.  
PDA-2018/3 - Pre DA advice was issued on 16 March 2018 in relation to a proposal for construction of an eight (8) storey mixed use development comprised of ground floor commercial; two basement level car parks; 51 residential units and a rooftop communal open space at 22-26 Keats Avenue, Rockdale.
- PDA-2018/3 - Pre DA advice was issued on 16 March 2018 in relation to a proposal for construction of an eight (8) storey mixed use development comprised of ground floor commercial; two basement level car parks; 51 residential units and a rooftop communal open space at 22-26 Keats Avenue, Rockdale.

#### Subject DA

A summary of the development application history is provided below:

- 17 August 2018 - The subject DA was submitted to Council.
- 28 August 2018 - The subject DA was publicly notified and advertised for a period of 30 days in accordance with the requirements of RDCP 2011.
- 3 September 2018 - Various referrals were sent to external agencies.
- 1 November 2018 - The application was reviewed by Council's Design Review Panel (DRP).
- 16 November 2018 - Council sent an additional information letter to the applicant. The matters raised included: Unreasonable visual bulk and scale impacts to the neighbouring residential development to the south, insufficient solar access, the height breach is not supported and the public benefits of the proposal are inadequate, design of deep soil zones covered by hard



surfaces, natural ventilation, various concerns raised by the DRP, requirement for a Stage 2 Detailed Site Investigation and traffic/parking/access/stormwater management issues.

- 25 February 2019 - Council advised the applicant that the preliminary concept designs provided in response to the concerns raised would not be supported due to the insufficient setbacks proposed from the southern boundary. The applicant was requested to provide a final set of amended plans to be considered by Council, and eventually, the Bayside Local Planning panel.
- 27 March 2019 - The applicant submitted amended plans. These plans are relied upon for assessment in this report and did not require re-notification in accordance with RDCP 2011.
- 2 April 2019 - The applicant submitted a Stage 2 DSI and planning response letter to accompany the amended plan submission.
- 30 April 2019 - The applicant provided additional information with respect to stormwater management.

### **Proposal**

Council is in receipt of a development application DA-2018/214 at 22-26 Keats Avenue, Rockdale which seeks consent for demolition of existing structures and construction of an eight (8) storey mixed use development comprising fifty one (51) residential apartments, three (3) commercial tenancies, three (3) levels of basement car parking and a roof top terrace.

The development incorporates 13 x 1 bedroom apartments, 33 x 2 bedroom apartments and 5 x 3 bedroom apartments. Vehicular access to the basement levels is attained via a proposed vehicular crossing on Keats Avenue. There is a loading dock for 2 small rigid vehicles proposed off the narrow lane way on the eastern side of the site.

Externally, the building is proposed to contain a mixture of aluminium cladding and composite panels, light grey concreted finish, metal cladding, painted render and glass balustrades. The submitted 3D view of the proposed development is re-produced below for reference:



Figure 1 - Photomontage as viewed from Hegerty Street

#### **S4.46 - Development that is Integrated Development**

The proposal includes excavation works for a proposed car stacker pit on site that will transect the water table and require temporary dewatering during the construction phase. The proposal is therefore Integrated Development pursuant to Section 91A of the Environmental Planning and Assessment Act 1979, and requires approval from the NSW Office of Water. The NSW Office of Water have issued their General Terms of Approval.

#### **Site location and context**

The subject site consists of four allotments and their amalgamation. The sites are commonly known as 22-26 Keats Avenue, Rockdale, and are legally described as Lots 10-13 in Deposited Plan 6311. The subject site located on the northern end of the block shared with a property to the south, 28-30 Keats Avenue, which is bounded to the north by Hegerty Street, to the east by a service laneway, to the west by Keats Avenue and to the south by another laneway. Existing vehicle access to the properties are provided off Hegerty Street or Keats Avenue. The amalgamated site provides for a frontage of 33.87 metres to Hegerty Street to the north and the shared boundary with 28-30 Keats Avenue to the south. The side boundaries both measure 36.58 metres. The overall site area is 1,228m<sup>2</sup>.

Located on the subject site are the following:

- Lot 10: brick warehouse
- Lots 11-13: single storey brick dwelling houses. Lots 11 and 13 have a rear fibro and metal shed

respectively.

The site is adjoined to the rear by a six storey mixed use development comprising a commercial ground floor unit with residential units above at 28-30 Keats Avenue. The building has recently been constructed. To the north across Hegerty Street are eight and ten storey shop top housing developments at 19-21A Hegerty Avenue and 555 Princes Highway respectively. To the east across Keats Avenue are older four storey flat buildings at 21-23 and 25 Keats Avenue. Development in the area is mixed in its form comprising newer mixed use development (ground floor commercial and residential above), older flat buildings, and commercial/industrial development along Princes Highway.



Figure 2: 22 Keats Avenue



Figure 3: 24 to 26 Keats Avenue

## 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 applicant has submitted a BASIX Certificate for the proposed development. The Certificate number is 945370M. No concerns are raised in this respect.

##### **State Environmental Planning Policy No 55—Remediation of Land**

In accordance with the requirements of SEPP 55, a Detailed Environmental Site Investigation Report has been submitted. The report concludes that the site is suitable for the proposed land use and Council's Environmental Scientist has accepted the recommendations contained within the report as being satisfactory. Therefore, in accordance with Clause 7 (1)(b) of SEPP 55, Council is satisfied that the land is suitable for the purpose for which the development is proposed to be carried out.

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

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

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

The proposal has been referred to the Design Review Panel on 1 November 2018 who have raised the following key concerns:

- The treatment and lack of setback to the south elevation which the Panel does not support. The Panel considers that the lack of setback cannot be justified in the context, noting that there is no possibility of a streetwall typology for the site to the south which is already developed. As a result the design should provide for an improved outlook for the apartments of the development to the south. The Panel notes that it may be possible to justify a nil setback with sufficient elevational articulation (at least equivalent to the other elevational treatments) west of the current midway recess. East of this recess the Panel considers a setback of at least three metres or more should be required in order to improve solar access to and general outlook from the apartments in the middle and east of the development to the south.
- The depth of the recess in the eastern elevation which provides for cross ventilation but is narrow and should have a wider throat to the recess as occurs on the western elevation.
- The noted deep soil area is reduced by the extent of hard landscaping and paving and may not be compliant as a result.
- The apartment layout for the north eastern corner apartment on level 7 which could be reconfigured to improve solar access to the living areas.

The applicant has provided amended plans which generally resolve the above mentioned issues, with the exception of the building setbacks to the southern boundary. This is discussed in greater detail later in this report.

*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 as indicated below:

Principle 1 – Context and Neighborhood Character

Principle 2 – Built Form and Scale

Principle 3 - Density

The bulk and scale of the proposal adjacent to the southern boundary is inappropriate to the existing and desired future character of the street and neighbouring residential building at No.28-30 Keats Avenue. The proposed southern interface with the neighbouring development is unsatisfactory. As the proposal is not subject to an FSR control, improved setbacks are required to manage the bulk and scale of the development and provide improved spacing in between buildings.

Principle 4 - Sustainability

A compliant BASIX Certificate has been provided which is acceptable. Natural cross ventilation for the proposed apartments is compliant with the ADG requirements.

Principle 5 – Landscape

The development provides two (2) deep soil zones on the eastern side of the building adjacent to the laneway which are separated by a SRV loading dock area. The swept path diagrams for a 6.4m SRV truck entering/exiting the designated spaces indicates that these vehicles would have to drive across the deep soil area. This outcome is unsatisfactory and is unable to be supported by Council.

Principle 6 – Amenity

The amenity within the development itself is generally satisfactory. However, as discussed throughout this report, the external amenity impacts for the neighbouring residential building to the south are considered to be adverse and are not supported.

Principle 7 - Safety

No safety issues have been identified.

Principle 8 - Housing Diversity and Social Interaction

The proposed development provides a suitable dwelling mix and social interaction is encouraged through the provision of communal areas.

Principle 9 – Aesthetics

The aesthetics of the development are generally supported.

*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 and Public Open Space	Communal open space has a minimum area equal to 25% of the site area. 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.	405m <sup>2</sup> or 33% of the site area provides as communal open space.	Yes
3E - Deep Soil Zones	7% of the site area with 3m dimensions for sites between 650m <sup>2</sup> - 1500m <sup>2</sup> .	<p>88m<sup>2</sup> (7% of the site) of deep soil is shown adjacent to the lane way on the eastern side of the site.</p> <p>However, the two deep soil zones shown are separated by a SRV loading dock area. The swept path diagrams for a 6.4m SRV truck entering/exiting the designated spaces indicates that these vehicles would have to drive across the deep soil area which is unsatisfactory.</p>	No

3F - Visual Privacy	Min separation - side & rear boundaries:			The non-habitable elevation (i.e - blank wall) to the southern boundary does not provide the required 3m/4.5m setbacks. This is discussed in greater detail later in this report.	No
	Building height	Habitable rooms and balconies	Non habitable rooms		
	Up to 12m (4 storeys)	6m	3m		
	Up to 25m (5-8 Storeys)	9m	4.5m		
	Over 25m (9+storeys)	12m	6m		
3J - Bicycle and car parking	As per Guide to Traffic Generating Developments, or per council requirement, whichever is less.  Parking provided off street.				Yes
4A - Solar and Daylight Access	<p>Living rooms + POS of at least 70% of apartments receive min 2hrs direct sunlight b/w 9am &amp; 3 pm mid-winter.</p> <p>Max 15% apartments receive no direct sunlight b/w 9am &amp; 3pm mid-winter</p>			<p>A total of 36/51 apartments or 70% would receive a minimum of 2 hours sunlight between 9am and 3pm on June 21st. Some of the sunlight attained is via windows on oblique angles and/or skylights.</p> <p>A total of 2 units (3.9%) receive no direct sunlight in mid-winter.</p>	<p>Yes</p> <p>Yes</p>
4B - Natural Ventilation	Min 60% of apartments are naturally cross ventilated in the first nine storeys of the building.			36 apartments (70%) achieve natural cross ventilation.	Yes

4C - Ceiling Heights	Minimum ceiling heights:		There are inconsistencies in the plans with respect to the finished floor levels. The northern part on the Level 1 Floor Plan is detailed as being RL15.39. The elevations and section however state RL15.58. Should RL15.58 be correct, a 3.3m ceiling height could be achieved for the ground floor commercial tenancies.  The design of the development is capable of achieving the required floor to ceiling heights for the residential component.	Unclear  Yes										
	Habitable	2.7m												
	Non-habitable	2.4m												
	Two storey apartments	2.7m main living 2.4m first floor, area < 50% of apartment area												
	Attic spaces	1.8m at edge 30deg min slope												
	Mixed use area	3.3m for ground and first floor												
4D – Apartment size and layout	Minimum internal areas: <table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>35m<sup>2</sup></td></tr><tr><td>1 bedroom</td><td>50M<sup>2</sup></td></tr><tr><td>2 bedroom</td><td>70m<sup>2</sup></td></tr><tr><td>3 bedroom</td><td>90m<sup>2</sup></td></tr></table> Internal areas includes only one bathroom. Additional bathrooms increase area by 5m <sup>2</sup> each.  Further bedrooms increase minimum internal area by 12m <sup>2</sup> each.		Apartment type	Minimum internal area	Studio	35m <sup>2</sup>	1 bedroom	50M <sup>2</sup>	2 bedroom	70m <sup>2</sup>	3 bedroom	90m <sup>2</sup>	The sizes of the proposed apartments all achieve the minimum size requirements.	Yes
Apartment type	Minimum internal area													
Studio	35m <sup>2</sup>													
1 bedroom	50M <sup>2</sup>													
2 bedroom	70m <sup>2</sup>													
3 bedroom	90m <sup>2</sup>													



4E – Private open space and balconies	Primary balconies as follows:			The design of the proposed balconies are compliant with the ADG area/depth requirements.	Yes
	Dwelling type	Minimum area	Minimum depth		
	Studio	4m <sup>2</sup>	-		
	1 bed	8m <sup>2</sup>	2m		
	2 bed	10m <sup>2</sup>	2m		
	3+ bed	12m <sup>2</sup>	2.4m		
	Min balcony depth contributing to the balcony area is 1m.				
4F – Common circulation and spaces	Max apartments off a circulation core on a single level is eight.			The proposal achieves this requirements. Two (2) lifts are proposed within the building.	Yes
4G – Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:			The extent of storage provided throughout the basement and within the individual apartments is generally compliant.	Yes
	Dwelling type		Storage size volume		
	Studio		4m <sup>2</sup>		
	1 bed		6M <sup>2</sup>		
	2 bed		8m <sup>2</sup>		
	3 bed		10m <sup>2</sup>		
	At least 50% of the required storage is located within apartment				

#### **Setbacks to the southern boundary**

The proposed setbacks to the southern boundary are considered to be insufficient to regulate the visual bulk and scale of the building. The primary outlook (habitable windows and balconies) of the neighbouring residential flat building at No.28-30 Keats Avenue face the subject site. The majority of the proposed southern elevation is a blank wall on zero setback. The view from an existing apartment at No.28-30 towards the subject site is shown in the images below for reference:



Figure 4 - View from existing balcony at No.28-30 Keats Avenue towards the subject site



Figure 5 - As above

It is acknowledged that the proposed development provides greater than required building setbacks from the eastern boundary (lane way). However, it is observed that these setbacks are generally required to ensure that a compliant amount of solar access is retained to the recently completed residential flat building at No.28-30 Keats Avenue.

The subject site does not have an applicable FSR. As a result, the building setbacks are vitally important to ensure that an appropriate building form is achieved in the context. The proposed setbacks to the southern boundary do not comply as discussed below:

- Part 3F Visual Privacy of the ADG specifies that non-habitable rooms are setback 3m (up to 4 storeys) and 4.5m (5-8 storeys). These setbacks are only provided in part, at the eastern end of the floor plate; and
- Control (3) in Part 7.5 – Local Edge of the Rockdale DCP 2011 states that a minimum 9m rear setback is to be provided where development shares a boundary with a residential property. Although it is at least somewhat arguable that the eastern boundary is the rear boundary, not the southern (depending on whether the frontage is taken to be Keats Avenue or Hegerty Street). In any case, the setback controls in Parts 5.2 and 5.3 of RDCP 2011 specify a 4.5m side setback for all levels above three storeys.

The relationship of the proposal to the neighbouring development (as viewed from Keats Avenue) to the south in the plan extract below:



The amended plan submission has improved the design of the building (in terms of the southern boundary interface). However, this aspect of the proposal remains unsatisfactory. The visual bulk and scale impacts of the proposed building are overbearing for the neighbouring residential apartments. It is considered that a blank wall on a common boundary is only likely to be approved in circumstances wherein it is anticipated that the neighbouring site would eventually re-develop and abut up to that wall.

In view of the above substantive design issues, refusal is recommended.

#### Rockdale Local Environmental Plan 2011

Relevant clauses	Compliance with objectives	Compliance with standard/provision
2.3 Zone B4 Mixed Use	Yes - see discussion	Yes - see discussion
4.3 Height of buildings	No - see discussion	No - see discussion
4.6 Exceptions to development standards	No - see discussion	No - see discussion
6.1 Acid Sulfate Soil - Class 5	Yes - see discussion	Yes - see discussion
6.2 Earthworks	Yes - see discussion	Yes - see discussion
6.4 Airspace operations	Yes - see discussion	Yes - see discussion
6.7 Stormwater	Yes - see discussion	Yes - see discussion
6.12 Essential services	Yes - see discussion	Yes - see discussion

#### 2.3 Zone B4 Mixed Use

The subject site is zoned B4 - Mixed Use under the provisions of Rockdale Local Environmental Plan 2011 (RLEP 2011). The proposal is defined as shoptop housing which constitutes a permissible development only with development consent. The objectives of the zone are:

- To provide a mixture of compatible land uses.
- To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.

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

#### 4.3 Height of buildings

The subject site has an allowable height limit of 22m. The site falls within Area I on the Height of Buildings Map. In accordance with Clause 4.3(2A), if the site area exceeds 1,000m<sup>2</sup> a bonus of 3 metres in height is gained. The site area is 1,228m<sup>2</sup>. The bonus 3 metres in height allows for a maximum of 25 metres. The proposed maximum height of buildings is 29.15m, being a variation of 4.15m. A clause 4.6 exception has been submitted by the applicant which is discussed below.

#### 4.6 Exceptions to development standards

As identified in Clause 4.3 above, the maximum allowable height is 25m inclusive of the 3m bonus in accordance with the provisions of Clause 4.3(2A). The proposed development has a maximum height of 29.15m to the top of the lift overrun. The extent of the breach is 4.15m or 16.6%. The non-compliant building elements relate to the lift overrun, various elements associated with the design of the roof top terrace area and the top 1.35m of eastern portion of apartment B703 on the level 7 floor plan. This is depicted in the height blanket drawing below:





Figure 6 - Drawing identifying the buildings elements in breach of the height limit

Importantly, it is noted that clause 4.6(8)(ca) states the following:

*(8) This clause does not allow development consent to be granted for development that would contravene any of the following:*

*(ca) clause 4.3 (2A), 4.4 (2A), (2B), (2C) or (2D), unless it is for a demonstrable public benefit, such as the provision of pedestrian links*

In other words, the provisions of clause 4.6 cannot be used to exceed the 25m height limit, unless it is for a demonstrable public benefit.

The applicant has addressed the above provisions with the following comments/proposal:

*Under Clause 4.6(8), the bonus under Clause 4.4(2C) cannot be varied unless a public benefit is demonstrated. In the submitted Clause 4.6 variation, we noted the proposed setback to the laneway surpasses Council's minimum requirements. The increased setback was to function as a public benefit as it is intended to be an area dedicated for the public to also enjoy. The space was to be landscaped and provided with seating opportunities, providing a space to encourage incidental interactions.*

*With the revised drawings, we submit to Council the additional setback to area of the laneway as a pedestrian right-of-way easement, with the exception of the vehicle crossing for the loading bay. Essentially, this will allow the public to use this space for their enjoyment while all maintenance will be required to be undertaken by the owner/developer. This does not change our offer of a public*

*benefit as originally lodged, however we seek to formalise this offer in the form of the easement as a 'public benefit'. The provision of the easement for this purpose will seek to assist in addressing a shortfall of green space and areas for members of the public to rest or relax on seating or interact with one another in the southern part of the Rockdale Town Centre.*

*Our intention is to update the landscape plan for this space once we have confirmation that the loading bays are supported by Council off the laneway. The landscape plan will assist in detailing our proposed treatment of the easement.*

Council has considered the public benefit offer and provides the following assessment:

- The existing narrow lane way adjoining the subject site to the east is not an identified area for public domain works/upgrades/linkages within the Rockdale Town Centre Public Domain Plan;
- There is already an existing public park (Subway Road Reserve) which is approximately 30-40m south of the subject site at the end of Keats Avenue. This area of open space provides similar benefits to those cited in the subject public benefit offer;
- The amenity of the space is questioned. It is positioned in between buildings adjacent to a narrow laneway and is interrupted by a loading dock. The swept path diagrams for a 6.4m SRV truck entering/exiting the designated loading dock indicates that these vehicles would have to drive across the adjacent deep soil/planting areas identified as being subject to a proposed pedestrian easement; and
- The indicative planting areas shown are in any case relied upon to satisfy the ADG deep soil requirements.

In view of the above, the public benefit offered is not sought by Council.

Given that there are insufficient public benefits associated with the development, the provisions of clause 4.6 to vary the height control cannot be used.

#### 6.1 Acid Sulfate Soil - Class 5

The site is identified as being affected by Class 5 acid sulfate soils. However, there is no adjacent (within 500m) land within Class 1,2,3 or 4. Accordingly, the development would be unlikely to lower the water table.

#### 6.2 Earthworks

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

#### 6.4 Airspace operations

The proposed development is affected by the Obstacle Limitation Surface (OLS) which is set at 51 metres to Australian Height Datum (AHD). The proposed building height is at 41 metres to AHD and in this regard, it is considered that the proposed development will have minimal adverse impact on the OLS and hence is acceptable with regards to this Clause.

**6.7 Stormwater**

The proposal involves the construction of an on site detention/retention system to manage stormwater. The proposed stormwater system has been approved by Council's development engineers and is consistent with this clause.

**6.12 Essential services**

Services will generally be available on the site. No further concerns are raised in this respect.

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

No relevant proposed instruments are applicable to this proposal.

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

The following Development Control Plan is relevant to this application:

**Rockdale Development Control Plan 2011**

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

Relevant clauses	Compliance with objectives	Compliance with standard/provision
4.1.1 Views and Vista	Yes	Yes
4.1.3 Water Management	Yes	Yes
4.1.4 Soil Management	Yes	Yes
4.1.9 Lot size and Site Consolidation - Mixed use	Yes	Yes
4.1.9 Lot size and Site Consolidation - isolated sites	Yes	Yes
4.2 Streetscape and Site Context - General	No - see discussion	No - see discussion
4.3.1 Open Space and Landscape Design - Mixed Use	Yes - see discussion	Yes - see discussion
4.3.2 Private Open Space - Residential Flat Building/Shoptop housing	Yes - see discussion	Yes - see discussion
4.3.3 Communal Open Space	Yes - see discussion	Yes - see discussion
4.4.1 Energy Efficiency - Retail, Commercial and Industrial Development	Yes	Yes
4.4.2 Solar Access - General Controls	Yes	Yes
4.4.2 Solar Access - Residential Flat Buildings and Shop Top Housing	Yes - see discussion	Yes - see discussion
4.4.3 Natural Lighting and Ventilation - Residential	Yes - see discussion	Yes - see discussion
4.4.5 Visual privacy	Yes	Yes
4.4.5 Acoustic privacy	Yes	Yes
4.4.5 Visual and Acoustic Privacy - Building Separation	No - see discussion	No - see discussion
4.4.6 Noise Impact	Yes	Yes
4.4.6 Noise Impact - Non-residential	Yes	Yes
4.4.7 Wind Impact	Yes	Yes
4.5.1 Social Equity - Housing Diversity and Choice	Yes - see discussion	Yes - see discussion
4.5.2 Social Equity - Equitable Access	No - see discussion	No - see discussion

<b>Relevant clauses</b>	<b>Compliance with objectives</b>	<b>Compliance with standard/provision</b>
4.6 Parking Rates - Shop-top Housing	No - see discussion	No - see discussion
4.7 Air Conditioning and Communication Structures	Yes	Yes
4.7 Waste Storage and Recycling Facilities	Yes	Yes
4.7 Service Lines/Cables	Yes	Yes
4.7 Laundry Facilities and Drying Areas	Yes	Yes
4.7 Letterboxes	Yes	Yes
4.7 Storage Areas	Yes	Yes
4.7 Hot Water Systems	Yes	Yes
5.3 Mixed Use - Side Setbacks	No - see discussion	No - see discussion
5.3 Mixed Use - Ground Level Uses	Yes	Yes
5.3 Mixed Use - Commercial	Yes	Yes
5.3 Mixed Use - Building Design	Yes	Yes
5.3 Mixed Use - Ground Floor Articulation	Yes	Yes
5.3 Mixed Use - Access to Premises	Yes	Yes
5.3 Mixed Use - Secured Access to Parking	Yes	Yes
7.5.1 Street Role - Service Laneway	Yes	Yes
7.5.1 Street Role - Centre Edge Residential	Yes	Yes
7.5.2 Local Edge	No - see discussion	No - see discussion
7.5.2 Laneway	Yes - see discussion	Yes - see discussion

#### 4.2 Streetscape and Site Context - General

The proposed development is unsatisfactory with respect to the controls in Part 4.2 of RDCP 2011 in that the design of the southern portion of the building relates poorly to the urban context and pattern of development on the neighbouring allotment.

#### 4.3.1 Open Space and Landscape Design - Mixed Use

The required rates of landscaped area and deep soil landscaping are superceded by the planning controls within SEPP 65/ADG.

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

The required private open space is superceded by the planning controls within SEPP 65/ADG.

#### 4.3.3 Communal Open Space

The communal open space controls within RDCP 2011 are superceded by the specific Communal open space requirements set out within Part 3D of the ADG.

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

The solar access controls within this part of RDCP 2011 are superceded by the requirements set out in Part 4A - Solar and daylight access of the ADG.

#### 4.4.3 Natural Lighting and Ventilation - Residential

The natural light and ventilation controls within this part of RDCP 2011 are superceded by the requirements set out in Part 4B and 4C of the ADG.

#### 4.4.5 Visual and Acoustic Privacy - Building Separation



Refer to previous building separation discussion under the ADG.

#### 4.5.1 Social Equity - Housing Diversity and Choice

Part 4.5 of RDCP 2011 contains objectives and controls that aim to ensure that apartments in mixed use developments are flexible, maximise housing choice and provide equality of access. The proposal is considered to satisfy the relevant objectives and requirements in that it provides an appropriate mix of one bedroom apartments (13), two bedroom apartments (33) and three bedroom apartments (5).

#### 4.5.2 Social Equity - Equitable Access

The following matters have been identified with respect to equitable access:

- The pre and post-adaptable unit plans for 403, 503 and 603 are inconsistent with the design of those apartments within the submitted floor plans; and
- Lift access to the rooftop terrace is provided by Lift A only. The path of travel from accessible dwellings 403, 503 and 603 includes a series of stairs within the common corridor, due to the split in the floor levels within the building.

#### 4.6 Parking Rates - Shop-top Housing

The proposed development provides a compliant amount of on-site car parking in accordance with the rates stipulated within RDCP 2011. Council's Development Engineer has reviewed the amended plans and raised the following concerns with the car parking design and layout:

- The design of the proposed circulation area within the parking facility is not supported as there are too many vehicular conflicts between oncoming vehicles around the sharp turns present within the basement design which creates safety issues. To resolve these issues it is advised to delete 6 spaces numbered C01, V10, R07, R31, R33, R55 and extend the basement ramps within these areas to ensure adequate sight distances and swept paths are maintained;
- The proposed vehicular access from the rear lane is not supported for the following reasons:
  - (a) The width of the road reserve is 3.1m and is not suitable for vehicular manoeuvring, falling significantly short of the traditional 6m wide laneway width. This results in insufficient room in this road reserve to support the vehicular swept path of a SRV vehicle as denoted in AS2890.2, this also holds for smaller vehicles contained within the standard.
  - (b) The current proposal results in the need for the SRV service vehicles to traverse a significant portion of the landscaped areas along the eastern frontage of the site, essentially removing them as being landscaped as these areas will need to be of hardstand construction.
  - (c) The current proposal results in safety issues and conflicts between pedestrians and vehicles.
  - (d) The current width of the road reserve does not comply with the Australian standard in regards to roadways and satisfactory clearances to adjacent high obstructions for vehicular roadways.

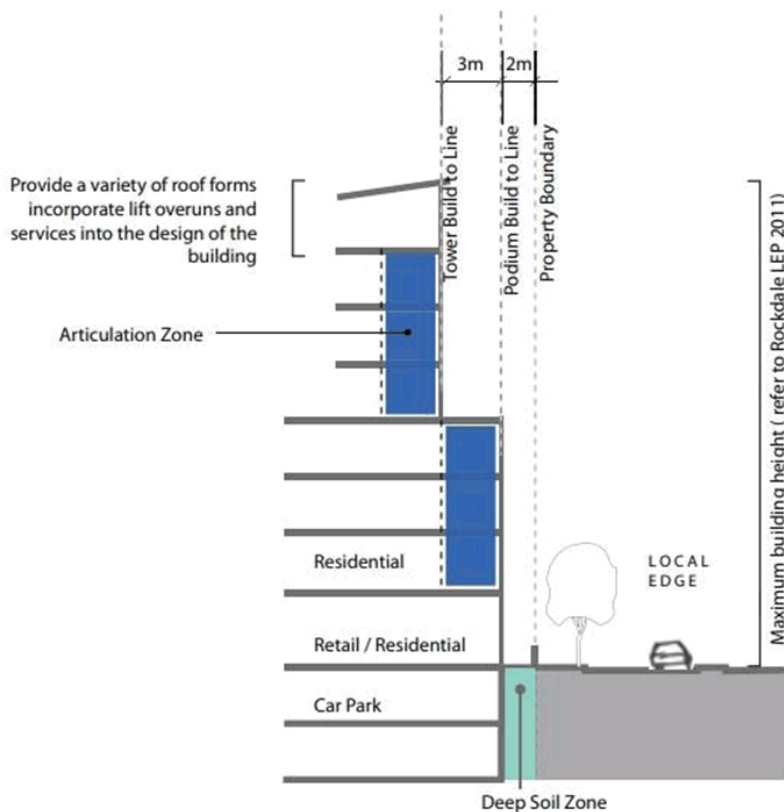
#### 5.3 Mixed Use - Side Setbacks

Detailed discussion regarding the side setbacks of the proposed development have been provided within the ADG/SEPP 65 Assessment and within Part 7.5.2 of RDCP 2011.

#### 7.5.2 Local Edge

Hegerty Street and Keats Avenue are identified as being 'Local Edge' frontages. Therefore, the relevant setback controls are as follows:

- (a) Lower 4 storeys are to be setback 2m from the property boundary
- (b) Levels above the 4th storey are to be setback at least 3m from the lower build to line.
- (c) A minimum 9m rear setback is to be provided where development shares a boundary with a residential property



The design of the proposed development generally achieves the stipulated building setbacks with the exception of:

- The balconies on the 5th storey encroach into the setback area. The diagrams which accompanies RDCP 2011 (re-produced above) demonstrates that the setbacks are intended to be measures to the edge of the balcony which forms the articulation zone; and
- A rear 9m setback to the adjacent residential properties at No.28-30 Keats Avenue has not been provided.

#### 7.5.2 Laneway

The required setbacks to the laneway (eastern boundary) are as follows:

- (a) *Lower 3 storeys are to be built to the property boundary or setback as required in by the Street Setback Table.*
- (b) *Levels above the 3rd storey are to be setback at least 3m.*

The design of the proposed development exceeds the minimum requirements set out above and is acceptable.

#### Clause 92 EP&A Regulation 2000 – Additional Matters

Clauses 92-94 of the Regulations outline the matters to be considered in the assessment of a development application. Clause 92 requires the consent authority to consider the provisions of AS 2601:1991 - Demolition of Structures when demolition of a building is involved. Conditions of consent could be imposed to ensure compliance with the standard, however the application is not supported for other reasons.

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

The proposed development would cause unreasonable visual bulk and scale impacts as viewed from the existing residential flat building on the neighbouring site to the south. This is because the proposed building setbacks from the southern boundary are insufficient to regulate the considerable bulk and scale of the development.

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

The site is unable to accommodate the density proposed in a manner which maintains a high level of residential amenity for neighbouring properties and presents a form that responds to the local context. As such, the site is not suitable for the development as proposed.

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

The development has been notified in accordance with the provisions of Rockdale DCP 2011. A total of 9 submissions and a petition containing 21 signatures have been received. The key issues raised are discussed below. It is noted that the submissions and petition has come from residents in the adjoining residential flat building to the south at No.28-30 Keats Avenue.

Concern: Loss of solar access to the existing apartments adjoining to the south

Comment: The proposed development will result in a loss of solar access to the existing residential flat building to the south at No.28-30 Keats Avenue. The applicant has provided a detailed solar analysis which demonstrates that 13/19 (68%) of units in this building would continue to receive 2 hours solar access. Notwithstanding this, it is observed that the extent of solar access to the neighbouring building would be improved, if the proposed setbacks to the southern boundary were enlarged. Given that some of the solar access impacts to the neighbouring building are caused by a non-compliant building setback, it is considered that the additional solar access impacts (i.e - above and beyond a compliant scheme) are not reasonable.

Concern: Loss of outlook/visual impact of the development as viewed from the existing apartments to the south

Comment: This grounds of objection is concurred with for reasons identified in the main body of the

report.

Concern: Loss of privacy and security for the existing apartments adjoining to the south

Comment: The proposed development has a blank wall presentation to the adjoining southern building. As a result, there are no privacy and/or security issues identified.

Concern: Loss of property values

Comment: No evidence has been provided to demonstrate that the proposed development will cause a loss of property values.

Concern: Increased noise impacts, increased bins on the street and disruptions through the construction phase

Comment: These matters are capable of being addressed through conditions of consent but do not form reasons of refusal.

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

The proposed development is considered to be unsatisfactory having regard to the objectives and requirements of the applicable environmental planning instruments and the Rockdale DCP 2011. As such it is considered that the proposed development is not in the public interest.

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

A Section 7.11 Contribution Payment is payable in accordance with Council's Policy. This would be required as a condition of consent. However, the application is not supported for other reasons.

#### ***Civil Aviation Act, 1988***

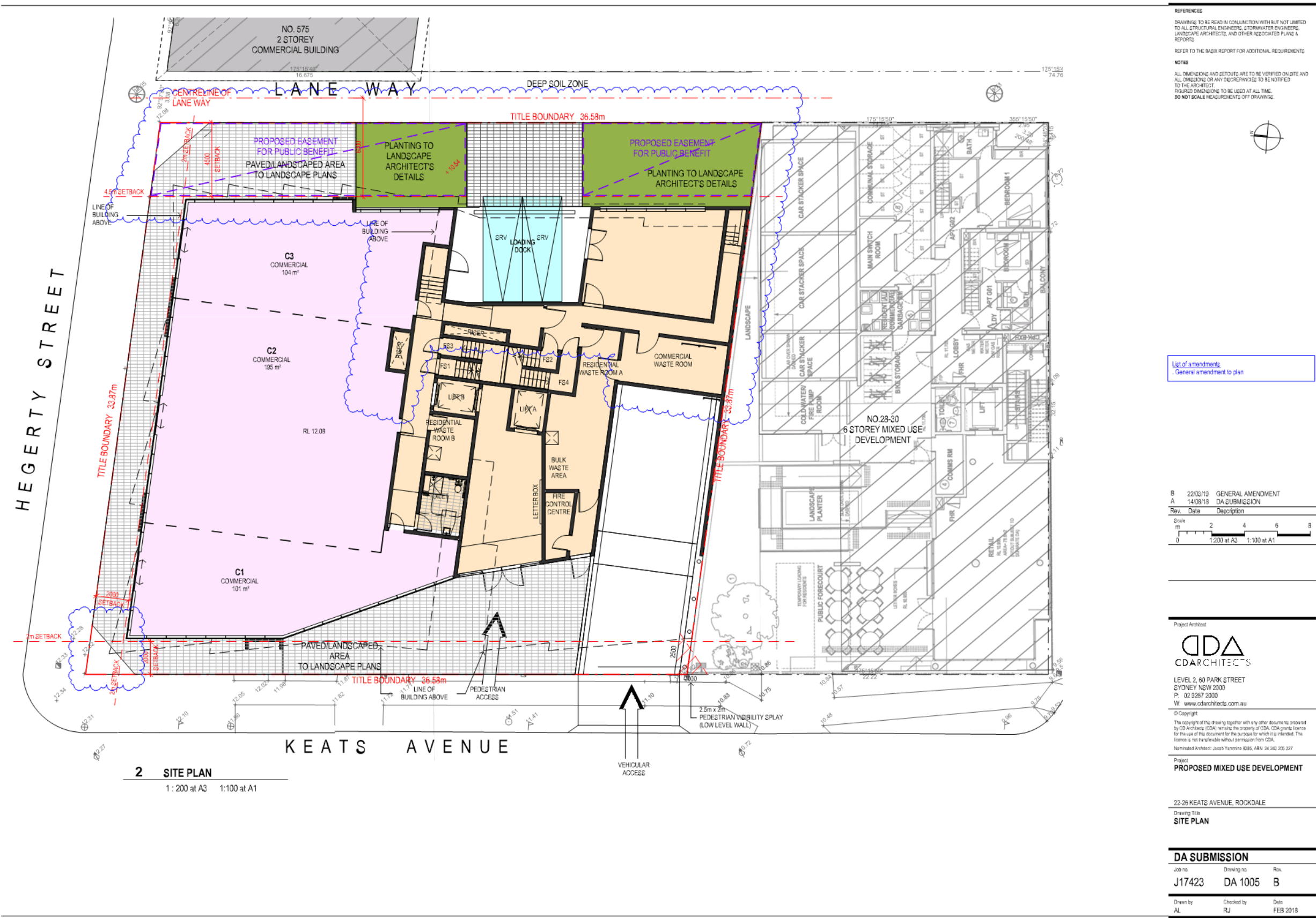
The site is within an area that is subject to the Civil Aviation (Building Controls) Regulations 1988 made under the *Civil Aviation Act, 1988*.

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

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

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

The subject site is affected by the 15.24m building height Civil Aviation Regulation. The proposed building height exceeds this, and therefore the proposal was referred to Sydney Airports for comment on 03/09/2018. To date, no response has been received from Sydney Airport.

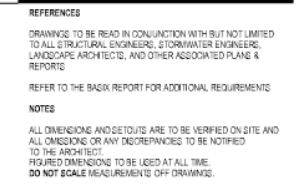






E1 EAST ELEVATION

1:200 at A3 1:100 at A1



B 22/03/19 GENERAL AMENDMENT  
A 14/08/18 DA SUBMISSION

Rev.	Date	Description
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Scale  
m 0 2 4 6 8  
1:200 at A3 1:100 at A1

Project Architect

**CDA**  
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Nominated Architect: Jacob Yilmazian 8026, ABN 28 342 205 227

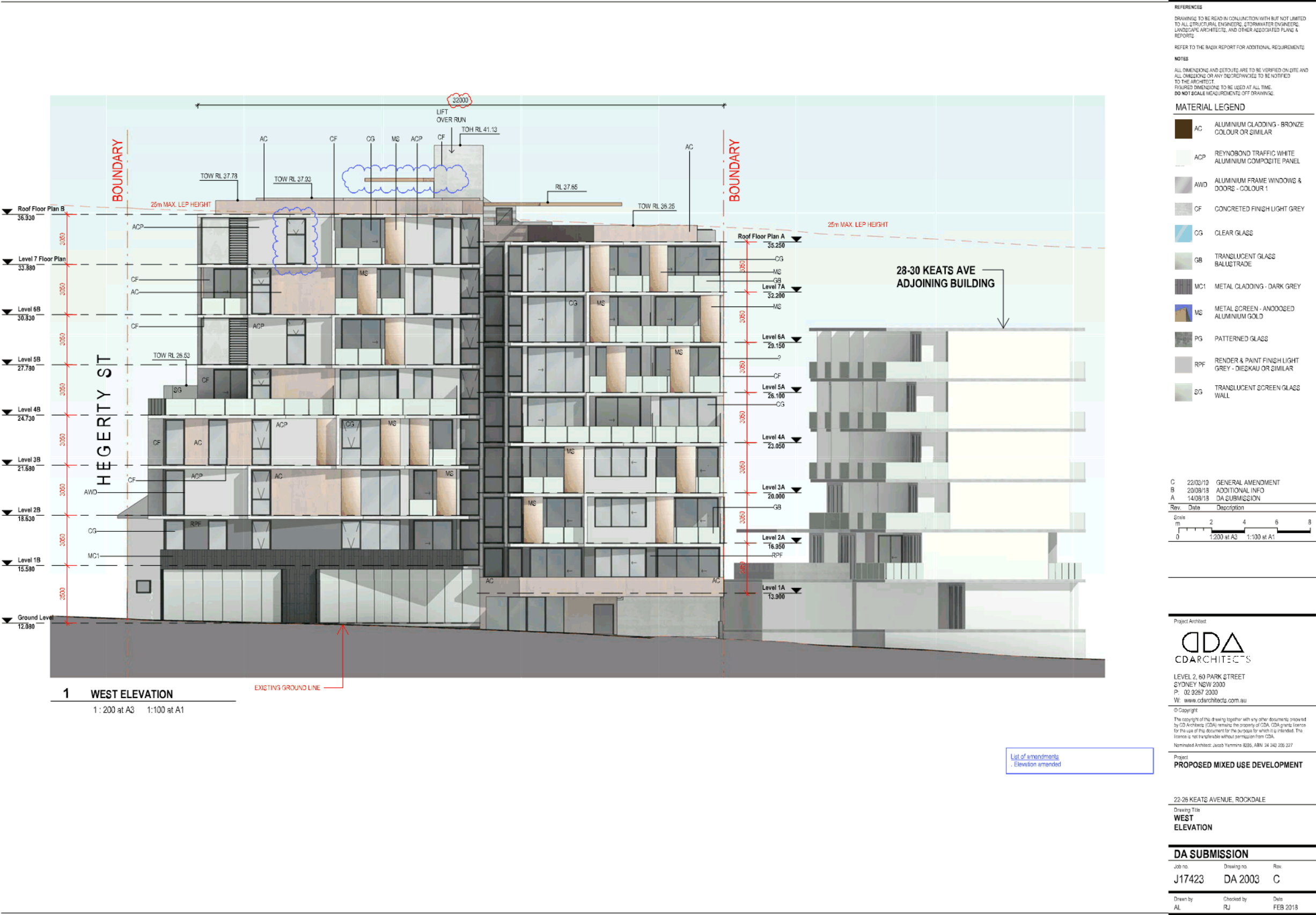
Project  
**PROPOSED MIXED USE DEVELOPMENT**

22-26 KEATS AVENUE, ROCKDALE

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Drawing Title  
**NORTH ELEVATION**

DA SUBMISSION		
Job no.	Drawing no.	Rev.
J17423	DA 2002	B
Drawn by	Checked by	Date
AL	RY	FEB 2018







**E1 SOUTH ELEVATION**  
1:200 at A3 1:100 at A1

[List of amendments](#)  
Elevation amended

**REFERENCES**  
DRAWINGS TO BE READ IN CONJUNCTION WITH BUT NOT LIMITED TO ALL STRUCTURAL ENGINEERING, STORMWATER ENGINEERING, LANDSCAPE ARCHITECTURE, AND OTHER ASSOCIATED PLANS & REPORTS  
REFER TO THE BACK REPORT FOR ADDITIONAL REQUIREMENTS

**NOTES**  
ALL DIMENSIONS AND DETAILINGS ARE TO BE VERIFIED ON SITE AND ALL OMISSIONS OR ANY DISCREPANCIES TO BE NOTIFIED TO THE ARCHITECT.  
MEASURED DIMENSIONS TO BE USED AT ALL TIMES.  
DO NOT SCALE MEASUREMENTS OFF DRAWINGS.

**MATERIAL LEGEND**

- AC ALUMINIUM CLADDING - BRONZE COLOUR OR SIMILAR
- ACP REYNOLBOND TRAFFIC WHITE ALUMINIUM COMPOSITE PANEL
- AWD ALUMINIUM FRAME WINDOWS & DOORS - COLOUR 1
- CF CONCRETE FINISH LIGHT GREY
- CG CLEAR GLASS
- GB TRANSLUCENT GLASS BALUSTRADE
- MC1 METAL CLADDING - DARK GREY
- MS METAL SCREEN - ANODISED ALUMINIUM GOLD
- PG PATTERNED GLASS
- RPF RENDER & PAINT FINISH LIGHT GREY - DESKAU OR SIMILAR
- SG TRANSLUCENT SCREEN GLASS WALL

C	22/03/19	GENERAL AMENDMENT
B	23/08/18	ADDITIONAL INFO
A	14/08/18	DA SUBMISSION
Rev	Date	Description
0		
1	22/03/19	1:200 at A3 1:100 at A1

Project Architect

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Notified Architect: David Hemmings B20, ABN 28 342 226 227

Project

**PROPOSED MIXED USE DEVELOPMENT**

22-26 KEATS AVENUE, ROCKDALE

Drawing Title  
**SOUTH  
ELEVATION**

**DA SUBMISSION**

Job no.	Drawing no.	Rev.
J17423	DA 2004	C
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## Bayside Design Review Panel

### REPORT OF THE BAYSIDE DESIGN REVIEW PANEL

Meeting held on Thursday, 1 November 2018 at Bayside Council

[Panel members: Alan Cadogan, Sam Crawford and Dean Boone]

#### ITEM 3

<b>Date of Panel Assessment:</b>	1 November 2018
<b>Applicant:</b>	CD Architects
<b>Architect:</b>	CD Architects
<b>Property Address:</b>	22-26 Keats Avenue, ROCKDALE NSW 2216
<b>Description:</b>	Integrated Development - Demolition of existing structures and construction of an eight (8) storey mixed use development comprising fifty one (51) residential apartments, three (3) commercial tenancies, three (3) levels of basement carparking and a roof top terrace
<b>No. of Buildings:</b>	1
<b>No. of Storeys:</b>	8
<b>No. of Units:</b>	51 - 1 bed = 13 units, 2 bed = 33 units and 3 bed = 5 units
<b>Consent Authority Responsible:</b>	Bayside Council
<b>Application No.:</b>	DA-2018/214
<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 Melissa Rodrigues (Planner, GAT & Associates), Rudy Jasin (Architect CDA) and Marta Gonzalez-Valdes (Council's Coordinator Development Assessment) and Patrick Nash (Senior Development Assessment 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 considers that the design exhibits substantial design merit in relation to context and neighbourhood character, built form and scale, density, sustainability, landscape, amenity, safety, housing diversity and social interaction and aesthetics. Notwithstanding the above, the panel considers there are serious design issues in relation to the following:</p> <ul style="list-style-type: none"> <li>The Panel is not concerned about the building's height exceedance but notes that the LEP provisions require that this is linked to the delivery of a public benefit which is not yet demonstrated</li> <li>The treatment and lack of setback to the south elevation which the Panel does not support. The Panel considers that the lack of setback cannot be justified in the context, noting that there is no possibility of a streetwall typology for the site to the south which is already developed. As a result the design should provide for an improved outlook for the apartments of the development to the south. The Panel notes that it may be possible to justify a nil setback with sufficient elevational articulation (at least equivalent to the other elevational treatments) west of the current midway recess. East of this recess the Panel considers a setback of at least three metres or more should be required in order to improve solar access to and general outlook from the apartments in the middle and east of the development to the south.</li> <li>Note: The Panel supports the other building boundary setbacks</li> </ul> <p>The Panel also notes that there are important but less critical design issues which should be resolved in relation to:</p> <ul style="list-style-type: none"> <li>The location of accessible parking which should be much closer to the lifts and not require the use of carpark ramps</li> <li>The interface between the waste storage and fire stairs which may be a BCA issue</li> <li>The provision of adequate shade to the northern rooftop communal open space</li> <li>The depth of the recess in the eastern elevation which provides for cross ventilation but is narrow and should have a wider throat to the recess as occurs on the western elevation</li> <li>The noted deep soil area is reduced by the extent of hard landscaping and paving and may not be compliant as a result</li> <li>The apartment layout for the north eastern corner apartment on level 7 which could be reconfigured to improve solar access to the living areas</li> <li>Further opportunities for including sustainability initiatives in the design above and beyond those required by BASIX, such as solar energy generation, rainwater harvesting, etc.</li> </ul>
<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><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><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 for the amenity and liveability of</p>	

Design Principle	Comments
<p>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><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><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><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>	

Design Principle	Comments
<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><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><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>	

#### RECOMMENDATION

- The Panel recommends that the above changes be made and be referred to the Council for further consideration.

**CLAUSE 4.6 VARIATION TO CLAUSE 4.3 – HEIGHT OF BUILDINGS  
OF THE ROCKDALE LOCAL ENVIRONMENTAL PLAN 2011**

**1. Introduction**

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This submission seeks a variation to Clause 4.3 of the Rockdale Local Environmental Plan (LEP) 2011, which relates to the height of buildings control.

This submission has been prepared in relation to a development application for the demolition of all existing structures and the construction of an eight (8) storey shop top housing development comprising 51 residential units, three (3) commercial tenancies, three (3) levels of basement parking and associated landscaping and site works at 22-26 Keats Avenue, Rockdale.

As detailed in this written request for a variation to the height of buildings development standard under the Rockdale LEP 2011, the proposed development meets the requirements prescribed under Clause 4.6 of the Rockdale LEP 2011.

This submission is made under Clause 4.6 of the Rockdale LEP 2011 – Exceptions to development standards. Clause 4.6 states the following:

***“4.6 Exceptions to development standards***

- (1) The objectives of this clause are as follows:
  - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
  - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.**
- (2) Development consent may, subject to this clause, be granted for a development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
  - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.**
- (4) Development consent must not be granted for development that contravenes a development standard unless:
  - (a) the consent authority is satisfied that:
    - (i) the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
    - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and**
  - (b) the concurrence of the Director-General has been obtained.**

- (5) In deciding whether to grant concurrence, the Director-General must consider:
- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
  - (b) the public benefit of maintaining the development standard, and
  - (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:
- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
  - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.
- Note.** When this Plan was made it did not include Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU6 Transition, R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living.
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:
- (a) a development standard for complying development,
  - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
  - (c) clause 5.4
  - (ca) clause 4.3 (2A), 4.4 (2A), (2B), (2C) or (2D), unless it is for a demonstrable public benefit, such as the provision of pedestrian links,
  - (cb) clause 4.3A."

The use of Clause 4.6 to enable an exception to this development control is appropriate in this instance and the consent authority may be satisfied that all requirements of Clause 4.6 have been satisfied in terms of the merits of the proposed development and the content in this Clause 4.6 variation request report.

Clause 4.6 Exceptions to development standards establishes the framework for varying development standards applying under a local environmental plan. Subclause 4.6(3)(a) and 4.6(3)(b) requires that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

*"4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

*4.6(3)(b) that there is sufficient environmental planning grounds to justify contravening the development standard."*

In addition, 4.6(4)(a)(i) and (ii) requires that development consent must not be granted to a development that contravenes a development standard unless the:

“

*(a) the consent authority is satisfied that:*

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and”*

The Environmental Planning Instrument to which these variations relate to is the Rockdale LEP 2011.

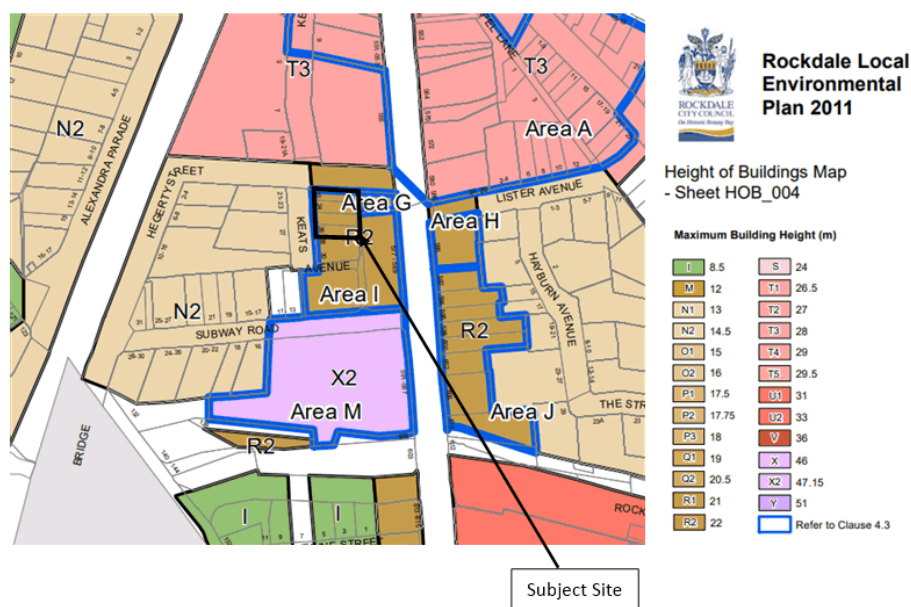
The development standard to which this variation relates to is Clause 4.3 – Height of Buildings, which reads as follows:

- 1) *The objectives of this clause are as follows:*
  - a) to establish the maximum limit within which buildings can be designed and floor space can be achieved,*
  - b) to permit building heights that encourage high quality urban form,*
  - c) to provide building heights that maintain satisfactory sky exposure and daylight to buildings, key areas and the public domain,*
  - d) to nominate heights that will provide an appropriate transition in built form and land use intensity.*
- 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), the height of a building may exceed the maximum height shown for the land on the Height of buildings Map by an additional:*
  - a) 12 metres—if the building is in Area A identified on the Height of Buildings Map and on a lot having an area of at least 1,500 square metres,*
  - b) 6 metres—if the building is in Area B identified on the Height of Buildings Map and on a lot having an area of at least 2,000 square metres,*
  - c) 6 metres—if the building is in Area C identified on the Height of Buildings Map and on a lot having an area of at least 1,200 square metres,*
  - d) 15 metres—if the building is in Area D identified on the Height of Buildings Map and on a lot having an area of at least 1,000 square metres,*
  - e) 3 metres—if the building is in Area E identified on the Height of Buildings Map and on a lot having an area of at least 600 square metres,*
  - f) 9 metres—if the building is in Area G identified on the Height of Buildings Map and on a lot having an area of at least 1,000 square metres,*
  - g) 12 metres—if the building is in Area H identified on the Height of Buildings Map and on a lot having an area of at least 2,000 square metres,*
  - h) 3 metres—if the building is in Area I identified on the Height of Buildings Map and on a lot having an area of at least 1,000 square metres,*
  - i) 9 metres—if the building is in Area J identified on the Height of Buildings Map and on a lot having an area of at least 2,000 square metres,*
  - j) 3 metres—if the building is in Area L identified on the Height of Buildings Map and on a lot having an area of at least 800 square metres,*
  - k) 25.15 metres—if the building is in Area M identified on the Height of Buildings Map and on a lot having an area of at least 9,000 square metres.*
- 2B) *Despite subclause (2), the maximum height of a building that is in Area K identified on the Height of Buildings Map and that is used only for the purpose of seniors housing is*
  - a) 14.5 metres—if the building is within 38 metres of Harrow Road, and*
  - b) 9.5 metres—if the building is not within 38 metres of Harrow Road*



Council's maps identify a maximum building height on the site of 22 metres. However, a bonus of 3 metres applies to the site as it falls within Area I for a total of 25 metres. Refer to Figure 1.

**Figure 1: Height of Buildings Map, Source: NSW Legislation, RLEP 2011**



The maximum height proposed is 29.15 metres.

A written justification is therefore required for the proposed variation to the height of buildings development standard, in accordance with Clause 4.6 of the Rockdale LEP 2011.

## 2. Extent of Non-Compliance

As noted above, Clause 4.3 within Rockdale LEP 2011 states the subject site has a maximum building height of 25 metres. Referring to the submitted architectural plans, it is noted that the maximum building height proposed is 29.15 metres, exceeding the maximum permitted height by 4.15 metres.

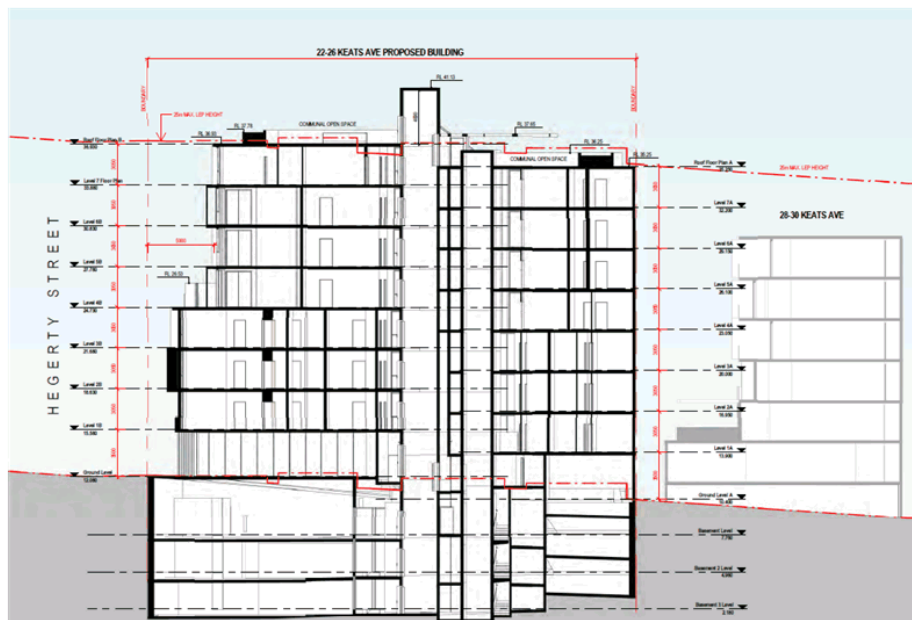
The extent of non-compliance is limited solely to part of the rooftop communal open space and the stairs and lift overrun/lift access provided to the roof terrace. To minimise the impact of this breach, the lift overrun is located to the centre of the building.

The maximum building height noted above has been measured to the highest point of the building, being the lift overrun. Refer to Figure 2.

**Figure 2 Height Plane Diagram, Source: CD Architects**



**Figure 3 Section, Source: CD Architects**



While a variation is sought, it is considered that the built form proposed is suitable for the site, given the existing built form and what has been approved within the Rockdale Town Centre including directly opposite the site at 555 Princes Highway where the same B4 Mixed Use zoning and 25 metre height of buildings control applies. Similar or greater height controls also apply and have been utilised in proximity to the site including at 564-570, 572-578 and 586 Princes Highway.

The rooftop communal open space is seen to be a desirable outcome in the circumstances of the site. Notwithstanding the stair and lift access to the communal open space, all gross floor area is fully compliant with the height of buildings control. A degree of flexibility is considered reasonable in this instance.

### **3. Is Compliance With the Development Standard Unreasonable or Unnecessary in the Circumstances of the Case?**

The proposed variation from the development standard is assessed against the required tests in Clause 4.6. In addition, in addressing the requirements of Clause 4.6(3), the accepted five possible approaches for determining whether compliances are unnecessary or unreasonable established by the NSW Land and Environment Court in *Wehbe vs Pittwater Council (2007) LEC 827* are considered.

In the matter of Four2Five, the Commissioner stated within the judgement the following, in reference to a variation:

*"...the case law developed in relation to the application of SEPP 1 may be of assistance in applying Clause 4.6. While Wehbe concerned an objection under SEPP 1, in my view the analysis is equally applicable to a variation under Clause 4.6 where Clause 4.6 (3)(a) uses the same language as Clause 6 of SEPP 1."*

In the decision of *Wehbe vs Pittwater Council (2007) LEC 827*, Preston CJ summarised the five (5) different ways in which an objection under SEPP 1 has been well founded and that approval of the objection may be consistent with the aims of the policy. The five possible ways are as set out below:

<b>First</b>	<i>The most commonly invoked way is to establish that compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.</i>  <i>The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. If the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary and unreasonable.</i>
<b>Second</b>	<i>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. (not applicable)</i>
<b>Third</b>	<i>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. (not applicable)</i>
<b>Fourth</b>	<i>A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents</i>

	<i>departing from the standard and hence compliance with the standard is unnecessary and unreasonable. (not applicable)</i>
<b>Fifth</b>	<i>A fifth way is to establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary. (not applicable)</i>

In respect of the height of buildings standard, the first method is invoked.

The objectives supporting the maximum height of buildings identified in Clause 4.3 are discussed below. Consistency with the objectives and the absence of any environmental impacts, would demonstrate that strict compliance with the standards would be both unreasonable and unnecessary in this instance.

The discussion provided below demonstrates how the proposal is consistent with the objectives of Clause 4.3.

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

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

While a variation is sought, all gross floor area has been located below the maximum height with one exception due to an unusual fluctuation in the natural ground level. Refer to Figure 3. Notwithstanding that minor element, the provision of roof top communal open space and the lift and stairs access to it have generated the variation. In terms of objective (a), it is considered the design is consistent.

The proposed building has been designed to a high standard, including a variety of articulation measures, including physical articulation in the form of protrusions, recessive elements, angled aspects and the like, and a variety of materials and finishes. These measures ensure a varied façade is provided to all street frontages. Additionally, the building has been designed to facilitate continued solar access to the property to the south at 28-30 Keats Avenue. It is considered objective (b) is achieved.

With respect to objective (c), as detailed in the comments above, careful design consideration has allowed for 68.4% of units in the adjoining southern building to maintain solar access following the development of the subject site, only one unit short of the requirement. This has been achieved through an angled design to the upper levels in conjunction with increased setbacks. To the proposed development itself, 36/51 units or 70.6% of the units will achieve two hours of solar access to their private open space and living rooms as required by the Apartment Design Guide. The proposal notably only provides for three units (5.98%) as receiving no direct solar access at the winter solstice. Accordingly all other units receive some solar access.

In view of the constraints of the site, this is considered to be an excellent design outcome. Particular note should be made to both the orientation of the site as well as the desired future character of the area when having regard to solar access. This is evident in the development to the north of the subject site, at 555 Princes Highway which falls within the same zone and height

controls which are available to the subject site. This site has already been developed as a ten storey mixed use development and casts significant shadows across the northern façade of the proposed development restricting solar access to the proposal. It is noted that future redevelopment along the eastern side of the laneway is also likely to result in additional shadows being cast across the subject site and demonstrates how the transition to a higher density can impact upon solar access. Given these constraints, affecting all new development within the Rockdale Town Centre, the proposal is considered to align with objective (c).

In terms of objective (d), the site is surrounded by a number of height controls. To the north, the height is prescribed as 28 metres. To the west, 14.5 metres. To the east, the same 22 metres and an additional 3 metre bonus if the appropriate site area is achieved applies. To the south, the same control again applies, with a 47.15 metre control with an additional 25.15 metres if the site area requirement is achieved to the site immediately to the south of 28-30 Keats Avenue. As illustrated, there are a number of height controls in the area. It is our submission that appropriate transition is inherently generated by the height controls in this area.

Notwithstanding this, the proposed eight storey development is consistent with the development types within the area. The Rockdale Town Centre is undergoing significant redevelopment to align with the desired future character of the area, being mixed use, as illustrated by the controls prescribed to it.

A consistent element to recent shop top housing developments to the north of the site, and in general in the Rockdale Town Centre, is the provision of rooftop communal open space as it serves as the most functional way to achieve a high quality space that achieves good solar access given the scale of development that would otherwise overshadow ground level spaces. The variation being sought only to part of this space and its means of access is not inconsistent with the approvals, nor is it contrary to the desired future character of the area.

In terms of direct transition, as noted above solar access is still achieved to property to 28-30 Keats Avenue through the management and careful consideration of the building footprint, while Keats Avenue and Hegerty Street themselves provide excellent building separation, inherently ensuring appropriate building transition in height, to the north and west. The site to the east shares the same height control and once redeveloped will be of a similar height. It is considered this objective has been achieved.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard.

#### **4. Are there Sufficient Environmental Planning Grounds?**

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The assessment above and shown throughout the supporting documentation demonstrates that the resultant environmental impacts of the proposal will be satisfactory.

The maximum proposed variation is 4.15 metres in service of rooftop communal open space and its access.

The Apartment Design Guide states:

*"Where developments are unable to achieve the design criteria, such as on small lots, sites within business zones, or in a dense urban area, they should:*

- *Provide communal spaces elsewhere such as a landscaped roof top terrace or a common room*
- *Provide larger balconies or increased private open space for apartments*

- *Demonstrate good proximity to public open space and facilities and/or provide contributions to public open space.*

It further supplements this by stating: *"where communal open space cannot be provided at ground level, it should be provided on a podium or roof"*.

The subject site is in a B4 Mixed Use zone and an existing urban area. As part of a mixed use development, ground floor commercial units are proposed in effort to achieve an active street frontage. The ground floor is occupied by three (3) commercial tenancies, the residential lobby, lifts and stairs, waste rooms, service rooms, loading bay and the basement driveway. Consequently, there is insufficient capacity to provide ground floor communal open space for the entire building.

It must be acknowledged that ADG solar access requirements would not be achieved for ground floor communal open space given the built form already around the site and what can be constructed in those sites currently underutilising their prescribed controls. Therefore, the conclusion of the above is that rooftop communal open space must be provided.

A total of 405m<sup>2</sup> of communal open space is proposed, being 33% of the site area, and easily exceeds the minimum 25%. By locating the communal open space on the roof, excellent solar access is available. Further, the space has been designed to a high quality. With reference to the landscape plan submitted with this application, a variety of spaces have been accommodated on this roof terrace with several seating areas, a BBQ area and a children's playing area, with a considerable amount of landscaping around the edges of the space, to ensure an inviting space is provided and can be enjoyed by a range of people, from individuals to families.

That the variation to height is proposed solely to the uppermost portion of this space and its access is considered an appropriate reason to vary the standard.

It is also noted that Clause 4.6 of the Rockdale LEP 2011 states the following, with emphasis added to the relevant section:

- "(8) This clause does not allow development consent to be granted for development that would contravene any of the following:*
- (a) a development standard for complying development,*
  - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
  - (c) clause 5.4*
  - (ca) clause 4.3 (2A), 4.4 (2A), (2B), (2C) or (2D), unless it is for a demonstrable public benefit, such as the provision of pedestrian links,*
  - (cb) clause 4.3A."*

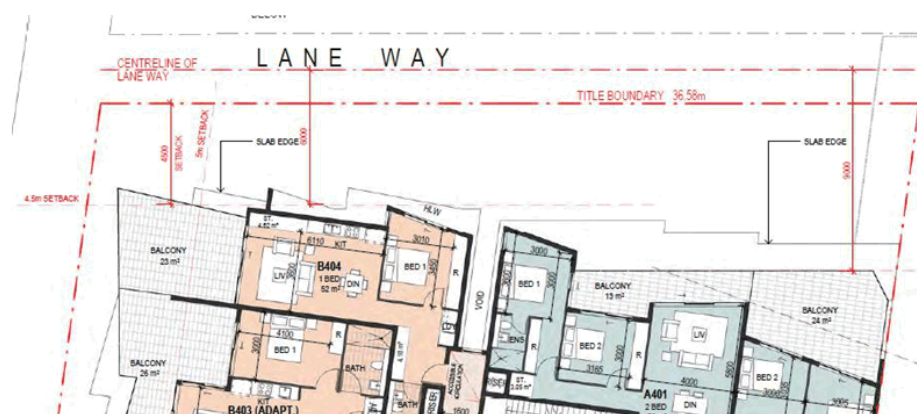
Clause 4.3(2A) as quoted in Part 1 of this submission allows a 3m height bonus to the 22m shown on the Height of Buildings Map, bringing the maximum height applicable to 25m. The above clause states that a variation to this 25m height is not permitted unless it is for a demonstrable public benefit. It is submitted that a public benefit is being provided as part of this development application.

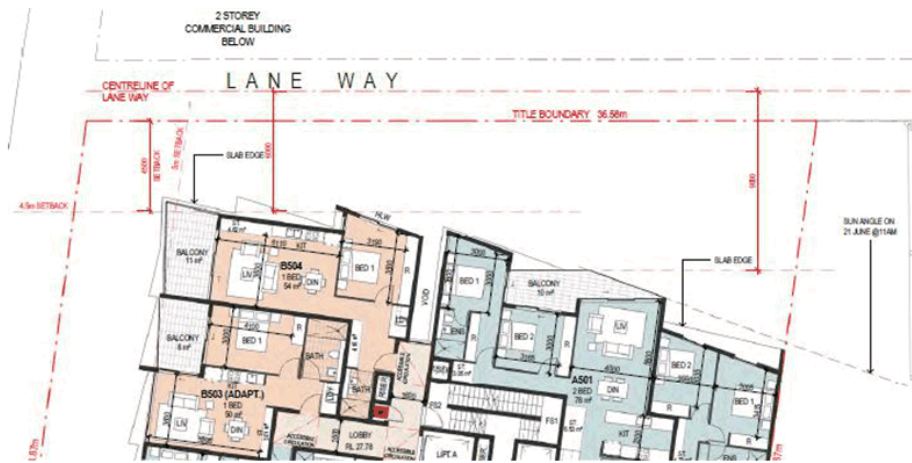
As discussed within the SEE, Part 7 of the Rockdale DCP 2011 requires a nil setback to the property boundary where it adjoins a laneway to the lower 3 storeys and a 3m setback to the levels above that third storey. The proposal before Council is providing a minimum 6m setback to the centre of the laneway at the lower level (or 4.5m to the boundary). This increases toward the rear of the site, as shown in Figure 4 below, being reflective of Levels 1-3.



**Figure 4 Level 1-3 Setback to Laneway**

The setback from Level 3 (being the fourth storey) in the DCP is required to be 3m, however the setback proposed is a minimum of 6m to the centre of the laneway on Level 3 but increases to up to 9m at Level 4 to the balcony edge and 14m to the external wall. At Level 5, this is realised with the removal of the larger balcony. Refer to Figures 5 and 6 below.

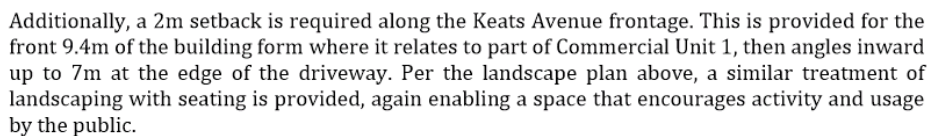
**Figure 5 Level 4 Setback to Laneway**

**Figure 6 Level 5-7 Setback to Laneway**

Further to the above, the proposed landscape plan prepared by Site Design & Studios indicates the treatment of the interface with the laneway. The plan is replicated in Figure 7 on the following page. The greater setback proposed to the laneway has allowed the provision of a combination of landscaping, seating and a pathway for use by the public within the boundary of the subject site, creating an inviting place for residents and the greater public to enjoy.

The above is considered to be a public benefit as it will substantially improve the presentation of the laneway. The laneway is 3.08m wide and with the existing single and two storey developments adjoining it, the laneway already feels narrow and constrained. With 3 storeys at a nil setback and only 3m to levels above, this feeling is likely to be exacerbated. The increased setback provided by this development will spatially improve the laneway presentation, reducing the potentially imposing bulk the prescribed controls for the site and its adjoining properties allow, being the 22m height with a potential bonus to 25m.





Neither of the above are required by the DCP. However, it has been seen as a benefit to be provided to activate these areas. It has been noted in visits to the area that recent developments within the vicinity of the site, within the Rockdale Town Centre, have not provided inviting outdoor spaces for the public to utilise. The above is considered to provide such a space for a site on the fringe of the Town Centre.

Finally, as discussed at the start of this section of this submission, the provision of rooftop communal open space is considered to be a public benefit as it enables a high quality space for residents and their guests to enjoy that achieves good solar access, which is becoming increasingly difficult to achieve in the Town Centre.

Given the above, the ability of the site to achieve the future desired character of the locality, provide inviting landscaped public areas along the laneway and Keats Avenue, and a high quality communal open space are considered to be a better planning outcome.

In this case, strict compliance with the development standard for height of buildings in the Rockdale LEP 2011 is unnecessary and unreasonable.

#### **5. Is the Variation in the Public Interest?**

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Clause 4.6 states that the development consent must not be granted for development that contravenes a development standard unless 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 to be carried out.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard under Part 4.

The development as proposed will be in the public interest as it is consistent with the objectives of Clause 4.3.

Furthermore, it is important to also consider the objectives of the B4 Mixed Use zone in relation to the development, which are as follows:

##### **Zone B4 Mixed Use**

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*

The following comments are made in relation to the zone objectives:

The proposed shop top housing development will provide for residential units of a high quality in a high density residential environment with ground floor commercial units, consistent with the desired future character of the area. The proposed uses are permissible and compatible.

The proposed shop top housing development will enable residential and commercial development within the Rockdale Town Centre, in walking distance to Rockdale Train Station and bus stops ensuring excellent public transport usage opportunities.

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

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standards, noting the development will be in the public interest.

#### **6. Public Benefit of Maintaining the Standard**

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It is considered that the public benefit will not be undermined by varying the standard. The proposal provides for the orderly and economic development of the site. Given the site's orientation, location and context it is considered that the site is well suited for the development, given its proximity to local infrastructure and other amenities.

The built form, bulk and scale is considered suitable within the context of Keats Avenue, Hegerty Street and the broader Rockdale Town Centre.

The development is generally consistent with the current planning controls and as detailed under point 4 of this submission.

It is not considered that the variation sought raises any matter of significance for State or regional environmental planning.

The departure from the height of buildings control within the Rockdale LEP 2011 allows for the orderly and economic development of the site in a manner which achieves the outcomes and objectives of the relevant planning controls.

#### **7. Is the Variation Well Founded?**

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It is considered that this has been adequately addressed in Parts 4 and 5 of this submission. In summary, this Clause 4.6 Variation is well founded as required by Clause 4.6 of the Rockdale LEP 2011 in that:

- Compliance with the development standards would be unreasonable and unnecessary in the circumstances of the development;
- There are sufficient environmental planning grounds to justify the departure from the standards;
- The development meets the objectives of the standard to be varied (height of buildings) and objectives of the B4 Mixed Use zoning of the land;
- The proposed development is in the public interest and there is no public benefit in maintaining the standard;
- The breach does not raise any matter of State or Regional Significance; and
- The development submitted aligns with the predominantly mixed use/urban centre nature of the neighbourhood.

Based on the above, the variation is considered to be well founded.

#### **8. General**

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Clause 4.6 also states that:

*“(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 all these zones.*

*(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*

- (8) *This clause does not allow development consent to be granted for development that would contravene any of the following:*
- (a) *a development standard for complying development,*
  - (b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
  - (c) *clause 5.4*
  - (ca) *clause 4.3 (2A), 4.4 (2A), (2B), (2C) or (2D), unless it is for a demonstrable public benefit, such as the provision of pedestrian links,*
  - (cb) *clause 4.3A"*

This variation does not relate to the subdivision of land in the stated land use zones. The variation sought is not contrary to subclause (6).

Should the exception to the development standard sought under this submission be supported by Council, the Council must retain a record of the assessment of this submission.

The development proposed is not complying development.

A BASIX certificate has been submitted with the application.

The development is not affected by clause 5.4, 4.4 (2A), (2B), (2C) or (2D) and 4.3A.

Clause 4.3(2A) is considered to be satisfied per the comments made under above in Part 5 of this submission.

## **9. Conclusion**

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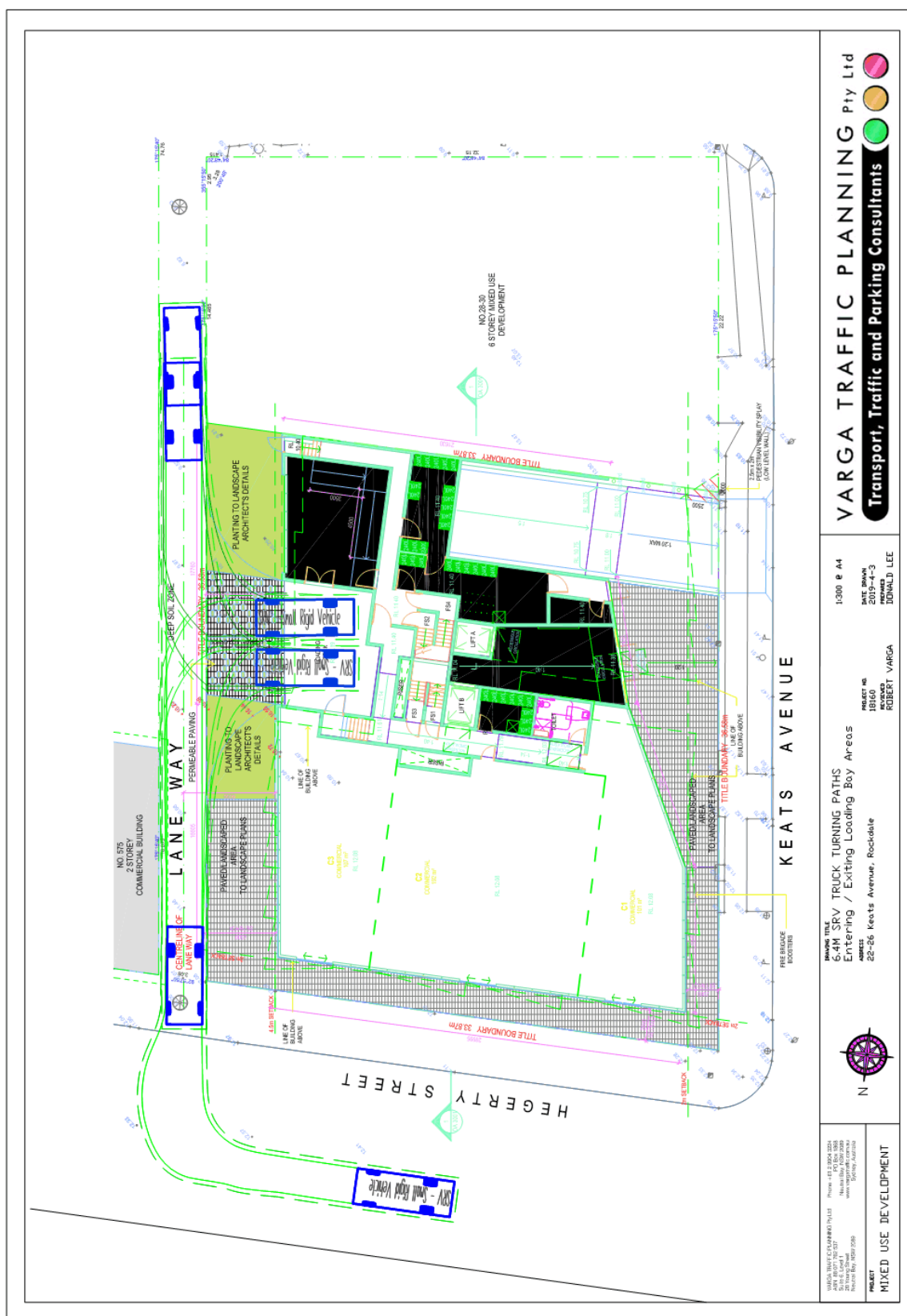
The proposal does not strictly comply with the height of buildings control as prescribed by Clause 4.3 of the Rockdale LEP 2011. Having evaluated the likely affects arising from this non-compliance, we are satisfied that the objectives of Clause 4.6 of the Rockdale LEP 2011 are satisfied as the breach to the controls does not create any adverse environmental impacts.

Consequently, strict compliance with this development standard is unreasonable and unnecessary in this particular instance and that the use of Clause 4.6 of the Rockdale LEP 2011 to vary this development controls is appropriate in this instance.

Based on the above, it is sensible to conclude that strict compliance with the height of buildings control is not necessary and that a better outcome is achieved for this development by allowing flexibility in the application.

Should you have any questions, please do not hesitate to contact me.

Darren Laybutt &  
Melissa Rodrigues  
**GAT & Associates**  
Plan 3395



## Bayside Local Planning Panel

11/06/2019

Item No	<b>6.6</b>
Application Type	Section 8.2
Application No	S82-2019/4
Lodgement Date	14/10/2017
Property	<b>38 Russell Avenue, Sans Souci</b>
Ward	Botany Bay
Owner	Mrs R Loukis
Applicant	Rabi Moussawel
Proposal	Section 4.55(2) modification application to modify approved dual occupancy with secondary dwellings to allow for a two storey secondary dwelling with parking on ground floor.
No. of Submissions	Nil
Cost of Development	996,358
Report by	Michael McCabe, Director City Futures

## Officer Recommendation

That the Bayside Planning Panel resolve pursuant to Division 8.2 relating to Development Application No. DA-2017/523/B being a Section 4.55(2) modification application for the application to modify approved dual occupancy with secondary dwellings to allow for a two storey secondary dwelling with parking on ground floor at 38 Russell Avenue, Sans Souci be APPROVED pursuant to Section 8.4 of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report.

## Location Plan



## Attachments

- 1 Planning Assessment Report [↓](#)
- 2 Site Plan [↓](#)
- 3 East & West Elevations [↓](#)
- 4 North & South Elevations [↓](#)
- 5 Proposed Shadow Diagrams [↓](#)
- 6 Concept Landscape Plan [↓](#)
- 7 Finishes Schedule [↓](#)
- 8 Notice of Refusal for DA-2017/523/B [↓](#)
- 9 Assessment Report for DA-2017/523/B [↓](#)



# BAYSIDE COUNCIL

## Planning Assessment Report

### Application Details

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<b>Application Number:</b>	S82-2019/4
<b>Date of Receipt:</b>	11 March 2019
<b>Property:</b>	38 Russell Avenue, SANS SOUCI (Lot 126 DP 2008)
<b>Owner:</b>	Mrs Rhonda Loukis
<b>Applicant:</b>	Mr Mario Mourad
<b>Proposal:</b>	Review of determination of DA 2017/523 for a two storey secondary dwelling with parking on the ground floor
<b>Recommendation:</b>	Approved
<b>No. of submissions:</b>	Nil.
<b>Author:</b>	Eric Alessi
<b>Date of Report:</b>	10 May 2019

### Key Issues

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The following key issues apply:

1. Development Application No. DA-2017/523/B for the S4.55(2) application to modify approved dual occupancy with secondary dwellings to allow for a two storey secondary dwelling with parking on ground floor was refused under delegated authority on the 12 February 2019.
2. Key issues related to DA-2017/523/B were identified as follows:
  - The application exceeded the maximum permissible floor space ratio on the site.
  - The proposed development is excessive in terms of bulk, scale, size and density.
  - The proposed development is not considered suitable for the site in terms of streetscape, context and design.
3. The subject review application has resolved all matters identified under DA-2017/523/B and the relevant heads of consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979 (the Act) as shown in this report.

### Recommendation

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It is RECOMMENDED that the Bayside Local Planning Panel resolve; pursuant to Division 8.2 of the Environmental Planning and Assessment Act 1979 relating to a review of determination of DA-2017/523/B being a Section 4.55(2) modification application to modify development consent DA-2017/523 for the construction of a dual occupancy with secondary dwellings to allow for a two storey secondary dwelling with parking on ground floor at 38 Russell Avenue, Sans Souci to change the determination and APPROVE the modification application; pursuant to Section 8.4 of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to



this report.

## Background

### History

The following applications were previously considered on the site:

- DA-2017/523 for the '*Demolition of all existing structure and construction of a two storey attached dual occupancy within swimming pool and rear secondary dwellings, and Torrens Title subdivision into two lots*' approved on 16.02.2018
- DA-2018/523/A for the '*Deletion of Condition 32 requiring registration of an easement - inserted in error*' approved on 29.05.2018
- DA-2017/523/B for the '*modification to relocate secondary dwelling to first floor within ground level car parking*' refused on 21.02.2019 for the following reasons:

The reasons for refusal of DA-2017/523/B are as follows:

- 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.
- The proposed development does not satisfy the objectives of the R3 Medium Density Residential Zone.
- The proposed development does not satisfy the Objectives of Clause 4.3 of the Rockdale Local Environmental Plan 2011 relating to Maximum Building Height.
- The proposed development does not satisfy the Objectives of Clause 4.4 of the Rockdale Local Environmental Plan 2011 relating to Maximum Floor Space Ratio.
- The proposed development does not meet the objectives of the Rockdale Development Control Plan 2011 Part 4.3.1 Open space and Landscape design, including Objectives D, E and I.
- The proposed development does not meet the objectives of the Rockdale Development Control Plan 2011 Part 4.4.2 Solar Access, including Objectives B and Controls 2 and 4(a).
- The proposed development does not meet the objectives of the Rockdale Development Control Plan 2011 Part 4.4.3 Natural light and ventilation, including Objectives A;
- The proposed development does not meet the objectives of the Rockdale Development Control Plan 2011 Part 5.1 Storey height and setbacks, including Objectives A, B, D, E and F;
- The proposed development is likely to result in the following adverse environmental impacts:
  - a) Natural Environment — Loss of solar access to the subject site resulting from the two storey design
  - b) Built Environment - Design does not respond appropriately to Russell Lane and has not taken into account the impact of the proposed development on the streetscape and surrounding built environment.
- The proposed development results in an undesirable and unacceptable impact on the streetscape and adverse impact on the surrounding built environment.
- The proposed development is excessive in terms of bulk, scale, size and density and would adversely impact upon the amenity of the locality.
- The proposed development is not considered suitable for the site, in terms of streetscape, context and design and is likely to have over-shadowing impacts onto the shared private open space.

### Proposal

The subject application is a Division 8.2 Review of the determination of Development Application No. DA-2017/523/B under Section 8.3 of the *Environmental Planning and Assessment Act, 1979* (the Act). The application addresses the Reasons for Refusal, determined on 21 February 2018 under delegated authority as well as an assessment of proposal under Section 4.15 of the Act.

The description of DA-2017/523/B which is the subject of this Section 8.2 review is '*modification to relocate secondary dwelling to first floor with ground level car parking*'.

A ground floor plan has been provided for the secondary dwelling at the rear. Each secondary dwelling at the rear consists of the following

Ground floor:

- Single car carport

First Floor:

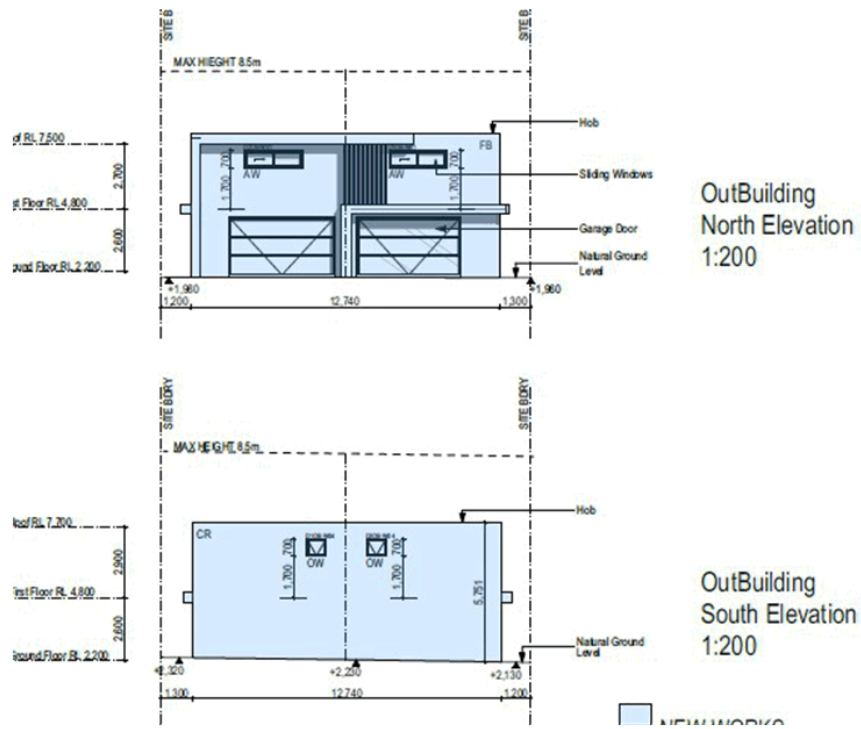
- Bedroom.
- Living Room.
- Bathroom.
- Kitchen.

The proposal has been accompanied by statement justifying the reasons for review. The document was prepared by Urbana Plan titled '*Section 82(a) Review of Determination*' dated 11 March 2019. The justification provided in the statement is summarised below:

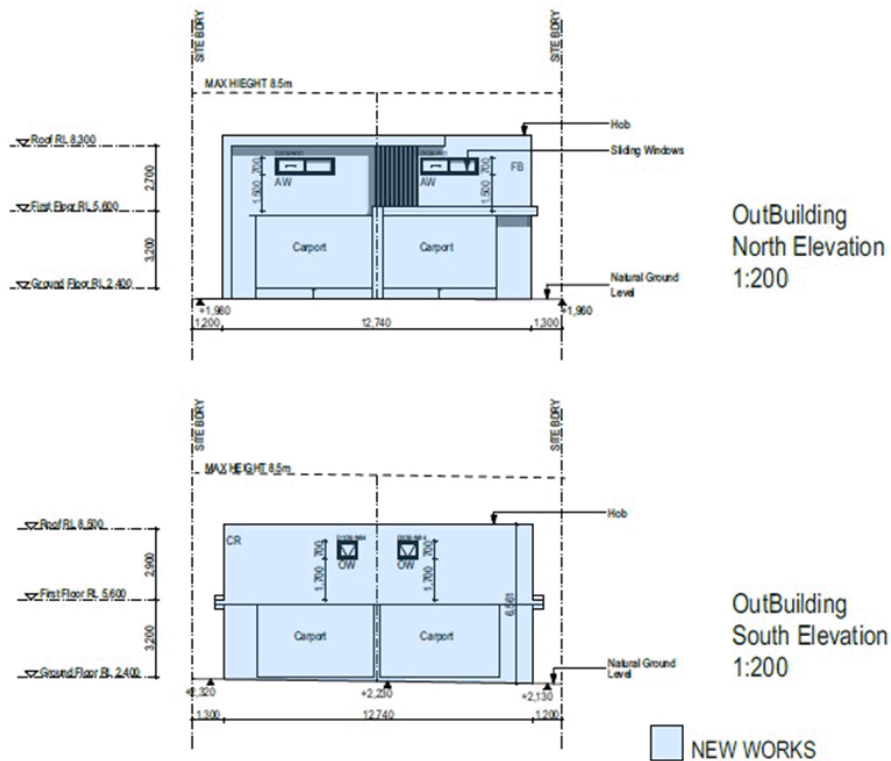
- The development compliments the existing two storey development in the streetscape.
- The secondary dwellings are setback 1.8 metres from Russel Lane to compliment the setbacks of recently constructed and existing surrounding development within Russel Lane.
- The elevation fronting Russell Lane has been articulated.
- There is proposed to be low shrub plantings and landscaped areas within the front setback.
- The carparking space at the rear is designed as an open spaced carport style structure.
- The revised architectural plans comply with the maximum permissible floor space ratio.

The revised plans augment the proposed building at the rear of 38 Russell in the following way.

- Opening up the ground floor component of the building changing this component from a garage to a carport.
- Increased articulation on the first floor component of the building.
- Increased rear setback from 0.9 metres to 1.8 metres.



Elevation plans as proposed in DA-2017/523/B



Elevations in the proposed Section 8.2

### Site location and context

The proposed location of the secondary dwellings area at the rear of an approved dual occupancy located off Russell Lane between Jameson Lane and Napoleon Street. The lot and deposit plan numbers for the allotment is Lot 126 and DP 2008. There is an approved two allotment subdivision for the dual occupancy. The dual occupancy has a frontage to Russel Avenue between Rocky Point Road and Napoleon Street. At the time of the site inspection the Dual Occupancies were nearing completion. No work had been undertaken towards the secondary dwellings.

A 1.3m wide easement is located along the western boundary of the subject site which contains a Stormwater Pipe. The site is relatively flat.

## 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*.

### S8.2 - Review of Determination

Pursuant to Section 8.2(1(a) of the EP&A Act, the determination of an application for development

consent by a council can be subject to review under this Division. Since the application is not for complying development, designated development or Crown development, it can be reviewed under this Division.

This Review Application is lodged pursuant to Section 8.3(1) of the EP&A Act and it may amend the proposal but only if the consent authority is satisfied that it is substantially the same development (S8.3(3) of the EP&A Act). It is considered that the proposal as outlined in the Review Application is substantially the same development as the original application.

The time within which the review application must be made is six (6) months pursuant to Section 8.10 and 8.3(2)(a) of the EP&A Act. Since the development application was refused on 21 February 2019, the application can be determined by the Council/the Panel as it has been lodged in the required time frame.

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

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

The following Environmental Planning Instruments are relevant to this application:

##### **Greater Metropolitan REP No. 2 – Georges River Catchment**

The proposal is consistent with Council's requirements for the disposal of stormwater in the catchment. Therefore, it is considered that the proposed development will not significantly impact upon the environment of the Georges River, either in a local or regional context, and that the development is not inconsistent with the general and specific aims, planning principles, planning considerations and policies and recommended strategies. The proposal is consistent with the aims and objectives of the Georges River Catchment Deemed (SEPP).

##### **State Environmental Planning Policy (Affordable Rental Housing) 2009**

The proposal is subject to the provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009. An assessment of the proposal against the ARHSEPP has been carried out as follows:

In accordance with Part 2, Division 2, Clause 22 of the SEPP:

*(2) A consent authority must not consent to development to which this Division applies if there is on the land, or if the development would result in there being on the land, any dwelling other than the principal dwelling and the secondary dwelling.*

The proposed development will not result in any dwelling other than the principal dwelling and the secondary dwelling.

*(3) A consent authority must not consent to development to which this Division applies unless:  
(a) the total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area allowed for a dwelling house on the land under another environmental planning instrument, and*

The Gross floor area of the principal dwellings and secondary dwellings has been calculated as 416 square metres over a site area of 742 square metres. In this regard, the proposed floor space ratio (FSR) for the building is 0.55:1 and therefore does not exceed the maximum FSR for the land (0.60:1) and accordingly is no more than the maximum floor area permitted by Clause 4.4 in Rockdale Local Environmental Plan 2011.

*(b) the total floor area of the secondary dwelling is no more than 60 square metres or, if a greater floor area is permitted in respect of a secondary dwelling on the land under another environmental planning instrument, that greater floor area.*

The total floor area of the proposed secondary dwelling one (1) is 34.7 sqm and for dwelling two (2) 35.3 sqm.

*(4) A consent authority must not refuse consent to development to which this Division applies on either of the following grounds:*

*(a) site area*

*if:*

- (i) the secondary dwelling is located within, or is attached to, the principal dwelling, or*
- (ii) the site area is at least 450 square metres,*

The site area is 371 sq.m for each proposed allotment. A merit assessment has been undertaken regarding the suitability of the proposal for the site.

*(b) parking*

*if no additional parking is to be provided on the site.*

The parking for the dual occupancies and secondary dwellings comply with the requirements of the Development Control Plan.

*(5) A consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (4).*

The proposed development is considered acceptable with regards to this clause.

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

The applicant has submitted a BASIX Certificate for the proposed development. The Certificate number is 958937M

The commitments made result in the following reductions in energy and water consumption:

Reduction in Energy Consumption 50%

Reduction in Water Consumption 41%

Thermal Comfort Pass

A condition has been imposed on the consent to ensure that these requirements are adhered to.

#### **Rockdale Local Environmental Plan 2011**

Relevant clauses	Compliance with objectives	Compliance with standard/provision
2.3 Zone R3 Medium Density Residential	Yes	Yes - see discussion
4.3 Height of buildings	Yes	Yes - see discussion
4.4 Floor space ratio - Residential zones	Yes	Yes - see discussion

Relevant clauses	Compliance with objectives	Compliance with standard/provision
5.4 (9) Secondary dwellings	Yes	Yes - see discussion
6.1 Acid Sulfate Soil - Class 3	Yes	Yes - see discussion
6.2 Earthworks	Yes	Yes - see discussion
6.4 Airspace operations	Yes	Yes - see discussion
6.6 Flood planning	Yes	Yes - see discussion
6.7 Stormwater	Yes	Yes - see discussion
6.12 Essential services	Yes	Yes - see discussion

### 2.3 Zone R3 Medium Density Residential

The subject site is zoned R3 - Medium Density Residential under the provisions of Rockdale Local Environmental Plan 2011 (RLEP 2011). The proposal is defined as a Secondary Dwelling which constitutes a permissible development only with development consent. The objectives of this zone are:

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

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

### 4.3 Height of buildings

The height of the proposed building is 6.1 metres and therefore does not exceed the maximum 8.5 metre height shown for the land on the Height of Buildings Map.

Further, the proposed development will result in a high quality urban form, maintain satisfactory sky exposure and daylight to buildings, key areas and public domain, and will provide an appropriate transition in built form and land use intensity. Accordingly, the proposed height of the building satisfies the objectives of this clause.

### 4.4 Floor space ratio - Residential zones

Calculation of the total gross floor area in the approved plans for the two (2) dual occupancies shows that for dwelling one (1) the Gross Floor Area is 170.5 square metres and 173.35 square metres for duplex two (2). The gross floor area for each secondary dwelling has been calculated to be 36.2 square metres. The total gross floor area over the site is 416.25 square metres over a site area of 742 square metres. The maximum floor space ratio in the Rockdale Local Environmental Plan Maximum Permissible Floor Space Ratio map is 0.6:1. The proposed floor space ratio is 0.56:1 which complies with the maximum permissible floor space ratio.

### 5.4 (9) Secondary dwellings

The floor area of the secondary dwellings has been calculated to be 36.2 square metres. This is less than the maximum permissible 60 square metres permitted for secondary dwellings. The secondary dwelling is less than 43% of the total floor area of the principal dwelling.

**6.1 Acid Sulfate Soil - Class 3**

Acid Sulfate Soils (ASS) – Class 3 affects the property. Development Consent is not required as the proposed works involve the disturbance of less than 1 tonne of soil and the works are not likely to lower the watertable.

**6.2 Earthworks**

The modification will not result in any substantial additional earthworks. Earthworks are limited to founding works for the new building, works for the installation of concrete pavements and excavations for key services.

**6.4 Airspace operations**

The proposed development is affected by the Obstacle Limitation Surface (OLS) which is set at 110 metres to Australian Height Datum (AHD). The proposed building height is at 8.3 metres to AHD and in this regard, it is considered that the proposed development will have minimal adverse impact on the OLS and hence is acceptable with regards to this Clause.

**6.6 Flood planning**

The original application was accompanied by a Flood Advice Letter dated 8 August 2017. Council's Development Engineers have assessed the proposed Section 8.2 and have provided support.

**6.7 Stormwater**

The proposal involves the construction of an on site detention system to manage stormwater. The proposed stormwater system has been approved by Council's development engineers and is consistent with this clause.

**6.12 Essential services**

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

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

No relevant proposed instruments are applicable to this proposal.

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

The following Development Control Plan is relevant to this application:

**Rockdale Development Control Plan 2011**

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

Relevant clauses	Compliance with objectives	Compliance with standard/provision
4.1.1 Views and Vista	Yes	Yes - see discussion
4.1.3 Water Management	Yes	Yes - see discussion
4.1.3 Groundwater Protection	Yes	Yes - see discussion
4.1.4 Soil Management	Yes	Yes - see discussion
4.2 Streetscape and Site Context - General	Yes	Yes - see discussion



Relevant clauses	Compliance with objectives	Compliance with standard/provision
4.3.1 Open Space & Landscape Design - Low & medium density residential	Yes	Yes - see discussion
4.4.2 Solar Access - Low and medium density residential	Yes	Yes - see discussion
4.4.3 Natural Lighting and Ventilation - Residential	Yes	Yes - see discussion
4.7 Air Conditioning and Communication Structures	Yes	Yes - see discussion
4.7 Laundry Facilities and Drying Areas	Yes	Yes - see discussion
5.1 Building Design - General	Yes	Yes - see discussion

#### 4.1.1 Views and Vista

No adjoining properties enjoy views over the site. The proposal will have no impact on views.

#### 4.1.3 Water Management

The roofwater and runoff is to be directed to a detention tank. A stormwater plan has been submitted.

#### 4.1.3 Groundwater Protection

The site is affected by the Groundwater Protection Zone 3, however it is considered that excavation in relation to the proposed building is not deep enough to cause any adverse impact on the Zone.

#### 4.1.4 Soil Management

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

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

#### 4.2 Streetscape and Site Context - General

The proposal is located in the R3 Medium Density Zone. The immediate context is relatively low to medium density, consisting of residential dwellings and multi-dwelling housing. In the plans submitted for the Section 8.2 the rear setback has been increased from 0.9 metres to 1.8 metres. Along Russell Lane there is an established pattern of development with frontage to the lane. This include garages and ancillary buildings to dwellings with frontage to Bonanza Parade and Russell Avenue, Multi-dwelling development with a secondary frontage or primary frontage to Russell Lane. The rear setback is consistent with the approved secondary dwelling at 25 Bonanza Parade which has a rear setback to the lane of 1.8 metres. The side setbacks for the secondary dwelling are 1.2 metres for the ground and first floor on each side boundary.

The proposed two storey secondary dwelling is consistent with prevailing character of development along Russell Lane.

#### 4.3.1 Open Space & Landscape Design - Low & medium density residential

The original application was accompanied by a landscaping plan which showed the area of landscaping over the site. The area of landscaping in the revised plans has been calculated to be 28% of the site. This is above the minimum required landscaped area of 25% of the site for low and medium density residential development.

#### 4.4.2 Solar Access - Low and medium density residential

Shadow diagrams have been provided for 9am, 12pm and 3pm mid winter and the equinox. The diagrams show that at 9am mid winter a shadow is cast west into the rear private open space of the neighbouring dwelling. At 12pm the shadow changes location to cause overshadowing to the private open spaces of the dual occupancies. At 3pm the shadow shifts east to cause partial overshadowing to the private open space of proposed dual occupancy number two (2) and the private open space of the neighbouring dwelling.

The diagrams show that a minimum three (3) hours of direct sunlight is to be maintained to habitable rooms of neighbouring dwellings and that at least 50% of the private open spaces of neighbouring dwellings retains direct solar access.

#### 4.4.3 Natural Lighting and Ventilation - Residential

The section plan shows that the floor to ceiling height for each storey is 2.7 metres. This is above the minimum required floor to ceiling height of 2.7 metres.

#### 4.7 Air Conditioning and Communication Structures

The plans do not depict the location of proposed residential air conditioning units on site. Accordingly, a condition is imposed in the draft conditions requiring air conditioning units to be obscured from public view should they be provided and operate in accordance with the relevant provisions of the Protection of the Environment Operations Act, 1997. Subject to conditions, the development is acceptable with regards to this Clause.

#### 4.7 Laundry Facilities and Drying Areas

Plans illustrate the provision of internal laundry facilities within each secondary dwelling. The provisions of this Clause are satisfied.

#### 5.1 Building Design - General

The following comments are made in relation to building design.

- The proposal feature a modern contemporary design with a flat roof and contemporary building materials such as cladding. The design is not inconsistent with the prevailing character of the area.
- The building features articulation including recessing of the ground floor carport, and shade structures.
- Staircases to the first floor level are internal.
- The ground floor section has been amended to contain an open carport. A garage will not be the dominant feature of the building facade or detract from the streetscape.

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

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

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

The relevant matters pertaining to the likely impacts of the development have been assessed and are discussed in this report.

#### **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.

Council's Development Engineers have assessed the proposed driveway ramp profile and have determined that the proposed ramp profile at 1:4.31 gradient is not suitable. Accordingly it has been recommended that a condition be incorporated into the consent requiring a revised driveway profile being submitted and approved by the principal certifying authority. The ground level of the carport at the rear will need to be lowered in order for the facilitate a suitable driveway profile. Accordingly it is proposed that a condition be incorporated into the consent requiring the ground level of the carport be lowered. As the ground floor component of the building is an unenclosed carport there is no requirement for this component to be built above the 1% AEP flood height.

Additional conditions of consent are proposed to further minimise any impacts on neighbouring properties.

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

The proposal was placed on exhibition between the 18th March and the 3rd April 2019. No submissions were received.

#### **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.

#### **S7.12 Fixed development consent levies**

Section 7.12 of the Environmental Planning and assessment Act 1979 (as amended) applies to the proposal. In this regard, a standard condition of development consent has been imposed in respect to a levy applied under this section.

#### ***Civil Aviation Act, 1988***

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

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

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

#### **Section 6 Prohibition of the construction of buildings of more than 150 feet in height in certain areas**

The proposed development is affected by the 51m Building Height Civil Aviation Regulations, however the proposed building height at 10.5 AHD 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
Subdivision DA11	RM Designs	12 January 2018	15 January 2018
Site analysis DA12	RM Designs	12 January 2018	15 January 2018
Demolition and Sediment control plan DA13	RM Designs	12 January 2018	15 January 2018
Site Plan DA14 Issue D	RM Designs	24 April 2019	26 April 2019
Ground floor DA 20	RM Designs	12 January 2018	15 January 2018
First floor DA21	RM Designs	12 January 2018	15 January 2018
Roof plan DA 22	RM Designs	12 January 2018	15 January 2018
DA25 Outbuilding Plans Issue D	RM Designers	24 April 2019	26 April 2019
DA 15 Streetscape Elevation Russell Lane Issue C	RM Designers	24 April 2019	26 April 2019
Concept landscape plan DA24 Issue D	RM Designs	24 April 2019	26 April 2019
Elevations and Sections DA 30 Issue D	RM Designs	24 April 2019	26 April 2019
Elevations and Sections DA 31 Issue D	RM Designs	24 April 2019	26 April 2019

Driveway Section DA 32	MBC Engineering Pty Ltd	14 November 2017	15 January 2018
Stormwater plan Job 2017688 Sheet 1 and 2 of 2	MBC Engineering Pty Ltd	14 November 2017	15 January 2018
Ground floor details Job 2017688 S01	MBC Engineering Pty Ltd	8 January 2018	15 January 2018

3. All new building work must be carried out in accordance with the provisions of the Building Code of Australia (BCA).
4. **A Construction Certificate must be obtained from Council or an Accredited Certifier prior to any building work commencing.**
5. The development must be implemented and all BASIX commitments thereafter maintained in accordance with BASIX Certificate Number 860085M other than superseded by any further amended consent and BASIX certificate.  
**Note:** Clause 145(1)(a1) of the Environmental Planning & Assessment Regulation 2000 provides: A certifying authority must not issue a construction certificate for building work unless it is satisfied of the following matters: -
  - (a1) that the plans and specifications for the building include such matters as each relevant BASIX certificate requires.**Note:** Clause 154B(2) of the Environmental Planning & Assessment Regulation 2000 provides: "A certifying authority must not issue a final occupation certificate for a BASIX affected building to which this clause applies unless it is satisfied that each of the commitments whose fulfilment it is required to monitor has been fulfilled."  
**Note:** For further information please see <http://www.basix.nsw.gov.au>.
6. This approval is not to be construed as permission to erect any structure on or near a boundary contrary to the provisions of the Dividing Fences Act.
7. Mail boxes must be installed along the street frontage of the property boundary in accordance with Australia Post Guidelines. Prominent house numbers are to be displayed, with a minimum number size of 150 mm in height for each number and letter in the alphabet.
8. The dwelling located on the western part of the site shall be known as 38 Russell Avenue and the dwelling located on the eastern part of the site shall be known as 38A Russell Avenue.

### Development specific conditions

The following conditions are specific to the Development Application proposal.

9. Parking spaces at the rear of the site fronting Russell Lane shall not be enclosed without further approval of Council. The enclosure of the carport structure is not permitted for this development.
10. 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.
11. 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.
  12. 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.
  13. 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.
  14. Retaining walls over 600mm in height shall be designed and specified by a suitably qualified structural engineer.
  15. The pool is for the private use of the dwelling residents only and not for public use.
  16. The pool/spa pump hours of operation shall be restricted to between 7am to 8pm weekdays and 8am to 8pm weekends.
  17. The pool area shall be enclosed by a 1200mm high pool safety fence and all associated gates shall be fitted with a self-latching device in accordance with AS1926.
- Note: A dividing fence will be accepted as part of the pool safety fence provided the fence complies with the requirements of AS1926.
18. Waste water from the pool or spa is to be discharged into a Sydney Water gully riser, in accordance with the typical connection shown in Council's Swimming Pool and Spa Code.
  19. The motor, filter, pump and all sound producing equipment or fittings associated with or forming part of the pool filtering system shall be sound insulated and/or isolated so as not to create an offensive noise to the neighbours.
  20. The front fence shall not exceed 1.2m in height when measured from the natural ground level at the front boundary.
  21. The door to the ground floor laundry located on the western elevation shall be converted to a window with fixed obscure glazing in any part of the window below 1.5m above floor level.

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

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

22. The following fees shall be paid to Council prior to the issue of a Construction



Certificate. If payment is made after the end of the financial year, the amount shall be adjusted in accordance with Council's adopted fees and charges.

- i. A Footpath Reserve Restoration Deposit of \$5,148.00. 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.
23. 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.
24. An application for Driveway Works (Public Domain Construction – Vehicle Entrance/Driveway Application) / Frontage Works (Public Domain Frontage Works Construction Application) shall be made to Council's Customer Service Centre prior to issue of the Construction Certificate. All boundary frontage works, egress paths, driveways and fences shall comply with the approval. A fee is payable to Council. If payment is made after the end of the financial year, the amount shall be adjusted in accordance with Council's adopted fees and charges.
25. A Section 94 contribution of \$8,739.46 shall be paid to Council. Such contributions are only used towards the provision or improvement of the amenities and services identified below. The amount to be paid is adjusted at the time of payment, in accordance with the contribution rates contained in Council's current Adopted Fees and Charges. The contribution is to be paid prior to the issue of construction certificate. (Payment of the contribution is not required prior to any separate construction certificates issued only for demolition, site preparation works and the construction of basement levels). The contribution is calculated from Council's adopted Section 94 contributions plan in the following manner:

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

26. A suitable qualified engineer is to certify that the structure can withstand the forces of floodwater, scour, debris and buoyancy in a 1% AEP flood event.
27. All building materials shall be flood resistant, or flood compatible to a height of 500mm above the 1% AEP flood, or flow level. All internal electrical switches, power points or similar utilities liable to flood damage shall be set at a minimum of 500mm above the 1% AEP flood, or flow level. Details shall be provided and approved prior to the issue of a construction certificate.
28. 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](#)

29. Prior to issue of the Construction Certificate, a longitudinal driveway profile shall be submitted to Principal Certifying Authority for assessment and approval. The profile shall start in the centre of the road and be along the critical edge (worst case) of the driveway. Gradients and transitions shall be in accordance with Council's Code. The profile shall be drawn to a scale of 1 to 25 and shall include all relevant levels, grades (%) and lengths.
30. Any part of the proposed building located in the vicinity of the existing pipeline shall be constructed on a pier and beam type foundation, piers shall be located outside the boundary of the drainage easement and to extend to a depth of no less than 300mm below the pipeline invert. This requirement shall be reflected on the Construction Certificate plans and supporting documentation
31. Any part of the proposed building within 3m of the proposed detention tank or absorption trench shall be constructed on a pier and beam foundation with piers extending no less than 300mm below the bottom of the tank or trench base. This requirement shall be reflected on the Construction Certificate plans and supporting documentation.
32. The driveway over the absorption trench shall be either constructed on a pier and beam foundation with piers extending no less than 300mm below the bottom of the trench base or constructed as a structural slab so that no load is transferred to the plastic trench. This requirement shall be reflected on the Construction Certificate plans and supporting documentation.
33. *[Amendment A S96(1A) deleted on 29 May 2018]*
34. Prior to the issue of the Construction Certificate, detailed drainage design plans for the management of stormwater are to be submitted to Principal Certifying Authority for assessment and approval. These detailed design plans must include the following:

The provision for two (2) separate On-site Stormwater Detention Systems for the development, designed to retain all 1 in 100 year storm events and satisfying all relevant Council and Australian Standards. The proposed On-site detention system shall be designed so that it does not negatively impact the existing Council owned stormwater drainage line that traverses through the site. Each On-site Detention system is to discharge to the Russell Avenue kerb & gutter system separately, lot 2 is not to utilise the discharge point lot 1 utilises.

Drainage grates shall be provided at the boundary. Width of the drainage grates shall be in accordance with Rockdale Technical Specification Stormwater Management.

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

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.

35. Weir provided for the above ground OSD systems shall be designed to ensure sheet flow achieved for over 1 in 50 year ARI and no concentrated flow to the neighbouring



properties.

The discharge to the Russell Avenue kerb outlet must be less than 50l/s for the combined discharge of the site for the 50 year ARI event. Details shall be provided prior to the issue of construction certificate to the satisfaction of the Principal Certifying Authority.

36. Prior to the issue of any Construction Certificate, all retaining walls over 600mm in height shall be designed and specified by a suitably qualified structural engineer. Retaining walls shall be able to withstand all hydrostatic loads generated by the 100 year ARI event. Details shall be shown in the construction certificate documents to the satisfaction of the principal certifying authority prior to the issue of the construction certificate.
37. Prior to issue of any construction certificate, the following revisions shall be undertaken to the detailed design the development to the satisfaction of the Principal Certifier:
  - a) The floor level of the carport shall be revised to be RL 2.15 AHD.
  - b) A new concrete footpath is to be constructed within the proposed right of way easement. Footpath is to have a smooth transition with the proposed driveway. No building structures are to be located within the easement.

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

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

38. 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.
39. 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.

40. 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.
41. The site shall be secured by a 1800 mm (minimum) high temporary fence for the duration of the work. Gates shall be provided at the opening points.

**During demolition / excavation / construction**

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

42. 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.
43. 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.
44. For Class 1 and 10 structures, the building works are to be inspected during construction, by the principal certifying authority (or other suitably qualified person on behalf of the principal certifying authority) to monitor compliance with Council's approval and the relevant standards of construction encompassing the following stages:
  - i. after excavation for, and prior to the placement of, any footings, and
  - ii. prior to pouring any in-situ reinforced concrete building element, and
  - iii. prior to covering the framework for any floor, wall, roof or other building element, and
  - iv. prior to covering waterproofing in any wet areas, and
  - v. prior to covering any stormwater drainage connections, and
  - vi. after the building work has been completed and prior to any occupation certificate being issued in relation to the building.

Documentary evidence of compliance with Council's approval and relevant standards of construction is to be obtained prior to proceeding to the subsequent stages of construction and copies of the documentary evidence are to be maintained by the principal certifying authority and be made available to Council officers upon request.

45. Ground water shall only be pumped or drained to Council's stormwater system if the water is clean and unpolluted. The standard used to determine the acceptability of the quality of the water is the 'Australian and New Zealand Environment and Conservation Council - Australian Water Quality Guidelines for Fresh and Marine Waters 1992'.

Note: Prior treatment and/or filtration of the water may be necessary to achieve acceptable quality, including a non-filterable residue not exceeding 50 milligrams/litre or small quantities may be removed by the services of a Licenced Liquid Waste Transporter. It is an offence under the provisions of the Protection of the Environment Operations Act 1997 to pollute the stormwater system.

46. 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.
47. 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.
48. 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.
49. 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.
- 50. All existing trees located within the site may be removed.
- 51. 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.
- 52. Where drainage or paving works are proposed to be constructed in the area below the dripline of trees, the proposed works and construction methods must not damage the tree. Where either the trees or works were not shown in detail on the approved plans, then Council approval must be obtained by contacting Council's Tree Management Officer.
- 53. Underground Services such as pipelines or cables to be located close to trees, must be installed by boring or by such other method that will not damage the tree rather than open trench excavation. The construction method must be approved by Council's Tree Management Officer.
- 54. Existing soil levels within the drip line of trees to be retained shall not be altered without reference to Council's Tree Management Officer.
- 55. Building materials, site residue, machinery and building equipment shall not be placed or stored under the dripline of trees required to be retained.

#### **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.

- 56. Evidence of the registration of the Torrens Title Subdivision of the attached dual occupancy with Land and Property Information shall be submitted to the PCA, prior to the issue of any Occupation Certificate for the rear secondary dwellings. Reference is to be made to Condition Numbers 71 to 78 (inclusive) of the subject Development Consent to satisfy conditions relating to Torrens Title Subdivision.
- The occupation, or use of the approved dwellings, shall not commence until an Occupation Certificate has been issued for the separate dwellings.
- 57. 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.

58. 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.
59. The flood management plans shall be updated to reflect the currently proposed development. The flood management plans shall be erected to a prominent location within all dwellings to the satisfaction of the Principal Certifier prior to occupation.
60. At least two (2) native or ornamental trees of at least 45 litre pot size and capable of growing to a minimum height of three (3) metres shall be planted in suitable locations within the property on completion of the building works and prior to the final inspection.
61. 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.
62. 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.
63. The combined single access driveway to Russell Avenue is to have a maximum width of 5.5m at the boundary.
64. 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.

65. 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.
66. A certificate from a Registered Surveyor shall be provided to the Principal Certifying Authority (PCA) certifying that the habitable floor level is constructed a minimum of 500mm above the 1% Annual Exceedance Probability (A.E.P) Flood Level. A copy of the certificate shall be provided to Council where Council is not the Principal Certifying Authority
67. A certificate from a Registered Surveyor shall be provided to the Principal Certifying Authority certifying that the garage floor is either constructed at or above 1% A.E.P Annual Exceedance Probability (AEP) Flood Level. A copy of the certificate shall be provided to Council where Council is not the Principal Certifying Authority.
68. Prior to occupation a Chartered Professional Engineer shall certify that the stormwater system has been constructed in accordance with the approved plans and as required by Rockdale Technical Specification Stormwater Management. The certificate shall be in the form specified in Rockdale Technical Specification Stormwater Management and include an evaluation of the completed drainage works. A works-as-executed drainage plan shall be prepared by a registered surveyor based on a survey of the completed works. A copy of the certificate and

- works-as-executed plan(s) shall be supplied to the Principal Certifying Authority. A copy shall be provided to Council if Council is not the Principal Certifying Authority.
69. Flow through open form fencing (louvres or pool fencing) is required for all new front fencing and all internal fences and gates up to the 1% AEP flood level. Any new boundary fences adjoining private property shall have an 80mm gap at the bottom to allow flows through. Documentation shall be provided to Certifying Authority prior to occupation
70. The development shall comply with Rockdale Development Control Plan (DCP) 2011, and the Planning Considerations and Development Controls listed in the Flood Advice letter issued by Council on 8 August 2017.
71. 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.
72. A final Occupation Certificate shall not be issued until all conditions relating to demolition, construction and site works of this development consent are satisfied.

#### **Prior to issue of subdivision certificate**

The following conditions must be complied with prior to the issue of the Subdivision Certificate or the Strata Certificate.

73. The provision of a 0.9 metre wide right of footway in favour of Bayside Council along the boundary with Russell Lane. The right of footway is to be covered by a Section 88B Instrument, which may only be varied or extinguished with the consent of Bayside Council.  
These provisions are to be put into effect prior to release of the Subdivision/Strata Certificate.
74. Reciprocal rights of carriageway shall be provided over both allotments to allow manoeuvring into and out of the garages fronting Russell Avenue.  
These provisions are to be put into effect prior to release of the Subdivision/Strata Certificate.
75. The provision of a 1.3m wide drainage easement over Council's drainage pipeline for the drainage of roof and surface runoff. The drainage easement is to be in favour of Bayside Council and covered by a Section 88B Instrument, which may only be varied or extinguished with the consent of Bayside Council. A restriction to user preventing building works within the easement is also required.

These provisions are to be put into effect prior to release of the Subdivision/Strata Certificate. Council requires proof of registration of the required easement with the Land Titles Office.

76. A Subdivision Certificate and four (4) copies of the plans for the endorsement of the General Manager shall be submitted to Council prior to lodgment with the Land and Property Information office. If applicable, an original and four (4) copies of the 88B Instrument are to be submitted.
77. The endorsed subdivision certificate shall not be released until completion of the development.
78. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Coordinator. Please refer to the Building Developing and Plumbing section of the web site [www.sydneypwater.com.au](http://www.sydneypwater.com.au) then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

The Section 73 Certificate must be submitted to the Principal Certifying Authority prior to release of the Subdivision/Strata Certificate.

79. The new lots created are to be numbered lot 700 and lot 701.
80. All existing and proposed services on the property shall be shown on a plan, and shall be submitted to Council. This includes electricity, gas, water, sewer, stormwater and telephone services. Where any service crosses one lot but benefits another lot, it is to be covered by an easement. The service easement is to be covered by a Section 88B Instrument, which may only be varied or extinguished with the consent of Bayside Council. These provisions are to be put into effect prior to the release of the Subdivision/Strata Certificate.
81. A positive covenant shall be provided over the on-site detention system. A Section 88B Instrument and four copies shall be lodged with the Subdivision/Strata Certificate.
82. Council will not issue the Subdivision Certificate unless the following has been provided to Council:
  - Works-As-Executed Plan for Stormwater Drainage System
  - Engineer's Compliance certificate for Stormwater Drainage System & work as executed drawing
  - Utility Service Plan
  - Original of Section 73 Compliance Certificate referring to Subdivision – (Sydney Water Act 1994)
  - Landscape certification (if Council not appointed as PCA)
  - Administration Sheet and 88B instruments prepared by a qualified surveyor

### **Roads Act**

83. Where applicable, the following works will be required to be undertaken in the road reserve at the applicant's expense:
  - i) construction of two new fully constructed concrete vehicular entrance/s;



- ii) upgrade of the existing kerb inlet pit that is located within the proposed vehicular crossing
  - iii) removal of the existing concrete vehicular entrance/s, and/or kerb laybacks which will no longer be required
  - iv) removal of redundant paving;
  - v) smooth transition with new driveways and footpath areas
84. 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.
  85. 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.
  86. 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.
  87. Following completion of concrete works in the footpath reserve area, the balance of the area between the fence and the kerb over the full frontage of the proposed development shall be turfed with either buffalo or couch (not kikuyu).

### Development consent advice

- a. You are advised to consult with your utility providers (i.e. Energy Aust, Telstra etc) in order to fully understand their requirements before commencement of any work.
- b. *Dial Before You Dig*

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

- c. Where Council is not engaged as the Principal Certifying Authority for the issue of the Subdivision Certificate (Strata), and the Section 88B or 88E (for landuse) Instrument contains easements and/or covenants to which Council is a Prescribed Authority, the Council must be provided with all relevant supporting information (such as works-as-executed drainage plans and certification) prior to Council endorsing the Instrument.
- d. All asbestos fibre demolition material and asbestos dust shall be handled, stored and removed in accordance with the relevant legislation and guidelines including:
  - Work Health and Safety Act 2011
  - Work Health and Safety Regulation 2011



- Code of Practice for the Safe Removal of Asbestos [NOHSC: 2002 (2005)]
- Code of Practice for the Management and Control of Asbestos in Workplaces [NOHSC: 2018 (2005)]
- Protection of the Environment Operations (Waste) Regulation 2005

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

- e. The water from the rainwater tank should not be used for drinking, Sydney Water shall be advised of the installation of the rainwater tank.
- f. 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.

**CALCULATIONS:**

SITE AREA = 742sqm.

**DUPLEX 1:**

DUPLEX 1 SITE AREA = 371sqm.  
GROUND LEVEL AREA = 90.52sqm.  
SINGLE GARAGE = 19.18  
ALFRESCO = 21.04sqm.  
OUT BUILDING = 38.21sqm.  
FIRST LEVEL AREA = 89.47sqm.  
FIRST FLOOR VOID AREA = 6.02sqm.  
FIRST LEVEL FRONT BALCONY = 10.93sqm.

**TOTAL FLOOR AREA:**

90.52sqm. + 89.47sqm. + 34.7 = 214.79sqm. = FSR 57.8:1

**NOTES:**

Gross floor area excludes balcony, alfresco, stairwell (first floor) and voids. Area measured from inside skin of external walls.

**LANDSCAPE AREAS**

Backyard = 85.05sqm. = 22.9 % (DEEP SOIL)  
Front yard = 54.57sqm. (landscaped area is 22.95sqm) 42.0% of front area landscaped.  
Private open space/alfresco = 20.59sqm.  
Overall landscape area = 108.01sqm. = 29.1%

**DUPLEX 2:**

DUPLEX 2 SITE AREA = 371sqm.  
GROUND LEVEL AREA = 92.24sqm.  
SINGLE GARAGE = 19.18  
ALFRESCO = 21.04sqm.  
OUT BUILDING = 38.70sqm.  
FIRST LEVEL AREA = 91.00sqm.  
FIRST FLOOR VOID AREA = 6.02sqm.  
FIRST LEVEL FRONT BALCONY = 10.90sqm.

**TOTAL FLOOR AREA:**

92.24sqm. + 91.00sqm. + 35.3 = 218.54sqm. = FSR 58.9:1

**NOTES:**

Gross floor area excludes balcony, alfresco, stairwell (first floor) and voids. Area measured from inside skin of external walls.

**LANDSCAPE AREAS**

Backyard = 84.7sqm. = 22.8 % (DEEP SOIL)  
Front yard = 54.33sqm. (landscaped area is 22.95sqm) 42.2% of front area landscaped.  
Private open space/alfresco = 21.04sqm.  
Overall landscape area = 107.55sqm. = 29%

**Basix Notes**

The applicant must plant indigenous or low water use species of vegetation throughout the area of land specified for the dwelling in the "Indigenous species" column of the table below, as private landscaping for that dwelling. (This area of indigenous vegetation is to be contained within the "Area of garden and lawn" for the dwelling specified in the "Description of Project" table).

The applicant must not install a private swimming pool or spa for the dwelling, with a volume exceeding that specified for it in the table below.

The pool or spa must be located as specified in the table.

The applicant must install, for the dwelling, each alternative water supply system, with the specified size, listed for that dwelling in the table below. Each system must be configured to collect run-off from the areas specified (excluding any area which supplies any other alternative water supply system), and to divert overflow as specified. Each system must be connected as specified.

The applicant must install each hot water system specified for the dwelling in the table below, so that the dwelling's hot water is supplied by that system. If the table specifies a central hot water system for the dwelling, then the applicant must connect that central system to the dwelling, so that the dwelling's hot water is supplied by that central system.

This commitment applies to each room or area of the dwelling which is referred to in a heading to the "Natural lighting" column of the table below (but only to the extent specified for that room or area). The applicant must ensure that each such room or area is fitted with a window and/or skylight.

The applicant must install the photovoltaic system specified for the dwelling under the "Photovoltaic system" heading of the "Alternative energy" column of the table below, and connect the system to that dwelling's electrical system.

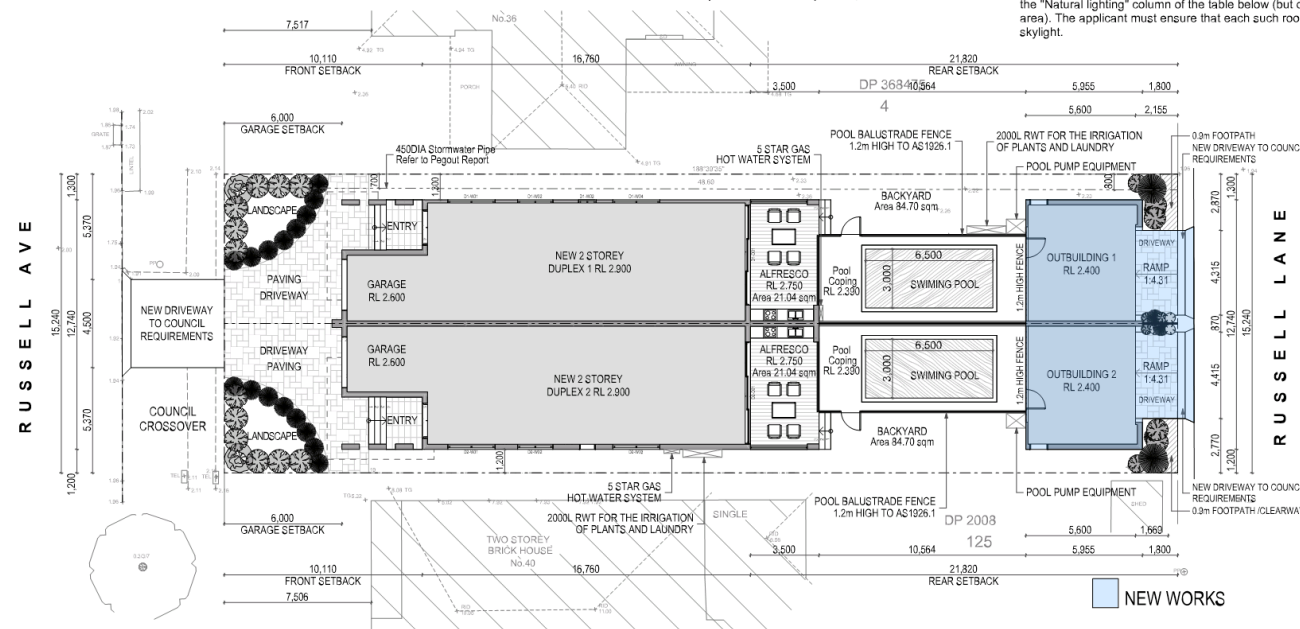
Where there is an in-slab heating or cooling system, the applicant must:  
(a) Install insulation with an R-value of not less than 1.0 around the vertical edges of the perimeter of the slab; or  
(b) On a suspended floor, install insulation with an R-value of not less than 1.0 underneath the slab and around the vertical edges of the perimeter of the slab.

The applicant must construct the floors and walls of the development in accordance with the specifications listed in the table below.

The applicant must install (or ensure that the development is serviced by) the alternative water supply system(s) specified in the "Central systems" column of the table below. In each case, the system must be sized, be configured, and be connected, as specified in the table.

A swimming pool or spa listed in the table must not have a volume (in kLs) greater than that specified for the pool or spa in the table.

The applicant must install the systems and fixtures specified in the "Central energy systems" column of the table below. In each case, the system or fixture must be of the type, and meet the specifications, listed for it in the table.



Issue	Date	Description	Ass by
A	10/03/2018	ISSUE FOR APPROVAL SECTION 96	RM
B	18/10/2018	ISSUE FOR APPROVAL SECTION 96	RM
C	18/02/2019	ISSUE FOR APPROVAL SECTION 96	RM
D	24/04/2019	ISSUE FOR APPROVAL SECTION 96	RM

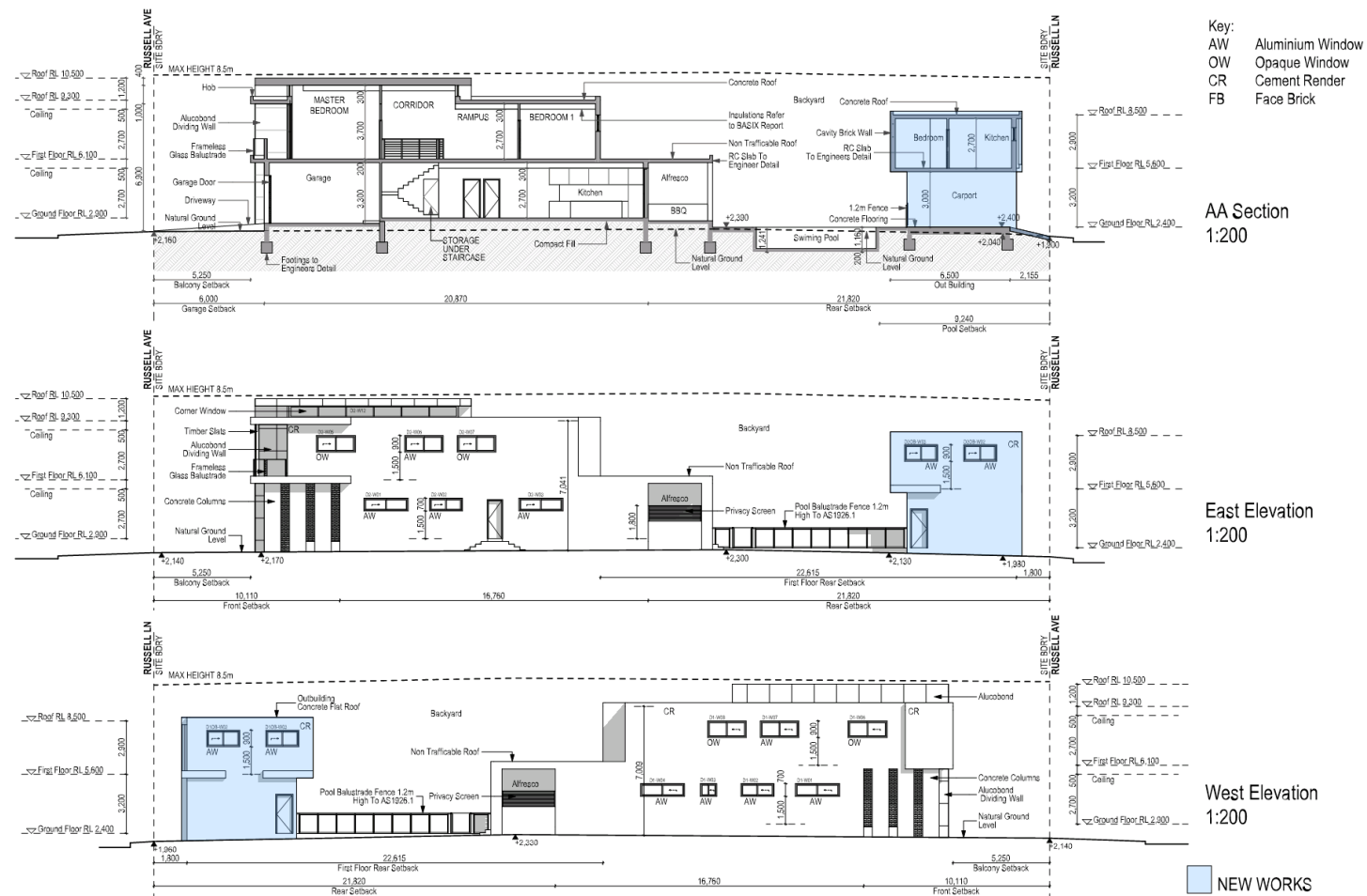
**SECTION 96**

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**RM**  
DESIGNERS  
Designer / 0425 204 511 / rm@rmdesigners.com

Client  
**Mr & Mrs LOUKIS**Consultants  
**1. ALPHA SURVEYS**Project Description  
**NEW SEMI DETACHED DUPLEX  
2 STOREY**Project Location  
**38 Russell Ave Sans Souci  
NSW 2219 Australia  
LOT 126  
DP 2008**Project Number  
**17093**Drawing Title  
**SITE PLAN**Scale  
**1:200**Drawing Number  
**DA 14**Issue  
**D**Drawing Status  
**NOT FOR CONSTRUCTION**

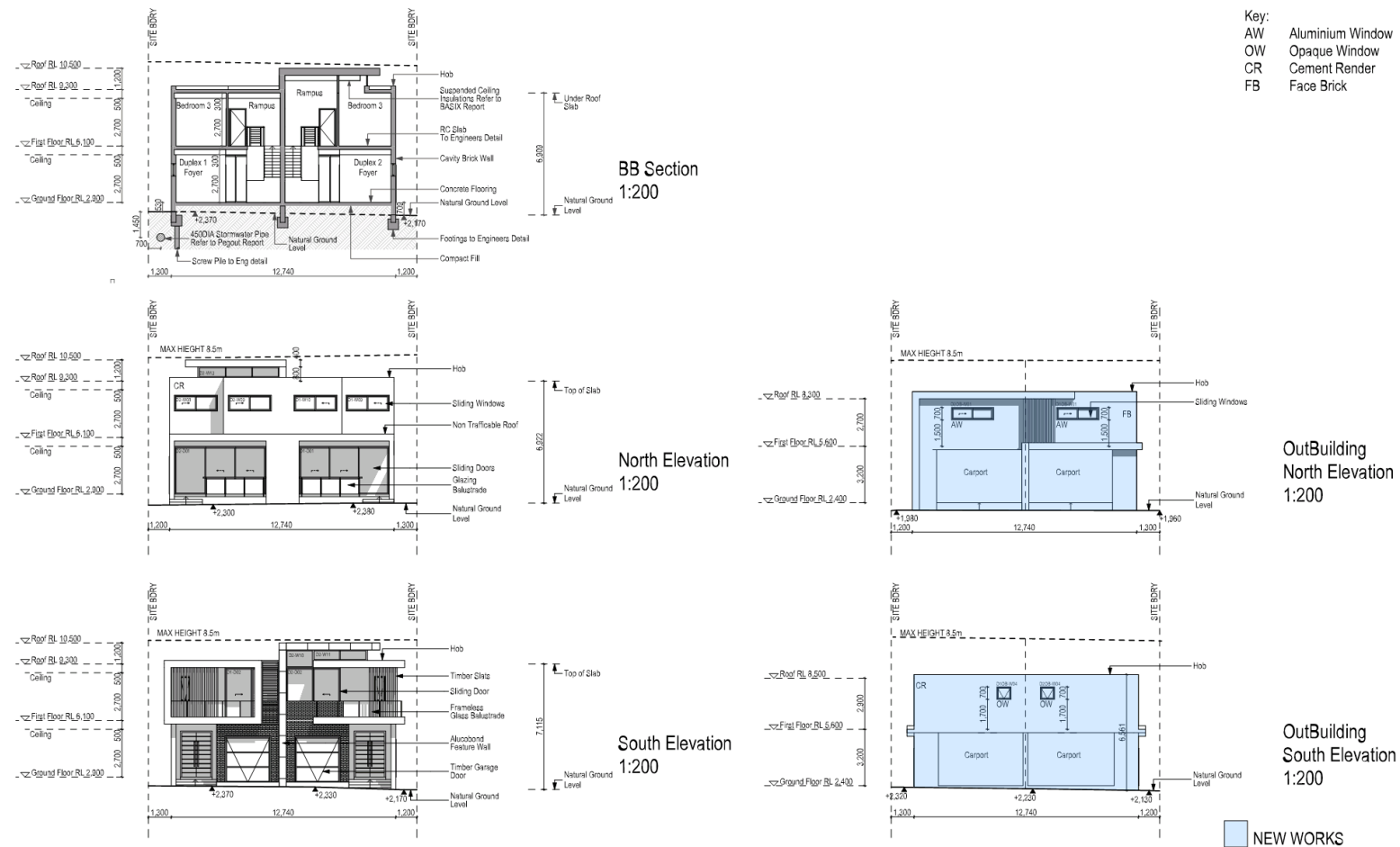
A3



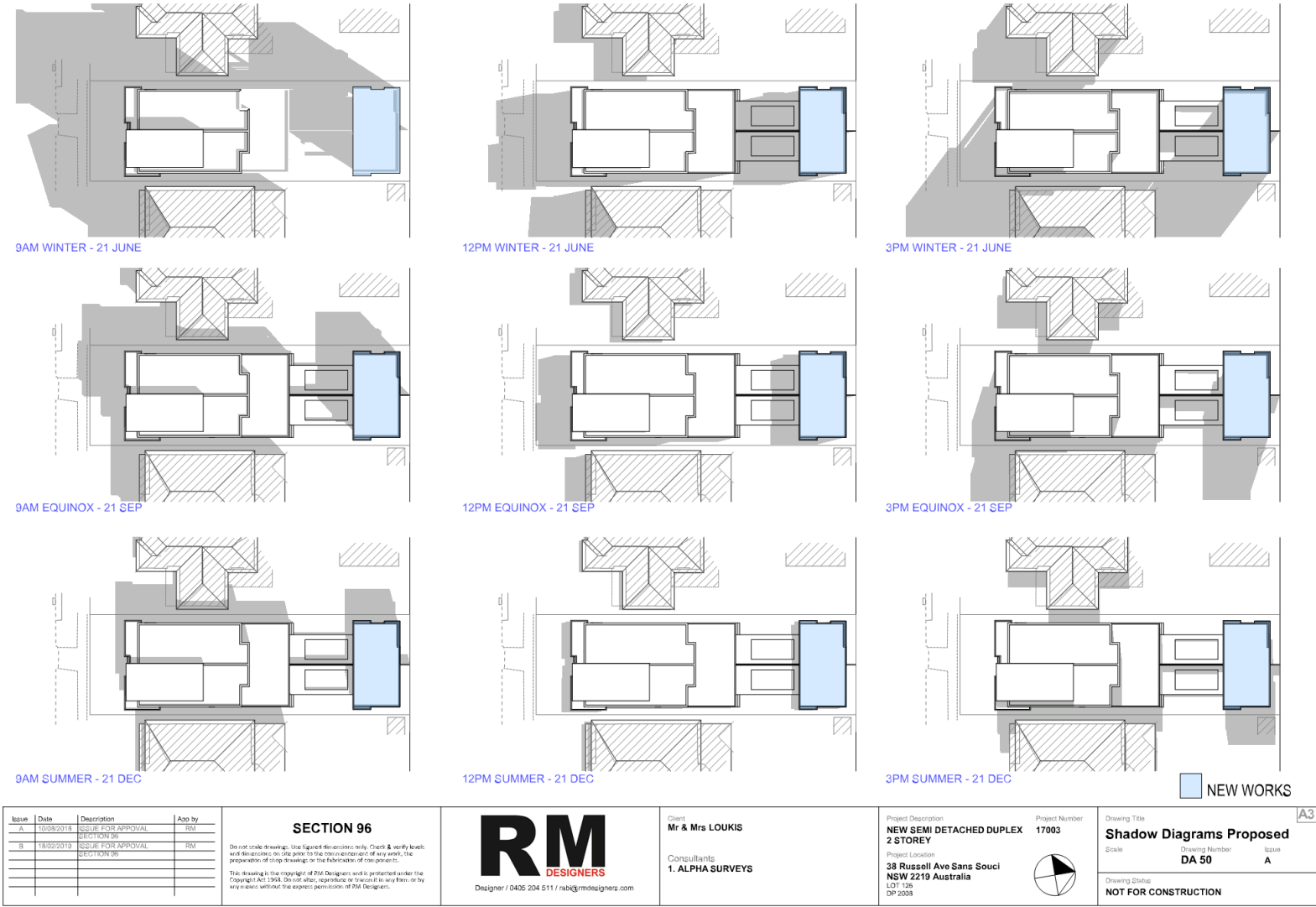
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<p><b>SECTION 96</b></p> <p>Do not scale drawings. Use figure dimensions only. Check &amp; verify levels and dimensions on site prior to the commencement of any work, the preparation of any drawings or the fabrication of components.</p> <p>This drawing is the copyright of RM Designers and is protected under the Copyright Act 1968. Do not alter, reproduce or transmit in any form or by any means without the express permission of RM Designers.</p>	<p><b>RM DESIGNERS</b></p> <p>Designer / 0425 204 511 / rab@rmdesigners.com</p>	<p>Client <b>Mr &amp; Mrs LOUKIS</b></p> <p>Consultants <b>1. ALPHA SURVEYS</b></p>	<p>Project Description <b>NEW SEMI DETACHED DUPLEX 2 STOREY</b></p> <p>Project Location <b>38 Russell Ave Sans Souci NSW 2219 Australia</b> LOT 126 DP 20038</p>	<p>Project Number <b>17003</b></p> <p>Drawing Title <b>Elevations &amp; Sections</b></p> <p>Scale <b>1:200</b></p> <p>Drawing Number <b>DA 30</b></p> <p>Issue <b>D</b></p> <p>Drawing Status <b>NOT FOR CONSTRUCTION</b></p>
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**TURF**

Excavate / grade all areas to be turfed to 120mm below required finished levels. Do not excavate within 1500mm of the trunk of any existing tree to be retained. Ensure that all surface water runoff is directed towards the inlet pits, kerbs etc., and away from buildings. Ensure that no pooling or ponding will occur. Pip to the subgrade to 150mm. Install 100mm depth of imported topsoil. Just prior to spreading the turf, spread "Shirley's No.17 lawn fertilizer" over the topsoil at the recommended rate. Lay "Kikuyu" turf rolls closely butted. Fill any small gaps with topsoil. Water thoroughly.

**Brick Garden Edging**

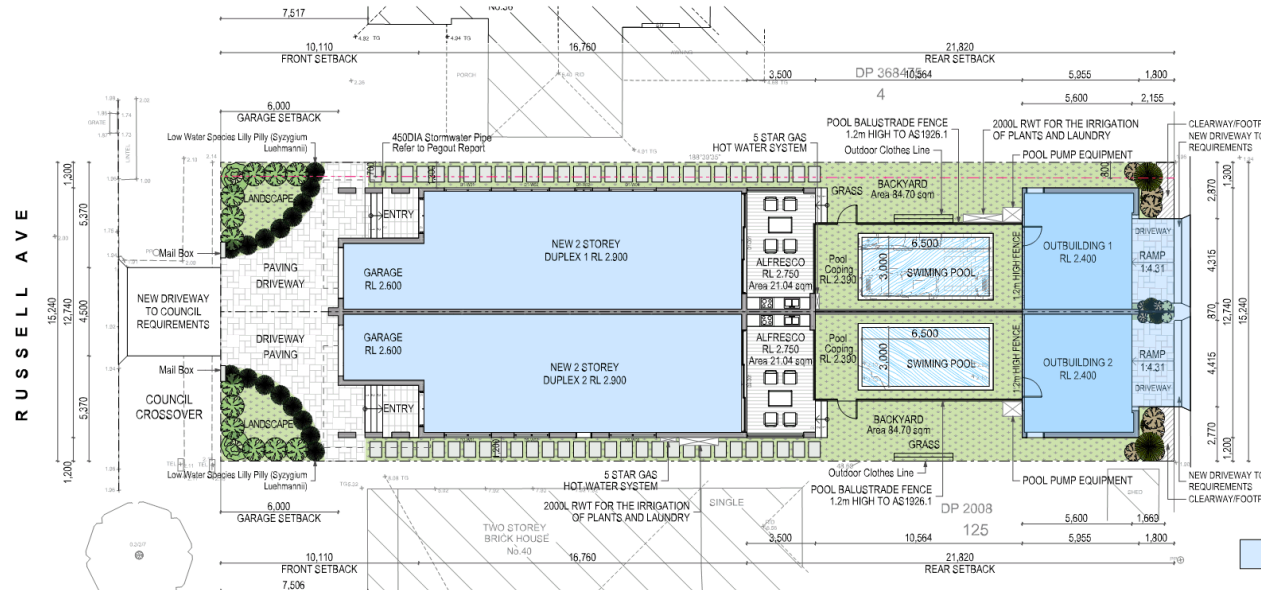
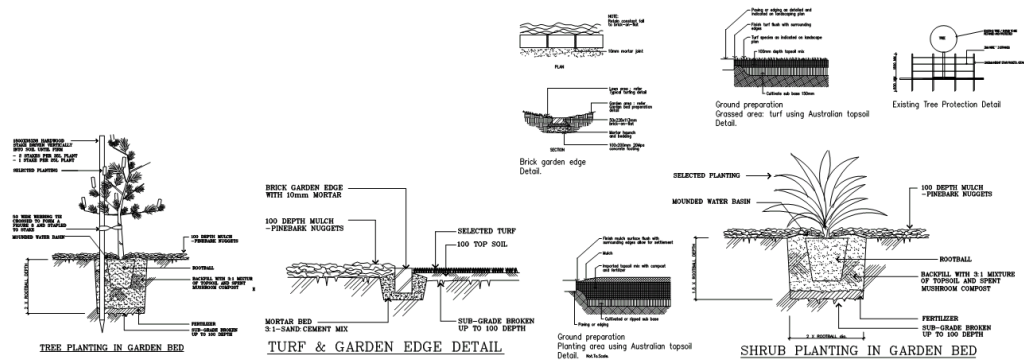
Lay a single course of paving bricks in a mortar haunch (200mm wide and 100mm deep). The edges are to be laid in even curves and straight line as shown on the plan. Where tight curves are shown use half bricks to show a more even curve. The top of the edge is to finish flush with the adjacent turf and mulch level.

**Planting areas**

Ensure that the mass planting areas have been excavated to 300 below finished levels. Pip to a further depth of 150mm. Supply and install 300mm soil mix. Soil mix to comprise of one part approved compost to three parts topsoil. Topsoil shall be either imported topsoil or stockpiled site topsoil (if suitable ie: No.17) install 75mm depth of selected mulch.

**Note: Maintenance:**

All landscape works are to be maintained for a period of three months from the date of practical completion. This includes all watering, weeding, spraying and re-mulching necessary to achieve vigorous growth. Any defects which arise during this period are to be rectified immediately. Any plants or areas of turf which fail during this period are to be replaced at no additional cost.

**LANDSCAPING****DUPLEX 1:****LANDSCAPE AREAS**

Backyard = 85.05sqm = 22.9 %  
(DEEP SOIL)  
Front yard = 54.57sqm  
(landscaped area is 22.96sqm)  
42.0% of front area landscaped  
Private open space/alfresco =  
20.59sqm  
Overall landscape area =  
108.01sqm = 29.1%

**DUPLEX 2:****LANDSCAPE AREAS**

Backyard = 84.7sqm = 22.8 %  
(DEEP SOIL)  
Front yard = 54.59sqm  
(landscaped area is 22.96sqm)  
42.2% of front area landscaped  
Private open space/alfresco =  
21.04sqm  
Overall landscape area =  
107.55sqm = 29%

NEW WORKS

<table><tr><th>Issue</th><th>Date</th><th>Description</th><th>App by</th></tr><tr><td>A</td><td>10/03/2018</td><td>ISSUE FOR APPROVAL SECTION 96</td><td>RM</td></tr><tr><td>B</td><td>18/10/2018</td><td>ISSUE FOR APPROVAL SECTION 96</td><td>RM</td></tr><tr><td>C</td><td>18/02/2019</td><td>ISSUE FOR APPROVAL SECTION 96</td><td>RM</td></tr><tr><td>D</td><td>24/04/2019</td><td>ISSUE FOR APPROVAL SECTION 96</td><td>RM</td></tr></table>				Issue	Date	Description	App by	A	10/03/2018	ISSUE FOR APPROVAL SECTION 96	RM	B	18/10/2018	ISSUE FOR APPROVAL SECTION 96	RM	C	18/02/2019	ISSUE FOR APPROVAL SECTION 96	RM	D	24/04/2019	ISSUE FOR APPROVAL SECTION 96	RM	<div>SECTION 96</div> <div>Do not state drawings. Use figure numbers only. Check &amp; verify levels and dimensions on site prior to the commencement of any work, the preparation of any drawings or the fabrication of components.</div> <div>This drawing is the copyright of RMA Designers and is protected under the Copyright Act 1968. Do not alter, reproduce or transmit in any form or by any means without the express permission of RMA Designers.</div> <div><div><div><div></div><div>RM</div><div>DESIGNERS</div></div><div>Designer / 0425 204 511 / rab@rmdesigners.com</div></div></div>		<div>Client Mr &amp; Mrs LOUKIS</div> <div>Consultants 1. ALPHA SURVEYS</div>		<div>Project Description NEW SEMI DETACHED DUPLEX 2 STOREY</div> <div>Project Location 38 Russell Ave Sans Souci NSW 2219 Australia LOT 128 DP 2008</div> <div>Project Number 17003</div>		<div>Drawing Title CONCEPT LANDSCAPE PLAN</div> <div>Scale 1:200</div> <div>Drawing Number DA 24</div> <div>Status D</div> <div>Drawing Status NOT FOR CONSTRUCTION</div>		<div>A3</div>
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**A** WHITE CEMENT RENDER

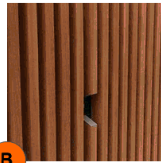
**B** TIMBER SLATS

**C** BRICK WALL

ARTIST IMPRESSION



**A**



**B**



**C**

<table><tr><th>Issue</th><th>Date</th><th>Description</th><th>App by</th></tr><tr><td>A</td><td>10/03/2018</td><td>ISSUE FOR APPROVAL SECTION 96</td><td>RM</td></tr><tr><td>B</td><td>18/10/2018</td><td>ISSUE FOR APPROVAL SECTION 96</td><td>RM</td></tr><tr><td>C</td><td>18/02/2019</td><td>ISSUE FOR APPROVAL SECTION 96</td><td>RM</td></tr><tr><td></td><td></td><td></td><td></td></tr><tr><td></td><td></td><td></td><td></td></tr></table>				Issue	Date	Description	App by	A	10/03/2018	ISSUE FOR APPROVAL SECTION 96	RM	B	18/10/2018	ISSUE FOR APPROVAL SECTION 96	RM	C	18/02/2019	ISSUE FOR APPROVAL SECTION 96	RM									<p><b>SECTION 96</b></p> <p>Do not scale drawings. Use figured dimensions only. Check &amp; verify levels and elevations on site prior to the commencement of any work, the preparation of shop drawings or the fabrication of components.</p> <p>This drawing is the copyright of RM Designers and is protected under the Copyright Act 1968. Do not alter, reproduce or transmit in any form or by any means without the express prior notice of RM Designers.</p>		<div><p>Designer / 0425 204 511 / <a href="mailto:rabi@rmdesigners.com">rabi@rmdesigners.com</a></p></div>	<p>Client <b>Mr &amp; Mrs LOUKIS</b></p> <p>Consultants <b>1. ALPHA SURVEYS</b></p>	<div><p>Project Description <b>NEW SEMI DETACHED DUPLEX 2 STOREY</b></p><p>Project Location <b>38 Russell Ave Sans Souci NSW 2219 Australia</b></p><p>LOT 126 DP 2003</p></div>	<p>Project Number <b>17003</b></p> <div></div>	<p>Drawing Title <b>FINISHES SCHEDULE</b></p> <p>Scale Drawing Number Issue <b>DA 42 B</b></p> <p>Drawing Status <b>NOT FOR CONSTRUCTION</b></p>	<div>A3</div>
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21 February 2019

Our Ref: DA-2017/523/B

Contact: Adam Iskander 9562 1666



Mr Rabi Moussawel  
31 Hillard St  
WILEY PARK NSW 2195

## NOTICE OF DETERMINATION

Issued in accordance with section 4.18(1a) of the *Environmental Planning and Assessment Act, 1979*

<b>Application Number:</b>	DA-2017/523/B
<b>Property:</b>	38 Russell Avenue, SANS SOUCI (Lot 126 DP 2008)
<b>Proposal:</b>	S4.55(2) application to modify approved dual occupancy with secondary dwellings to allow for a two storey secondary dwelling with parking on ground floor
<b>Authority:</b>	Delegated to Council Staff
<b>Determination:</b>	Refused
<b>Date of determination:</b>	21 February 2019

Your application was considered under the *Environmental Planning and Assessment Act 1979*. The application sought to modify the following previous consent(s):

- DA-2017/523 - approved on 16 February 2018
- DA-2017/523/A- amended and approved on 29 May 2018

Your application is **refused** under Section 4.16(1)(b) of the *Environmental Planning and Assessment Act 1979* for the following reasons:

1. Pursuant to the provisions of Section 4.15(1)(b) and Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*, insufficient 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.

4. 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 the objectives of the R3 Medium Density Residential Zone as contained in Part 2.3 of the zone under Rockdale Local Environmental Plan 2011 as the proposal does not ensure that land uses are carried out in a context and setting that minimises any impact on the character and amenity of the area.

**Eastgardens Customer Service Centre**  
Westfield Eastgardens  
152 Bunnerong Road  
Eastgardens NSW 2036, Australia  
ABN 80 690 785 443 Branch 004

**Rockdale Customer Service Centre**  
444-446 Princes Highway  
Rockdale NSW 2216, Australia  
ABN 80 690 785 443 Branch 003  
DX 25308 Rockdale

Phone 1300 581 299  
T (02) 9562 1666 F 9562 1777  
E [council@bayside.nsw.gov.au](mailto:council@bayside.nsw.gov.au)  
W [www.bayside.nsw.gov.au](http://www.bayside.nsw.gov.au)

Postal address: PO Box 21, Rockdale NSW 2216



Telephone Interpreter Services - 131 450

Τηλεφωνικές Υπηρεσίες Διερμηνέων

خدمة الترجمة الهاتفية

電話傳譯服務處

Служба за преведување по телефон



5. 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 the Objectives of Clause 4.3 of the Rockdale Local Environmental Plan 2011 relating to Maximum Building Height
6. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development does not satisfy the Objectives of Clause 4.4 of the Rockdale Local Environmental Plan 2011 relating to Maximum Floor Space Ratio
7. Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not meet the objectives of the Rockdale Development Control Plan 2011 Part 4.1 Streetscape, including Objectives A,B and C and Controls 1, 4 and 5;
8. Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not meet the objectives of the Rockdale Development Control Plan 2011 Part 4.3.1 Open space and Landscape design, including Objectives D, E and I;
9. Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not meet the objectives of the Rockdale Development Control Plan 2011 Part 4.4.2 Solar Access, including Objectives B and Controls 2 and 4(a);
10. Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not meet the objectives of the Rockdale Development Control Plan 2011 Part 4.4.3 Natural light and ventilation, including Objectives A;
11. Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not meet the objectives of the Rockdale Development Control Plan 2011 Part 5.1 Storey height and setbacks, including Objectives A, B, D, E and F;
12. 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) Natural Environment – Loss of solar access to the subject site resulting from the two storey design of the secondary dwelling
  - b) Built Environment - Design does not respond appropriately to Russell Lane and has not taken into consideration the recently approved developments within close proximity to the subject site and fails to respond to the spacial characteristic and limitations of the site.
13. 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.

14. 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 and density and would adversely impact upon the amenity of the locality.

15. The proposed development, pursuant to the provisions of Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, is not considered suitable for the site, in terms of streetscape, context and design and is likely to have over-shadowing impacts onto the shared private open space.

#### **Additional Information**

- Section 82A allows Council to reconsider your proposal. Should you wish to have the matter reconsidered you should make an application under that section with the appropriate fee.
- Under Section 8.7 and 8.10 of the Act, applicants who are dissatisfied with the outcome of a consent authority have a right of appeal to the Land and Environment Court. This right must be exercised within six (6) months from the date of this notice. The Court's Office is situated at Level 1, 225 Macquarie Street, Sydney (Telephone 9228 8388), and the appropriate form of appeal is available from the Clerk of your Local Court.

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Should you have any further queries please contact Adam Iskander on 9562 1666



**Luis Melim**  
**Manager - Development Services**

# BAYSIDE COUNCIL

## Planning Assessment Report

### Application Details

---

<b>Application Number:</b>	DA-2017/523/B
<b>Date of Receipt:</b>	11 September 2018
<b>Property:</b>	38 Russell Avenue, SANS SOUCI (Lot 126 DP 2008)
<b>Owner:</b>	Mrs Rhonda Loukis
<b>Applicant:</b>	Mr Rabi Moussawel
<b>Proposal:</b>	Modification to relocate secondary dwelling to first floor with ground level car parking
<b>Recommendation:</b>	Refused
<b>No. of submissions:</b>	Nil
<b>Author:</b>	Adam Iskander
<b>Date of Report:</b>	20 February 2019

### Key Issues

---

The key issues related to this application are:

- Non-compliance with the Objectives of the Zone
- Non-compliance with the Objectives of Floor space Ratio Standard
- Non-compliance with streetscape Objectives
- Non-compliance with Open Space and landscaping Objectives
- Non-compliance with over-shadowing Controls and Objectives
- Non-compliance with natural lighting and ventilation Objectives
- Non-compliance with setbacks Controls and Objectives
- The modification is not within the public interest.

### Recommendation

---

That this Development Application be **REFUSED** pursuant to Section 4.16(1)(b) of the Environmental Planning and Assessment Act 1979 for the following reasons:

1. Pursuant to the provisions of Section 4.15(1)(b) and Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, insufficient 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.

4. 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 the objectives of the R3 Medium Density Residential Zone as contained in Part 2.3 of the zone under Rockdale Local

Environmental Plan 2011 as the proposal does not ensure that land uses are carried out in a context and setting that minimises any impact on the character and amenity of the area.

5. 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 the Objectives of Clause 4.3 of the Rockdale Local Environmental Plan 2011 relating to Maximum Building Height

6. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development does not satisfy the Objectives of Clause 4.4 of the Rockdale Local Environmental Plan 2011 relating to Maximum Floor Space Ratio

7. Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not meet the objectives of the Rockdale Development Control Plan 2011 Part 4.1 Streetscape, including Objectives A,B and C and Controls 1, 4 and 5;

8. Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not meet the objectives of the Rockdale Development Control Plan 2011 Part 4.3.1 Open space and Landscape design, including Objectives D, E and I;

9. Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not meet the objectives of the Rockdale Development Control Plan 2011 Part 4.4.2 Solar Access, including Objectives B and Controls 2 and 4(a);

10. Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not meet the objectives of the Rockdale Development Control Plan 2011 Part 4.4.3 Natural light and ventilation, including Objectives A;

11. Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not meet the objectives of the Rockdale Development Control Plan 2011 Part 5.1 Storey height and setbacks, including Objectives A, B, D, E and F;

12. 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) Natural Environment – Loss of solar access to the subject site resulting from the two storey design of the secondary dwelling

b) Built Environment - Design does not respond appropriately to Russell Lane and has not taken into consideration the recently approved developments within close proximity to the subject site and fails to respond to the spacial characteristic and limitations of the site.

13. 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.

14. 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 and density and would adversely impact upon the amenity of the locality.

15. The proposed development, pursuant to the provisions of Section 4.15(1)(c) of the Environmental

Planning and Assessment Act 1979, is not considered suitable for the site, in terms of streetscape, context and design and is likely to have over-shadowing impacts onto the shared private open space.

## Background

### History

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

- DA-2017/523 for the demolition of all existing structures on site and construction of a two storey attached dual occupancy with swimming pool and rear secondary dwellings, and Torrens Title subdivision into two lots was approved 16 February 2018.
- DA-2017/523/A for the deletion of Condition 32 requiring registration of an easement which was inserted in the conditions of consent in error was approved 29 May 2018.

#### DA-2017/523/B

- 28 September 2018 - Council issued a letter to the applicant advising that the modification for a two storey secondary dwelling be withdrawn as the proposal could not be supported.
- 8 October 2018 - The applicant's town planner submitted additional information justifying the modification, however, the information was insufficient. The applicant was again requested to withdraw the application, however, the applicant insisted on providing further amendments.
- 26 October 2018 - The applicant submitted amended plans and further supporting documents converting the garage to a carport. However, these amendments did not adequately address the concerns raised by Council relating to design and streetscape. The amended plans also provided increases in setbacks, however, the design changes were minor and the supporting documents remained insufficient as they did not provide reasonable planning justifications for the modification.
- 19 December 2018 - A meeting was held at Council to discuss the modification with the applicant.
- 29 January 2019 - As no additional plans or documents had been submitted since the meeting date an email was received from the applicant requesting Council to determine the application in its current design.

### Proposal

Council is in receipt of a development application DA-2017/523/B at 38 Russell Avenue Sans Souci, which seeks consent to carry out modification to create a two storey secondary dwelling to each dual occupancy fronting Russel Lane with ground floor parking.

Specifically, both secondary dwellings consist of:

Ground floor:

- Single garage with timber panel lift garage door;
- Internal staircase to first-floor level;
- Entry point on side elevation.

First floor:

- Open plan kitchen and living room;
- Bathroom and bedroom; and
- Concrete flat roof.

The facade consists of brown brick with white cement render and timber slats. The secondary dwellings are attached and form a large rectangular structure with 1.2-1.3m side setbacks and a 900mm front setback from Russell Lane. Two windows are proposed along the first-floor side elevations and front elevation with bottom sill heights measuring 1.5m from finished floor level.

### Site location and context

The subject site is located on the northern side of Russell Avenue, between Jameson Lane and Napoleon Street, Sans Souci. The site is rectangular in shape with a frontage of 15.24m to Russell Street and 15.24m frontage to the rear lane (Russell Lane). The side boundaries measure 48.69m in length. The site area is 742sqm and is under construction for a dual occupancy development with rear secondary dwellings. A 1.3m wide easement is located along the western boundary of the subject site which contains a Stormwater Pipe. The site is relatively flat. Surrounding developments consist of residential dwellings, dual occupancies and townhouse developments. To the far east is Russell Avenue Open Space and to the far west is a mixed-use development containing cafes and a shopping centre with units on top. The street has a variety of roof forms consisting of flat and pitched roofs.

#### 29 - 31 Bonanza Parade

To the rear across Russell Lane is 29-31 Bonanza Parade which contains a two storey townhouse development containing eight units and benefits from rear lane access via Russell Lane and faces directly opposite the rear of the subject site. This site has rear entrance via Russell Lane which leads to a below ground basement. The building has a 3m setback from Russell Lane and 3m setbacks from the side boundaries. The rear of the site consists of two separate buildings/modulations containing two units in each as a two storey building and separated by the basement entry.

#### 25 Bonanza Parade

To the rear of the subject site (north-west) is 25 Bonanza Parade. On 11 October 2018, Council approved a two storey dual-occupancy at 25 Bonanza Parade which included an alfresco area, swimming pool and two storey secondary dwelling facing Russell Lane. The two storey secondary dwelling is in close proximity to the subject site and has been designed appropriately within its context and has taken into consideration streetscape, landscape, setbacks, bulk and scale.

## Statutory Considerations

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

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

### **S4.55 (2) - Modification**

1.2. S4.55(2) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT

S4.55(2) states:

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to an in accordance with the regulations, modify the consent if:

*a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*

Comments: The application seeks to modify the approved rear single-storey secondary dwellings to construct a two storey secondary dwelling with parking on the ground floor and living space on the first floor. The proposal remains as a dual occupancy with a secondary dwelling within medium density zone. As such it is considered substantially the same development.

*b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*

Comments: Division 4.8 of the Act does not apply to this application.

*c) it has notified the application in accordance with:*

- (i) the regulations, if the regulations so require, or*
- (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and*

Comments: The application has been notified in accordance with the provisions of Council's DCP 2011.

*d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

Comments: No objections have been received.

#### S4.55(3) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT

Sections 4.55(3) and 4.56(1A) state that:

In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application. 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.

An assessment of the application has been carried out under the provisions of Section 4.15 of the Environmental Planning and Assessment Act, 1979. The matters of relevance to this application have been considered. The following is an assessment of the proposed development under the provisions of

Section 4.15(1) of the Environmental and Planning Assessment Act. The proposal as modified is unacceptable for the reasons given in this report.

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

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

The following Environmental Planning Instruments are relevant to this application:

##### **Greater Metropolitan REP No. 2 – Georges River Catchment**

The proposal is consistent with Council's requirements for the disposal of stormwater in the catchment. Therefore, it is considered that the proposed development will not significantly impact upon the environment of the Georges River, either in a local or regional context, and that the development is not inconsistent with the general and specific aims, planning principles, planning considerations and policies and recommended strategies. The proposal is consistent with the aims and objectives of the Georges River Catchment Deemed (SEPP).

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

The applicant has submitted a BASIX Certificate for the proposed development. The Certificate number is 958937M

The commitments made result in the following reductions in energy and water consumption:

Reduction in Energy Consumption 51%

Reduction in Water Consumption 41%

Thermal Comfort Pass

The BASIX is no longer valid as it has been lodged more than three months ago since the date of issue on 5 September 2018.

##### **State Environmental Planning Policy No 55—Remediation of Land**

The property is identified in Council's records as being potentially contaminated.

In accordance with the requirements of SEPP 55, a Preliminary Environmental Site Investigation Report had been submitted with the original development application DA-2017/523. The report concluded that the site is suitable for the proposed land use. The proposed development satisfies the requirements & objectives of the SEPP

#### **Rockdale Local Environmental Plan 2011**

<b>Relevant clauses</b>	<b>Compliance with objectives</b>	<b>Compliance with standard/provision</b>
2.3 Zone R3 Medium Density Residential	No - see discussion	Yes - see discussion
4.3 Height of buildings	No - see discussion	Yes
4.4 Floor space ratio - Residential zones	No - see discussion	Yes
6.1 Acid Sulfate Soil - Class 3	Yes	Yes
6.4 Airspace operations	Yes	Yes - see discussion



Relevant clauses	Compliance with objectives	Compliance with standard/provision
6.6 Flood Planning Land	Yes	Yes
6.7 Stormwater	Yes	Yes
6.12 Essential services	Yes	Yes

### 2.3 Zone R3 Medium Density Residential

The subject site is zoned R3 - Medium Density Residential under the provisions of Rockdale Local Environmental Plan 2011 (RLEP 2011). The proposal is defined as dual occupancy and secondary dwelling which constitutes a permissible development only with development consent. The objectives of this zone are:

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

The design and setting of the two storey secondary dwelling do not positively improve the character of the area and contributes unreasonably to bulk and scale from both the public domain and neighbouring properties. As such, the proposed secondary dwelling is assessed as being out of context and setting and negatively impacts the character and amenity of the area. The proposed secondary dwelling does not satisfy point four of the Objectives of the Zone and therefore the proposal fails to satisfy the zone Objectives.

### 4.3 Height of buildings

The height of the proposed two storey secondary dwelling is 5.74m and therefore does not exceed the maximum 8.5 height shown for the land on the Height of Buildings Map.

However, the proposed development does not maintain daylight to key areas such as the shared private open space within the subject site and as such, the application fails to satisfy Objective C of Clause 4.3 of RLEP 2011

### 4.4 Floor space ratio - Residential zones

The Gross floor area of the proposed development has been calculated as 222sqm over a site area of 371sqm for each dual occupancy. In this regard, the proposed floor space ratio (FSR) for the building is 0.60:1 and therefore does not exceed the maximum FSR for the land (0.60:1) as shown on the Floor Space Ratio Map.

The originally submitted plans showed an enclosed garage on the ground floor of the secondary dwelling, however, as the maximum on-site parking requirements have already been met with the dual-occupancy, the additional proposed garage spaces with this application have been included within the gross floor area (GFA) calculations which result in the GFA to be calculated at 510sqm or 0.69:1 FSR which does not comply with the FSR maximum.

The applicant has since submitted amended plans creating a carport on the ground floor instead of an enclosed garage space ensuring that the approved GFA and FSR on site remain unchanged and compliant with the numerical standard for maximum floor space ratio.

Notwithstanding, the proposed two-storey element of the secondary dwelling does not provide an appropriate visual relationship between new development and the existing character of the areas as it contributes negatively to the area and is not sympathetic to the adjoining neighbouring properties and recently approved developments in relation to design, setback, bulk and scale. As such, the application fails to satisfy the Objectives of Clause 4.4 of RDCP 2011.

#### 6.4 Airspace operations

The proposed development is affected by the Obstacle Limitation Surface (OLS) which is set at 120 metres to Australian Height Datum (AHD). The proposed secondary dwelling height is at 7.7metres to AHD and in this regard, it is considered that the proposed development will have minimal adverse impact on the OLS and hence is acceptable with regards to this Clause.

#### **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>
4.1.3 Flood Risk Management	Yes	Yes
4.1.3 Groundwater Protection	Yes	Yes
4.1.4 Soil Management	Yes	Yes
4.1.5 Contaminated Land	Yes	Yes
4.2 Streetscape and Site Context - General	No - see discussion	No - see discussion
4.3.1 Open Space & Landscape Design - Low & medium density residential	No - see discussion	No - see discussion
4.4.2 Solar Access - Low and medium density residential	No - see discussion	No - see discussion
4.4.3 Natural Lighting and Ventilation - Residential	No - see discussion	No - see discussion
5.1 Storey Height and Setbacks - Dual occupancy & Semi-detached dwelling	No - see discussion	No - see discussion

#### 4.2 Streetscape and Site Context - General

The proposal is located in a R3 Medium Density Zone. The immediate context is relatively low to medium density, consisting of residential dwellings and multi-dwelling housing. The proposed two storey secondary dwelling is consistent within the area considering a two storey secondary dwelling was recently approved by Council within close proximity to the subject site, fronting Russell Lane at 25 Bonanza Parade.

The proposed secondary dwelling has not been built taking into consideration streetscape, design, setbacks, bulk and scale when compared to the approved two storey secondary dwelling at 25 Bonanza Parade

A comparison of the setbacks from both the proposed secondary dwelling and the approved secondary dwelling at 25 Bonanza Parade is shown in the table below, along with the setback of the constructed townhouse development at 29-31 Bonanza Parade:

	25 Bonanza Parade	29-31 Bonanza Parade	38 Russell Avenue
Front Setback	1.8m	3m	0.9m
Side Setback ground floor	3.6m	3m	1.2-1.3mm
Side setback first floor	1m	3m	1.2-1.3mm

**The table above indicating the difference between setback with the proposed secondary dwelling and the approved secondary dwelling at 25 Bonanza Parade and the rear of the town house development at 29-31 Bonanza Parade**

#### 25 Bonanza Parade - Dual occupancy with two storey secondary dwelling:

Taking into consideration that both properties have the same length in frontages (15.24m), the development at 25 Bonanza Parade has successfully designed a two storey secondary dwelling with appropriate setbacks to minimise the visual impacts of the development from both Russell Lane and the surrounding neighbouring properties. Further, the development has been designed with a fully open carport along the side elevation on the ground floor allowing for a greater setback from the side boundaries and removing hard structures from the design to soften the appearance of the development. Additional landscaping has also been provided along the increased front setback to soften the visual appearance of the development from Russell Lane. The ground floor carport does not extend the length of the secondary dwelling which allows for additional soft landscaping and private open space for the future occupants of the secondary dwelling to benefit from.

Lastly, a skillion style roof creating a pitch design has been approved which also adds visual interest to the development rather than a simple square design. A variety of textures and materials have been incorporated into the design to improve the developments cohesiveness with the adjoining developments within Russell Lane.

#### 29-31 Bonanza Parade - Eight unit townhouse development

Although 29-31 Bonanza is a different style of medium density housing, it is worth considering the increased setback proposed from all sides and rear boundaries facing Russell Lane. The development also includes soft landscaping within the front setback to soften the development's appearance from Russell Lane.

#### 38 Russell Avenue:

The proposed secondary dwelling fails to provide increased setbacks with the design thereby failing to respond to the spatial character of the environment. The square design and lack of landscaping do not respond to the streetscape quality nor does it enhance the architectural and landscape interest of the area.

Council allowed the applicant to amend and justify their design relating to site constraints and

streetscape. Several attempts were submitted to Council, however, each design and supporting documents were insufficient and did not adequately address the street and emerging character of the area. As such, the application fails to satisfy the Objectives A, B and C and Controls 1, 4 and 5 of Part 4.2 of RDCP 2011.

#### 4.3.1 Open Space & Landscape Design - Low & medium density residential

According to Council's DCP, a minimum of 80sqm of open space shall be shared between both the dual occupancy and secondary dwelling, however, this open space should be clearly defined. It is unclear to where the secondary dwellings will benefit from a clearly defined open space area. Further, no additional landscaping is provided to soften the perceived impacts of the development when viewed from both Russell Lane and neighbouring properties.

Although there are only two small windows facing south towards the rear swimming pools, the lack of separation of the two uses may exacerbate the levels of noise impacts to the future occupants of the secondary dwellings.

As such, the application fails to satisfy the Objectives D, E and I of Part 4.3.1 as the proposal does not provide privacy or enhance environmental amenity; does not enhance streetscape or promote a scale and density of planting that is appropriate for the surrounding built form; and does not ensure that the location of swimming pools will have a detrimental impact on the amenity of private spaces of the secondary dwelling.

#### 4.4.2 Solar Access - Low and medium density residential

The applicant has submitted shadow diagrams for 9 a.m., 12 p.m. and 3 p.m. on June 21. The shadow diagrams show that the subject site will not receive the prescribed amount of sunlight within its private open space.

The two storey secondary dwelling will over-shadow the rear yard of the dual-occupancy between 9am to 3pm in the middle of winter by more than 50% thereby failing to satisfy Objective B of Part 4.4.2 which requires development to not unreasonably diminish sunlight within the development site. The modification also fails to satisfy Controls 2 and 4(a) which requires that the building form, separation and plan layout facilitate good solar access to external living spaces and private open spaces. As such the application fails to satisfy the Objectives and Controls of Part 4.4.2 of RDCP 2011

#### 4.4.3 Natural Lighting and Ventilation - Residential

To reduce the impacts of over-looking, each dual occupancy will have four windows, one of these windows is for a bathroom and is small in size. The remaining three windows are not large enough to maximise the northern sun or provide the future occupants with sufficient levels of solar access and ventilation. These windows have been designed to reduce the impacts of over-looking on the adjoining properties which is a consequence of an over-developed site. As such, the application fails to satisfy Objectives A or Part 4.4.3 of RDCP 2011.

#### 5.1 Storey Height and Setbacks - Dual occupancy & Semi-detached dwelling

The proposed setback are as follows:

DCP2011	PROPOSED	COMPLIES?
Setback to rear lane 3m (ground and first floor)	0.9m on ground and first floor	No

Ground floor side setback 900mm	1.2-1.3	Yes
First-floor side setback – 1.5m	1.2m and 1.3m	No

The application fails to satisfy the numerical setback controls measured from the lane and the first floor. As a result of the non-compliance, the application fails to satisfy Objectives A, B, D, E and F of Part 5.1 of RDCP 2011 where the development does not encourage a high standard of architectural merit and design; does not ensure that the new dwellings preserve sunlight for neighbouring and new residents; does not encourage housing which is pleasant to live in, does not ensure orderly development of land and high standard of site layout and design and does not meet the needs and community expectations of amenity.

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

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

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

Potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls.

#### **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 and has failed to satisfy the provisions within its Council's Local Environmental Plan and Development Control Plan. Therefore, the proposed modification is not suitable for the site.

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

The development has been notified in accordance with the provisions of Rockdale DCP 2011. Council did not receive any submissions on this proposal.

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

The proposed development is considered to be unsatisfactory having regard to the objectives and requirements of Rockdale Local Environmental Plan 2011 and Development Control Plan 2011. Impacts on adjoining properties and streetscape have been considered and addressed. As such it is considered that the proposed development is not in the public interest.

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

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## Bayside Local Planning Panel

11/06/2019

Item No	<b>6.7</b>
Application Type	Development Application
Application No	DS18/891
Lodgement Date	02/11/2018
Property	<b>19-25 Robey Street, Mascot</b>
Ward	Mascot
Owner	Robey Mascot Pty Ltd
Applicant	Inca Property Group
Proposal	Modification to provide accessible entry from Robey Street, provision of colorbond fencing to the rear boundary, metal fencing to ground floor terraces 3, 4, 6, 7, and 8; reduced glazing and sliding doors to side and rear elevations; and deletion of Condition 116(a) relating to the pathway along the northern boundary to remain private.
No. of Submissions	Nil
Cost of Development	Nil
Report by	Michael McCabe, Director City Futures

## Officer Recommendation

That application number DA-2016/165/4 (DS18/891) being a Section 4.55(1A) application for modifications to provide an accessible entry from Robey Street, provision of colorbond fencing to the rear boundary, metal fencing to ground floor terraces 3, 4, 6, 7, and 8; reduced glazing and sliding doors to side and rear elevations be APPROVED and the consent amended in the following manner:

By amending Condition 1, to read as follows:

The development is to be carried in accordance with the following plans and endorsed with Council's stamp, except where amended by other conditions of this consent. Reference documentation is also listed.

Plans	Author	Date Received
Cover Page, Drawing No. DA001, Rev A dated 27 February 2018		1 March 2018
Site Analysis Plan, Drawing No. DA101, Rev A dated 27 February 2018		1 March 2018
Site Plan, Drawing No. DA102, Rev A dated 27 February 2018		1 March 2018
Demolition Plan, Drawing No. DA103, Rev A dated 27 February 2018		1 March 2018

<p><del>Ground Floor Plan, Drawing No. DA201, Rev A dated 27 February 2018</del></p> <p><del>Ground Floor Plan, Drawing No. DA201, Rev E dated 12 July 2018</del></p> <p><del>(DA-2016/165/02)</del></p> <p>Ground Floor Plan, Drawing No. DA201, Rev F dated 26 October 2018</p> <p>(DA-2016/165/02)</p>	DKO Architecture	<p><del>1 March 2018</del></p> <p><del>8 August 2018</del></p> <p><del>(DA-2016/165/02)</del></p> <p>2 November 2018</p> <p>(DA-2016/165/04)</p>
<p><del>Level 1 Plan, Drawing No. DA202, Rev A dated 27 February 2018</del></p> <p>Level 1 Plan, Drawing No. DA202, Rev D dated 26 October 2018</p> <p>(DA-2016/165/04)</p>		<p><del>1 March 2018</del></p> <p>2 November 2018</p> <p>(DA-2016/165/04)</p>
<p><del>Level 2 Plan, Drawing No. DA203, Rev A dated 27 February 2018</del></p> <p>Level 2 Plan, Drawing No. DA203, Rev D dated 26 October 2018</p> <p>(DA-2016/165/04)</p>		<p><del>1 March 2018</del></p> <p>2 November 2018</p> <p>(DA-2016/165/04)</p>
<p><del>Level 3 Plan, Drawing No. DA204, Rev A dated 27 February 2018</del></p> <p>Level 3 Plan, Drawing No. DA204, Rev D dated 26 October 2018</p> <p>(DA-2016/165/04)</p>		<p><del>1 March 2018</del></p> <p>2 November 2018</p> <p>(DA-2016/165/04)</p>
<p><del>Level 4 Plan, Drawing No. DA205, Rev A dated 27 February 2018</del></p> <p>Level 4 Plan, Drawing No. DA205, Rev D dated 26 October 2018</p> <p>(DA-2016/165/04)</p>		<p><del>1 March 2018</del></p> <p>2 November 2018</p> <p>(DA-2016/165/04)</p>
Roof Terrace, Drawing No.DA206, Rev A dated 27 February 2018		1 March 2018
Basement 1 Plan, Drawing No. DA207, Rev A dated 27 February 2018		1 March 2018
Basement 2 Plan, Drawing No. DA208, Rev A dated 27 February 2018		1 March 2018
Adaptable Units, Drawing No. DA209, Rev A dated 27 February 2018		1 March 2018
<p><del>South Elevation, Drawing No. DA301, Rev A dated 27 February 2018</del></p> <p><del>South Elevation, Drawing No. DA301, Rev D.1 dated 25 February 2019</del></p> <p><del>(DA-2016/165/02)</del></p>		<p><del>1 March 2018</del></p> <p>2 November 2018</p>

<b>South Elevation, Drawing No. DA301, Rev D dated 26 October 2018</b> <b>(DA-2016/165/04)</b>		
<b>(DA-2016/165/04)</b>		
<b>North Elevation, Drawing No. DA302, Rev A dated 27 February 2018</b> <b>North Elevation, Drawing No. DA302, Rev B dated 26 October 2018</b> <b>(DA-2016/165/04)</b>		<b>1 March 2018</b> <b>2 November 2018</b> <b>(DA-2016/165/04)</b>
<b>East Elevation, Drawing No. DA303, Rev A dated 27 February 2018</b> <b>North Elevation, Drawing No. DA302, Rev B dated 26 October 2018</b> <b>(DA-2016/165/04)</b>		<b>1 March 2018</b> <b>2 November 2018</b> <b>(DA-2016/165/04)</b>
<b>West Elevation, Drawing No. DA304, Rev A dated 27 February 2018</b> <b>North Elevation, Drawing No. DA302, Rev B dated 26 October 2018</b> <b>(DA-2016/165/04)</b>		<b>1 March 2018</b> <b>2 November 2018</b> <b>(DA-2016/165/04)</b>
Section A, Drawing No. DA305, Rev A dated 27 February 2018		1 March 2018
Section B, Drawing No. DA306, Rev A dated 27 February 2018		1 March 2018
Section C, Drawing No. DA307, Rev A dated 27 February 2018		1 March 2018
Streetscape, Drawing No. DA308, Rev A dated 27 February 2018		1 March 2018
Landscape Concept Ground Floor Plan, DWG No. LSDA-201, Issue C dated 7 February 2018	Greenplan	1 March 2018
Landscape Concept Roof Floor Plan DWG No. LSDA-202, Issue C dated 7 February 2018		1 March 2018
Landscape Planting Ground Floor DWG No. LSDA-301, Issue A, dated 7 February 2018		1 March 2018
Landscape Planting Roof Floor, DWG No. LSDA-302, Issue A dated 7 February 2018		1 March 2018
Landscape Details Planting, DWG No. LSDA-401, Issue A, dated 7 February 2018		1 March 2018
Landscape Details Typical Construction, DWG No. LSDA-404, Issue A dated 7 February 2018		1 March 2018
Cover Sheet, Drawing No. SW100, Revision A dated 26 February 2018		1 March 2018



Stormwater Concept Design – Basement 2 Plan, Drawing No. SW200, Issue A, dated 26 February 2018	SCG Engineering	1 March 2018
Stormwater Concept Design – Ground Floor Plan, Drawing No. SW201, Issue A, dated 26 February 2018		1 March 2018
Stormwater Concept Design – Roof Plan, Drawing No. SW202, Issue A, dated 26 February 2018		1 March 2018
Stormwater Concept Design – Details Sheet 1 of 2, Drawing No. SW300, Issue A, dated 26 February 2018		1 March 2018
Stormwater Concept Design – Details Sheet 2 of 2, Drawing No. SW301, Issue A, dated 26 February 2018		1 March 2018
Erosion & Sediment Control – Plan & Details, Drawing No. SW400 dated 26 February 2018		1 March 2018
Stormwater Concept Design – Music Catchment Plan, Drawing No. SW500, Issue A, dated 26 February 2018		1 March 2018
Survey Plan (Ref: 3558), dated 7 June 2016	Cedar Surveying Services Pty Ltd	16 September 2016
Ground Floor Swept Paths – 6.4m SRV, Drawing No TX.01 Rev C, dated 23 February 2018	Traffix Traffic and Transport Planners	1 March 2018
Ground Floor Swept Paths – B85 & B99 Drawing No TX.02 Rev C, dated 23 February 2018		1 March 2018
Basement Level 1 B99 Circulation & Passing, Drawing No. TX.03, Rev C dated 23 February 2018		1 March 2018
Basement Level 2 B99 Circulation & Passing, Drawing No. TX.04, Rev B dated 18 January 2018		1 March 2018
Ramp Profile, Drawing No. TX.05, Rev C dated 23 February 2018		1 March 2018

Reference Document(s)	Author	Date Received
Amended Statement of Environmental Effects	Chapman Planning Pty Ltd	1 March 2018
Amended Clause 4.6 variation to the height development standard dated 27 February 2018	Chapman Planning Pty Ltd	1 March 2018
Statement of Compliance: Access for people with a disability (Ref: 216196), dated 26 February 2018	Accessible Building Solutions	1 March 2018
SEPP 65 Report dated 26 February 2018	DKO Architecture	1 March 2018

Traffic Impact Assessment Rev B- Ref: 17.607v02, dated 23 February 2018	Traffix Traffic and Transport Planners	1 March 2018
<del><b>BASIX Certificate No. 902705M_02 dated 25 February 2018</b></del> <b>BASIX Certificate No. 902705M_03, dated 31 October 2018</b>	Senica Consultancy Group Pty Ltd	<del><b>1 March 2018</b></del> <b>5 November 2018</b>
NATHERS Certificates with various dates	Senica Consultancy Group Pty Ltd	1 March 2018
Acoustic Report- Ref: 20161114.1/1104A/R1/RL (Rev 1), dated 11 April 2017;	Acoustic Logic	21 April 2017
Arboricultural Assessment Report (Ref: R 17/11), dated 24 August 2016.	Angophora Consulting Arborist	16 September 2016
Arboricultural Assessment Report - Tree Impact Statement & Root Investigation dated 12 April 2017;	Naturally Trees	21 April 2017
BCA Compliance Assessment Report No. 18/002, dated 23 February 2018	Paul Aramini Consulting Pty Ltd	1 March 2018
Waste Management Plan 2018/02034 dated 22 February 2018	Senica Consultancy Group	1 March 2018
Stage 1 Desktop Environmental Site Assessment (Ref: E29461KHrpt dated 20 July 2016.	Environmental Investigation Services (EIS)	16 September 2016
Stage 2 Environmental Site Assessment (Ref: E29461KHrpt2-interim) dated 16 September 2016;	Environmental Investigation Services (EIS)	16 September 2016
Geotechnical Investigation- Ref: 29461ZRrpt dated 20 July 2016;	JK Geotechnics	16 September 2016

**[Amendment 4 – S4.55(1A) amended on 11 June 2019]**

## Location Plan



## Attachments

- 1 Planning Assessment Report [↓](#)
- 2 Statement of Environmental Effects [↓](#)
- 3 North Elevation [↓](#)
- 4 South Elevation [↓](#)
- 5 West Elevation [↓](#)
- 6 East Elevation [↓](#)

# BAYSIDE COUNCIL

## Planning Assessment Report

Application Details	
<b>Application Number:</b>	DA-2016/165/4 (DS18/891)
<b>Date of Receipt:</b>	2 November 2018
<b>Property:</b>	19-25 Robey Street, Mascot  Lot 15 Sec A in DP 4115, Lot 16 Sec A in DP 4115, Lot 1 in DP 946234, Lot 1 in DP 455491, Lot 19 Sec A in DP 4115, Lot C in DP 418600 and Lot 1 in DP 931264
<b>Owner:</b>	Robey Mascot Pty Ltd
<b>Applicant:</b>	Inca Property Group
<b>Proposal:</b>	Modification to provide accessible entry from Robey Street, provision of colorbond fencing to the rear boundary, metal fencing to ground floor terraces 3, 4, 6, 7, and 8; reduced glazing and sliding doors to side and rear elevations; and deletion of Condition 116(a) relating to the pathway along the northern boundary to remain private.
<b>Recommendation:</b>	Approval subject to amended conditions
<b>Value:</b>	Nil
<b>Zoning:</b>	B2 - Local Centre
<b>No. of submissions:</b>	Nil
<b>Author:</b>	Andrew Ison, Senior Development Assessment Planner
<b>Date of Report:</b>	11 June 2019

### Key Issues

The proposal seeks the deletion of Condition 116(a) relating to a public right of footway over the rear approved footway on site, off Elizabeth Avenue. The removal of the previously approved ROW for public access is not supported.

### Recommendation

- That Development Application Number 2016/165/4 (DS18/891) being a Section 4.55(1A) application for modifications to provide an accessible entry from Robey Street, provision of colorbond fencing to the rear boundary, metal fencing to ground floor terraces 3, 4, 6, 7, and 8; reduced glazing and sliding doors to side and rear elevations is APPROVED and the consent amended in the following manner:
  - By amending Condition 1, to read as follows:

The development is to be carried in accordance with the following plans and endorsed with Council's stamp, except where amended by other conditions of this consent. Reference documentation is also listed.

Plans	Author	Date Received
Cover Page, Drawing No. DA001, Rev A dated 27 February 2018	DKO Architecture	1 March 2018
Site Analysis Plan, Drawing No. DA101, Rev A dated 27 February 2018		1 March 2018
Site Plan, Drawing No. DA102, Rev A dated 27 February 2018		1 March 2018
Demolition Plan, Drawing No. DA103, Rev A dated 27 February 2018		1 March 2018
<del>Ground Floor Plan, Drawing No. DA201, Rev A dated 27 February 2018</del> <del>Ground Floor Plan, Drawing No. DA201, Rev E dated 12 July 2018</del> <del>(DA-2016/165/02)</del> Ground Floor Plan, Drawing No. DA201, Rev F dated 26 October 2018 (DA-2016/165/02)		<del>1 March 2018</del> <del>8 August 2018</del> <del>(DA-2016/165/02)</del> 2 November 2018 (DA-2016/165/04)
Level 1 Plan, Drawing No. DA202, Rev A dated 27 February 2018 Level 1 Plan, Drawing No. DA202, Rev D dated 26 October 2018 (DA-2016/165/04)		1 March 2018 2 November 2018 (DA-2016/165/04)
Level 2 Plan, Drawing No. DA203, Rev A dated 27 February 2018 Level 2 Plan, Drawing No. DA203, Rev D dated 26 October 2018 (DA-2016/165/04)		1 March 2018 2 November 2018 (DA-2016/165/04)
Level 3 Plan, Drawing No. DA204, Rev A dated 27 February 2018 Level 3 Plan, Drawing No. DA204, Rev D dated 26 October 2018 (DA-2016/165/04)		1 March 2018 2 November 2018 (DA-2016/165/04)
Level 4 Plan, Drawing No. DA205, Rev A dated 27 February 2018 Level 4 Plan, Drawing No. DA205, Rev D dated 26 October 2018 (DA-2016/165/04)		1 March 2018 2 November 2018 (DA-2016/165/04)
Roof Terrace, Drawing No. DA206, Rev A dated 27 February 2018		1 March 2018
Basement 1 Plan, Drawing No. DA207, Rev A dated 27 February 2018		1 March 2018

Basement 2 Plan, Drawing No. DA208, Rev A dated 27 February 2018		1 March 2018
Adaptable Units, Drawing No. DA209, Rev A dated 27 February 2018		1 March 2018
<del>South Elevation, Drawing No. DA301, Rev A dated 27 February 2018</del> <del>South Elevation, Drawing No. DA301, Rev D.1 dated 25 February 2019</del> <del>(DA-2016/165/02)</del> South Elevation, Drawing No. DA301, Rev D dated 26 October 2018 (DA-2016/165/04)		<del>1 March 2018</del>  2 November 2018
(DA-2016/165/04)		
<del>North Elevation, Drawing No. DA302, Rev A dated 27 February 2018</del> North Elevation, Drawing No. DA302, Rev B dated 26 October 2018 (DA-2016/165/04)		1 March 2018 2 November 2018 (DA-2016/165/04)
<del>East Elevation, Drawing No. DA303, Rev A dated 27 February 2018</del> North Elevation, Drawing No. DA302, Rev B dated 26 October 2018 (DA-2016/165/04)		1 March 2018 2 November 2018 (DA-2016/165/04)
<del>West Elevation, Drawing No. DA304, Rev A dated 27 February 2018</del> North Elevation, Drawing No. DA302, Rev B dated 26 October 2018 (DA-2016/165/04)		1 March 2018 2 November 2018 (DA-2016/165/04)
Section A, Drawing No. DA305, Rev A dated 27 February 2018		1 March 2018
Section B, Drawing No. DA306, Rev A dated 27 February 2018		1 March 2018
Section C, Drawing No. DA307, Rev A dated 27 February 2018		1 March 2018
Streetscape, Drawing No. DA308, Rev A dated 27 February 2018		1 March 2018
Landscape Concept Ground Floor Plan, DWG No. LSDA-201, Issue C dated 7 February 2018	Greenplan	1 March 2018
Landscape Concept Roof Floor Plan DWG No. LSDA-202, Issue C dated 7 February 2018		1 March 2018
Landscape Planting Ground Floor DWG No. LSDA-301, Issue A, dated 7 February 2018		1 March 2018
Landscape Planting Roof Floor, DWG No. LSDA-302, Issue A dated 7 February 2018		1 March 2018

Landscape Details Planting, DWG No. LSDA-401, Issue A, dated 7 February 2018		1 March 2018
Landscape Details Typical Construction, DWG No. LSDA-404, Issue A dated 7 February 2018		1 March 2018
Cover Sheet, Drawing No. SW100, Revision A dated 26 February 2018		1 March 2018
Stormwater Concept Design – Basement 2 Plan, Drawing No. SW200, Issue A, dated 26 February 2018		1 March 2018
Stormwater Concept Design – Ground Floor Plan, Drawing No. SW201, Issue A, dated 26 February 2018		1 March 2018
Stormwater Concept Design – Roof Plan, Drawing No. SW202, Issue A, dated 26 February 2018		1 March 2018
Stormwater Concept Design – Details Sheet 1 of 2, Drawing No. SW300, Issue A, dated 26 February 2018		1 March 2018
Stormwater Concept Design – Details Sheet 2 of 2, Drawing No. SW301, Issue A, dated 26 February 2018		1 March 2018
Erosion & Sediment Control – Plan & Details, Drawing No. SW400 dated 26 February 2018		1 March 2018
Stormwater Concept Design – Music Catchment Plan, Drawing No. SW500, Issue A, dated 26 February 2018	SCG Engineering	1 March 2018
Survey Plan (Ref: 3558), dated 7 June 2016	Cedar Surveying Services Pty Ltd	16 September 2016
Ground Floor Swept Paths – 6.4m SRV, Drawing No TX.01 Rev C, dated 23 February 2018	Traffix Traffic and Transport Planners	1 March 2018
Ground Floor Swept Paths – B85 & B99 Drawing No TX.02 Rev C, dated 23 February 2018		1 March 2018
Basement Level 1 B99 Circulation & Passing, Drawing No. TX.03, Rev C dated 23 February 2018		1 March 2018
Basement Level 2 B99 Circulation & Passing, Drawing No. TX.04, Rev B dated 18 January 2018		1 March 2018
Ramp Profile, Drawing No. TX.05, Rev C dated 23 February 2018		1 March 2018

Reference Document(s)	Author	Date Received
Amended Statement of Environmental Effects	Chapman Planning Pty Ltd	1 March 2018
Amended Clause 4.6 variation to the height development standard dated 27 February 2018	Chapman Planning Pty Ltd	1 March 2018
Statement of Compliance: Access for people with a disability (Ref: 216196), dated 26 February 2018	Accessible Building Solutions	1 March 2018
SEPP 65 Report dated 26 February 2018	DKO Architecture	1 March 2018



Traffic Impact Assessment Rev B- Ref: 17.607v02, dated 23 February 2018	Traffix Traffic and Transport Planners	1 March 2018
<del><b>BASIX Certificate No. 902705M_02 dated 25 February 2018</b></del> <b>BASIX Certificate No. 902705M_03, dated 31 October 2018</b>	Senica Consultancy Group Pty Ltd	<del><b>1 March 2018</b></del> <b>5 November 2018</b>
NATHERS Certificates with various dates	Senica Consultancy Group Pty Ltd	1 March 2018
Acoustic Report- Ref: 20161114.1/1104A/R1/RL (Rev 1), dated 11 April 2017;	Acoustic Logic	21 April 2017
Arboricultural Assessment Report (Ref: R 17/11), dated 24 August 2016.	Angophora Consulting Arborist	16 September 2016
Arboricultural Assessment Report - Tree Impact Statement & Root Investigation dated 12 April 2017;	Naturally Trees	21 April 2017
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Geotechnical Investigation- Ref: 29461ZRrpt dated 20 July 2016;	JK Geotechnics	16 September 2016

**[Amendment 4 – S4.55(1A) amended on 11 June 2019]**

## Site Description

The subject site is commonly known as 19-25 Robey Street, Mascot (Lot 15 Sec A in DP 4115, Lot 16 Sec A in DP 4115, Lot 1 in DP 946234, Lot 1 in DP 455491, Lot 19 Sec A in DP 4115, Lot C in DP 418600 and Lot 1 in DP 931264). The site is rectangular in shape, has an area of 2,590m<sup>2</sup>. The approved mixed use development is currently under construction.





The surrounding area is characterised primarily by various forms of residential developments to the north, south and west and commercial development to the east. The subject site is located on the western edge of the Mascot town centre, between O’Riordan Street to the west and Botany Road to the east.

## Background

DA-2016/165 Approved 17 May 2018 - Sydney Central Planning Panel

Integrated Development application for the demolition of the existing buildings and associated structures, construction of a five storey mixed commercial and residential flat development comprising of 66 residential apartments and 2 large retail tenancies, two levels of basement car parking accommodating 133 spaces, associated landscaping, relocation of stormwater easement and consolidation of lots fronting Robey Street

DA-2016/165/02 Approved 12 March 2019 - Bayside Planning Panel

- Modification of Condition 1 to amend the approved plans;
- Modification of Condition 33 to read “Prior to the issue of the Construction Certificate, details shall be provided certifying that all Ausgrid requirements have been satisfied;
- Addition of Condition 95(b) to maintain safety for pedestrians due to the revised location of the travel path; and
- Modification of Condition 107 to reflect Council’s Development Engineer’s requirements.

DA-2016/165/03 Submitted to Council 25 September 2018

Modifications to basement design and deletion of Condition 34 relating to waterproofing and tanking of the basement structure. This remains under assessment.

BDA-2016/165/A Submitted to Council 15 January 2019

- Deletion of Condition 68(c) and 68(d) relating to the undergrounding of all above ground utilities; and
- Deletion of Condition 11(c) relating to the construction of a new stormwater pipe.

On 23 May 2019, the applicant filed a Class 1 appeal with the Land and Environment Court, and hence is a deemed refusal. A Directions Hearing has been scheduled for 21 June 2019, which will set out a future timetable and a likely Section 34 Conciliation.

## Proposal

The proposal seeks as follows:

### (1) Amended plans

- Relocation of boundary stairs at the Robey Street frontage in the middle of the frontage area to allow for wheelchair access to the retail tenancies;
- Colourbond metal fencing to rear boundaries;
- Metal palisade fencing to a maximum height of 1.4m above ground level to terraces of Units 3, 4, 6, 7, 8; and

- A reduction in the size of the sliding door and window openings, and the deletion of some windows to facades other than Robey Street. This results in a reduction to the extent of glazing on the facades.
- (2) Deletion of Condition 116(a) referred to below, relating to the provision of a Public Right of Footway over a pathway on site.

*“The pathway as indicated on the landscape plan along the northern boundary is to remain private with a public Right of Footway over the path from Elizabeth Avenue to John Curtin Reserve and must be noted as such on any future strata title subdivision. Appropriate access control gates and ambient lighting is required to provide adequate safety for residents outside of daylight hours.”*

## Statutory Considerations

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

### **S.4.55(1A) – Modifications involving minimal environmental impact**

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) *it is satisfied that the proposed modification is of minimal environmental impact,*

The relocation of the disabled stairs along the frontage as well as the reduction in the size of the openings as specified earlier in the report will result in minimal environmental impact. It is considered that the proposed amendments are suitable in the context of the site and 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 the consent was originally granted and before that consent as originally granted was modified (if at all), and*

The Section 4.55(1A) modification relates to internal and external modifications to the previously approved development and does not alter the approved height or gross floor area of the development. The modification as proposed is deemed to be substantially the same development to that which consent was originally granted.

- (c) *it has notified the application in accordance with:*

- i. the regulations, if the regulations so require, or*
- ii. a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*

Notification of the modification has been undertaken out in accordance with Part 2 of the Botany Bay Development Control Plan (DCP) 2013.

- (d) *it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

Nil submissions were received by Council in relation to the modified proposal.

**S.4.55(3) – Consideration**

In the assessment of this modification, the original reasons for the granting of consent were considered and the consent authority can be satisfied that the proposal as modified is appropriate in regards to the provisions of this clause.

**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:

**S4.47 - Development that is Integrated Development**

The original application was approved as Integrated Development as the proposal required temporary dewatering to construct the basement levels. The proposal as modified does not alter the basement levels nor depth of excavation previously approved. As such the proposal remains compliant with the provisions of this part.

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

The applicant has submitted a revised BASIX Certificate for the proposed development. The Certificate number is 902705M\_03. The commitments made result in reductions in energy and water consumption. The proposal satisfies the requirements of the SEPP and the reference documents in condition 1 are to be updated to reflect the revised BASIX.

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

Given the nature of proposed modifications, the proposal remains consistent with the SEPP.

**State Environmental Planning Policy No. 55 – Remediation of Land**

Consideration of this SEPP was undertaken as part of the original assessment, with the site deemed suitable for the proposal. There is no further information as part of this modification which would alter previous conclusions regarding the suitability of the site. The site remains suitable for the proposal as modified.

**State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Buildings**

The provisions of this SEPP have been considered in the assessment of the proposal as modified. Given the nature and scale of proposed modifications, consideration by the Design Review Panel was not required. Notwithstanding a merit assessment was undertaken.

Proposed modifications relating to the reduction in the size of sliding door and window openings, and the deletion of some windows to facades do not result in adverse solar access or ventilation impacts on site and continue to present a scheme that is generally consistent with the approved design.

The proposal in its modified form remains generally consistent with the requirements and objectives of the SEPP.

### **Botany Bay Local Environmental Plan 2013 (BBLEP2013)**

Botany Bay Local Environmental Plan 2013 has been considered in the assessment of the proposal as modified. The proposal as modified remains generally consistent with the objectives and requirements of the B2 - Local Centre zone of which the site is positioned within. The proposal remains as previously approved in relation to Height of Building and FSR.

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

There are no current Draft EPIs applicable to the subject site or development.

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

The following Development Control Plan is relevant to this application:

### **Botany Bay Development Control Plan 2013**

#### Part 3C – Access and Mobility

The relocation of the front boundary stairs to facilitate an accessible path of travel to retail tenancies will continue to ensure the dignified, equitable and safe access to and within the approved development for people with a disability and / or mobility impairment.

#### Part 3I – Crime Prevention Safety and Security

Proposed modifications include the provision of metal colourbond fencing to the rear boundaries of the site and addition of metal palisade fencing to the periphery of private open spaces of ground floor units 3, 4, 6, 7, 8 to improve the safety and security of the ground floor component of the development.

Whilst the size of the windows and door openings have been reduced in size, they still allow for passive surveillance of the public domain and communal areas within the development.

#### Part 3H – Sustainable Design

The proposed minor modifications to glazing do not result in a reduction in cross-ventilated or hours of solar access for the units within the development.

#### Part 4C – Residential Flat Buildings

The proposed modifications will not result in a significant change to the streetscape presentation of the approved development, with the only modification being the relocation of the stairs.

The proposed boundary fencing has been designed to a height of 1m to 1.8m along the side and rear boundaries.

#### **S.4.15(1)(a)(iv) - Provisions of Regulations**

The provisions of the regulations have been considered in the assessment of the proposal as modified.

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

##### Condition 116a – Public Right of Way

The proposal seeks to delete condition 116a in order to remove an approved requirement for a public right of way through the site.

Condition 116a reads as follows;

*“The pathway as indicated on the landscape plan along the northern boundary is to remain private with a public Right of Footway over the path from Elizabeth Avenue to John Curtin Reserve and must be noted as such on any future strata title subdivision. Appropriate access control gates and ambient lighting is required to provide adequate safety for residents outside of daylight hours.”*

The submitted documents provide the following justification for the proposed deletion of Condition 116(a):

- *There is an unacceptable security issue with having public access through the site in such close proximity to the ground floor units, particularly due to limited surveillance opportunities from Elizabeth Avenue and from low park usage;*
- *There is no current access through the subject site to provide such thoroughfare; and*
- *Separation of the space into two paths is not practical due to limited space.*

The assessing officer does not concur with the above and the deletion of condition 116a is not supported for the following reasons:

- There are still opportunities made available for passive surveillance to the walkway by way of three ground floor units that have a northerly aspect and with that living areas that directly look into the area;
- Whilst there was no access from Elizabeth Avenue into John Curtin Reserve as there was a large industrial building located at the end of Elizabeth Avenue, this has now been demolished as part of the approved development application. The design of the approved development has presented an opportunity to improve pedestrian linkages to John Curtin Reserve, particularly for residents within the proposed development and also to the east of the reserve;
- The condition has not requested for two separate paths, with the retention of the single path as per the approved ground floor plan;
- The original DA was approved with an FSR variation. This variation, in part, was supported on the basis of the provision of public access to John Curtin Reserve via the rear walkway along the northern boundary of the subject site; and

Removal of condition 116a would be contrary to the reasons that the development was initially approved by the Regional Panel given the above.

Based on the above, it is recommended that condition 116a be retained.

**S.4.15(1)(c) - Suitability of the Site**

Site suitability was assessed as part of the original application. There are no additional site circumstances or matters, which would otherwise alter the previously concluded suitability of the site. The site remains suitable for the proposal as modified.

**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 fourteen (14) day period. No submissions were received.

**S.4.15(1)(e) - Public Interest**

Granting approval to the modified development with relation to the openings, fencing and access ramp will have no adverse impact on the public interest.

The retention of Condition 116(a) with respect of to the previously approved public right of way through the site to John Curtin Reserve from Elizabeth Avenue is deemed to be in the public interest as it will improve through site linkages and facilitate public access to a reserve, particularly for residents who live to the east of this reserve.

**Section 7.11 - Contributions**

The proposed modification does not change any Section 7.11 Contributions that are payable, and as prescribed in the original development consent (as amended).

**Conclusion**

Development Application No. 2016/165/4 (DS18/891) for modifications to provide accessible entry from Robey Street, provision of colorbond fencing to the rear boundary, metal palisade fencing to ground floor terraces of units 3, 4, 6, 7, and 8; reduced glazing and sliding doors to side and rear elevations; and deletion of Condition 116(a) relating to the pathway along the northern boundary to remain private at 19-25 Robey Street, Mascot has been assessed in accordance with the relevant requirements of the Environmental Planning and Assessment Act 1979.

It is recommended that Condition 1 is amended to reflect the supported modifications to the building with relation to the fencing, openings and accessible entry from Robey Street. It is further recommended that Condition 116(a) relating to the public Right of Footway between Elizabeth Avenue and John Curtin Reserve be retained.

































